

J [REDACTED] D.,
Appellant,

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION

Opinion No. 20-32

OPINION

INTRODUCTION

This is an appeal of the Montgomery County Board of Education's ("local board") 4-4 split decision which resulted in the denial of Appellant's Request for Change of School Assignment ("COSA") for her son. The local board filed a Memorandum in Response to Appeal maintaining that the decision of the Superintendent's Designee should remain in effect because it was not arbitrary, unreasonable, or illegal. The Appellant responded and the local board replied.

FACTUAL BACKGROUND

Appellant's son, [REDACTED], will be entering the sixth grade this school year, 2020-2021. He previously attended [REDACTED] Elementary School (" [REDACTED] ES") and is assigned to attend [REDACTED] Middle School (" [REDACTED] MS") in the fall. Appellant wants [REDACTED] to attend Silver Spring International Middle School ("SSI MS").

On or about February 10, 2020, Appellant submitted a Change of School Assignment ("COSA") application seeking to have [REDACTED] attend SSI MS instead of [REDACTED] MS based on a unique hardship. (Local Bd. Ex. 2). In Appellant's letter supporting the request, she stated only that [REDACTED]'s friends will be attending SSI MS, that she and her husband have busy work schedules, and that her older son attended SSI MS from 2015-2018 on an approved COSA. *Id.* Appellant also included a letter from her employer confirming her employment, her work hours Monday through Friday from 8:00 a.m. to 5:30 p.m., and her ability to pick [REDACTED] up from school to bring him with her to work until her shift ends in the evening. *Id.* On February 18, 2020, the Division of Pupil Personnel and Attendance Services ("DPPAS") denied the request citing lack of a unique hardship. *Id.*

In letters dated February 22 and 25, 2020, Appellant appealed DPPAS's denial of her COSA request. (Local Bd. Ex. 3). The letters explained that Appellant and her husband believe it is unsafe for [REDACTED] to be home alone after school without adult supervision. *Id.* Allowing him to attend SSI MS, which is approximately 2 miles from Appellant's work, would make it convenient for her to pick him up after school and take him to work with her until her shift ends. *Id.* The letters also stated that the arrangement would allow Appellant to be close to school in the event of an emergency involving [REDACTED]. They further noted that the Appellant would like [REDACTED]

to have “the same opportunities of education as his older brother” who attended SSI MS on a COSA approval. *Id.*

The Chief Operating Officer, Andrew M. Zuckerman, the Superintendent’s Designee for transfer appeals, referred the matter to Hearing Officer, Dennis S. Leighty, for review. (Local Bd. Ex. 4). In a Memorandum dated March 10, 2020, Mr. Leighty provided his report and recommendation. As part of his review, Mr. Leighty communicated with the Appellant and her husband; the Principals of [REDACTED] MS, SSI MS, and [REDACTED] ES; and Mrs. Pelton, Transportation Senior Router with the Transportation and Support Services Unit. The Appellant and her husband told Mr. Leighty that Appellant wants to be closer to [REDACTED]’s school in case of an emergency. They also explained that although there is not a financial hardship, having [REDACTED] stay with Appellant at work after school provides them with a financial savings on childcare. Appellant’s husband has a busy work schedule that involves travel, which prevents him from regularly assisting with [REDACTED]’s childcare. *Id.* The Principal of SSI MS advised Mr. Leighty that the sixth grade at SSI MS is overenrolled and that the school cannot support additional students. *Id.* Both middle schools have the same start and end time, and the family lives within walking distance of [REDACTED] MS. *Id.*

Based on his review and finding no unique hardship, Mr. Leighty recommended that the COSA request be denied. He stated the following:

I appreciate the parents’ goal for [REDACTED] to attend Silver Spring International Middle School, which, is close to the mother’s place of employment and also offers monetary savings. However, the father noted there is no financial hardship and emphasized the convenience factor and monetary savings rather than seek childcare. Given that [Appellant] works until 5:30 p.m., should the family not choose to access available daycare options in their neighborhood, nor the option of [REDACTED] spending his afternoons at [Appellant’s] place of employment, [REDACTED] would be at home alone until approximately 6:00 p.m. In addition, the Grade 6 program at Silver Spring International Middle School is overenrolled for the 2020-2021 school year and the current position allocation is insufficient to meet the needs of the students. Proximity to a particular school does not rise to the level of a unique hardship. This appears to be a preference of one school over another.

Id. By letter dated March 12, 2020, the Superintendent’s Designee advised the Appellant that he adopted Mr. Leighty’s findings and recommendations and denied the COSA request. (Local Bd. Ex. 5).

By email dated March 12, 2020, Appellant appealed the decision of the Superintendent’s Designee to the local board. (Local Bd. Ex. 6). In the appeal, Appellant reiterated her concern for her son’s safety if he is to be home alone while she and her husband are at work, noting again the convenience of her work location to SSI MS and her ability to bring [REDACTED] there after school. *Id.* She also stated that she first learned from Mr. Leighty’s memorandum that they live in the walking zone for [REDACTED] MS and that there will be no bus service to their neighborhood.

She asserted that [REDACTED] is not ready to walk to and from school on his own and that it is not safe for him to do so. *Id.*

By Memorandum dated March 18, 2020, Jack R. Smith, Superintendent, responded to the appeal. He recommended that the local board uphold the decision to deny the Appellant's COSA request due to lack of a unique hardship. (Local Bd. Ex. 7). He stated that neither the proximity of the parent's workplace to the requested school nor Appellant's concerns about her son walking the designated route to school are issues unique to the Appellant and her family, therefore, they do not constitute a unique hardship. *Id.* Dr. Smith also reported that the staff of [REDACTED] ES did not report any concerns regarding [REDACTED]'s independent functioning skills that might impair his ability to walk to school. *Id.* He further confirmed that SSI MS is overenrolled in the sixth grade. *Id.*

On March 26, 2020, Appellant submitted additional information in support of her appeal restating her prior concerns. (Local Bd. Ex. 8). In addition, for the first time, Appellant asserted a safety concern related to [REDACTED]'s poor vision and his need for prescription glasses, attaching a copy of his eyeglass prescription to the appeal. *Id.* Appellant maintained that if [REDACTED] were to forget his glasses or if they broke, it would be unsafe for him to walk to school because the walking route requires [REDACTED] to cross Viers Mill Road, which has six lanes. *Id.* Appellant explains that [REDACTED] has a very strong prescription due to his severe farsightedness, which renders his near-vision blurry if uncorrected. (Response to Local Bd. Memorandum). Appellant believes that SSI MS is a safer school choice because she can pick [REDACTED] up from school, eliminating the need for him to walk what she perceives to be a dangerous route. *Id.*

In a Decision and Order issued May 12, 2020, the local board was unable to attain the five votes necessary to affirm or reverse the decision of the Superintendent's Designee denying the COSA request. (Local Bd. Ex. 9). The result of the local board's failure to attain the votes was that the decision of the Superintendent's Designee denying the COSA remained in effect. The four members who agreed with the decision found that the Appellant failed to demonstrate a unique hardship sufficient to justify the change of school assignment, and that the Appellant has the option to obtain before and aftercare in the [REDACTED] community, which would alleviate any concerns about [REDACTED] walking to and from school and being home alone. The four members who disagreed with the decision believed that the totality of the evidence presented established a unique hardship. *Id.*

This appeal followed. Although it is uncertain when in-person school will resume due to the COVID-19 emergency, we must address the issues raised in this appeal based on the assumption that in-person school will resume at some point.

STANDARD OF REVIEW

The standard of review in a student transfer decision is that the decision of the local board shall be considered *prima facie* correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.06A. A decision is arbitrary or unreasonable if "it is contrary to sound educational policy" or if "a reasoning mind could not have reasonably reached the conclusion the local board or local superintendent reached. COMAR 13A.01.05.06B. The Appellant has the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.06D. Because the local board

did not attain the necessary votes to either affirm or reverse the Superintendent's Designee's denial of the COSA request in this case, we apply this standard to our review of his decision.

LEGAL ANALYSIS

Thousands of students every year seek to transfer between schools in Montgomery County. For this reason, the Montgomery County Public Schools ("MCPS") has developed particular criteria to guide its process for determining which students are eligible to change schools. It is well established that there is no right or privilege to attend a particular school. *See Bernstein v. Bd. of Educ. of Prince George's County*, 245 Md. 464, 472 (1967); *Carolyn B. v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 15-20 (2015).

MCPS permits student transfers in certain situations, one of which is when the family can demonstrate unique hardships "that could be mitigated by a change of school assignment." (MCPS Regulation JEE-RA, Section V.A.1). However, "problems that are common to large numbers of families, such as day care issues ... do not constitute a unique hardship, absent other compelling factors." *Id.*

Appellant's State Board appeal focusses on her request to have ■■■ attend SSI MS based on alleged safety concerns if he were to attend ■■■ MS. She maintains that it is unsafe for ■■■ to be home alone after school without parental supervision and that it is unsafe for him to cross Viers Mill Road on his walk to and from school, particularly in light of his poor vision if he is not wearing his prescription glasses.

Childcare

With regard to Appellant's safety concerns about ■■■ being at home without parental supervision, this is essentially a childcare issue. Like many parents, the Appellant and her husband have jobs that prevent them from being at home with their child after school. Appellant's workplace is in close proximity (2 miles) to SSI MS and Appellant would like ■■■ to attend school there so that she can easily pick him up after school and bring him to work with her. Although ■■■ MS is 5.8 miles from Appellant's work location, Appellant states that she has only a one-hour work break for the roundtrip, which she claims is insufficient time due to traffic.

The State Board has consistently held that absent additional compelling factors, childcare issues do not amount to a hardship. *See Raegan and Rick H. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 14-62 (2014); *Desbele S. v. Montgomery Country Bd. of Educ.*, MSBE Op. No. 11-55 (2011); *Mr. and Mr. David G. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 10-14 (2010); *A.T. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 07-08 (2007). Childcare issues are common to many families who are faced with balancing the demands of work and children. In our view, the Appellant has not offered any additional compelling factors to establish a unique hardship on the basis of childcare concerns. Although the Appellant would prefer to save money rather than spend it on childcare, as many other parents would also prefer, there is no evidence of financial hardship to suggest that the family cannot afford childcare so that ■■■ does not have to be home alone.

Walking Route

Appellant also seeks the transfer because she is concerned for [REDACTED]'s safety crossing Viers Mill Road based on his age (entering sixth grade) and the fact that he might not be wearing his prescription glasses. Neither of these issues rise to the level of a unique hardship. Other children [REDACTED]'s age who live within the walking zone of their schools must traverse busy, multi-lane roads to get to school. Likewise, many of the children who walk to school wear prescription glasses for vision impairment.

Appellant maintains that the walking route is unsafe because it crosses Viers Mill Road. To support this she relies on a Montgomery pedestrian crash heat map of a portion of Viers Mill Road which reports crashes between pedestrians and motor vehicles. (Response to Local Bd. Memorandum). The Director of Transportation for Montgomery County Public Schools ("MCPS") has explained that MCPS regularly reviews walking routes and that the walking route [REDACTED] would utilize, particularly the intersection at Viers Mill Road and [REDACTED] Road, was deemed to meet safety standards for students who walk to [REDACTED] MS. (Watkins Affidavit). The assessment took into account the presence of the adult crossing guards that are stationed at the intersection daily. *Id.* MCPS provides two crossing guards at that intersection from 7:40-8:10 a.m. and 3:00-3:30 p.m. each school day, with the times adjusted in the event of delayed opening or early dismissal. *Id.* Approximately 60-100 students successfully cross Viers Mill Road at that location every morning and afternoon with the assistance of these crossing guards. *Id.* If the Appellant believes that the walking route is unsafe, she should request that the school system undertake a review of the route. Furthermore, we point out that although the Appellant has indicated that she would have [REDACTED] cross Viers Mill Road at a different intersection (Viers Mill Road and Claridge Road), the local board has indicated that the crossing at Viers Mill Road and [REDACTED] Road is the crossing location for the walking route to school.

Under the local board's criteria for approving student transfers, the Appellant must set forth facts that establish a unique hardship in order to support an exception to the generally applicable rule that students attend the school to which they are assigned based on their residence. The availability and cost of childcare and walking route safety concerns are issues that are common to many families. As explained above, the concerns raised by the Appellant are not unique hardships and are insufficient to justify a student transfer.

Over-Enrollment of Sixth Grade at SSI MS

Finally, the Principal of SSI MS advised Mr. Leighty that the sixth grade at the school was overenrolled. MCPS Regulation JEE-RA (IV)(B)(6) provides that in approving or denying a COSA request, consideration is given to school capacity and other issues that implicate the ability of the school to admit new students. The State Board has repeatedly recognized that over-enrollment concerns are a valid justification for denying a transfer request to a specific school. *See Latasha B. v. Charles County Bd. of Educ.*, MSBE Op. No. 14-45 (2014) and cases cited therein. Thus, the capacity issue alone may have been sufficient to deny the request to attend SSI MS.

CONCLUSION

For the reasons stated above, we find that the Appellant has failed to show by a

preponderance of the evidence that the decision of the Superintendent's Designee was arbitrary, unreasonable or illegal. Accordingly, we affirm his denial of the Appellant's COSA request to transfer her son from [REDACTED] MS to SSI MS.

Signatures on File:

Clarence C. Crawford
President

Jean C. Halle
Vice-President

Shawn D. Bartley

Gail H. Bates

Charles R. Dashiell, Jr.

Susan J. Getty

Vermelle D. Greene

Rachel McCusker

Joan Mele-McCarthy

Lori Morrow

Warner I. Sumpter

Holly C. Wilcox

Absent:
Rose Maria Li

August 25, 2020