

K.E. and E.E.

Appellant,

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 20-43

OPINION

INTRODUCTION

The Appellants, parents of [REDACTED], appeal the unanimous decision of the Montgomery County Board of Education (“local board”) denying Appellants’ request to reassign their son to [REDACTED] Middle School (“[REDACTED]”) instead of [REDACTED] Middle School (“[REDACTED]”), his assigned school, for the 2020-2021 school year. Appellants requested the reassignment based on their desire to have their son attend school in the [REDACTED] Cluster where his older siblings attend high school and to have him remain in a school community where he and his family feel comfortable. The local board filed a Memorandum in Response to Appeal and the Appellants replied.

FACTUAL BACKGROUND

During the 2019-2020 school year, [REDACTED] was attending 5th grade at [REDACTED] Elementary School (“[REDACTED]”). He was slated to attend the 6th grade at his home school, [REDACTED] at the start of the 2020-2021 school year.

On February 1, 2020, Appellants submitted a Change of School Assignment (“COSA”) request asking to transfer [REDACTED] from [REDACTED] to [REDACTED]. Appellants maintained that the COSA was based on a unique hardship and explained that an older sibling was attending the 8th grade at [REDACTED], and would be moving on to the 9th grade at [REDACTED] High School, where a second sibling was already attending the high school. (Board Ex. 2, COSA Application). Appellants’ main reason for the COSA was “the type of support we have gotten from [REDACTED] and the community over the years.” *Id.* Appellants stated that the family had lost loved ones over the years while [REDACTED] and his siblings attended [REDACTED] and [REDACTED], respectively, and they wanted [REDACTED] to receive the continued support and services at [REDACTED]. (Board Ex. 2). On February 28, 2020, the Division of Pupil Personnel and Attendance Services (“DPPAS”) denied the COSA for lack of a documented unique hardship. (Board Ex. 3).

On March 9, 2020, Appellants appealed the DPPAS denial, stating that [REDACTED] is doing well academically and socially with his [REDACTED] peer group. Appellants stated that denying the COSA for [REDACTED] when similar COSAs were approved for his siblings could be detrimental to his success and overall health and well-being. *Id.* Appellants included a letter from [REDACTED], MSN, CPNP, of Pediatric Care of Rockville with their appeal. Ms. [REDACTED] wrote, “I believe that it

would be beneficial to [REDACTED]'s well-being if he were allowed to remain with his peer group cluster as they transition to upper school.” She noted that the pediatrician was available if there were additional questions. *Id.* The letter did not identify any diagnosed medical condition or treatment requirement to support [REDACTED]'s assignment to [REDACTED].

On March 25, 2020, Hearing Officer, Shari Perry, conducted an investigation of the COSA. Ms. Perry spoke with [REDACTED]'S mother who indicated that although [REDACTED] never required any mental health support while at [REDACTED] Elementary, he needed to attend [REDACTED] for his emotional well-being and that they would pursue psychological evaluations necessary to demonstrate [REDACTED]'s specific need. (Board Ex. 4). Ms. Perry spoke with the principal and counselor at [REDACTED] who confirmed that [REDACTED] had not received any specific supports or services while there. *Id.* Ms. Perry also noted that although Appellants indicated that having [REDACTED] attend [REDACTED] would simplify their before and after school transportation schedule, [REDACTED] would provide bus transportation eliminating the need for Appellants to drive him to school. *Id.* Ms. Perry concluded there was no unique hardship and recommended that Chief Operating Officer, Andrew Zuckerman deny the COSA request. *Id.* By letter dated March 27, 2020, Dr. Zuckerman concurred with Ms. Perry's findings and adopted her recommendation to deny [REDACTED]'s transfer from [REDACTED] to [REDACTED]. (Board Ex. 5). He advised Appellants of their right to appeal his decision to the local board. *Id.*

On April 13, 2020, Appellants appealed Dr. Zuckerman's decision to the local board. Appellants stated that family traumas affected [REDACTED]. (Board Ex. 6). They explained that they had not done testing for a full psychological examination because they hoped that the pediatrician's recommendation would suffice to support the COSA rather than subject [REDACTED] to intense and rigorous testing. *Id.*

By memorandum dated May 5, 2020, local superintendent, Jack Smith, recommended that the local board affirm Dr. Zuckerman's decision and deny the COSA request. Dr. Smith explained that Appellants' original appeal did not rise to the level of a unique hardship because they failed to offer any substantive documentation. Dr. Smith noted the Appellants statement that they would pursue psychological evaluations to meet the criteria of a unique hardship, if necessary. (Board Ex. 7).

On May 29, 2020, Appellants disclosed additional information about family problems and another letter from Ms. [REDACTED]. Ms. [REDACTED] stated:

[REDACTED]'s anxiety is an ongoing concern at this time. I feel his anxiety may negatively impact his transition to middle school and a change in school cluster will impose a significant burden on [REDACTED]. It is my understanding [REDACTED] has been both academically and socially successful in his present school cluster. His continued success in school and in management of his anxiety will be more difficult in the setting of a new cluster. Exposure to a new group of peers may have a significant probability of exacerbating [REDACTED]'s anxiety, which would in turn negatively impact his academic progress.

(Board Ex. 8).

On June 29, 2020, the local board unanimously affirmed the denial of the COSA request. The local board found that Appellants did not demonstrate a unique hardship as required by the

local board's policy. It considered Ms. [REDACTED]'s letter, which did not indicate that [REDACTED] is currently being treated for any diagnosed conditions that would impact his education.

This appeal followed. Included with the appeal is new evidence that Appellants did not submit to the local board as part of the COSA request. The new evidence is a June 24, 2020, letter from [REDACTED], MS. Psych, BSN RN. Although the local board did not consider the letter in reaching its decision, it addresses the letter in its response to the State Board appeal.

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.

LEGAL ANALYSIS

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). Local board policy JEE-RA requires students to attend their assigned school unless they are granted a special exception to attend a school outside their geographic attendance area. (Board Policy JEE and Administrative Regulation JEE-RA). Local board policy permits student transfers in certain situations, one of which is when “a family’s individual and personal situation creates a unique hardship 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 or program/course preferences do not constitute a unique hardship, absent other compelling factors.” *Id.*

Documented Unique Hardship Exception

With regard to a unique hardship, Appellants maintains that [REDACTED]'s mental health needs require him to attend [REDACTED] instead of [REDACTED]. In order to justify a transfer based on a medical need, an appellant must demonstrate a link between the student’s medical condition and the necessity for transfer to the requested school. *Shervon D. v. Howard County Bd. of Educ.*, MSBE Op. No 17-10 (2017); *Philip and Deborah W. v. Prince George's County Bd. of Educ.*, MSBE Op. No. 11-48 (2011). The fact that a documented medical condition exists is not itself sufficient to grant approval of a transfer. *See Timothy and Michelle W. v. Howard County Bd. of Educ.*, MSBE Op. No. 09-18 (2009). Documentation should include information about the diagnosis, treatment, and expected outcomes for the student. In addition, an appellant must show that health professionals at the assigned school cannot support the medical condition. *Shervon D., supra*. “Brief statements” from medical professionals fall short of “the type of detailed explanation needed regarding the necessity for the transfer and the intended outcome.” *Carolyn B. v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 15-20 (2015).

This Board has long recognized that it is an adjustment for students transitioning from elementary to middle school and then to high school. Students can understandably be anxious and insecure in the new environment. It is a time when they meet new people, make new friends, become involved in new school activities and become a part of the school community. The school administration and school staff are able to assist students with this transition and provide needed supports. As this Board has often stated, the desire to attend school with one's friends or peer group does not constitute a unique hardship. *Nicole B. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 13-57 (2013); *Mary Ann K. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 10-52 (2010); *Tom & Judy M. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 09-37 (2009); *Iglesias v. Montgomery County Bd. of Educ.*, MSBE Op. No. 02-50 (2002).

We agree that the information and evidence in the record reviewed by the local board supports its denial of the COSA request, and we do not find that its decision was arbitrary, unreasonable or illegal. However, our analysis does not end there because Appellants seek to introduce additional evidence in the State Board appeal that they did not previously introduce in their appeal to the local board.

New Evidence

The Appellants submitted with the present appeal a letter dated June 24, 2020, from [REDACTED] MS. Psych, BSN RN. The State Board may consider the additional evidence or remand the appeal to the local board for consideration of the additional evidence if the evidence is material to the case and the Appellant offers good reason for failing to present the information to the local board. COMAR 13A.01.05.04C. To be material, the evidence must be "of such a nature that knowledge of the item would affect a person's decision-making." *Shervon D.*, supra, at p.3.

Ms. [REDACTED] states that she is [REDACTED]'s mental health provider and is concerned about the management of his "well-documented anxiety." The letter states that she conducted virtual appointments with [REDACTED] to assess his mental and emotional state. She is concerned that [REDACTED]'s "continued lack of socialization, fear of isolation, and increasing distress within a minimally diverse school environment will definitely contribute further to his anxiety regression going forward." She states that the "potential for rapid decline of [REDACTED]'s] mental health status is a valid and grave concern." In her view, "[i]f [REDACTED] is not afforded the opportunity to regularly maintain a familiar learning environment equipped with onsite therapeutic services, his academic performance and socialization will be severely affected and eventually the symptoms associated with his psychosomatic ideology of anxiety will be further damaged." She concludes, "[b]ased on my assessment of [REDACTED]'s mental, physical, and emotional wellbeing, I am submitting this formal request for [REDACTED] to remain in the [REDACTED] / [REDACTED] cluster during his transition to middle school in order to ensure JNE maintains continued academic success and mental health stability."). The letter is dated before the local board issued its decision, but after Appellants were given a deadline of May 18, 2020, to submit a reply to the local superintendent's memorandum. (Appellant's Response).

The local board acknowledges that this is new evidence and notes that it reflects [REDACTED]'s "anxiety resulting from COVID-19 and private family matters." (Board Response at p. 7). It argues, however, that the new evidence submitted by appellants is not material because it does

not state that [REDACTED] has been diagnosed with any mental health condition that requires a change in his school assignment. (Response at p. 11).

We disagree. Although the letter could provide more detail, it references an anxiety diagnosis and expected outcomes for the student. Ms. [REDACTED] states that she conducted virtual appointments to assess [REDACTED]'s mental and emotional state, and refers to his well-documented anxiety, and that approval of the school assignment could mitigate his anxiety. It is our view that the new evidence is material because the contents of the letter could affect the local board's decision-making. We also find that there was good reason for Appellants' failure to offer the letter to the local board given its unavailability until after the reply deadline.

Because we find the letter is material to the decision and that there was good reason for Appellants' failure to submit it to the local board prior to its decision, we remand this matter to the local board for further proceedings to consider the additional evidence.

Other Matters

The Appellants would like [REDACTED] to attend [REDACTED] based on convenience given its proximity to [REDACTED] High School where his siblings will attend be attending high school. The transfer will make it easier to transport the children to and from school. This is not a proper basis for granting the COSA request as transportation arrangements are a common issue for many families who have multiple children who attend different schools. *See Karina D. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 19-01 (2019). Moreover, Ms. [REDACTED] noted in her report that [REDACTED] would be providing transportation to [REDACTED] based on the location of the residence.

CONCLUSION

For the reasons stated above, we remand this matter to the local board to review the June 24, 2020 letter from [REDACTED] presented by the Appellants in determining whether to grant the COSA request.

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

Rose Maria Li

Rachel McCusker

Joan Mele-McCarthy

Lori Morrow

Warner I. Sumpter

Holly C. Wilcox

December 8, 2020