

C.M. and D.M.,

Appellant,

v.

MONTGOMERY COUNTY  
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 21-03

## OPINION

### INTRODUCTION

Appellants appeal the Montgomery County Board of Education’s (“local board”) unanimous decision denying their request for a change of school assignment (“COSA”) for their child. The local board filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal. Appellants responded to the local board’s Motion. The local board replied. Appellants offered new evidence with their appeal and response.

### FACTUAL BACKGROUND

Appellants’ child, ■■■, attended ■■■■ Elementary School (“■■■■”) and was expected to begin 6th grade at ■■■■ Middle School (“■■■MS”), in the fall of 2020.<sup>1</sup> On February 19, 2020, Appellants sought a COSA for the 2020-21 school year for ■■■ to attend ■■■ Middle School or ■■■■ Middle School (“■■■” or “■■■”) instead of ■■■MS, ■■■’s assigned school, based on a unique hardship. Appellants explained that they own a vehicle towing business that operates in the ■■■■ and ■■■■ area and they often receive threats of violence from people upset with them because of their business. (Local Board Ex. 3). Appellants stated their concern that ■■■ would be threatened and bullied at ■■■MS because they intend to use their company vehicle that displays the name and phone number of their business to transport ■■■ to and from school. Although school bus transportation is available to ■■■, Appellants indicated their intent to primarily transport him to and from school by company vehicle. (Appellant Exs. A and D). Appellants claimed that ■■■■ and ■■■■ are better options for ■■■ because they do not conduct their business in areas around those schools. (Appeal at 2 and Ex. D).

On March 20, 2020, MCPS personnel in the Division of Pupil Personnel and Attendance Services (“DPPAS”) denied the COSA concluding that Appellants’ fears were speculative and the evidence failed to support the unique hardship requirement of Regulation JEE-RA. Appellants appealed the DPPAS decision to the local superintendent’s designee, Chief Operating Officer Andrew Zuckerman, and he delegated hearing officer Shari Perry to conduct an

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<sup>1</sup> Because of the COVID-19 pandemic and health care emergency, students did not return to schools for in person learning in the beginning of the 2020-21 school year. Instead, instruction for the 2020-21 school year has been on-line and remote.

investigation. (Board Ex. 4). Ms. Perry's investigation included speaking with Appellants, the principal of ██████████, and the ██████████ pupil personnel worker. ██████'s father stated he is frequently threatened because of his business. However, Appellants stated they were unaware that any ██████MS student or parent threatened ██████. During the time ██████ was in at ██████████, Appellants transported ██████ to school in their marked company vehicle and there were no incidents against ██████ related to Appellants' business. Appellants included in their appeal a two page document they claim shows times when police responded to their office. They did not explain the context for the police responses but none appeared to be related to ██████ or ██████'s school. (Appellant Ex. C). On April 23, 2020, Appellants submitted a letter to Ms. Perry, stating that it would be an undue hardship for them to remove over 30 business contracts in the ██████████/██████████ area. (Local Board Ex. 4).

On May 26, 2020, Ms. Perry sent her memorandum to Dr. Zuckerman recommending denial of the COSA because Appellants failed to present evidence of a unique hardship for ██████ to attend ██████MS. She concluded there was no direct link between threats made to Appellants and ██████'s safety at ██████MS. She encouraged Appellants to contact the ██████MS staff directly about their concerns, develop a plan of support for ██████, and learn about how to assist ██████ to engage in opportunities available to incoming 6th graders. (Local Board Ex. 5). Dr. Zuckerman adopted Ms. Perry's recommendation and denied the COSA on May 28, 2020. His denial included Appellants' appeal rights to the local board. (Local Board Ex. 6).

Appellants appealed the denial to the local board on June 17, 2020. They maintained that transporting ██████ to ██████MS in Appellants' marked company vehicle would likely lead to ██████ being retaliated against and bullied because of the nature of their business. (Local Board Ex. 7). On July 1, 2020, local superintendent Jack Smith submitted a memorandum to the local board recommending denial of the COSA because Appellants' reasons were speculative and did not support a unique hardship. (Local Board Ex. 8).

On July 8, 2020, Appellants sent a letter to the local board restating that they were seeking the COSA to prevent threats and bullying against ██████ at ██████MS due to the nature of Appellants' business. Appellants also stated that ██████ would not be using school provided bus transportation. (Local Board Ex. 9). Dr. Smith submitted a second memorandum to the local board on July 13, 2020, again stating that it was speculative that random individuals threatening Appellants based on their business would lead to students bullying ██████ at ██████MS. (Local Board ex. 10).

On July 21, 2020, Appellants submitted another letter to the local board. They explained that ██████ had previously used school bus transportation, but that taking the school bus will be unduly burdensome for them and is a sacrifice to their career and domestic responsibilities. (Local Board Ex. 11).

On August 25, 2020, the local board issued its Decision and Order denying the COSA. The local board considered Appellants' arguments that ██████ would be subject to retaliation based on Appellants' business if he attends ██████MS. The local board found there was no evidence that any person associated with ██████MS has been impacted by Appellants' business or made any threats against Appellants or ██████ because of their business. Appellants' receipt of threats from people in the ██████████ area did not support a unique hardship to justify ██████'s transfer to another school required by Administrative Regulation JEE-RA. Moreover, ██████ can use school transportation if

Appellants believe that transporting him to ■MS in their marked company vehicle will increase the likelihood of retaliation. (Appellant Ex. B). The local board unanimously adopted Dr. Zuckerman’s findings and recommendations.

This appeal followed.

### STANDARD OF REVIEW

The standard of review in a student transfer matter 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. See *Tom & Judy M. v. Bd. of Educ. of Montgomery County*, Op. No. 09-37 (2009). 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. *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). Appellants argue that the COSA should be granted based on the unique hardship that ■ will be harassed and bullied at ■MS because of threats against Appellants due to their business in the neighborhoods near the school. They maintain that ■ or ■ are safe alternatives because they do not operate their business in those school neighborhoods. Appellants argue that the local board’s decision is arbitrary and unreasonable because it failed to consider evidence of violent threats and bullying that Appellants’ family has faced. (Appeal at 3).

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. The school system may grant a student a transfer to a different school, if there is the existence of a unique hardship. (Local Board Exs. 1 and 2, Board Policy JEE and Administrative Regulation JEE-RA). The record shows that the local board reviewed and considered Appellants’ arguments and information submitted, including their statements that the family experienced threats because of their business in the neighborhoods near ■MS. The local board’s Decision and Order discussed the nature of the threats and the lack of an evidentiary connection between random threats to Appellants and ■. The record fails to show any actual threats or bullying to ■ because of Appellant’s business. The circumstances may be unique, but the evidence of hardship is speculative. There were no reported incidents at ■ related to Appellants’ business and the local board states that ■MS has systems in place to address bullying that can take place in any school environment.

Appellants argue that MCPS did not cross reference police reports with student rosters to determine if Appellants’ threats were from ■MS families. The local board referenced Appellants’ “submitted evidence of police reports, which were in response to threatening behavior by individuals that live in the ■ and ■ areas.”

Appellants' Exhibit C consists of two pages identified as "Incident Search Result." There are no parties, addresses or context showing what the document shows. It is not possible to determine from this document any threat to ■■■ at ■■■MS. The record does not contain any police reports or specific documentation showing threats to Appellants from people in the ■■■MS neighborhoods, threats to ■■■, or related to ■■■'s school.

In *Adele and Nicholas B. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 13-46 (2013), a student was bullied by neighborhood children because of the family's involvement in community safety and fighting crime. There, the State Board recognized that it is not uncommon for parents to have concerns about how their children will be treated by other students in school based on events that transpire in the neighborhood. There was no evidence, however, to support that staff at the child's school could not prevent or address bullying in the school. Thus, the State Board upheld local board's denial of the COSA. The State Board suggested school personnel monitor the situation to determine if Appellants' fears turned into reality, and if so, for the school to respond to any bullying or harassment incidents that might occur at school.

As we stated in *Adele and Nicholas B.*, we take such situations very seriously and we expect that staff at ■■■MS will keep a very close watch on this issue and maintain regular contact with the Appellants to evaluate the situation continuously. If bullying or harassment incidents arise targeting ■■■ at school, ■■■MS staff must take swift action to remedy the situation, including considering the transfer request anew if appropriate under the circumstances. Likewise, we expect Appellants to keep the school informed of any bullying or harassment incidents they believe are occurring at school.

Appellants state -without any support- that ■■■ is anxious about attending ■■■MS. To the extent Appellants are seeking approval of the COSA based on a medical condition, they have not made their case. 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). Documentation to support the request should include information about the diagnosis, treatment, and expected outcomes for the student. Here, there is no documented medical condition to support approval of the COSA on a medical basis.

#### *New Evidence*

In their State Board appeal, Appellants seek to include additional evidence that was not a part of the record before the local board. The State Board may consider 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.

With their appeal to the State Board, Appellants submitted a text message exchange. The text messages are undated, do not identify specific individuals, and lack context as to what they refer or whether they are school related. Although they have an aggressive tone and appear to be

taunting between several people, the messages do not relate to Appellants' business or █MS. With their response to the local board's Motion for Summary Affirmance, Appellants attached an affidavit, dated November 5, 2020, from █'s mother attempting to explain the text messages. She states that they are from July 2020, when schools were not in session and provides a summary. The summary of July messages fails to offer anything material to support a threat to █ at █MS related to Appellants' business.

Also with their response to the motion, Appellants submitted emails related to four incidents that occurred in 2017, 2018, 2019, and February 2020 at █. The affidavit sets out to explain these four incidents. The emails give no material evidence to support a unique hardship to attend █MS and Appellants fail to offer any good reason for failing to present the information to the local board.<sup>2</sup> Appellants sent letters to the local board during the COSA investigation and before the local board issued its decision. The information was available, but not submitted to the local board for consideration. For these reasons we will not consider the new information.

### CONCLUSION

For the reasons stated above, we find that the local board's decision is not arbitrary, unreasonable, or illegal. Accordingly, we affirm the local board denying Appellants' request for a change of school assignment. We also direct the local board to take steps for █MS to monitor the situation and take action consistent with this opinion if bullying or harassment incidents at school arise against █ as a result of Appellants' business.

Signatures on File:

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Clarence C. Crawford  
President

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Jean C. Halle  
Vice-President

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Shawn D. Bartley

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Gail H. Bates

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Charles R. Dashiell, Jr.

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<sup>2</sup> One document Appellants submitted is an activation key for a student information system at GMS. There appears to be no relevance between this document and the appeal.

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Susan J. Getty

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Rose Maria Li

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Rachel McCusker

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Joan Mele-McCarthy

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Lori Morrow

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Warner I. Sumpter

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Holly C. Wilcox

Absent:  
Vermelle Greene

January 26, 2021