

P.C.,

Appellant,

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 22-13

OPINION

INTRODUCTION

Appellant appeals the decision of the Montgomery County Board of Education (“local board”) denying his request for a change of school assignment for his son. The local board filed a response to the appeal. The Appellant did not file a reply to the local board’s response.

FACTUAL BACKGROUND

Appellant is the father of Student X, who began kindergarten at the start of the 2021-2022 school year. Appellant lives in Washington, D.C., where he works from home, and shares joint physical and joint legal custody of Student X with Student X’s mother who lives in the Beall Elementary School (“BES”) attendance area. Student X spends part of his time with his father in Washington, D.C. and part of his time with his mother in Montgomery County on a two-day, two-day, three-day rotating schedule. (Response Ex. 1).

On September 22, 2017, the Superior Court of the District of Columbia Family Court issued an order that awarded the parents joint legal custody, but awarded final decision-making authority (called “tie-breaking” authority) to the mother with regard to matters concerning Student X’s education, child care (babysitters, day care, after-school care), and health care if the parents cannot reach joint decisions as to such matters. (Response Ex. 2 at 20). On June 16, 2021, the Court ordered that Student X be enrolled in a Montgomery County elementary school for the 2021-2022 academic year, either at Forest Knolls Elementary School (“FKES”) or at BES, and that the Court would revisit the issue “if and when” the parties obtained permission to have the child enrolled at FKES instead of BES given the mother’s residence in the BES attendance area. *Id.* at 22-23. Thereafter, the mother enrolled Student X at BES in August 2021.

On August 20, 2021, Appellant submitted a request for change of school assignment (“COSA”) to the principal of BES asking for his son to be reassigned from BES to FKES based on a unique hardship. (Response Ex. 4). Appellant attached a written statement with the COSA request explaining that the location of BES places a unique and undue hardship on his commute given the shared custody schedule with Student X’s mother. *Id.* Appellant maintained that his core work hours are 9:00 a.m. to 3:30 p.m. and that drive time to or from BES ranges from approximately one hour to one hour and 45 minutes depending on traffic, while drive time for

FKES would be 15 minutes shorter. *Id.* On September 15, 2021, the Director of the Division of Pupil Personnel and Attendance Services denied the COSA request finding no unique hardship was documented. *Id.*

On September 29, 2021, Appellant appealed the decision to the Montgomery County Public Schools (“MCPS”) Appeals/Transfer Team. (Response Ex. 5). He explained that he sought the COSA to allow for a more balanced life with access to school with reasonable distances for both parents and to allow him to fulfill his custody requirements without four hours of driving. *Id.* Student X’s mother opposed the COSA request. (Response Ex. 1).

Upon receipt of the appeal, MCPS assigned the case to a hearing officer who reviewed the records and spoke with the Appellant. On October 25, 2021, the hearing officer submitted a written report to Eugenia Dawson, Chief of Finance and Operations, acting as the Interim Superintendent’s Designee. (Response Ex. 6). The hearing officer recommended that the Appellant’s COSA request be denied given that there was an absence of unique hardship and the parents were not in agreement regarding the COSA. She also noted that Student X was thriving at BES. *Id.* On October 26, 2021, Ms. Dawson notified the Appellant that his appeal was denied. She stated, “As the Interim superintendent’s designee, I have reviewed the hearing officer’s report, concur with the findings, and adopt the recommendation that your child not be allowed to transfer from [BES] to [FKES] for the 2021-2022 school year.” *Id.*

Appellant appealed the decision of the Interim Superintendent’s Designee to the local board. (Response Ex. 7). In his appeal to the local board, Appellant reiterated that the commuting time from his home to BES and back was a hardship. *Id.*

In response to the appeal, the Interim Superintendent, Dr. Monifa B. McKnight, highlighted that the Appellant’s COSA request did not rise to the level of a unique hardship and recommended that the local board deny the appeal. (Response Ex. 8). Dr. McKnight also noted that based on the court order, the parents would both need to submit a COSA request in the future given their shared custody and the fact that only the Appellant had filed the COSA here. *Id.*

In response, the Appellant requested oral argument before the local board. He continued to maintain that the current assigned school location at BES was a hardship to Appellant due to the commute and its impact on his work hours, and that he was requesting a COSA to allow access to a school within a reasonable distance for both parents. (Response Ex. 9).

The local board initially considered the appeal in closed session on January 13, 2022. (Response Ex. 10). During that meeting, the local board voted to grant the parties an oral argument before the local board. Oral argument before the local board took place on February 2, 2022. The Appellant, Student X’s mother, and legal counsel for the Interim Superintendent presented arguments to the local board. (Response Ex. 1, Local Bd. Decision).

In a decision issued on February 8, 2022, the local board agreed with and adopted the recommendation of the Interim Superintendent’s Designee and the recommendation from Dr. McKnight. (Response Ex. 1). The local board found that the Appellant failed to demonstrate a

unique hardship. The local board explained that the basis for the request was common to large numbers of families given that many MCPS students have divorced parents and spend time living in homes outside of their school attendance area.

This appeal followed.

STANDARD OF REVIEW

Decisions of a local board involving a local policy or a controversy and dispute regarding the rules and regulations 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 may be arbitrary or unreasonable if it is contrary to sound educational policy, or if a reasoning mind could not have reasonably reached the conclusion of the local board. 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 absent a claim of deprivation of equal educational opportunity or unconstitutional discrimination, there is no right of 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).

Pursuant to Policy JEE(B), *Student Transfers*, students are expected to attend the school within the established area in which they reside, their home school. Parents may request a COSA from the student's home school based on the following criteria: unique hardship, family move, or a sibling placement. (Policy JEE(C)). MCPS provides a COSA Information Booklet that includes Frequently Asked Questions ("FAQs") about the COSA request process. (Response Ex. 3). The FAQs define the criteria for requesting a COSA, including "what is a unique hardship". The FAQs explain a unique hardship depends on the family's individual and personal situation. However, the FAQs are clear that problems that are common to large numbers of families, such as issue involving day care or program/course preference, do not constitute a hardship, unless there are other compelling factors present. *Id.*

The Appellant has maintained throughout the case that his request for a COSA demonstrates a unique hardship due to that fact that he lives and works in Washington, D.C. and has to travel to and from BES based on his shared custody with Student X's mother who lives in the BES attendance area. He is seeking a transfer for his son to attend a school that is closer to Appellant's home in order to decrease the commute time when his son stays with him.

The local board's determination that Appellant's basis for the COSA request is not a unique hardship is consistent with prior State Board decisions. While the Appellant may prefer that his child attend a school that is in closer proximity to his home and work, this Board has consistently held that concerns about the distance from school or time it takes to get to a student's school of assignment as compared to the requested school is not a unique hardship. *See A.A. v. Howard County Bd. of Educ.*, MSBE Op. No. 20-39 (2020); *John and Carolann M. v.*

Charles County Bd. of Educ., MSBE Op. No. 14-48 (2014); *Mary Ann K. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 10-52 (2010); *Taryana C. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 10-06 (2010); *Chicherio v. Montgomery County Bd. of Educ.*, MSBE Op. No. 06-3 (2006); *Brande v. Montgomery County Bd. of Educ.*, MSBE Op. No. 05-5 (2005); *Wuu & Liu v. Montgomery County Bd. of Educ.*, MSBE Op. No. 04-40 (2004); *Longobardo v. Montgomery County Bd. of Educ.*, MSBE Op. No. 99-3 (1999).

With regard to the issue of the parents’ shared custody of Student X, Appellant states that the custody order from June 16, 2021 explicitly ordered the parents to jointly complete a COSA for FKES. That is not the case. The June 16 order simply orders that Student X “shall be enrolled in a Montgomery County elementary school”. Although the order references the Appellant’s desire to have his son attend FKES, it also shows the mother’s desire to have her son attend BES. The court noted that the parents would need to jointly request a COSA from MCPS for Student X to attend school at FKES. The transcript of court proceedings demonstrates that the judge expected the parents to come to an agreement on the filing of a COSA request. *See Santo v. Santo*, 448 Md. 620, 633 (2016) (observing that an award of joint legal custody with tie-breaking authority to one parent “is still consonant with the core concept of joint custody because the parents must try to work together to decide issues affecting their children.” The parents did not come to an agreement and Appellant unilaterally requested the COSA. Because the record shows that both the September 22, 2017 and June 16, 2021 court orders demonstrate that Student X’s mother has final decision-making authority on any educational decisions, (Response Ex. 2), we agree with the local board that the Appellant did not have the authority to unilaterally request the COSA without the agreement of Student X’s mother. It was therefore unnecessary for the local board to reach the question of unique hardship but its analysis on that question was nonetheless correct.

CONCLUSION

For the foregoing reasons, we do not find the local board’s decision to be arbitrary, unreasonable, or illegal and we affirm the local board’s denial of Appellant’s request for a change of school assignment.

Signatures on File:

Clarence C. Crawford
President

Charles R. Dashiell, Jr.
Vice-President

Gail H. Bates

Chuen-Chin Bianca Chang

Susan J. Getty

Vermelle D. Greene

Jean C. Halle

Rachel McCusker

Joan Mele-McCarthy

Lori Morrow

Warner I. Sumpter

Holly C. Wilcox

Abstained:
Shawn D Bartley

June 28, 2022