

B.L. AND W.L.,

Appellants

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 25-01

OPINION

INTRODUCTION

B.L. and W.L. (“Appellants”) appeal the decision of the Montgomery County Board of Education (“local board”) denying their Change of School Assignment (“COSA”) request for the 2024-2025 school year for their daughter to attend ██████████ High School (“HS”) based on lack of a unique hardship related to mental health concerns. In their State Board appeal, the Appellants include additional health documentation that was not a part of the record before the local board. The local board filed a response to the appeal maintaining that its decision is not arbitrary, unreasonable, or illegal and should be upheld, and that the State Board should not consider the new evidence. The Appellants responded, and the local board replied. For the reasons stated below, it is appropriate for the State Board to remand the case to the local board to consider the additional evidence.

FACTUAL BACKGROUND

The Appellants’ daughter, Student X, began ninth grade at the start of the 2024-2025 school year at ██████████ High School (“assigned school”).

On February 9, 2024, Appellants submitted a COSA application seeking to have Student X attend ██████ HS instead of her assigned school claiming a unique hardship. (R. 1-8). The Appellants described the hardship as follows:

[Student X] has faced academic challenges, including ADHD and a learning disability diagnosed in the 4th grade. Since the pandemic began, she has received Individualized Education Program (IEP) support, which has been crucial for addressing her needs. The pandemic affected her 4th and 5th-grade years, leading to challenges with remote learning and uncertainties. We also feel that [the assigned high school’s] overcrowding is a concern, which may potentially hinder her learning style and personal growth, while leading to even greater anxiety that she already faces.¹

¹ According to the MCPS Capital Improvement Program, the assigned school was projected to have an enrollment of 2,512 students with a program capacity of 2,034 students. (R. 12).

(R. 6). On February 23, 2024, the Division of Pupil Personnel and Attendance Services (“DPPAS”) for Montgomery County Public Schools (“MCPS”) denied the request citing that it does not meet criteria and, on February 26, 2024, notified the Appellants that the request was denied for lack of unique hardship. (R. 8-10).

On March 6, 2024, the Appellants appealed the denial of their COSA request to Dana Edwards, Chief of District Operations and the Superintendent’s Designee for COSA appeals. (R. 11). The Appellants stated that since the time they submitted the initial COSA request, Student X had been the victim of threats of physical harm, in person and via text and other social media platforms, from a prior student at Student X’s middle school (“Student A”) and from other female students attending Student X’s middle school. *Id.* The Appellants explained that the students involved would be attending the same high school as Student X next year and the Appellants wanted Student X transferred to ■HS based on her physical, mental, and emotional well-being. *Id.* They further stated that Student X’s anxiety level about attending the assigned school with these other students had “gone through the roof” due to the situation. *Id.*

The Superintendent’s Designee referred the matter to Hearing Officer, Albert Mangiacapra, for review. (R. 14). In a memorandum dated May 7, 2024, Mr. Mangiacapra provided his report and recommendation. (R. 12-13). As a part of the review, Mr. Mangiacapra communicated with the Appellants, the school counselor and assistant school administrator at Student X’s middle school, and the school counselor at the middle school attended by Student A. (R. 12).

The Appellants told Mr. Mangiacapra that the verbal and physical threats from Student A occurred mostly in the community or by social media. (R. 12-13). Student A reportedly spread a rumor that Student X used a racial slur, which Student X denied. (R. 12). The last communication the middle school had with the Appellants about the issue was on February 15, 2024, when the assistant school administrator contacted the Appellants to tell them she was present in the hallway when Student X told several students that she did not use racial slurs. *Id.*

Mr. Mangiacapra found that the Appellants failed to present evidence of a unique hardship and recommended denial of the COSA request. (R.13). He stated the following:

[Student X] currently receives special education services for OHI [other health impairment] to address additional difficulties related to her diagnosed ADHD, which she takes prescribed medication for. [Student X’s] current IEP can be serviced at [the assigned school]. [Student X] does not participate in therapy, nor have a diagnosis of anxiety. [Student X] is seeking to attend [■HS] to lessen safety concerns and feeling of anxiety related to Student A and several other students. Student A, the main source of [Student X’s] anxiety, will not attend the [assigned high school]. [Student X] has not met with her school counselor regarding this conflict, nor submitted MCPS Form 230-35, *Bullying, Harassment, or Intimidate (sic) Reporting Form*. School administration have not been made aware of any additional incidents of physical or verbal threats being made to [Student X] while in school.

Id. By letter dated May 7, 2024, the Superintendent's Designee advised the Appellants that she adopted Mr. Mangiacapra's findings and recommendations, and she denied the COSA request. (R. 14).

On June 5, 2024, the Appellants filed an appeal with the local board. (R. 15). The Appellants reiterated their position that Student X was experiencing a unique hardship and extenuating circumstances related to her mental and emotional well-being. *Id.* They stated:

[Student X's] anxiety is due to much more than just the bullying. Her ADHD diagnosis and the fact that she has needed extra support have been difficult for her and have led to a lack of self-confidence and an inability to branch out to make friends outside of a small circle of girls who are all going to [REDACTED] in the fall.

Id. They also stated that since the denial of their COSA request, Student X has become withdrawn and overcome by emotion and anxiety. *Id.* The Appellants further stated their intent to take Student X to a doctor for a formal recommendation for school transfer and to begin Student X in therapy. *Id.*

On June 20, 2024, the Interim Superintendent, Monique Felder, submitted a Memorandum to the local board in response to the appeal. (R. 19-20). Dr. Felder noted that Student X's IEP, which includes goals for reading and writing but no behavioral or social-emotional goals, can be implemented at the assigned school. *Id.* She highlighted that the conflict with Student A occurred in the community and had no educational impact, noting that Student X maintained grades of A's and B's both semesters of 8th grade, as she has done throughout elementary and middle school. *Id.* Dr. Felder recommended that the local board deny the COSA based on lack of unique hardship. *Id.*

The Appellants submitted a response to the memorandum and included documents not previously provided. The documents included (1) Student X's July 15, 2019 Neuropsychological Examination from the [REDACTED] with the diagnosis of ADHD, Combined Type; Specific Learning Disorder, with Impairment in Reading (including non-word decoding, word reading accuracy, and oral fluency); and Anxiety Disorder, Unspecified and (2) a June 18, 2024 letter from her therapist, [REDACTED] LCSW-C, at [REDACTED] [REDACTED] (R. 22-38). The letter provides diagnoses of generalized anxiety disorder and ADHD, for which it states Student X is receiving treatment. The letter also states that Student X experiences symptoms that interfere with daily functioning that have increased as the beginning of high school approaches. (R.38). It further states:

Navigating change, although difficult for most of us, present (sic) additional challenges for those with an Anxiety Disorder and ADHD. The transition to high school will naturally present [Student X] with those challenges and it is vital to her success that she be in an environment where she feels safe. Unfortunately, due to some bullying in person and over social media, which has been relentless, she will likely struggle at [the assigned school]. Most recently she and some friends were chased through her neighborhood by some of these peers; one specifically, has gang affiliation and overwhelming influence over friends. Student X is now fearful of participating in sports or any other activities at [the assigned school], in an effort to

minimize time in the environment where she can be targeted and bullied. My fear is that over time, she will avoid the school environment completely.

Id. The letter further states that Student X’s learning disorder “will likely be exacerbated as anxiety symptoms increase, further complicating ADHD symptoms and her ability to focus on task.” *Id.*

On August 20, 2024, the local board issued a unanimous decision upholding the denial of the COSA request. (R. 41-43). The local board found that the Appellants did not demonstrate a unique hardship as required by local board policy “that can be alleviated through a change in [Student X’s] assigned school,” noting that the bullying Student X experienced occurred largely in the community and there was only one incident at middle school during the winter with no further report of ongoing issues between the students involved. *Id.* The board stated that “[i]nterpersonal conflicts between students are common and trained staff members are available at [the assigned school] to help [Student X] navigate the situation” and assist Student X with the transition to high school to help her feel safe and secure in her learning environment. *Id.* As to her academic needs, the board stated that Student X’s IEP can be serviced at the assigned school with adjustments made as needed in the new school environment. *Id.*

This appeal followed. In the State Board appeal the Appellants have submitted additional information that was not a part of the administrative record before the local board at the time it reviewed the appeal and issued its decision. They provided a letter from Student X’s therapist, [REDACTED] LCPC, of [REDACTED] dated September 12, 2024 and have provided their own information on how Student X has been doing since she began attending the assigned school this school year. (Appeal).

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. 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 (1) contrary to sound educational policy or (2) a reasoning mind could not have reasonably reached the conclusion the local board or superintendent reached. COMAR 13A.01.05.06B. A decision may be found illegal if it is: (1) unconstitutional; (2) exceeds the statutory authority or jurisdiction of the local board; (3) misconstrues the law; (4) results from an unlawful procedure; (5) is an abuse of discretionary powers; or (6) is affected by any other error or law. COMAR 13A.01.05.06C. The Appellants have the burden of proof by the 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 Cnty*, 245 Md. 464, 472 (1967); *Carolyn B. v. Anne Arundel Cnty Bd. of Educ.*, MSBE Op. No. 15-20 (2015). Thousands of students every year seek to transfer between schools in Montgomery County. For this reason, the MCPS has developed criteria to guide its process for determining which students are eligible to change schools. MCPS

permits students to apply for a COSA based on a “unique hardship” when there are “extenuating circumstances related to their specific physical, mental, or emotional well-being or their family’s individual or personal situation that could be mitigated by a change of school environment.” (R. 47-65, Policy JEE at C.1.a). However, “problems that are common to large numbers of families ... do not constitute a unique hardship, absent other compelling factors.” *Id.* MCPS policy specifically requires that hardship requests must be accompanied by documentation that can be independently verified, or the request will be denied. *Id.* When there are extenuating circumstances involving the physical, mental, or emotional well-being of the student, MCPS policy requires the COSA request to include documentation of ongoing treatment by a health care provider of issues related to the student’s physical, mental, or emotional well-being that are directly related to or significantly impacted by the school environment. (R. 48, Policy JEE at C.1.a.2).

Documented Unique Hardship Exception

The Appellants maintain that Student X’s mental health needs require her to attend █HS instead of her assigned high school. The Appellants link their COSA request to Student X’s anxiety disorder, in conjunction with her ADHD and other learning disability, claiming that Student X needs to attend █HS to be with her strong, supportive network of friends that attend school there to help maintain her stability and good mental health. Appellants also claim that Student X’s anxiety has increased as she now attends the assigned school, and the appeals process has progressed.

The health, safety and welfare of all students is of the utmost importance to this Board. Transfer requests based on medical needs are some of the most difficult transfer cases we review. Through the years, we have developed a framework for review of these types of cases. 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 Cnty. Bd. of Educ.*, MSBE Op. No. 17-10 (2017); *Philip and Deborah W. v. Prince George’s Cnty. Bd. of Educ.*, MSBE Op. No. 11-48 (2011). “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 Cnty. Bd. of Educ.*, MSBE Op. No. 15-20 (2015). Further, an appellant must establish that health professionals at the student’s assigned school cannot support the medical condition. *Carolyn B. v. Anne Arundel Cnty. Bd. of Educ.*, MSBE Op. No. 15-20 (2015). The fact that a documented medical condition exists is not itself sufficient to grant approval of a transfer. *Timothy and Michelle W. v. Howard Cnty. Bd. of Educ.*, MSBE Op. No. 09-18 (2009).

In the local board appeal, the Appellants provided documentation from Student X’s therapist (June 18, 2024 letter) regarding their medical concern to support their transfer request. Although the documentation provides a diagnosis of a mental health condition and the therapist’s opinion that there could be negative consequences to Student X if she were not transferred to █HS, a reasoning mind could find the local board’s conclusion that there was no unique hardship to be reasonable based on the speculative view of possible future events against the backdrop of the other evidence before the local board. Namely, there was evidence that the Appellants made no reports to the school of any ongoing issues concerning bullying and threats between Student X and other students; that the Appellants never engaged with school staff, including the school

counselor, on the issue of the bullying and threats or Student X's anxiety; that the bullying and threats took place mostly in the community and primarily involved a student who would not be attending the assigned school; and that there was no evidence that Student X had received ongoing mental health services related to the anxiety prior to the local board appeal. The local board reasonably relied on the totality of the information in reaching its finding of lack of a unique hardship and concluding that the education professionals at the assigned school could support Student X's anxiety issues and safety concerns.

New Evidence

In their appeal to the State Board, the Appellants submitted information that was not part of the administrative record before the local board at the time it rendered its decision. The information consists of a letter dated September 12, 2024, from [REDACTED] LCPC, a clinical mental health therapist working with Student X and updated information on how Student X is doing at the assigned school. 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 Appellants offer 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.* at p.3.

The therapist's September 12 letter states as follows:

[Student X] and I have been working together over the last few months focusing specifically on her anxiety and how it has been elevated due to her current school situation. [Student X] has expressed fear for her own personal safety at [the assigned school], due to previous social situations that have led to her being threatened by a few of her classmates. The anxiety from these situations has made it difficult for [her] to focus in class and has left her feeling isolated without any social or emotional support in this new environment. The anxiety continues to impact [Student X] at home which makes it difficult for her to adequately study and prepare for upcoming tests and assignments. At this point my recommendation would be for [Student X] to be able to transfer to [REDACTED] HS where she already has a built-in support system, where she will be removed from unsafe social situations and where she will be able to adequately focus on her coursework.

(Appeal, Ex. 2). The local board argues that the therapist's letter should be excluded from the State Board's review. The local board argues that the letter should be excluded because it does not differ substantially from the June 18 therapist letter that was considered by the local board, and because the information, which postdates the local board's decision, did not exist when the decision was made. Thus, any impact on Student X was only speculative at the time.

We do not find the local board's argument persuasive. Viewing the two letters together, the September 12 letter connects existing concerns and struggles to Student X's anxiety issues and a medical need to attend [REDACTED] HS. The letter verifies ongoing treatment stating that the therapist has been working with Student X over the past few months, and refers to her documented anxiety, and that approval of the school assignment at this juncture could mitigate the anxiety. The information regarding the actual impact of attending the assigned school was not available at

the time that the local board rendered its decision because it had not yet occurred. While information previously presented may have been speculative, that is no longer the case, and this information is material as it could affect the local board's decision-making. There was also good reason for the Appellants' failure to offer the letter to the local board given its unavailability at that time. *See K.E. and E.E. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 20-43 (2020)(Remanding appeal to the local board for consideration of the additional evidence from mental health provider).

Although the local board cites to *Dan and Lauren T. v. Montgomery Cnty. Bd. of Educ.*, MSBE Op. No. 20-34 (2020), to support its denial of the COSA request here, we find *Dan and Lauren T.* is distinguishable because the documentation from the pediatrician in that case provided no evidence of diagnosis or treatment of a mental health condition and no evidence that the student had received any mental health services. As to additional evidence in that case that the State Board declined to consider, all of the documents predated the original COSA application, and the appellants failed to provide any explanation why the documents were not included in their original COSA or at any other point in the appeal process.

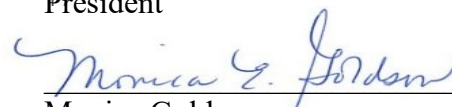
The Appellants' updated report on Student X is that she continues to see a therapist and they are working with staff at the assigned school to ensure that Student X has the support and accommodations that she requires. However, the Appellants report that "while the bullying has largely subsided, we have seen her completely withdraw from school activities outside of attending classes due to lacking the support system she previously enjoyed. She is opting to withdraw her interest from participating in any clubs, sports, or other activities associated with the school." (Appeal at 1). They also report that Student X "is becoming increasingly frustrated, doesn't want to go to school daily, and isolates herself from those around her." (Appellants' Reply at 2). We find this information to be material to the issues in this case and find good reason for the Appellants' failure to provide it as part of its appeal to the local board.

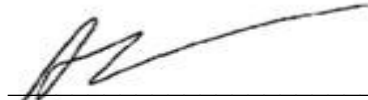
Because we find that the September 12 therapist letter and parent update on Student X's progress at the assigned school are material and that there was good reason for the Appellants' failure to submit the information to the local board prior to its decision, we remand this matter to the local board to consider the additional evidence.


CONCLUSION


For the reasons stated above, we remand this matter to the local board to review the September 12 therapist letter and the updated information on Student X since she has been attending the assigned school in determining whether to grant the COSA request.


Joshua L. Michael
President

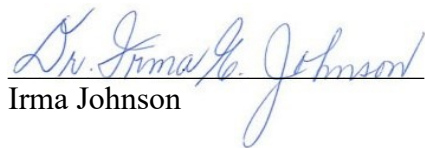

Monica Goldson
Vice-President

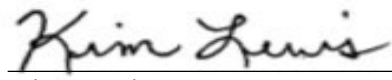

Chet Chesterfield



Kenny Clash

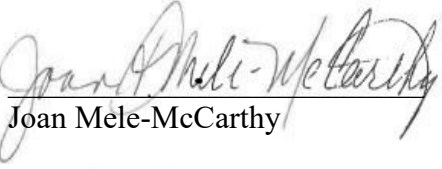

Clarence C. Crawford

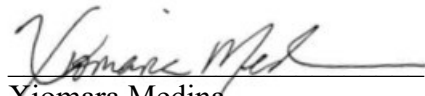

Nick Greer

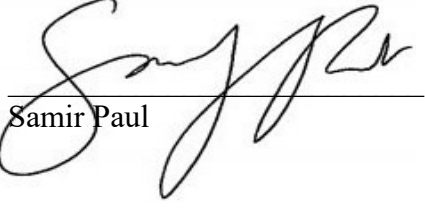

Irma Johnson


Kim Lewis


Rachel McCusker


Joan Mele-McCarthy


Xiomara Medina


Samir Paul

Absent:
Chuen-Chin Bianca Chang

January 28, 2025