

SHERVON D.,
Appellant

v.

HOWARD COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION

Opinion No. 17-10

OPINION

INTRODUCTION

Appellant appeals the decision of the Howard County Board of Education (“local board”) denying her request to have her son, D.E., reassigned from Oakland Mills High School (“Oakland Mills”) to Wilde Lake High School (“Wilde Lake”). The local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal and should be upheld. Appellant did not respond.

FACTUAL BACKGROUND

At the start of the 2015-2016 school year, D.E. lived in the attendance area for Wilde Lake and started his ninth grade year there. In November 2015, D.E. and his family moved to a different address in Columbia in the Oakland Mills attendance area. (Administrative Record (A.R. 15)). Local Board Policy 9000, “Student Residency, Eligibility, Enrollment, and Assignment,” provides that a student who has a change of residence within the county during the school year may complete the current school year at the school in which the student is enrolled. The student must then enroll for the next school year in the newly designated school. Pursuant to this policy, D.E. continued to attend Wilde Lake for the remainder of his ninth-grade year. The school system advised Appellant that beginning with the 2016-2017 school year, D.E. would attend Oakland Mills.

On August 4, 2016, the Appellant requested a change of school assignment for D.E.¹ (A.R. 18). She stated that the reason for the request was to keep D.E. “in a more comfortable and healthy school environment.” (A.R. 19). By letter dated August 15, 2016, Maryann Thomas, Specialist for Residency and Student Reassignment, denied Appellant’s request, finding that D.E. was ineligible for reassignment. (A.R. 20).

On August 17, 2016, Appellant appealed Ms. Thomas’ decision. (A.R. 13). In her letter, Appellant stated that she was devastated by the decision, that her children were discouraged and afraid of attending classes at their new schools and that they were still suffering from the impact of Appellant’s mother’s recent death. In a letter dated August 23, 2016, Kathleen Hanks, Administrator for the local board, acknowledged receipt of

¹ Appellant initially also requested a transfer for her younger son K.P. who is in middle school. Appellant later dropped that transfer request and it is not a part of this case.

Appellant's appeal and asked her to complete the Appeal Information Form. (A.R. 12). On the appeal form, Appellant stated that she had several concerns about D.E. attending Oakland Mills based on "ongoing safety issues" and that the school was not a good fit for her son's physical and mental health. (A.R. 6, 7). Appellant was provided with the opportunity to submit additional documents, but she did not so. (A.R. 5).

In a decision dated October 26, 2016, the local board unanimously upheld the decision to deny Appellant's reassignment request, finding that the Appellant had not demonstrated a unique hardship sufficient to warrant a transfer.

On November 22, 2016, Appellant appealed the local board decision to the State Board.

STANDARD OF REVIEW

When reviewing a student transfer decision, the decision of the local board is presumed *prima facie* correct. COMAR 13A.01.05.05A. The State Board will not substitute its judgment for that of the local board unless the decision is shown to be arbitrary, unreasonable or illegal. *Id.*

LEGAL ANALYSIS

According to the local board's student transfer policy, students are required to attend their assigned school unless they are granted a special exception to attend a school outside their geographic attendance area. (Policy 9000). There are several types of special exceptions set forth in the policy, only one of which is relevant to this case – the "Special Circumstances" exception, section (IV)(J)(4), which states in pertinent part:

In rare circumstances, the Superintendent/Designee, in consultation with school-based administrators, may grant parent requests for individual exceptions to the student reassignment standards based on documented unique hardships.

This is the provision under which the Appellant sought D.E.'s reassignment. Under this exception, the parents of the student bear the burden of presenting documented evidence of a unique hardship establishing the need for the reassignment. Policy 9000 does not define what constitutes a unique hardship, but states that problems common to large numbers of families, such as the need for a particular schedule, class/program, sibling enrollment, redistricting, or day care issues, do not constitute an exception to the reassignment standards.

It is well settled that there is no right to attend a particular school. *Bernstein v. Bd. of Educ. of Prince George's County*, 245 MD. 464, 472 (1967). Additionally, the desire to attend a school that Appellant believes is academically better than the assigned school does not rise to the level of a unique hardship. *See, e.g. Dennis v. Bd. of Educ. of Montgomery County*, 7 Op. MSBE 953 (1988); *Marshall v. Bd. of Educ. of Howard County*, 7 Op. MSBE 56 (1997). Likewise, the desire to attend school with one's friends or peer groups does not constitute a unique hardship. *Mr. and Mrs. Rashad M. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 12-07 (2012). *Safety Issues*

Appellant has expressed generalized safety concerns about Oakland Mills based on emails she stated she received and discussions with community leaders. Appellant, however, has not provided the emails or any details of her discussions with community leaders. Thus, we have no specific evidence of “safety concerns.”

The State Board has held that, absent sufficient evidence, a generalized assertion that a school environment is unsafe does not constitute a unique hardship. Allegations alone about an unsafe school environment does not provide justification for transfer under the policy. *See Tom & Judy M. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 09-37(2009) (“Although Appellants have cited a safety concern as one of the bases for the transfer request, they have presented no evidence that Northwest cannot provide their [child] with a safe school environment.”).

Transfer Request for Health Reasons

The Appellant argues that D.E. would be healthier emotionally and physically at Wilde Lake. In support of this she has produced a letter from D.E. that lists the reasons he wants to stay at Wilde Lake, recent emotional struggles, and his fears regarding Oakland Mills.

We have previously held that in order to assert a claim for a unique hardship based on a medical condition, an appellant must demonstrate a link between the student’s condition and the necessity for a transfer to the requested school. *K.J. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 14-18 (2014). In addition, we have held that the Appellant must show that the medical condition cannot be supported by health professionals at the assigned school. *See Carolyn B. v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 11-48 (2011).

The letter does not provide any clinical diagnosis of any medical condition that would require D.E.’s placement at Wilde Lake. Thus, there is no persuasive evidence that there is a medical basis for the transfer. While we are sympathetic to the Appellant’s concerns about her son, we do not find that she has met her burden of establishing a unique hardship sufficient to justify a transfer in this case.

New Evidence Included in State Board Appeal

In her appeal, Appellant seeks to introduce four new documents into the evidentiary Record that were not a part of case before the local board: (1) a July 28, 2016 letter from Appellant to Maryann Thomas, Specialist for Residency and Student Reassignment, (2) D.E.’s report card which reflects grades he received while attending Wilde Lake and Oakland Mills, (3) her younger son’s report card, and (4) a letter from D.E.’s English teacher at Wilde Lake, which requests that D.E. be allowed to attend Wilde Lake.

The State Board may review additional evidence if it is shown that the evidence is material to the issues in the case and there were good reasons for failure to offer the evidence in the proceedings before the local board. COMAR 13A.01.05.04C. For evidence to be material, it must be of such a nature that knowledge of the item would affect a person’s decision-making. *Black’s Law Dictionary* (10th Ed. 2014). The State Board may consider the additional

evidence or remand the appeal to allow the county board to review the additional evidence. *Id.*

These new documents were produced after the Appellant had received the adverse decision from the local board. First, the letter from Appellant to Ms. Thomas is repetitive of Appellant's concerns about safety at Oakland Mills. In that letter, Appellant repeated her general concern about ongoing safety issues, and emails she received about separate incidents occurring in and around the area of Oakland Mills. These incidents included reports of student misbehavior in and around the school, D.E.'s fear of the behavior of the students at Oakland Mills, and an incident where D.E.'s younger brother, K.P., was chased from a local mall by students from Lake Elkhorn and Oakland Mills. Those facts do not add specificity to the Appellant's generalized comments about safety at Oakland Mills.

The letter to Ms. Thomas also explained the recent death of her mother. Appellant's family had lived in the Wilde Lake attendance district for over seven years, but were forced to relocate so that Appellant could care for her mother, who suffered from a long illness that left Appellant's mother unable to take care of herself. Sadly, Appellant's mother succumbed to cancer in August 2015. The Appellant asserts that her mother's death affected D.E.'s mental health. While we accept that may be the case, there is no clinical diagnosis provided. That additional evidence is thus not sufficient or material to support a transfer for unique hardship.

D.E.'s report cards from Wilde Lake and Oakland Mills documented a decrease in his average grades from "B's" to mostly "C's" and "D's" in core content areas, and the letter from D.E.'s ninth-grade English teacher noted his positive academic and athletic qualities and indicated her support of allowing D.E. to return to Wilde Lake. We do not find such information material to support a unique hardship transfer.

As noted in the record and here, Appellant had the opportunity to produce this evidence during the local board's appeal process and but did not. Appellant has not shown a good reason for failing to introduce these documents before the local board. Therefore, for all these reasons we will not consider the additional documents.

CONCLUSION

For the reasons stated above, we do not find the local board's denial of Appellant's transfer request to be arbitrary, unreasonable or illegal. We affirm the local board's decision.

Signatures on File:

Laurie Halverson

Stephanie R. Iszard

Rose Maria Li

Barbara J. Shreeve

Madhu Sidhu

Guffrie M. Smith, Jr.

Laura Weeldreyer

Abstain:

Andrew R. Smarick
President

Michele Jenkins Guyton

Dissent:

Maryland makes it excessively difficult for parents to select their child's school. It should be the policy of the state to encourage, rather than discourage, a parent's ability to place their child in the school that will best serve him or her.

Chester E. Finn, Jr.
Vice-President

February 28, 2017