

KEITH AND VENERA J.,

Appellant

v.

MONTGOMERY COUNTY  
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 18-37

## OPINION

### INTRODUCTION

This is an appeal of the Montgomery County Board of Education's ("local board") decision denying the Appellants' Request for Change of School Assignment ("COSA") for their son. The local board filed a Motion for Summary Affirmance maintaining that its decision to deny the request was not arbitrary, unreasonable, or illegal. The Appellant responded to the local board's Motion. The local board replied.

### FACTUAL BACKGROUND

At the start of this school year (2018-2019), Appellants' son, K.J., began the 9<sup>th</sup> grade at his assigned school, Wootton High School ("Wootton"). K.J. had previously attended Cabin John Middle School ("Cabin John"), which has a split articulation to high school. Depending on where they live, some Cabin John students attend Wootton and some attend Churchill High School ("Churchill").

On February 27, 2018, while K.J. was still in middle school, Appellants submitted a COSA application asking that K.J. be allowed to attend Churchill instead of Wootton. (Motion, Ex. 2). Appellants cited "unique hardship" as the basis for the request but failed to provide any information or documentation to support their request at that time. *Id.* On March 13, 2018, the Division of Pupil Personnel and Attendance Services ("DPPAS") denied the request for lack of documentation regarding a unique hardship. (*Id.*).

On April 5, 2018, Appellants appealed the denial of their request and submitted supporting documents. (Motion, Ex. 3). In their letter of appeal, Appellants explained that they want K.J. to take Russian as a foreign language at school, and Russian is offered at Churchill through the AP level, but it is not offered at Wootton. Appellants argued that the denial of the COSA prevents K.J. from learning his mother's native language, prevents him from improving his ability to communicate with his Russian speaking relatives, prohibits him from gaining a deeper understanding of his culture and heritage, and will negatively impact his career opportunities and college admissions prospects. *Id.* In support of the appeal, Appellants attached the following items to the letter:

- Letter dated February 9, 2018, from Nathalie McGregor, Founder, CEO and Chairman of the American-Russian Educational Center, Inc., where K.J. had been attending private Russian School for the past seven years, recommending that he continue his Russian studies in high school.
- Email dated January 11, 2018 from Kimberly Bolden, Principal of Wootton, confirming that she would “sign off on the COSA and forward it to central office,” but cautioning that she has no say in such decisions and that they are made at the central office.<sup>1</sup>
- Email dated January 10, 2018 from Joan Benz, Principal of Churchill, expressing support for the COSA request.
- Email from Anthony DeRosa, resource teacher in the World Languages Department at Wootton, confirming that Wootton does not offer Russian.

MCPS Chief Operating Officer, Andrew M. Zuckerman, Ed.D., acting as the Superintendent’s Designee, referred the matter to Hearing Officer Sandra S. Walker for review. In a Memorandum dated April 23, 2018, Ms. Walker summarized Appellants’ concerns as set forth in the April 5 letter of appeal and in discussions with Appellant, Mr. J. (Memorandum). Mr. J. explained that K.J.’s older brother attended Churchill and took Russian courses there, which resulted in his qualifying for scholarships and awards that he might not have otherwise received. The family has since moved into the Wootton attendance zone where no high school Russian class is offered. He further explained that K.J. had been taking Russian classes for several years on Saturday mornings, and how important it is to them that K.J. continue to advance in Russian language studies at Wootton. *Id.*

Ms. Walker explained that changes in school assignment are not made for requests to take a specific class. She recommended denial of the COSA request based on the “absence of a unique hardship.” However, given that the Russian language class is offered first period at Churchill, Ms. Walker offered K.J. the option of attending the first period class at Churchill and return to Wootton for the remainder of the school day so long as the family could provide the transportation. *Id.* By letter dated April 24, 2018, Mr. Zuckerman advised the Appellants that he agreed with Ms. Walker’s findings and recommendations regarding lack of a unique hardship, and adopted the recommendation that K.J. not be allowed to transfer from Wootton to Churchill for the 2018-2019 school year. (Zuckerman Letter).

By letter dated May 23, 2018, Appellants, through newly retained legal counsel, appealed Dr. Zuckerman’s decision to the local board. The appeal letter reiterated Appellants’ desire for K.J. to continue to learn Russian at Churchill given that his mother and relatives are native Russian speakers and K.J. has taken private Russian lessons for several years. Appellants noted that K.J. and his brother were raised bi-lingual, speaking both Russian and English, and that K.J. was placed into the English as a Second Language (“ESOL”) program for third through fifth grades. Appellants claimed that because they are now paying a college expense for their older son, K.J.’s “continued enrollment in the Russian Saturday program would constitute a significant financial burden” for them and they “likely will not be able to continue paying tuition for the

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<sup>1</sup> Principals are required to sign COSA requests so that they have notice of the request only. The signature is not indicative of approval or disapproval.

Saturday Russian class.” They also claimed that it would be difficult for K.J. to keep up with the demands of high school and extracurricular sports (swim and tennis teams) while also taking the Saturday class.

In addition, the Appellants indicated that they had moved around a lot when K.J. was younger, five years in Tokyo and one year in Vienna, before returning to the United States and moving from the Beverly Farms Elementary School (“Beverly Farms”) district to the Cold Spring Elementary School (“Cold Spring”) district. Because of the move during elementary school, Appellants explained that K.J. had some anxiety separating from his good friend at Beverly Farms. Appellants further explained that K.J.’s friend from Beverly Farms and his friends from Cold Spring will all be attending Churchill and Appellants would like him to go there to attend school with them, presumably to avoid the anxiety he experienced when he changed elementary schools. *Id.*

Appellants also pointed out that having K.J. take Russian as his first period class at Churchill and then having him finish the rest of the day at Wootton would not be a workable situation. First, they explained that they both work and cannot wait around for the first period class to end at 8:40 to take K.J. back to Wootton before heading off to work. Second, they explained that even if they could arrange for a ride, the schools are on the same time and bell schedule and K.J. would have to miss part of the first period class or part of the second period class in order to get from one school to the next. *Id.*

Appellants argued that their situation was a unique hardship sufficient to support the COSA. They summarized it as follows:

[K.J.’s] desire to take high level Russian language courses is not a mere preference, it is a way for him to continue studying Russian as he had been doing over seven years, as well as a connection to his heritage. While he may not be the only MCPS student interested in Russian language courses, it is highly unlikely that there are large numbers of students living near Churchill for whom it represents such a personal and familial connection or who were placed in ESOL because they communicated at home in Russian. Furthermore, [K.J.] has experienced several different transitions in his education: he lived abroad for six years, then he attended two different MCPS elementary schools. He also has and will experience separation from friends due to MCPS school assignments. For [K.J.] to lose the opportunity to study Russian – or have to choose between participating on athletic teams or Russian – will create significant anxiety when he is about to start high school and constitutes a unique hardship under MCPS Regulation JEE-RA, Section V.A.I.

*Id.*

By memorandum dated June 4, 2018, Superintendent of Schools, Dr. Jack R. Smith, responded to the appeal and recommended that the local board uphold Dr. Zuckerman’s decision.

(Smith Memorandum). Dr. Smith addressed the issues raised by Appellants and noted that none of the information provided rose to the level of a unique hardship. *Id.* He specifically noted that the desire to take particular courses is not a hardship, that the Appellants did not submit supporting documentation of financial hardship, and that K.J. would know many students attending Wootton because his middle school is a feeder school for Wootton.

In a Decision and Order issued June 25, 2018, the local board agreed with Dr. Zuckerman's decision that the Appellants failed to present a unique hardship and affirmed the denial of the COSA request. The local board noted that it "has consistently held that the desire to access a particular program, such as the Russian language cited by [the Appellants], does not constitute a unique hardship for COSA Purposes." The local board also noted that the "COSA Booklet explains and as the Board has said in many COSA decisions, the desire to attend school with existing friends does not constitute a unique hardship."

This appeal followed.

### 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.01.05.05A. 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.01.05.05 (B)(1) & (2). The Appellants have the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.05(D).

### LEGAL ANALYSIS

Thousands of students every year seek to transfer between schools in Montgomery County. For this reason, the Montgomery County Public Schools ("MCPS") has developed particular criteria to guide its process for determining which students are eligible to change schools. 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).

#### **Unique Hardship Standard**

MCPS permits student transfers in certain situations, one of which is when the family can demonstrate unique hardships "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 ... do not constitute a unique hardship, absent other compelling factors." *Id.*

Appellants want K.J. to transfer to Churchill so that he can take Russian classes there. A COSA based on the desire to participate in particular courses or a program of study runs counter to MCPS policy because it is an issue common to large numbers of families who may prefer the course offerings of one school over another. *See id.* The State Board has repeatedly upheld cases denying COSA requests based on a desire to participate in particular classes/programs. *See*

*Christine C. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 14-59 (2014)(denial of transfer request based on desire to participate in business and finance course); *Richard and Nadia S. v. Harford County Bd. of Educ.*, MSBE Op. No. 07-41 (2007)(transfer to take advantage of science courses offered at one high school but not another found permissible); *William Wu & Linda Liu v. Montgomery County Bd. of Ed.*, MSBE Op. No. 04-40 (2004)(desire to participate in advanced studies in art and Chinese offered at Quince Orchard High School not a valid basis for transfer); *Warran v. Montgomery County Bd. of Educ.*, MSBE Op. No. 00-25 (2000)(denial of transfer based on desire to participate in high school's signature program in fine arts and humanities upheld); *Simms v. Prince George's County Bd. of Educ.*, MSBE Op. No. 00-12 (2000)(desire to participate in sign language program in high school is insufficient to justify transfer request).

The Appellants indicate that the family moved around a lot when K.J. was younger and that he attended two different elementary schools in the County. K.J. established specific friendships at those elementary schools, as well as at middle school, and Appellants would like him to attend Churchill where these specific friends will be attending school to provide A.J. with some stability and help ease his anxiety with attending a new school. Appellants have not provided any medical documentation to support claims of anxiety as required by MCPS Policy. See JEE-RA, Section V.A.2 ("Documentation that can be independently verified must accompany all hardship requests, or the request will be denied."). Nor does the desire to remain with a peer group satisfy the hardship standard. See *Mr. & Mrs. G. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 10-14 (2010). See also *Nicole B. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 13-57 (2013); *Brande v. Montgomery County Bd. of Educ.*, MSBE Op. No. 05-05 (2005); *Wuu & Liu v. Montgomery County Bd. of Educ.*, MSBE Op. No. 04-40; *Upchurch v. Montgomery County Bd. of Educ.*, MSBE Op. No. 99-7 (1999). Moreover, K.J. will know many of the students at Wootton because one of the elementary schools and the middle school attended by K.J. are feeders for Wootton.

As part of the basis for the COSA request, Appellants claim that they can no longer afford K.J.'s Saturday Russian lessons given the college expense of their older child. As the local board points out, the Appellants did not submit any documentation to support a financial hardship as required by MCPS policy. Even if they had done so, it is our view that such financial concerns could not serve as a basis for a unique hardship here. The financial issues associated with out-of-school activities are matters faced by numerous families of school-aged children and do not amount to a unique hardship absent additional compelling factors. See *Greg & Sivan K. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 15-38 (2015).

The Appellants maintain that the local board's decision to deny the COSA is illegal because it misconstrues the COSA policy which requires the local board to look at the totality of all of the factors presented in determining if the unique hardship standard was satisfied. Appellants cite to Regulation JEE-RA, Section V.A.1 which states:

Transfers, or COSAs, may be requested when a family's individual and personal situation creates a unique hardship that could be mitigated by a change of school assignment. 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**. [Emphasis added].

Appellants argue that K.J.'s family background and desire to speak Russian with his relatives; his former experience as an ESOL student; his bi-lingual upbringing; the logistical impossibility of taking Russian first period at Churchill and then traveling to Wootton; his need for stability in high school; his inability to take the Saturday Russian class due to its impact on his education, participation in extra-curricular sports and finances; and all of the factors specifically addressed above collectively serve as the compelling factors that raises this case to the level of a unique hardship sufficient to justify the COSA.

The local board took all of the information provided by the Appellants into consideration and determined that the COSA request did not rise to the level of a unique hardship. Although the Appellants believe that there are compelling factors that make the confluence of all of their reasons sufficient to justify the COSA, the local board did not find that to be the case. Many students seek transfers to other schools for a variety of reasons. Some of those reasons may be personal and some may be related to academics, college and career, or other things. Having reasons for requesting a COSA does not mean that those reasons are compelling enough to satisfy the unique hardship standard. We do not find that the local board misconstrued or misapplied the unique hardship requirement.

### **Offer to Take Russian Course at Churchill**

As this Board understands it, MCPS does offer some students who have been denied transfers to the school offering the class the student wants to take the option to take the class at that school within the confines of the student's schedule. As far as we can tell, there is no written policy on when and how that option is offered or implemented. It appears to be on an *ad hoc* basis.

It is commendable that MCPS offers such opportunity to students. This case demonstrates, however, that the opportunity may seem to be an elusive one. Such an opportunity was offered here but not pursued by the family because they believed that scheduling and transportation were insurmountable barriers to taking the Russian class at Churchill. The record reflects that the family did not attempt to resolve those problems with the school system. It is possible, however, that other options could have been available, such as schedule changes or an on-line course.

We emphasize that there is no legal requirement that MCPS offer other feasible educational options for students who are legally denied transfers. MCPS exercises good educational policy when it does so. As we stated previously, however, there appears to be an *ad hoc* nature to when other educational options are offered to some students denied transfers. When transfers are denied, there is no notice that discussions about options will be entertained. To the extent that all students who are denied transfers are not aware that the school system is willing to discuss other options, we have concerns about fairness. We understand that there may not be feasible options available for every student, but all students denied transfers should be made aware that discussions about other options are possible. We note that determination of what is a feasible option remains within the sole discretion of the school system. If the parents and student do not accept the option offered, no appeal right arises.

While we agree with the local board that there was no basis to grant the transfer on account of hardship, we request that MCPS re-examine the options available for this student and discuss feasible options, if any, with the family. If the family wishes to discuss such options, it should contact the school system forthwith.

## MCPS Educational Policy

Appellants argue that the local board's decision to deny K.J. entry to Churchill to participate in the Russian language program is contrary to MCPS' educational policy. To support their argument, Appellants cite to the following portion of the MCPS world languages curriculum framework that sets forth the program goals:

[P]repare students to be linguistically and culturally competent in languages other than English. The ability to communicate in a culturally appropriate manner with speakers of other languages is the key to success in the increasingly diverse global community of the 21<sup>st</sup> century. As students develop proficiency in world languages and an understanding of the underlying values and beliefs of other cultures, they gain the skills that are essential to meaningful communication.

(Appellants' Opposition at 5).

The COSA policy and the statement of goals for the world languages curriculum are completely separate matters. The curriculum goals statement sets forth MCPS' general desire to educate students to become "linguistically and culturally competent" in a foreign language. K.J. will have the opportunity to take a foreign language at Wootton, but it may not be the foreign language he prefers. We do not find the local board's denial of the COSA request to be contrary to MCPS educational policy.

Although we affirm the local board's decision in this case, we will be examining transfer policies across the State at a future State Board meeting to determine whether we should adopt regulations concerning student transfers.

## CONCLUSION

For the reasons stated above, we find that the local board's decision is not arbitrary, unreasonable or illegal. We affirm the decision of the Montgomery County Board of Education to deny the Appellants' request to transfer their son from Wootton High School to Churchill High School.

Signatures on File:

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Justin M. Hartings  
President

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Stephanie R. Iszard  
Vice-President

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Vermelle D. Greene

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Michele Jenkins Guyton

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Jean C. Halle

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Rose Maria Li

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Joan Mele-McCarthy

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Michael Phillips

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Warner I. Sumpter

Dissent:  
Chester E. Finn, Jr.

Abstain:  
David Steiner

October 23, 2018