

C [REDACTED] K.

Appellant,

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 20-40

OPINION

INTRODUCTION

Ca [REDACTED] K. (“Appellant”) appeals the decision of the Montgomery County Board of Education (“local board”) denying her Change of School Assignment (“COSA”) request for her son to attend [REDACTED] Middle (“[REDACTED] MS”) for the 2020-2021 school based on lack of a unique hardship. The local board filed a Memorandum in Response to Appeal maintaining that its decision is not arbitrary, unreasonable, or illegal and should be upheld. Appellant responded, and the local board replied.

FACTUAL BACKGROUND

Appellant’s son, [REDACTED] entered the 6th grade at the start of the 2020-2021 school year and is assigned to [REDACTED] Middle School (“[REDACTED] MS”). [REDACTED] attended the magnet program at [REDACTED] Elementary School (“[REDACTED] ES”) for first and second grade. For third through fifth grade he attended the [REDACTED] Elementary School (“[REDACTED] ES”), which is paired with [REDACTED] ES.¹

In February 2020, Appellant submitted a COSA application seeking to have [REDACTED] attend [REDACTED] MS instead of [REDACTED] MS claiming a unique hardship. (Local Bd. Ex. 2). Appellant stated that [REDACTED] is doing well in school and that it is important for his “academic progress, self-esteem, and his socio-emotional well being” to attend [REDACTED] MS. *Id.* She expressed concern that he would not have an academic peer group at [REDACTED] MS, specifically in math, and that she thinks it is best for him to remain with his peers from elementary school. *Id.* Appellant explained that the family moved from [REDACTED] 7 years ago and has built a supportive community in the [REDACTED] area that helps the family manage two kids, work, sports, and other after school activities. *Id.* On February 27, 2020, the Division of Pupil Personnel and Attendance Services (“DPPAS”) for Montgomery County Public Schools (“MCPS”) denied the request citing lack of a unique hardship. *Id.*

On March 13, 2020, Appellant appealed the denial of her COSA request to the Chief Operating Officer (“COO”), Andrew M. Zuckerman, the Superintendent’s Designee for COSA appeals, reiterating the reasons for her request. (Local Bd. Ex. 3). She stated that her work

¹ Montgomery County Public Schools has several paired elementary schools in which students attend pre-k through second grade at one school and third through fifth grade at another.

hours pose a hardship because she cannot care for [REDACTED] after school and cannot afford after-school care. She stated that she relies on her [REDACTED] support system to assist with carpooling and after-school care. *Id.* She also stated that the denial of the COSA request has had an impact on [REDACTED]'s mental health. She submitted a letter from the principal at [REDACTED] Elementary School, where she works as a paraeducator, who confirmed that she will have extended work hours (beyond 3:15 p.m.) for the 2020-2021 school year. *Id.* She also submitted an email from [REDACTED], [REDACTED] ES counselor, who confirmed that the family has built a community in [REDACTED]. Ms. [REDACTED] stated that the community has been helpful to the family, but also stated her belief that [REDACTED]. "will thrive in whatever environment he is placed in" because he is a wonderful student. *Id.*

Dr. Zuckerman referred the matter to Hearing Officer, Janice N. Faden, for review. In a memorandum dated April 27, 2020, Ms. Faden provided her report and recommendation. As part of her review, Ms. Faden communicated with the Appellant who elaborated on the issues that she identified in her letter of appeal. She explained that [REDACTED] had been with the same cohort of students since first grade and that the family had developed trusted relationships in the community over the years. She explained that her and her husband's work schedules do not allow them to pick up [REDACTED] for after-school activities and they rely on their friends from the [REDACTED] community to help them. Ms. Faden spoke with the principal of [REDACTED] ES who advised that Appellant's work hours would be ending at 4:30 for the 2020-2021 school year. Ms. Faden also spoke to the principals of [REDACTED] MS, and [REDACTED] MS. (Local Bd. Ex. 4). The principal of [REDACTED] MS advised that the school has enriched and advanced courses and programming. She also indicated that the staff is always open to connect with incoming families and is happy to speak with the Appellant about her situation. *Id.*

Ms. Faden recommended that Appellant's request be denied for lack of a unique hardship. By a letter dated April 30, 2020, Dr. Zuckerman advised Appellant that he adopted Ms. Faden's findings and recommendations and he denied the COSA request. (Local Bd. Ex. 5).

Appellant appealed Dr. Zuckerman's decision to the local board on May 9, 2020. (Local Bd. Ex. 6). Appellant reiterated the family's reliance on the community support system and a family friend for after school care and to help take [REDACTED] to soccer. Appellant also stated that she is not comfortable with [REDACTED], who is eleven years old, walking home after school or remaining at home alone until she returns from work. She expressed concern for [REDACTED]'s self-esteem, school performance and overall transition to middle school if not permitted to attend [REDACTED] MS where the family has connections and he feels comfortable. *Id.*

On May 26, 2020, Dr. Zuckerman responded to the appeal by memorandum to the local board urging the local board to deny the COSA request. He noted that the appeal lacked documentary support for Appellant's claims. He explained that Montgomery County Child Protective Services guidelines permit children age eight or older to be home alone. He stated that many parents are concerned about the ability of their children to participate in after school activities, such as soccer in M.S.'s case, and that it is common for families to have to make arrangements to deal with the various work, school, and activity schedules, but that [REDACTED] MS has numerous after school activities most days with adult supervision. He further noted that the transition from elementary to middle school is a time of change for students when they must make new friends and establish new support groups. He recommended that Appellant reach out

to staff at █████ MS to discuss her concerns and develop a plan to assist █████. with the transition to middle school. *Id.*

Appellant submitted a reply with new documents that were not previously part of the appeal. (Local Bd. Ex. 8). She discussed the difficulty the family experienced in becoming a part of the █████ community after moving from █████ and the time it took to develop trusted relationships. She submitted paystubs for herself and her husband to support her claim that they cannot afford private after school care. She also submitted a June 3, 2020 letter from Lesley K. Sanders, PsyD., a licensed clinical psychologist. The letter stated that Dr. Sanders was assisting the Appellant's family with adjusting to the impact of COVID-19 and it was brought to her attention that the family has concerns about █████'s adjustment to a new school environment. Dr. Saunders stated that COVID-19 presents stressors for █████ which, combined with being separated from his peer group and adjusting to a new school in an unusual school year, would be minimized by attending █████ MS. *Id.*

On June 29, 2020, the local board issued its decision upholding the denial of the COSA request. (Local Bd. Ex. 9). The local board found that Appellant did not demonstrate a unique hardship as required by local board policy. The board stated that █████ MS offers advanced courses that are appropriate for █████ It also noted that the school offers after school activities in which █████ can participate if Appellant does not want him to be home alone until she returns from work. The local board found no evidence to support Appellant's claim that either walking home or remaining at home alone after school until Appellant gets home from work would be dangerous for █████. The local board also noted that the letter from Dr. Saunders failed to state that she is currently treating █████, or that he has any diagnosed condition that would impact his education or require his attendance at █████ MS. *Id.*

This appeal followed. As part of the appeal, Appellant included new documentation including a letter confirming Appellant's diagnosis of glaucoma and another letter from Dr. Sanders. Appellant claims that the additional stress of losing the family's support system if █████ attends █████ MS is not good for her because added stress may affect the pressure in her eyes. The new July 23, 2020 letter from Dr. Saunders states that she is "the treating clinician for [█████.];" that he "displays and exhibits difficulties with affective regulation, neurovegetative symptoms, and struggles with generational boundaries;" and that Appellant has identified that █████. has had these challenges since the "stay at home" orders.

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.

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 County*, 245 Md. 464, 472 (1967); *Carolyn B. v. Anne Arundel County 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 particular criteria to guide its process for determining which students are eligible to change schools. 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, . . . do not constitute a unique hardship, absent other compelling factors.” *Id.* MCPS policy specifically requires that, “[d]ocumentation that can be independently verified must accompany all hardship requests, or the request will be denied.” JEE-RA, Section V.A.2.

Peer Group

Appellant seeks to transfer ██████ to ██████ MS so that he can attend school with the peer group he has been with throughout elementary school and with whom he developed supportive relationships after moving from ██████. This Board has stated previously and often, the desire to attend school with one’s friends or peer group does not constitute a unique hardship. *Nicole B. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 13-57 (2013); *Mary Ann K. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 10-52 (2010); *Tom & Judy M. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 09-37 (2009); *Iglesias v. Montgomery County Bd. of Educ.*, MSBE Op. No. 02-50 (2002). Even when the student has experienced instability as a result of moving multiple times and changing countries. *See Greg and Sivan K. v. Montgomery County B. of Educ.*, MSBE Op. No 15-38 (2015).

Students often develop strong relationships with the friends they make in their elementary school years when they are first embarking on their educational journey. The matriculation from elementary to middle school is an adjustment for entering students who can understandably be anxious and insecure in a new environment where some of those old friends may now be attending other schools. It is a time, however, when they meet new people, make new friends, get involved in new school activities and become a part of a new school community.

To the extent that Appellant maintains that ██████. will not have an academic peer group at ██████ MS, there is no evidence that this is the case. The principal at ██████ MS confirmed that the school offers many enriched and advanced courses and programming in which ██████ can partake. There is no basis to conclude that ██████. will not have access to challenging courses with a cohort of students at a similar intellectual level. Moreover, this Board has stated that that the desire to have a child attend a school the parent believes better serves that child’s academic needs is not a unique hardship. *See Joe and Donna M. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 11-54 (2011).

Child Care

Appellant stresses the family’s connection to the ██████ community as a basis for the COSA request. She explains that after moving from another country, it took time for the

family to build up trusted relationships in the area and that she relies on a friend and other trusted individuals from the [REDACTED] community to take care of [REDACTED] after school and to take him to activities such as soccer. She claims that the family is not able to pay for child care.

The State Board has held consistently that absent additional compelling factors, childcare issues do not amount to a hardship. *See Raegan and Rick H. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 14-62 (2014); *Desbele S. v. Montgomery Country Bd. of Educ.*, MSBE Op. No. 11-55 (2011); *Mr. and Mr. David G. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 10-14 (2010); *A.T. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 07-08 (2007). Appellant, like many other families, would like to utilize free child care arrangements provided by trusted friends and community members. Childcare issues are common to many families who are faced with balancing the demands of work and children.

Although the Appellant claims financial inability to pay for after school care, financial concerns regarding child care arrangements do not constitute a unique hardship sufficient to justify a transfer because it too is a common issue. *See Raegan and Rick H. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 14-62 (2014); *Ashley F. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 14-54 (2014). We recognize that the Appellant submitted pay stubs that appear to suggest they are a low-income family. However, the local board reasonably determined that the pay stubs alone fail to establish a unique hardship based on financial inability to afford after school care. The appeal contains no detailed explanation of the Appellant's financial status or explanation of the pay stubs, and the Appellant presented no information regarding the cost or availability of after school child care arrangements for [REDACTED]. Further, we note that it is the Appellant's choice not to have [REDACTED] walk home or stay at home alone until she returns from work based on her comfort level. There is no evidence that to do so is patently unsafe. Finally, given the very close proximity of [REDACTED] MS to [REDACTED] MS (less than two miles), it is unclear why the family friend is unable to assist with after school care if [REDACTED] attends [REDACTED] MS.

With regard to Appellant's reliance on friends in the community to assist with transportation to after school activities, specifically soccer, the desire to participate in after school activities and the challenges faced by parents in making the necessary transportation arrangements is a common issue for many families. It serves as a great resource when parents work together to carpool for such activities, however the inability to do so is not a unique hardship for transfer purposes. *Mr. and Mrs. Rashad M. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 12-07 (2012). Moreover, there are after school activities at [REDACTED] MS in which [REDACTED] can partake.

Medical Need

Appellant links her COSA request to stress that [REDACTED] has experienced since the COVID-19 pandemic, stating that it has changed his daily routine and that attending [REDACTED] MS is necessary for his mental well-being. She supports this with a letter from Dr. Sanders – one letter in her appeal to the local board and another letter in her appeal to the State Board.² Both letters

² We will consider the July 23, 2020 letter from Dr. Sanders that was submitted with the appeal to the State Board because we find it material to the issues in the appeal and was issued after the local board's June 29 decision. *See* COMAR 13A.01.05.04C.

are similar and highlight points about the stressors of COVID-19 and the importance of maintaining stability, consistency and predictability during these unusual times.

The health, safety and welfare of all students is of great importance to this Board. Cases involving transfer requests for medical reasons are some of the most difficult appeals that we review. 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). The fact that a documented medical condition exists is not itself sufficient to grant approval of a transfer. *Timothy and Michelle W. v. Howard County Bd. of Educ.*, MSBE Op. No. 09-18 (2009). Documentation should include information about the diagnosis, treatment, and expected outcomes for the student. Further, an appellant must establish that health professionals at the student's assigned school cannot support the medical condition. *Carolyn B. v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 15-20 (2015).

We recognize that stress can have various effects on students, particularly as they navigate the transition from elementary to middle school, and especially during the COVID-19 pandemic. The letters from Dr. Sanders, however, do not establish a diagnosis and do not establish any medical need requiring [REDACTED] to attend [REDACTED] MS. Dr. Sanders opines generally about the uncertainty presented by the pandemic and the difficulties presented during the transition to middle school with a change of peer group. Even though the July 23, 2020 letter sets forth some specific difficulties faced by [REDACTED], it still falls short of the documentation required to justify the reassignment. While attending [REDACTED] MS could help alleviate some of that stress for [REDACTED], this view does not equate to a medical condition that necessitates a change of school assignment. *See Shervon D., supra*, at p.3 (Affirming denial of transfer where medical professional failed to offer a clinical diagnosis of medical condition).

Further, the Appellant has failed to establish that the professionals at [REDACTED] MS cannot support any stress related issues he may have. The principal of [REDACTED] MS advised the staff is always open to connect with incoming families and is happy to speak with the Appellant about her situation. We recognize that it is a natural time for the students to meet new people and establish new relationships. We urge the Appellant to reach out to staff at [REDACTED] MS to discuss her concerns and develop a plan to assist [REDACTED] with the transition.

New Evidence

In her appeal to the State Board, Appellant seeks to introduce new evidence not presented to the local board. 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 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.

The Appellant submitted a July 17, 2020 letter from her eye doctor confirming her diagnosis of glaucoma for which she may ultimately need surgery. Appellant argues that stress can negatively affect the pressure in her eyes and that she will suffer additional stress if [REDACTED] does not attend [REDACTED] MS where the family has its support system in place. We will not

consider this new evidence because we do not find it to be material to whether the local boards decision was arbitrary, unreasonable or illegal.

CONCLUSION

For the reasons stated above, we find that the local board's decision is not arbitrary, unreasonable or illegal. Accordingly, we affirm the denial of the Appellants' COSA request.

Signatures on File:

Clarence C. Crawford
President

Jean C. Halle
Vice-President

Shawn D. Bartley

Gail H. Bates

Charles R. Dashiell, Jr.

Susan J. Getty

Vermelle D. Greene

Rose Maria Li

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Warner I. Sumpter

October 27, 2020