BRIONI B.,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
CHARLES COUNTY BOARD OF EDUCATION,	OF EDUCATION
Appellee.	Opinion No. 14-53

OPINION

INTRODUCTION

Appellant contests the decision of the Charles County Board of Education (local board) denying her request to transfer back to Maurice J. McDonough High School (McDonough) after she was rezoned from McDonough to St. Charles High School (St. Charles) based on a recent redistricting. In the appeal, Appellant specifically challenges the local board's rejection of her argument that she qualified for a transfer under Superintendent's Rule 5126 which allows students to transfer to schools with adequate space so that the student can participate in "an academic course of study not offered within the student's zoned school." Appellant maintains that the provision applies in her case because she wants to participate in Show Choir, which is offered at McDonough but not at St. Charles.

This Board considered the appeal at its August 26, 2014 meeting and issued MSBE Op. No. 14-50 affirming, in part, the local board's decision to deny the transfer request, and remanding the academic course of study issue to the local board for further explanation. In response to the remand, the local board submitted a Memorandum to the State Board providing additional information. The Appellant was also offered the opportunity to provide the State Board with additional information but did not do so.

FACTUAL BACKGROUND

The factual background for this case is set forth in MSBE Op. No. 14-50, attached hereto. We provide additional factual background below concerning the courses at issue in this case.

The Appellant wants a transfer back to McDonough to take Show Choir, which is an honors level class. The course description for the Show Choir is as follows:

> These courses are for advanced vocal students as determined by an annual audition. Presentation of works from the musical stage in addition to other selected materials will be emphasized. Students will develop the skills necessary to read, interpret, and present selections from musical theater. Students will be required to write and perform dance routines. Students will learn music from a

> variety of styles including jazz, pop, and Broadway musicals. Students will be required to prepare scales and solos. The solos must be a minimum of level IV and currently listed on the Maryland Choral Directors Association approved list. Afterschool rehearsals and public performances outside of the regular school day are a crucial component of these courses.

(Charles County Public Schools High School Program of Studies, http://www.ccboe.com/community/students/Program%20of%20Studies%20SY%2014_15.pdf .)

The Appellant has begun the new school year at St. Charles where she is taking an honors Chamber Choir class. The course description for Chamber Choir classes is as follows:

> These courses require a high level of musical proficiency which is to be determined by an annual audition for admission to these classes. Chamber Choir is designed for singers performing chamber music from all styles and time periods. Students will be required to prepare scales and solos as well as rhythmic and melodic sight-singing. The solos must be a minimum of level IV and currently listed on the Maryland Choral Directors Association approved list. Afterschool rehearsals and public performances outside of the regular school day are a crucial component of these courses.

Id.

Concert Choir is also offered at St. Charles. The course description for Concert Choir is as follows:

> These courses are designed to expose experienced singers to the best of accompanied and unaccompanied choral literature through study and performance and may require a yearly audition. Students will work on melodic and rhythmic sight-reading skills. The ability to read music is strongly recommended. Afterschool rehearsals and public performances outside of the regular school day are a crucial component of these courses.

Id.

STANDARD OF REVIEW

The standard of review in a student transfer decision is that the State Board will not substitute its judgment for that of the local board unless the Appellant demonstrates that the local board's decision is arbitrary, unreasonable or illegal. COMAR 13A.01.05.05. A decision may be arbitrary or unreasonable if it is contrary to sound educational policy or a reasoning mind could not have reasonably reached the conclusion of the local board. COMAR 13A.01.05.05(B).

A decision may be illegal if it is unconstitutional, exceeds statutory authority or the jurisdiction of the local board, misconstrues the law, results from an unlawful procedure, is an abuse of discretionary power, or is affected by any other error of law. COMAR 13A.01.05.05(C).

ANALYSIS

We have already considered the Appellant's arguments concerning the issues of free exercise of religion and unusual hardship and ruled in favor of the local board on those matters in MSBE Op. No. 14-50 issued last month. Thus, the only issue left for consideration is the Appellant's argument that she qualified for a transfer under the academic course of study provision.

The Appellant maintains that her transfer request should be approved because she wants to participate in Show Choir which is not offered at St. Charles. The Appellant seeks the transfer under the provision of Superintendent's Rule 5126 which allows students to transfer to schools with adequate space so that the student can participate in "an academic course of study not offered within the student's zoned school." A transfer under this provision is not allowed, however, for participation in "JROTC, World Languages, and other courses offered at each school in which there may be differences in academic focus among the schools."[1]

The local board explains that the local Superintendent included the academic course of study provision in the transfer rule to allow students who are participating in specific academic programs the ability to continue participation if their assigned school does not offer that program. For example, not all of the high schools offer a biomedical program of studies, for which students begin taking classes in the ninth grade and continue until graduation. If a student were to be redistricted or move out of the attendance area and into the attendance zone of a school not offering the biomedical program, the student could qualify under the transfer rule for a transfer back to the original school in order to complete the program.

The local board further explains that the Superintendent specifically fashioned the transfer rule to limit transfers to exclude students who simply wanted to take specific courses. For example, every high school offers an "academic course of study" in government and politics, but only one school offers an elective class in International Relations. Likewise, every high school offers an "academic course of study" in English, but not all offer the Poet's Workshop class, a course specifically focusing on poetry. In the Superintendent's view, the International Relations class and the Poet's Workshop class would not qualify for a transfer because they are not an "academic course of study." Many high schools have other unique classes that may be viewed by students as more respected or extensive than the ones offered at their assigned school, as the Appellant does in this case.

We have previously stated that a "school system has expertise in interpreting its own policies" and that we "defer to that expertise unless the interpretation is clearly wrong." *See Howard and Brynna W. v. Howard County Bd. of Educ.*, MSBE Op. No. 13-42 (2013). The local board has clarified that the Superintendent applies the transfer provision only to full

[1] To the extent that Appellant seeks a transfer to McDonough to participate in extracurricular choral or drama activities, the transfer rule does not allow for transfers to participate in extracurricular activities.

programs of study not offered at the assigned school. Like the examples cited above for International Relations and Poet's Workshops, both the Superintendent and the local board viewed Appellant's request to transfer to McDonough to participate in Show Choir as not meeting the requirements of the transfer rule because both McDonough and St. Charles offer an "academic course of study" in the performing arts that includes choir classes.

There is good reason to deny transfers for specific classes only. Allowing such transfers would cause potential overcrowding at certain schools, would create unpredictable enrollment levels, and would make staffing decisions more difficult. We find no basis to conclude that the decision of the local board was arbitrary, unreasonable or illegal.

Moreover, the State Board has consistently upheld the denial of transfer requests for students seeking to change schools to access specific courses and high-level specialized programs. *See, e.g. Mr. and Mrs. Danny J. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 08-47 (2008); *Richard and Nadia S. v. Harford County Bd. of Educ.*, MSBE Op. No. 07-41 (2007); *Goldberg v. Montgomery County Bd. of Educ.*, MSBE Op. No. 05-35 (2005).

CONCLUSION

For the reasons stated above, we affirm the local board's decision to deny the transfer request on the academic course of study issue because it is not arbitrary, unreasonable or illegal.

Charlene M. Dukes
President

Mary Kay Finan
Vice President

James H. DeGraffenreidt, Jr.

Linda Eberhart

S. James Gates, Jr.

Absent
Larry Giammo

Luisa Montero-Diaz

Absent

Sayed M. Naved

Madhu Sidhu

Madhu Sidhu

Donna Hill Staton

Donna Hill Staton

Guffie M. Smith, Jr.

September 23, 2014

BRIONI B.,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
CHARLES COUNTY BOARD OF EDUCATION,	OF EDUCATION
Appellee.	Opinion No. 14-50

OPINION

In this appeal, Appellant contests the decision of the Charles County Board of Education (local board) denying her request to transfer back to Maurice J. McDonough High School (McDonough) after she was rezoned from McDonough to St. Charles High School (St. Charles) based on a recent redistricting. The local board filed a Motion for Summary Affirmance maintaining that its decision was not arbitrary, unreasonable or illegal. Appellant submitted a response to the local board's Motion, to which the local board has submitted a reply.

FACTUAL BACKGROUND

Appellant attended McDonough during her freshmen and sophomore years of high school, 2012-2013 and 2013-2014, respectively. During that time, Appellant was highly involved in the chorus and drama program there. (Motion, Ex. 7).

As a result of a recent redistricting in Charles County, Appellant was rezoned to attend St. Charles for the 2014-2015 school year based on her home address. *Id.* The local board enacted the boundary change because St. Charles is a new school slated to open in August 2014 to alleviate overcrowding at other area high schools, and the school needed to be populated with students. (Motion, p.11).

In January 2014, Appellant submitted a School Change Request form seeking to transfer from St. Charles to McDonough stating that she is "in Advanced Choirs and in Drama Club" and wants to "major in Theater/Acting, so the experience [at McDonough] will help." (Motion, Ex.4). Her parents also submitted a form requesting the transfer which indicated that Appellant's continued attendance at McDonough would allow her to take a morning bus from a daily church program in which she participates and that St. Charles would be "out of the way." (Motion, Ex.5). The Director of Student Services, Patricia Vaira, denied the request because it did not meet the transfer guidelines. (Motion, Ex.6).

On April 10, 2014, Appellant appealed the denial to the Office of School Administration. (Motion, Ex.7). In her appeal, Appellant explained her commitment to the drama program at McDonough. She stated the following:[1]

> I have been a Student Director for three shows this year and am currently in the Advanced Acting classes, which I am hoping to continue. I understand that St. Charles will also have these programs, but they will not be at the same level of excellence that McDonough does. My current Director, Mrs. Heyl, has told me that if I were to continue at McDonough that I would have a very high chance of getting an officer status in Drama Club and continue to be a Student Director. Both of these jobs are obviously huge opportunities for me. Also, because I plan on majoring in Acting and/or Theater Arts in college, the more advanced classes at McDonough will help me on my resume to get into a college of higher rating.

Id. With regard to the choral program at McDonough, Appellant stated as follows:

> I am a member of the Ramettes, which is the Advanced Women's Choir. I am planning to audition for the Madrigal Lords and Ladies, which is the Chamber choir, or the McDoNotes, which is the show choir. While, again, St. Charles does have a Women's choir and a Chamber choir, there will not be a Show choir and, again, it won't be the same level of excellence that McDonough has, which can be expected. But the choirs at McDonough go on tours to schools, nursing homes, etc., continually get Superior ratings at the Choral Festival, and everyone knows us for our knowledge and use of music. I am certain that it will take St. Charles a very long time to get to this same level.

Id. By letter dated April 28, 2014, Sylvia Lawson, Assistant Superintendent of School Administration, advised that she was affirming Ms. Vaira's decision because the transfer request did not meet the guidelines established by the transfer policy. (Motion, Ex.8).

Appellant appealed to the local board. In addition to submitting her previous letter to the Office of School Administration, Appellant's parents submitted a letter stating that Appellant had auditioned for and been accepted to the Show Choir for Women and the Ramettes, which are both honors level choirs at McDonough. They explained that Appellant would not be able to avail herself of these opportunities if she were not allowed to continue at McDonough. (Motion, Ex.9).

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[1] We would like to commend the Appellant on the manner in which she represented herself in her submissions at the local board level and on appeal to the State Board. She has demonstrated a great degree of professionalism and maturity.

The local board denied the transfer request concluding that Appellant failed to satisfy the transfer provisions that allow a transfer for certain courses of study and for a showing of unusual hardship. (Motion, Ex.1). With regard to Appellant's desire to continue with the choral and drama courses at McDonough, the local board explained that transfers are not permitted if the academic course of study is offered at the zoned school and St. Charles offers both choral arts and drama as courses of study. *Id.* As for Appellant's attendance at her church-related program, the local board found that Appellant had not presented an unusual hardship in that the issue was a matter of convenient transportation for an out-of-school activity, which is not an uncommon issue for families. *Id.*

This appeal followed. In her appeal, Appellant indicates that she has been accepted into four of the five choirs offered at McDonough - Chamber, Show, Advanced Women's, and Concert. Appellant claims that at St. Charles, there will be three choirs, but she will be eligible for only two. She also reemphasizes her desire to continue to grow and expand in the performing arts area at McDonough in order to gain education and experience that will aid in her goals of pursuing the arts in college and as a career.

STANDARD OF REVIEW

The standard of review in a student transfer decision is that the State Board will not substitute its judgment for that of the local board unless the Appellant demonstrates that the local board's decision is arbitrary, unreasonable or illegal. COMAR 13A.01.05.05. A decision may be arbitrary or unreasonable if it is contrary to sound educational policy or a reasoning mind could not have reasonably reached the conclusion of the local board. COMAR 13A.01.05.05(B). A decision may be illegal if it is unconstitutional, exceeds statutory authority or the jurisdiction of the local board, misconstrues the law, results from an unlawful procedure, is an abuse of discretionary power, or is affected by any other error of law. COMAR 13A.01.05.05(C).

ANALYSIS

Free Exercise of Religion

Appellant argues that the local board's denial of her transfer request infringes on her First Amendment right to freely exercise her religion. She claims that attending St. Charles will make it more difficult for her to get to school after she is finished attending the seminary program at her church each morning before school because she is able to rely on buses to take her to McDonough rather than having to rely on an individual to drive her to school. As Appellant states, attending McDonough "makes going to seminary and school easier as the bus is always there, unlike if I were to have a ride and one day they are not there, leaving me with no way to get to school." (App. Response Ltr.).

The Free Exercise of Religion Clause prohibits a governmental entity from enacting policies that are "designed to suppress religious beliefs or practices unless the laws are justified by a compelling governmental purpose and narrowly tailored to meet that purpose." *See Booth v. Maryland*, 327 F.3d 377, 380 (4th Cir. 2003); *Citizens for a Responsible Curriculum, et al. v. Montgomery County Board of Education,* MSBE Op. No. 07-30 (2007). The governmental

entity, however, need not demonstrate a compelling interest in every case. The Free Exercise Clause permits governmental entities to enact rules and regulations that incidentally interfere with religious practice, as long as such measures are both "neutral" towards religion and "generally applicable" to members of the community. *Booth*, 327 F.3d at 380; *American Life League, Inc. v. Reno*, 47 F.3d 642, 654 (4th Cir. 1995).

The policy at issue here is the student transfer policy which is set forth in Superintendent's Rule 5126. The policy states, in pertinent part, that:

- A student may request a transfer for an academic course of study not offered within the student's zoned school. Academic courses of study under this Rule do not include JROTC, World Languages, and other courses offered at each school in which there may be differences in academic focus among the schools.

- Unusual hardship cases not stated above shall be considered on a case-by-case basis. Such exceptions will not be granted for issues common to large numbers of families, such as the need for a particular schedule, sibling enrollment, redistricting, or typical day care issues.

(Motion, Ex.3).

The policy is religion-neutral - it does not directly target or restrain religion, nor does it treat religious students differently from non-religious students. Rather, it applies to all students in Charles County Public Schools (CCPS) in the same way, regardless of their religion. In addition, there is no evidence that the policy was motivated by or applied to the Appellant with an anti-religious bias.

The denial of Appellant's transfer request had nothing to do with her religion. The local board found that no "unusual hardship" existed in the case based on the issue of transportation for an out-of-school activity, which is a common issue for many families. It had no relation to whether the activity was a religious one or not.

Unusual Hardship

Appellant maintains that the local board should have granted the transfer because she satisfies the "unusual hardship" exception given the transportation issues she will encounter while trying to participate in the seminary program each school morning if she is required to attend St. Charles.

Superintendent's Rule 5126 allows a transfer for "unusual hardship cases." Unusual hardship transfers are considered on a case-by-case basis and are not granted for issues common to large numbers of families. Here, Appellant seeks the transfer to make it easier for her to attend a before-school activity because she can ride the bus to school rather than rely on some other mode of transportation.

The need to coordinate transportation to and from out-of-school activities is an issue faced by numerous families of school-aged children and does not amount to an unusual hardship under the transfer policy. *See Darren and Suzie L. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 12-53 (2012)(finding that the desire for a student to be close to parent's work and community activities does not demonstrate a unique hardship.); *Mr. and Mrs. Rashad M. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 12-07 (2012)(desire to participate in extracurricular activities and the ensuing challenge in making transportation arrangements for those activities is a common issue for many families and is not a unique hardship for transfer purposes.); *Wuu & Liu v. Montgomery County Bd. of Educ.*, MSBE Op. No. 04-40 (2004) (desire to be in a school closer to home so the student could participate in extracurricular activities without relying on transportation from parents did not amount to hardship.); *Dale and Diane Grote v. Carroll County Bd. of Educ.*, MSBE Op. No. 04-07 (2004)(desire to be involved in the social and religious community is common to families and does not support transfer).

We note that while Appellant states that the bus from her neighborhood to McDonough would be available to her, students who are granted transfers are not eligible for school transportation. *See* Superintendent's Rule 5126. Thus, Appellant would still be facing a transportation issue even if she were granted a transfer to McDonough.

Academic Course of Study

The Appellant maintains that her transfer request should be approved because she wants to participate in the choral and drama offerings at McDonough given her view that they are more extensive and more respected than those that will be offered at St. Charles, and some courses are offered at the honors level. The Appellant seeks the transfer under the provision of Superintendent's Rule 5126 which allows students to transfer to schools with adequate space so that the student can participate in "an academic course of study not offered within the student's zoned school." A transfer under this provision is not allowed, however, for participation in "JROTC, World Languages, and other courses offered at each school in which there may be differences in academic focus among the schools."

We have reviewed the local board's decision to understand the rationale that supports its conclusion that a transfer based on the "academic course of study" exception is not allowed in this case. The concept of "differences in academic focus among the schools," we believe, needs to be fully explained.

CONCLUSION

For the reasons stated above, we affirm the local board's decision on the issues of free exercise of religion and unusual hardship. We remand the academic course of study issue for action consistent with this decision by September 10, 2014.

Charlene M. Dukes
President

Absent

Mary Kay Finan
Vice President

James H. DeGraffenreidt, Jr.

Linda Eberhart

Absent

S. James Gates, Jr.

Larry Giammo nlp

Luisa Montero-Diaz

Sayed M. Naved

Madhu Sidhu

Donna Hill Staton

Guffrie M. Smith, Jr.

August 26, 2014