

GREG & SIVAN K.

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 15-38

OPINION

INTRODUCTION

Appellants appealed the decision of the Montgomery County Board of Education (local board) denying their request to transfer their children from Garrett Park Elementary School (Garrett Park) to Farmland Elementary School (Farmland). The local board filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. The Appellants responded to the motion and the local board replied.

FACTUAL BACKGROUND

Appellants moved to Maryland from Israel with their three children in April 2013 and leased a residence in the Farmland attendance area. (Appeal). Their daughter, R.K., attended Farmland for the remainder of the 2013-14 school year while her two siblings attended pre-school at the Jewish Community Center (JCC) in Rockville. *Id.* For the 2014-15 school year, R.K. continued at Farmland where she was in the third grade and her brother, N.K., began attending kindergarten there. *Id.* After school, R.K. and N.K. took the Montgomery County Public Schools' (MCPS) bus from Farmland to the JCC so that they could attend a Jewish education program there.¹ (Motion, Ex. 5). The JCC class takes place one afternoon a week on Mondays at 4:30 pm. (Motion, Ex. 4A).

Toward the end of the 2014-15 school year, the family moved from the Farmland attendance area to the Garrett Park attendance area. On May 10, 2015, the Appellants submitted Request for Change of School Assignment (COSA) forms asking that R.K. and N.K. be permitted to remain at Farmland rather than attend Garrett Park. (Motion, Ex.1). Appellants gave three reasons for the COSA request: (1) the children had already changed schools several times as a result of moving from Australia to Israel and then Israel to the United States; (2) the children had already made new friends at Farmland; and (3) Appellants would have no way to get their children to the JCC at the end of the school day because Garrett Park does not have after

¹MCPS allows students to take the bus from Farmland to the JCC because the JCC is on an already existing Farmland bus route. (Motion, Ex. 5).

school bus service to the JCC and neither parent could transport them due to work schedule conflicts *Id.* The requests were approved for the remainder of the 2014-15 school year.² *Id.*

On or about June 8, 2015, Appellants appealed the decision to the Chief Operating Officer (COO), acting as the Superintendent's designee, because they wanted the transfer to continue for the 2015-16 school year. They explained that it was important for their children to continue their Jewish education at the JCC and that they could not afford to pay someone to take them there after school from Garrett Park. They further explained that they had struggled financially for two years and that they ultimately had to move to a less expensive rental location which placed them in a different school district. (Motion, Ex. 2).

The COO referred the matter to a hearing officer for review. (Motion, Ex. 3A). The hearing officer reviewed the case and spoke with Mrs. K and the principals of Farmland and Garrett Park. *Id.* The hearing officer recommended that the transfer request be denied. *Id.* She explained that attending a new school and having to make new friends after a move to a new attendance zone and getting children to after-school programs are issues common to students and families and do not qualify as unique hardships under the MCPS transfer policy and regulation. *Id.* The COO adopted the hearing officer's recommendation and denied the transfer request for the 2015-16 school year. (Motion, Ex. 3).

On or about July 21, 2015, Appellants appealed the COO's decision to the local board. (Motion, Ex. 4). Even though the JCC class took place only on Mondays, Appellants stated that Mrs. K would have to leave her job in order to transport the children to the JCC. Appellants stated that this will result in unmanageable financial problems for the family. *Id.*

The Interim Superintendent of Schools responded to the appeal. (Motion, Ex, 5). The Interim Superintendent noted that documentation confirmed the children were enrolled for afternoon Hebrew School at the JCC that begins at 4:30 p.m. each Monday. *Id.* He acknowledged the Appellants' claims that they were unable to transport the children to the JCC themselves due to work constraints, that they could not afford to pay someone to drive them, and that they were unable to find alternative affordable Hebrew school for their children. *Id.* Given the facts of the case, the Interim Superintendent found that no unique hardship had been established and he recommended that the local board deny the Appellants' transfer request. *Id.*

On September 8, 2015, the local board issued a Decision and Order denying the transfer request. (Motion, Ex, 6). The local board stated that it has "consistently held that a family's desire for their children to attend an afterschool activity, even one as important to the family as religious education, does not constitute a unique hardship under [MCPS policy]." *Id.*

This appeal followed.

²Pursuant to school system regulation, when a family moves within the county during the school year, the student may continue to attend the school serving the prior address through the end of the school year. (Motion, Ex. 7A, MCPS Regulation JEE-RA.IV.D.1(f)).

STANDARD OF REVIEW

When reviewing a student transfer decision, the decision of the local board is presumed to be *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.*; see *Alexandra and Christopher K. v. Charles County Bd. of Educ.*, MSBE Op. No. 13-06 (2013). 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 local superintendent reached. COMAR 13A.01.05.05B. A decision may be illegal if it is unconstitutional; exceeds the statutory authority or jurisdiction of the local board; misconstrues the law; results from unlawful procedure; is an abuse of discretionary powers; or is affected by any other error of law. COMAR 13A.01.05.05C.

LEGAL ANALYSIS

There is no right or privilege to attend a particular school. *Bernstein v. Board of Educ. of Prince George's County*, 245 Md. 464, 472 (1967). The establishment of school attendance areas is left to the discretion of local boards of education. See Md. Code Ann., Educ. §4-109(c). In MCPS, students are required to attend the school serving the geographic attendance areas in which they reside within the county unless they qualify for a change of school assignment under the MCPS transfer policy and regulation.³ (Motion, Ex. 7, local board Policy JEE and MCPS Regulation JEE-RA). Under the policy and regulation, a student is allowed to transfer from the student's home school to another school when there is a "documented unique hardship" or the student satisfies one of the following exceptions: (1) the student has an older sibling attending the regular program at the requested school; (2) the student attended middle school as a transfer and is continuing in the articulation pattern for high school; (3) the student met the criteria for and was admitted to a countywide program; or (4) the student's family moved within the county during the school year and the student desires to continue in the former home school through the end of the current school year. *Id.*

Free Exercise of Religion

In their appeal, Appellants claim that the denial of their transfer request impacts their ability to practice their religion because the Monday afternoon class at the JCC is where their children receive their religious instruction.

The First Amendment's Free Exercise of Religion Clause prohibits governmental entities from enacting policies designed to suppress religious beliefs or practices. *Booth v. Maryland*, 327 F.3d 377, 380 (4th Cir. 2003). Governmental entities may, however, enact policies that incidentally interfere with religious practice, as long as such measures are both "neutral" towards religion and "generally applicable" to members of the community. *Id.*; *American Life League, Inc. v. Reno*, 47 F.3d 642, 654 (4th Cir. 1995).

³ The school serving the geographic attendance area is called the "home school." (Motion, Ex. 7A, MCPS Regulation JEE-RA.III.A).

In a similar case, this Board previously addressed the Free Exercise of Religion Clause with regard to the MCPS student transfer policy. In *Ashley F. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 15-54 (2014), the local board denied the appellant's request to transfer her son to another school so that he could attend before and after-school care at a Christian learning facility affiliated with appellant's church. The facility infused religious instruction into its after-care program. The appellant maintained that the religious aspect of the program was important to her and that she could not afford to send her son elsewhere. This Board found that the MCPS transfer policy did not violate the appellant's First Amendment right to freely exercise her religion because the policy was religion-neutral. This Board stated that the transfer policy "does not target or restrain religion, nor does it treat religious students differently from non-religious students. Rather, it applies to all students in the county the same way, regardless of their religion." *Id.* Nor was there evidence in the case that the policy was motivated by or applied to the appellant with an anti-religious bias. *Id.* The student transfer policy in *Ashley F.* is the same one at issue in this case.

In another case, this Board addressed the issue with regard to the Charles County Public Schools' student transfer policy. In *Brioni B. v. Charles County Bd. of Educ.*, MSBE Op. No. 14-50, this Board upheld the local board's denial of a student transfer request based, in part, on the student's desire to attend a before-school religious program at her church. The Appellant claimed that without the transfer she was unable to attend the religious program because she had no means of transportation from the church to the assigned school. *Id.* The State Board determined that the transfer policy was religion-neutral and was applied in a religion neutral manner, thus it did not run afoul of the appellant's right to freely exercise her religion. *Id.*

Applying the reasoning set forth in *Ashley F.* and *Brioni B.*, we conclude that neither the student transfer policy nor the application of that policy to the Appellants in this case, violates the Appellants' right to freely exercise their religion under the First Amendment. The policy is religion-neutral and the local board applied it to the Appellants in a religion-neutral manner.

Hardship

Appellants maintain that the transfer should be granted based on hardship due to the transportation and financial issues they will encounter if the children do not attend Farmland. Appellants maintain that they cannot leave work in time to transport the children and they cannot afford to pay for transportation or alternative Jewish education classes.

As stated above, under the school system's student transfer policy, a student is allowed to change schools when there is a "documented unique hardship." (Motion, Ex. 7). Unique hardships depend on the individual circumstance of each family. The MCPS Regulation states that "[p]roblems that are common to large numbers of families do not constitute a unique hardship . . . absent additional compelling factors." (Motion, Ex. 7, JEE-RA).

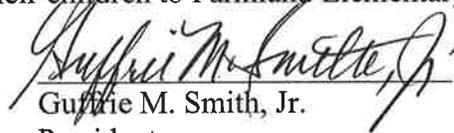
The need to coordinate transportation to out-of-school activities, as well as the attendant financial issues associated with those activities, are matters faced by numerous families of school-aged children and do not amount to a unique hardship under the MCPS transfer policy

and regulation.⁴ See *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); *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.); *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); *Darren and Suzie L. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 12-53 (2012)(student's desire to be close to parent's work and community activities does not demonstrate a unique hardship.); *Brioni B*, MSBE Op. No. 14-50 (2014)(transportation issues related to before-school religious instruction are not uncommon issues for families). Cf *Ashley F.*, MSBE Op. No. 15-54 (transportation and financial concerns related to before and after-school care with religious instruction did not constitute unique hardship to justify transfer).

Appellants also maintain that they want their children to remain at Farmland for stability purposes given that the family has moved several times in recent years and the children have had to change schools. This too is another issue that is common for families. Many families move from one geographic attendance area to another, whether it's a change in countries, counties, cities or streets. School teachers and administrators are adept at helping students deal with transitions to a new school as a result of a move.

CONCLUSION

For the reasons stated above, we affirm the Montgomery County Board of Education's decision to deny Appellants' request to transfer their children to Farmland Elementary school.

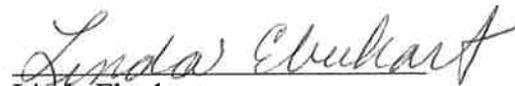

Guffie M. Smith, Jr.
President

Absent

S. James Gates, Jr.
Vice-President

Absent

James H. DeGraffenreidt, Jr.


Linda Eberhart

⁴ In their State Board appeal, Appellants submitted new evidence of Mrs. K's work schedule to bolster their argument that she is unable to transport the children to the JCC each Monday. The decisions of the Superintendent's designee and the local board are already premised on the fact that difficulty with transportation arrangements for after-school activities is a common problem. Thus, even if we were to consider the new evidence, it does not alter the analysis finding a lack of a unique hardship here.



Larry Giammo



Michele Jenkins Guyton

Absent

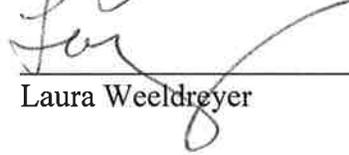
Stephanie R. Iszard

Absent

Madhu Sidhu



Andrew R. Smarick



Laura Weeldreyer

Dissent:



Chester E. Finn, Jr.

December 8, 2015