ISRAEL AND MIRTHA B.,

Appellants

v.

MONTGOMERY COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 13-58

OPINION

INTRODUCTION

Appellants have appealed the denial of their request to transfer their son from Forest Oak Middle School ("Forest Oak") to Lakelands Park Middle School ("Lakelands"). The Board of Education of Montgomery County (Local Board) has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal. Appellants have not replied to the local board's Motion.

FACTUAL BACKGROUND

Appellants' son, AB, is assigned to Forest Oak. On or about March 5, 2013, Mrs. B submitted a "Request for Change of School Assignment" (COSA) seeking to transfer their son from Forest Oak to Lakelands. As the basis for the transfer, she checked the box for "Older sibling attends requested school" and noted that AB's sister attended grades six, seven, and eight at Lakelands. (Motion, Ex. 1).

The COSA request was forwarded to the Division of Pupil Personnel Services. The division denied the request on March 13, 2013, because the documentation did not meet the required guidelines. (Motion, Ex. 1).

Appellants appealed the denial to Larry Bowers, Chief Operating Officer and Superintendent's designee. He referred the appeal to a hearing officer, Janice N. Faden, who conducted an investigation into the COSA request. She spoke with Mr. B; Arthur Williams, principal of Forest Oak; Deborah R. Higdon, principal of Lakelands; James A. Sweeney, principal of Rosemont Elementary School ("Rosemont"); and Maria Y. Heintze, a teacher at Rosemont. Mr. B explained that AB's sister had been bullied by other students at Rosemont, leading to her receiving a COSA to attend Lakelands. She is scheduled to attend Quince Orchard High School ("Quince Orchard") in the current (2013-14) school year. Mr. B stated that AB's sister had been successful at Lakelands and that he wanted the same thing for his son. He claimed that AB had trouble with his peers, but was reluctant to discuss the matter with his parents because of a fear of retaliation by other students. Appellants stated they believe anxiety over attending school at Forest Oak has caused psychological harm to their son. (Motion, Exs. 2, 3A).

Mr. Sweeney, principal at Rosemont, stated that there were no reports of bullying against AB, that he had not witnessed any teasing or bullying against AB, and that AB was "doing fine" at school. AB's fifth grade teacher, Ms. Heintze, stated that AB had "lots of friends" and stated that she had not witnessed any evidence of bullying. The hearing officer recommended that Mr. Bowers deny the request for change of school assignment because the situation did not present a unique hardship. She found no record or report of bullying against AB and concluded Appellants simply preferred one school over another for their son. She suggested Appellants meet with AB's guidance counselor at Forest Oak over the summer to help plan for a smooth transition. (Motion, Ex. 3A).

On April 15, 2013, Mr. Bowers adopted the hearing officer's recommendation and denied the transfer request. (Motion, Ex.3). Appellants further appealed to the local board, reiterating their concerns that AB was bullied by other students. (Motion, Ex. 4).

On May 13, 2013, the local superintendent responded to the appeal and recommended that the local board uphold the denial of the transfer due to lack of a unique hardship. The local superintendent noted that Mr. Sweeney, principal of Rosemont, met with Mrs. B and AB to learn more about the accusations of bullying. When pressed for details, AB stated that one girl said he was not smart, and, in AB's words, "She called me short, I think." Mr. Sweeney stated he could not substantiate any bullying incidents. (Motion, Ex. 5).

In a decision issued June 13, 2013, the local board affirmed the decision of the Chief Operating Officer denying Appellants' request. (Motion, Ex.6). The board stated in the decision:

> Whatever the circumstances may have been regarding [AB's] sister, there is insufficient evidence of any bullying at [AB's] elementary school, much less a basis for believing that [AB] will be bullied at Lakelands. While it is understandable that [Appellants] may wish for [AB] to attend the same schools that his sister attended, the Board finds that the request is based on a preference for one school over another. The Board has consistently held that such a preference does not constitute a unique hardship.

*Id.*

Appellants appealed the local board's decision to the State Board of Education on July 1, 2013, and supplemented their appeal on July 13, 2013. Appellants reiterate the same concerns they raised before Mr. Bowers and the local board and note that the student who bullied their son will be attending Forest Oak. Appellants include in their appeal a letter, dated June 28, 2013,

from Dr. Gul Chablani. [1] Dr. Chablani stated that AB's health conditions are "variable depending on his mood" and predicted that AB's transition from elementary to middle school would be "emotionally difficult" for him. Dr. Chablani expressed his opinion that attending Lakelands would be beneficial for AB because the school is closer to his home and this proximity would make AB's mother feel more comfortable if she needed to pick him up from school for medical reasons.

## 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.*, Op. No. 13-06 (2013). The Appellants have the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.05D

## LEGAL ANALYSIS

Pursuant to the Montgomery County Board of Education's policy, students are assigned to schools in the areas in the county where they live. In order to attend a different school, the student must demonstrate evidence of a unique hardship or meet one of the exemptions from the hardship rule. (Motion, Ex. A, MCPS Regulation JEE-RA(IV)(A) and (B)). The exemption at issue here allows for a transfer "where there is an older sibling already attending the requested school at the same time in the regular program." (*Id.*, MCPS Regulation JEE-RA(IV)(B) & COSA Information Booklet). Although AB's older sibling did attend Lakelands, she is now scheduled to attend Quince Orchard, so the change in school assignment for AB would not result in the two siblings attending the "requested school *at the same time*" (emphasis added). Accordingly, Appellants must demonstrate a unique hardship in order to justify the transfer request.

What constitutes a unique hardship depends on each family's circumstances. Local board policy states that "[p]roblems that are common to large numbers of families . . . do not constitute a hardship, absent additional compelling factors." (Motion, Exhibit A, COSA Information Booklet).

Bullying of students in the school environment is always of paramount concern. Bullying, harassment, and intimidation are defined as "any intentional written, verbal, or

[1] This letter was written after the local board issued its decision. The State Board generally does not consider new evidence as part of an appeal. *See Lessie B. v. Caroline County Bd. of Ed.*, No. 11-16 (2011) ("The State Board has consistently declined to address issues that were not reviewed by the local board."). The State Board may, however, consider additional evidence if the additional evidence is material and there are good reasons for Appellants' failure to offer the evidence to the local board. COMAR 13A.01.05.04C. The doctor's letter does not appear material and Appellants have failed to explain why they did not seek such a letter earlier. Even if the State Board were to consider the letter, Appellants would still not be able to demonstrate a unique hardship. The letter states that the transition from elementary school to middle school will be "emotionally difficult" for AB, but this is true for many students. Additionally, the letter states that the travel distance to Lakelands is more convenient for Appellants, but having a child attend a school in a less convenient location is a common problem for many families.

physical act" that "(1) physical harms an individual; (2) damages an individual's property; (3) substantially interferes with an individual's education or learning environment; or (4) places an individual in reasonable fear of harm to the individual's person or property." Md. Code Ann., Educ. ' 7-424.3. Appellants claimed that AB was being bothered and bullied by multiple students at school to the point where he was scared to attend classes. When pressed for details, though, AB named only one student who told him he was not smart and may have called him short. His fifth grade teacher and the principal at his school reported no sign of bullying and stated AB had "lots of friends."

Absent additional evidence, there is no indication that AB's negative experience with one student at Rosemont constituted bullying. Moreover, there is no indication that AB will face bullying at Forest Oak or that school staff will be unable to address such a situation should it occur. Appellants' concerns appear grounded in their desire for AB to have the same type of positive educational experience at Lakelands as his sister.

Accordingly, Appellants have not met their burden to demonstrate a unique hardship justifying a change of school assignment for AB. The local board's decision to allow the local superintendent's decision to stand was not arbitrary, unreasonable or illegal.

CONCLUSION

For all these reasons, we affirm the decision of the local board to allow the local superintendent's decision to stand because it is not arbitrary, unreasonable or illegal.

absent
Charlene M. Dukes
President

Mary Kay Finan
Mary Kay Finan
Vice President

James H. DeGraffenreidt, Jr.

Linda Eberhart
Linda Eberhart

S. James Gates, Jr.
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Luisa Montero-Diaz
Luisa Montero-Diaz

Absent

Sayed M. Naved

Madhu Sidhu

Madhu Sidhu

Donna Hill Staton

Donna Hill Staton

Absent

Guffrie M. Smith, Jr.

October 30, 2013