

RAEGAN AND RICK H.,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 14-62

OPINION

INTRODUCTION

Appellants have appealed the denial of their request to transfer their son R.H. from Spark M. Matsunaga Elementary School (“Matsunaga”) to Ronald McNair Elementary School (“McNair”). The Montgomery County Board of Education (“local board”) has filed a Motion for Summary Affirmance maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellant has responded to the local board’s Motion. The local board replied.

FACTUAL BACKGROUND

Appellants and their son R.H. live within the geographic attendance area for Matsunaga, where R.H. was slated to begin kindergarten at the start of the 2014-2015 school year. (Motion, Ex. 1). On February 18, 2014, Mrs. H submitted a request for a change of school assignment (“COSA”) asking that R.H. be allowed to attend McNair rather than Matsunaga. (Motion, Ex. 5). Mrs. H is a teacher at McNair. In a letter attached to her request, Mrs. H cited “hardship” as the reason for the request. She stated that the transfer would allow R.H. to continue to attend his current day care facility, La Petite Academy, for before and after school care, and make it easier for her to meet her family and work-related obligations. The Director of the Division of Pupil Personnel Services denied the request for failure to meet the hardship criterion.

In a letter dated May 8, 2014, Appellants appealed this decision to the Chief Operating Officer (“COO”), Mr. Larry M. Bowers. (Motion, Ex. 5). The letter described Mr. H’s demanding work schedule which required him to travel frequently as well as Mrs. H’s commitment to “attending school functions with [R.H.] and being an active member of his school parent community.” *Id.* Mrs. H argued that if R.H. attended the same school where she taught, she would be better equipped to fulfil her responsibilities as a parent and as a teacher. Further, Mrs. H highlighted that R.H’s grandmother and other friends would be willing to help transport R.H. to and from daycare.

Mr. Bowers referred the case to a hearing examiner, Ms. Janice F. Faden, for review and recommendations. During her investigation, Ms. Faden talked directly with the Appellants and the principals of Matsunaga and McNair. Appellants sent an additional letter to Ms. Faden, dated May 16, 2014, in which they indicated that R.H. had a “wonderful experience at La Petite

for years and they would love to keep R.H. there.” (Motion Ex. 7). In addition, the Appellants noted that La Petite provided transportation to McNair but not to his assigned school, Matsunaga. *Id.* They explained that a family friend was willing to provide before and after school care for R.H. if the Appellants decided that they could not afford to send R.H. to daycare. *Id.*

Ms. Faden concluded that while she understood that the Appellants wanted R.H. to remain in the same child care, child care does not amount to an undue hardship. (Motion Ex. 8). She pointed out that Mrs. H wanted R.H. to attend the same school she taught at for the sake of convenience, rather than because of a unique hardship. *Id.* Ms. Faden observed that before and after school care at Matsunaga would be available to Appellants beginning at 6:30 a.m. and ending at 6:30 p.m. On May 27, 2014, Ms. Faden recommended that the Appellants transfer request be denied. The COO adopted this recommendation and denied the request. *Id.*

In a letter dated June 11, 2014, Appellants appealed the COO’s decision. (Motion, Ex. 9). Appellants explained that the “family schedule, not child care” was the reason for their transfer request. *Id.* They explained that Mr. H’s schedule was no longer as flexible as it once had been and that Mrs. H is “the sole parent who is responsible for transporting R.H. to and from school.” *Id.* Appellants declared that without the transfer, R.H. would have very limited access to school events and it would be “nearly impossible [for Mrs. H] to be a classroom volunteer or attend class parties” with her son due to her requirements as a teacher. *Id.*

On June 19, 2014, Superintendent Dr. Joshua P. Starr responded to Appellants’ appeal. (Motion, Ex. 10). Dr. Starr explained that he understood the Appellants’ concerns about wanting R.H. to be at the same school as his mother so she could participate in his school activities. *Id.* However, Dr. Starr stated that this would conflict with her duties as a school teacher. *Id.* According to Dr. Starr, parents “generally do not work where their children attend school and must balance their work schedules with their children’s school activities in order to participate in those activities.” *Id.* Further, he concluded that the fact that transportation to McNair would be easier for Appellants was an issue of convenience and that child care concerns do not constitute unique hardships. *Id.* Dr. Starr recommended that the local board uphold his designee’s denial of the transfer request. *Id.*

The local board considered the Appellants’ appeal on June 30, 2014 and issued its decision on July 15, 2014. (Motion Ex. 11). The local board concluded that the COO applied the correct standard and adopted his findings that a unique hardship had not been demonstrated. *Id.* The board found that the circumstances faced by the Appellants are common to multiple families and parents. *Id.* Further, the local board noted that children usually do not attend the same school where their parent works. *Id.* The local board concluded that the bulk of Appellants’ argument was based on convenience and child care concerns, which do not constitute a unique hardship. *Id.*

Appellant filed this appeal to the State Board on August 5, 2014.

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). Appellant has the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.05D

LEGAL ANALYSIS

Pursuant to Montgomery County Public Schools' policy, students are assigned to schools based on the areas in the county where they live. MCPS allows for transfers from one school to another when there is a "documented unique hardship." MCPS Board Policy JEE-RA. Unique hardships depend on each family's individual circumstances. The MCPS policy states "[p]roblems that are common to large numbers of families do not constitute a unique hardship . . . absent additional compelling factors." MCPS Board-Policy JEE-RA. Appellants provide several reasons on appeal as to why their transfer request should be granted.

Unique Hardship

Appellants argue that a transfer should be granted so that their son can remain at La Petite Academy because it offers a better child care program and provides transportation to McNair, not Matsunaga. The State Board has repeatedly found that a child care preference is "common to many families" and "absent additional compelling factors, does not amount to a hardship." *Id.* at 4; see *Desbele S. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 11-55 (2011); *A.T. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 07-08 (2007). The Appellants' preference for a particular day care provider, under the MCPS transfer policy, is not a sufficient reason for a transfer request.

Appellants further explain that they have struggled financially and that their current daycare allows for flexible payments. They also have an offer of free day care from a friend, but only if their son attends McNair. Financial concerns related to daycare do not constitute a unique hardship because they are common to many families. See *Ashley F. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 14-54 (2014).

Related to their financial concerns, Appellants contend that they could be forced to move from their current home if the owner decided to sell it. They argue that if R.H. were granted a transfer, he could have a consistent home school no matter where the family might live. Because there is no indication in the record that the Appellants' landlord will sell their home or that they would not be able to find housing within the same school attendance area, this argument is speculative, at best. In the end, however, there is no right to a consistent home school.

Finally, Appellants argue that having R.H. attend the same school where Mrs. H works would allow Mrs. H to meet her obligations as a parent as well as a teacher. Under the MCPS transfer policy, however, teachers are not treated differently than other parents in the school

system. The preference to have one's child attend a school near where the parent works is common to multiple families and therefore does not constitute a unique hardship.

Other Transfer Requests

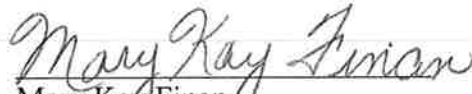
Mrs. H presents five instances in which children of MCPS employees were approved for transfer requests to the school where she previously taught and claims to know of other cases similar to hers in which transfers were granted. Each family's situation is different and it is difficult to compare transfer decisions without knowing all of the facts that led to those decisions. The local board based its decision on the information provided by Appellants and MCPS policies. Based on our review, we cannot say that its decision was an arbitrary or unreasonable one.

CONCLUSION


For all these reasons, we affirm the decision of the local board because it is not arbitrary, unreasonable, or illegal.

ABSENT

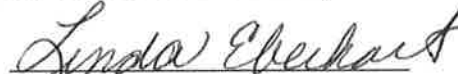
Charlene M. Dukes
President



Mary Kay Finan
Vice President



James H. DeGraffenreidt, Jr.



Linda Eberhart

ABSTAIN

S. James Gates, Jr.



Larry Giammo

ABSENT

Luisa Montero-Diaz

ABSENT

Sayed M. Naved



Madhu Sidhu

Donna Hill Staton/MLP

Donna Hill Staton

Gurrie M. Smith, Jr.

Gurrie M. Smith, Jr.

October 28, 2014