

TED AND DIANE G.,

Appellant

v.

MONTGOMERY COUNTY BOARD
OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 16-36

OPINION

INTRODUCTION

Appellants have appealed the denial of their request to transfer their son from White Oak Middle School to William H. Farquhar Middle School. The Montgomery County Board of Education (local board) has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal. Appellants have responded and the local board has replied.

FACTUAL BACKGROUND

Appellants' son A.G. was scheduled to begin sixth grade at the start of the 2015-16 school year. Based on his home address, A.G. was assigned to attend White Oak Middle School (White Oak), part of Montgomery County Public Schools (MCPS). Appellants submitted a Change of School Assignment form to MCPS requesting that A.G. be transferred from White Oak to William H. Farquhar Middle School (Farquhar) based on a unique hardship. The local board denied the request and Appellants appealed to the State Board. We dismissed the appeal based on untimeliness. *See Ted and Diane G. v. Montgomery County Bd. of Educ.*, MSBE Or. No. 15-08 (2015). A.G. attended private school for the 2015-16 school year.

On March 21, 2016, Appellants submitted a new Change of School Assignment form requesting that A.G. attend seventh grade at Farquhar rather than his assigned school, White Oak, for the 2016-17 school year. In support of the request, Appellants included several attachments that had been submitted as part of the previous transfer request. These were:

- (1) a letter from a former teacher who had substitute teaching experience at the two schools and expressed her opinion that A.G. would do poorly at White Oak because the classrooms are disruptive and chaotic;
- (2) a psychological assessment issued in May 2015 that diagnosed A.G. with attention deficit hyperactivity disorder (ADHD) and recommended that he be placed in a classroom that is "calm and free of distractions"; and
- (3) a letter dated April 27, 2015 from A.G.'s pediatrician offering his opinion that A.G. would be better served at Farquhar because of its smaller student population and smaller class sizes, friendly student population, and nurturing environment.

(Motion, Ex. 1).

On March 30, 2016, a representative from the Division of Pupil Personnel Services denied the request. (Motion, Ex. 1). Appellants appealed the decision to the superintendent's designee, who referred the matter to a hearing officer for review. In their appeal, Appellants explained that their son had attended nonpublic schools for the past five years and that the small class sizes and calm environment with minimal distractions in those schools had helped A.G. thrive despite his ADHD diagnosis. Appellants stated that other parents had strongly recommended Farquhar to them and that their own research convinced them it would be the best fit for their son. (Motion, Ex. 6).

The hearing officer was the same one who reviewed Appellants' transfer request in 2015. As part of her 2015 review, the hearing officer interviewed Mrs. G; A.G.'s pediatrician and psychologist; and the principal of White Oak. Appellants explained that nothing had changed since the 2015 transfer request and that the information the hearing officer received in 2015 was the same. In 2015, A.G.'s pediatrician told the hearing officer that he had no firsthand knowledge of either school and that A.G. could do well in either setting with the appropriate attention. That same year, A.G.'s psychologist stated that if A.G.'s learning needs are met, as outlined in A.G.'s psychological assessment, the particular school he attends would not matter. (Motion, Ex. 7A).

On May 10, 2016, the hearing officer recommended that the superintendent's designee uphold the denial of the transfer request. She concluded that Appellants had not presented evidence of a unique hardship and that all schools, including White Oak, can meet the needs of students diagnosed with ADHD. (Motion, Ex. 7A).

On May 18, 2016, the superintendent's designee adopted the hearing officer's recommendation. Appellants appealed to the local board. In their appeal, they explained that A.G. had shadowed another student at White Oak and he was overwhelmed and anxious by the school environment. Appellants also met with a school counselor at White Oak, who reportedly stated that A.G. would not be provided any accommodations in connection with his ADHD until the end of the first quarter, when his teachers would meet to discuss whether he might qualify for a Section 504 Plan.¹ They challenged MCPS's definition of a unique hardship and sought examples of other instances when transfer appeals had been granted. Appellants also argued that when parents take the time to advocate for a transfer request, that they should be given the benefit of the doubt and a transfer should be granted. In addition, Appellants updated their request to inform the board that A.G.'s mother had been transferred to a new work location in Virginia, which would severely hamper her ability to pick A.G. up after school and bring him to his after-school tutor. (Motion, Ex. 8).

On July 13, 2016, the local board upheld the decision of the superintendent's designee. Although the local board expressed sympathy for the Appellants' situation, it determined that

¹ Section 504 of the Rehabilitation Act of 1973 is a federal law designed to protect the rights of individuals with disabilities in programs and activities that receive federal funding through the U.S. Department of Education. School systems must ensure that qualified students with disabilities receive a free appropriate public education, which includes the provision of regular or special education instruction and related aids and services designed to meet the student's individual education needs in the same manner as a nondisabled student.

they had not demonstrated a unique hardship. The board found that there was not a sufficient link between the recommendations of A.G.'s doctors and the request to transfer him to one specific school. The board also found that Mrs. G's change in employment, and the ensuing complications with A.G.'s after-school tutoring, was the type of common problem faced by many families and did not constitute a unique hardship. (Motion, Ex. 10).

This appeal followed.

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

MCPS has approximately 156,000 students located in 202 schools. (Motion, Ex. 7). Students are assigned to those schools based on the geographic attendance areas in which they reside within the county. MCPS Board Policy JEE-RA.

Thousands of students every year seek transfers between MCPS schools. The school system has developed particular criteria to guide its process for determining which students are eligible to change schools. Transfers may be granted for students who meet certain criteria, such as those with an older sibling at the same school or those who have met the criteria for, and been admitted into, countywide programs. (Motion, Ex. 2). Students who do not otherwise meet those criteria for a transfer may still be granted one if they are able to present a "documented unique hardship." The MCPS Change of School Assignment Information Booklet states that a unique hardship "depends on the family's individual and personal situation. Problems that are common to large numbers of families, such as issues involving day care or program/course preferences, do not constitute a hardship, absent additional compelling factors." (Motion, Ex. 2). The school system received 4,200 transfer requests during the 2014-15 school year, 86 percent of which were granted. See *Linda C. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 15-30 (2015).

It is well established that absent a claim of deprivation of equal educational opportunity or unconstitutional discrimination, there is no right to attend a particular school. See *Linda C. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 15-30 (2015) (citing *Bernstein v. Board of Educ. of Prince George's County*, 245 Md. 464, 472 (1967)). Accordingly, local school systems may establish geographic attendance areas and establish policies to govern transfers of students between schools.

Appellants argue that they have presented sufficient information to show a unique hardship. They maintain that MCPS's policy is arbitrary because it is not well-defined, is too narrow in scope, and leads to the denial of reasonable transfer requests, such as their own. (Appeal, Response to Motion).

As we have previously stated, the “very nature of a unique hardship means that there is no standard definition that will apply to each family’s circumstances, nor, in our opinion, should there be.” *Mr. and Mrs. David G. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 10-14 (2010). Local board members have discretion to weigh the facts presented to them and issue a decision based on their established policy. *Id.* That exercise of discretion does not itself make a policy arbitrary. *Id.*

Having found that the policy itself is not per se arbitrary, unreasonable, or illegal, we turn to the arguments raised by Appellants in support of their transfer request.

Appellants argue that A.G.’s ADHD diagnosis and his need for small class sizes and a calm environment support his transfer to Farquhar. In order to justify a claim for unique hardship based on a medical condition, such as ADHD, an Appellant must demonstrate a link between the student’s medical condition and the necessity for a transfer to the requested school. *See Linda C. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 15-30 (2015); *K.J. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 14-18 (2014).

A.G.’s pediatrician and psychologist both acknowledged that A.G.’s needs could be met at any school, so long as the school provided the necessary supports for him. Although Appellants have raised concerns about White Oak’s ability to meet A.G.’s needs, the local board maintains that those fears are unfounded. The board observed that the percentage of special education students is comparable between the two schools (10 percent at White Oak compared to 10.3 percent at Farquhar) and White Oak has a better student-to-staff ratio (1 staff member for every 11 students compared to 1 staff member for every 12 students at Farquhar).

We have previously dismissed transfer appeals, even where students have significant medical or psychological issues, based on a lack of evidence to support a link between the condition and the specific, requested school. *See S.G. and D.G. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 15-04 (2015) (frequent bouts of pneumonia); *Linda C. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 15-30 (2015) (severe allergies and asthma); *Carolyn B. v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 15-20 (2015) (anxiety and other health issues). It was not unreasonable for the local board to find that the documents from A.G.’s pediatrician and psychologist alone do not support a transfer to a specific school.

Appellants also argued that it would constitute a unique hardship for A.G. to attend White Oak because Mrs. G had recently transferred to a new job and it would be difficult to transport A.G. to after-school tutoring on time. The need to coordinate transportation to out-of-school activities is a matter faced by many families of school-aged children and does not amount to a unique hardship under the MCPS transfer policy.

We must address, however, a reference in the record to the possibility that A.G. might qualify for a Section 504 Plan related to his ADHD. At this point in time, A.G. does not have a Section 504 plan. The local board acknowledges that a parent can request accommodations under Section 504 “at any point.” If they do so, the school system would evaluate A.G. to determine if he qualifies for such a plan and, if so, what services he should receive under the plan.

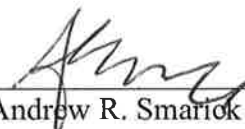
According to Appellants, the school counselor at White Oak reportedly informed them that A.G. would not receive any accommodations until after the end of the first quarter of the

school year. During the 2016-17 school year at White Oak, the first marking period ends on November 4. At that time, A.G. would be considered for a Section 504 Plan if he qualified for one. In other words, even if A.G. might qualify for accommodations for his ADHD, the school counselor has informed Appellants that A.G. would not receive those accommodations for two months, until the first quarter of school has passed. While this information may not support a transfer request to Farquhar, it certainly suggests that A.G.'s needs may not initially be met at White Oak.


In its decision, the local board explained that it was not considering any issues related to a potential Section 504 Plan for A.G. because a separate appeals process exists for Appellants to raise those claims. Although we agree that a separate appeals process exists, we conclude it was unreasonable for the local board to not address the Appellants' claim about the school counselor's statements as part of its decision. Appellants were not raising a claim about their son's eligibility under Section 504; instead, they used the counselor's statements as evidence that A.G. would not receive the support he needed at the school. In our view, evaluating the information presented by Appellants concerning the school counselor's statements was relevant to determine whether the transfer request itself was reasonable. Accordingly, we remand the case for reconsideration in order for the local board to address the school counselor's statements and to issue an amended decision.²

CONCLUSION

For all these reasons, we remand the decision of the local board for reconsideration consistent with this opinion.




Andrew R. Smarick
President



S. James Gates, Jr.
Vice-President



Chester E. Finn, Jr.



Michele Jenkins Guyton



Laurie Halverson



Stephanie R. Iszard


² In remanding this case, we do not opine on whether A.G. actually qualifies for a Section 504 Plan or whether White Oak is able to appropriately meet A.G.'s needs. The local board may supplement the record with additional evidence on these points if necessary for its decision.



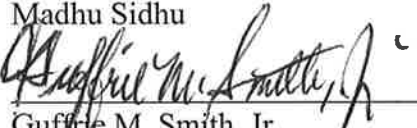
Jannette O'Neill-González



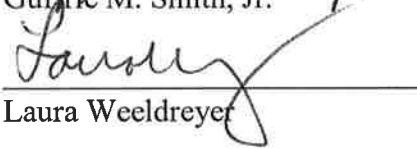
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September 27, 2016