MR. & MRS. DAVID G.,	BEFORE THE
Appellants	MARYLAND
v.	STATE BOARD
MONTGOMERY COUNTY BOARD OF EDUCATION,	OF EDUCATION
Appellee.	Opinion No. 10-14

OPINION

In this appeal, the Appellants challenge the decision of the Montgomery County Board of Education ("local board") denying their transfer request for their daughter. The local board has submitted a Motion for Summary Affirmance arguing that its decision was not arbitrary, unreasonable or illegal and should be upheld.

FACTUAL BACKGROUND

The Appellants' daughter, H.G., was assigned to attend Key Middle School at the start of the 2009-2010 school year. In February 2009, the Appellants requested that H.G. be transferred to Farquhar Middle School. The Appellants stated that the cost of before and after care for H.G. would place a financial hardship on their family, and that it was critical that H.G. continue receiving free daycare from relatives who live in the Farquhar Middle School attendance area. (Local Bd. Motion, Exh. 2).

The transfer request was denied on April 30, 2009, and the Appellants appealed to Larry Bowers, Chief Operating Officer, who served as the local superintendent's designee. Mr. Bowers transferred the matter to a hearing examiner. The Appellants explained that they needed before school care for H.G. because she would miss her school bus when the Appellants drive their son to high school "for safety reasons". Mrs. G. also explained that their son's extracurricular activities after school prevented him from watching H.G., and that she would not be able to leave work immediately at the end of her shift at 3:45 to meet H.G. at home either. Consequently, the Appellants stated they relied on free family daycare before and after school, which is the best arrangement for H.G. and saves them about $5,000 per year. (Local Bd. Motion, Exh. 3).

The hearing examiner concluded that the Appellants' decision to drive their son to school instead of using the school bus, Mrs. G.'s decision to not leave work at the end of her shift, and their child care concerns did not constitute a hardship under local policy. On June 11, 2009, Mr. Bowers adopted the hearing officer's recommendation to uphold the transfer denial. (Local Bd. Motion, Exh. 4).

On the appeal to the local board, the Appellants stated for the first time that the most significant aspect of their transfer request was H.G.'s emotional well being, which they hoped to keep out of the record. The Appellants included letters from H.G.'s elementary school principal and school counselor, who described several of H.G.'s emotional issues, including lack of self esteem and self worth, fear of new experiences, and the need to continue grief counseling with her cousin after the recent loss of their grandfather. The letters further noted H.G. would be "at risk" for negative academic consequences if her emotional needs were not met. (Local Bd. Motion, Exh. 6).

In response, the local superintendent argued the Appellants did not present any documented financial hardships to overcome the presumption that their child care issues do not amount to a hardship. The superintendent also argued that the Appellants did not raise H.G.'s emotional issues until their other reasons were found insufficient, nor did they present evidence that they sought professional support for H.G.'s issues. (Local Bd. Motion, Exh. 7).

The Appellants supplemented their appeal to the local board by stating H.G.'s situation was unique because she was identified as an "at risk" student with significant emotional issues. The Appellants further added that because they have seen declines in their family 403(b) and college savings accounts, any avoidable expenditure like child care should be viewed as an undue hardship. (Local Bd. Motion, Exh. 8).

At its meeting on August 27, 2009, the local board considered the appeal in closed session, but did not obtain the five person majority vote needed to overturn the local superintendent's decision. Four board members would have overturned the decision and approved the transfer request based on the unusual circumstances presented by the Appellants. Three other board members did not believe the transition issues presented were unique or amounted to a hardship, and that all schools were equipped to address these issues. (Local Bd. Motion, Exh. 9). Because the local board was unable to reach a majority decision, the superintendent's denial of the transfer remained in effect.

This appeal to the State Board followed.

STANDARD OF REVIEW

The standard of review in a student transfer case is that 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. COMAR 13A.01.05.05; *see, e.g., Bell v. Montgomery County Bd. of Educ.*, MSBE Op. No. 05-02 (2002); *Breads v. Bd. of Educ. of Montgomery County,* 7 Op. MSBE 507 (1997).

LEGAL ANALYSIS

The Appellants first argue that the local board's decision was arbitrary and unreasonable because it did not adequately consider H.G.'s emotional well being, including the "at risk"

factors noted by H.G.'s school counselor and principal, which the Appellants fear will negatively impact her education. The Appellants contend that the local board was obligated to consider this in balancing countywide considerations with those of the family in student transfer cases.

As argued by the local board, Appellants rely upon an obsolete evaluation standard for student transfer cases. The current policy, in effect since 2002, establishes a presumption that students will attend their assigned school unless the parents can demonstrate a unique hardship that would justify a transfer. (*See* Regulation JEE-RA, Local Bd. Motion, Exh. 1). Thus, H.G.'s emotional well being is one factor in determining the existence of a hardship.

In our review of the record, the local board considered the information presented by the Appellants, but was not able to reach a majority vote to reverse the superintendent's decision. Several members of the board determined that the information did not amount to a unique hardship: several members believed that it did. The record reflects a considered approach to all the evidence.

Next, the Appellants contend that "hardship" is not defined on the transfer request form or in board policy, which leads to arbitrary local board decisions. The local board disagrees, noting that the transfer form instructs parents to carefully review the Change of School Assignment Booklet, which states:

> By definition, hardship depends on the family's individual and personal situation. Problems that are common to large numbers of families, such as issues involving provision of day care, do not constitute a hardship, absent additional compelling factors. Documentation that can be independently verified must accompany all hardship requests.

(COSA Booklet, p.2, Local Bd. Exh. 1).

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. The Appellant presented several factors to support the request for transfer - - emotional issues, peer group, and financial factors. The Appellant argues that the decision issue here is arbitrary because it fails to find that the factors presented constitute documented hardship.

Certainly, H.G.'s emotional well being is an important factor, but it was within the discretion of those board members to weigh that factor differently than the Appellants do. Their exercise of that discretion does not make the decision of the local board arbitrary.

In addition, the Appellants' desire to have H.G. at a school with her peer group does not satisfy the hardship standard. *See Brande v. Montgomery County Bd. of Educ.*, MSBE Op. No. 05-05 (2005); *Wuu & Liu v. Montgomery County Bd. of Educ.*, MSBE Op. No. 045-40 (2004);

Upchurch v. Montgomery County Bd. of Educ., MSBE Op. No. 99-7 (1999); *Longobardo v. Montgomery County Bd. of Educ.*, MSBE Op. No. 99-3 (1999).

While the Appellants understandably prefer to utilize free family daycare arrangements to avoid the cost of child care, a family daycare arrangement is a preference common to many families that, absent additional compelling factors, does not amount to a hardship under the local board's policy. *See Bell v. Montgomery County Bd. of Educ.*, MSBE Op. No. 05-02 (2002); *Jamei and Esmaili v. Bd. of Educ. of Montgomery County,* MSBE Opinion No. 01-31 (2001); *Sullivan v. Bd. of Educ. of Montgomery County,* MSBE Opinion No. 00-22 (2000); *Gelber v. Bd. of Educ. of Montgomery County,* 7 Op. MSBE 616 (1997); *Marbach v. Bd. of Educ. of Montgomery County*, 6 Op. MSBE 351 (1992). The fact that the Appellants have noted declines in their 403(b) and college savings funds does not support a unique need for the preferred daycare arrangement given that such losses have been a nearly universal occurrence due to the economy.

It is well settled that there is no right to attend a particular school. *See Bernstein v. Bd. of Educ. of Prince Georges County*, 245 Md. 464, 472 (1967); *cf. Dennis v. Bd. of Educ. of Montgomery County,* 7 Op. MSBE 953 (1998) (desire to participate in particular courses does not constitute unique hardship sufficient to override utilization concerns); *Marshall v. Bd. of Educ. of Howard County,* 7 Op. MSBE 596 (1997) (no entitlement to attend four-year communications program offered at Mount Hebron); *Slater v. Bd. of Educ. of Montgomery County*, 6 Op. MSBE 365 (1992) (denial of transfer to school alleged to better serve student's abilities and welfare); *Williams v. Bd. of Educ. of Montgomery County*, 5 Op. MSBE 507 (1990) (denial of transfer to program offering advanced German); *Sklar v. Bd. of Educ. of Montgomery County*, 5 Op. MSBE 443 (1989) (denial of request to attend school offering four years of Latin, note taking/study skills course, and piano). Based on our review of the record, we do not find that the superintendent's decision denying the transfer was arbitrary, unreasonable or illegal.

CONCLUSION

For all these reasons, we affirm the decision of the superintendent denying the transfer.

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March 23, 2010