

TARYANA C.,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 10-06

OPINION

INTRODUCTION

In this appeal, the Appellant challenges the decision of the Montgomery County Board of Education (“local board”) denying her transfer request for her 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 Appellant’s daughter, D.J., was assigned to attend tenth grade at Gaithersburg High School for the 2009-2010 school year. In February 2009, the Appellant submitted a Change of School Assignment form requesting that D.J. attend Wooton High School or four others, listed in order of preference, instead of Gaithersburg. (Local Bd. Motion, Exh. 1)

The Appellant’s transfer request was based on hardship. The Appellant was concerned that Gaithersburg would not be the best choice for D.J. because she previously attended private school and was “very shy and sheltered”. The Appellant was further concerned with past negative publicity surrounding students at Gaithersburg High School. (Local Bd. Motion, Exh. 1.)

On April 1, 2009, the local school system denied the transfer request for failure to demonstrate a unique hardship. The Appellant appealed to the chief operating officer, as the local superintendent’s designee, who assigned the appeal to a hearing officer. After speaking with the Appellant, the hearing officer recommended that the transfer denial be upheld because there was an absence of a unique hardship, as required by the local board’s policy. The chief operating officer adopted the hearing officer’s recommendation.

On appeal to the local board, the Appellant changed her first choice transfer request from Wooton High School to Rockville High School. She added that the transfer would be in D.J.’s best interest because several of D.J.’s former classmates attended Rockville and would help ease her transition to public school.

As further support for the transfer request, the Appellant submitted an email exchange she had with the Gaithersburg principal, in which she described the negative experiences D.J. had while attending freshmen orientation at Gaithersburg. (Local Bd. Motion, Exh. 7) The Appellant stated as follows:

Three students (one boy and two girls) sat behind her. The boy made a comment loud [enough] for her to hear. He said "More black girls should have hair like hers". The girls he was with apparently did not like that and began to make loud comments like she had lice. Then the boy began to kick her chair and the one girl said "She's not going to turn around." My daughter being the timid shy girl did not turn around.

. . . The teasing kept on from there. She was in a classroom sitting and there was a boy in front of her. A boy (not sure if the same boy) came and said to the other boy in front of her "She likes you." The boy got up and ran away and everyone was laughing. My daughter at this point has still not spoken a word to anyone.

In the hall as they were walking a boy ran up and while passing her saying "Hi" and getting in her face and putting his hands on her. I think he was flirting with her based on her story but she is not used to that kind of attention.

Later, another boy was sitting down blocking her path. She politely said "excuse me" to pass but the boy did not move and looked at her as if she was crazy.¹

The local board issued its opinion on July 27, 2009. The local board expressed its regret concerning D.J.'s negative experiences at Gaithersburg's orientation, but noted that "unfortunately, no school is completely free from teasing or other misconduct, and students can experience some degree of such behavior at any school." The Board further expressed its confidence that the school administration at Gaithersburg could address such conduct as appropriate. The local board also stated its belief that although D.J. had some bad experiences on a single day at orientation, those experiences would not necessarily translate into similar experiences during D.J.'s time in high school. The local board concluded that the appeal did not contain a documented, unique hardship and affirmed the decision of the chief operating officer.

¹The principal of Gaithersburg responded to Appellant's email, apologizing for the behavior of the incoming 9th grade students, who had not yet had the opportunity to learn about the expectations of being high school students. He assured the Appellant that he did not condone such behavior at Gaithersburg. (*Id.*)

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.01.05.05A.

LEGAL ANALYSIS

The local board's policy provides that transfer requests will be granted if a student either meets a qualifying exemption or demonstrates a documented, unique hardship. Documented hardships do not include "[p]roblems that are common to large numbers of families, . . . absent additional compelling factors." (Local Bd. Motion, Exh. 2.). The Appellant based her transfer request on hardship, arguing that it is in D.J.'s best interest to be transferred to Rockville High School, where she knows other students and she'll be closer to her siblings who attend a nearby private school. She also recounted the teasing that occurred during orientation day.

We are concerned about the teasing that D.J. experienced during orientation. In particular, the lice comments and chair kicking were mean. We can understand why D.J. was upset by the events that transpired that day. Although the local board made note of the teasing in its decision, we believe that it glossed over the issue by stating that "no school is completely free from teasing. . . ." While this may be true, we cannot minimize the impact that incidents of teasing can have on students in the school setting. We recognize that teasing can negatively affect a student's educational experience. We also recognize the possibility that teasing may be the precursor to more serious incidents, such as bullying or harassment. We take this opportunity, therefore, to emphasize our expectation that school systems will not accept the inevitability of such conduct and strive to create safe, healthy and orderly environments in which students have positive experiences. With that said, however, we do not believe that the teasing in this case gave rise to a finding of hardship which would warrant a transfer.

With regard to the Appellant's request that D.J. attend a school with her former classmates, the State Board has consistently held that a desire to attend a school with a particular peer group does not constitute a unique hardship. *Tom & Judy M. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 09-37 (2009); *Iglesias v. Montgomery County Bd. of Educ.*, MSBE Op. No. 02-50 (2002); *Skardis v. Montgomery County Bd. of Educ.*, 7 Op. MSBE 1055 (1998); *Diehl v. Montgomery County Bd. of Educ.*, 7 Op. MSBE 589 (1997).


In addition, the State Board has also held that a family's concern over the distance that a student lives from a school does not constitute a unique hardship. *Tom & Judy M. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 09-37 (2009); *Brande v. Montgomery County Bd. of Educ.*, MSBE Op. No. 05-05 (2005); *Wuu & Liu v. Montgomery County Bd. of Educ.*, MSBE Op. No. 04-40 (2004); *Upchurch v. Montgomery County Bd. of Educ.*, MSBE Op. No. 99-7 (1999). In our view, this rationale would also apply to the Appellant's concern about


enrolling D.J. in a school close to her siblings. Such a desire would be common to large families and does not constitute a unique, documented hardship.

The Appellant also argues that she was not fully given an opportunity make her case for D.J.'s transfer by the local school system. Based on our review of the record, the Appellant was provided adequate process at each stage of the transfer appeal process. While the Appellant disagrees with the local school system's response, we have not found any evidence that the Appellant was denied an opportunity to advocate on D.J.'s behalf.


CONCLUSION

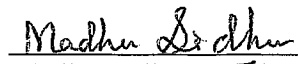
For all these reasons, we affirm the decision of the Montgomery County Board of Education.



James H. DeGraffenreidt, Jr.
President


Charlene M. Dukes
Vice President


Mary Kay Finan


S. James Gates, Jr.

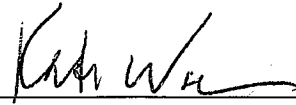

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February 23, 2010