

ADELE AND NICHOLAS B.,

Appellant

v.

MONTGOMERY COUNTY  
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 13-46

## OPINION

### INTRODUCTION

Appellants have appealed the denial of their request to transfer their daughter from Clopper Mill Elementary School (Clopper Mill) to Great Seneca Creek Elementary School (Great Seneca). 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 replied to the local board's Motion.

### FACTUAL BACKGROUND

Appellants' daughter, MB, will be entering the kindergarten at the start of the 2013-14 school year. They reside in the geographical attendance area for Clopper Mill.

On or about February 5, 2013, Mrs. B submitted a "Request for Change of School Assignment" seeking to transfer their daughter from Clopper Mill to Great Seneca. As the basis for the transfer, Appellants selected "Hardship", as listed on the form, and included a letter providing more detail. (Motion, Exhs.1 & 1A). Appellants wrote:

The children in the neighborhood have targeted my family because they know we've reported crimes to the police. When we go out in the neighborhood around the school, pool, or park, my daughter is often verbally harassed and bullied. We have been the victims of theft, violence, bullying, and harassment. We have attended community meetings with the police to try and work together to stop the crime and targeting in the neighborhood. As an adult, I feel in danger of taking my daughter to the park by the school because of how we've been treated in the neighborhood. I simply cannot send her there alone into that environment. The groups of kids in the neighborhood know who she is, and we've even had things thrown at us walking between our home and the school.

(Motion, Ex.1A). Appellants stated that they "need to get [MB] away from the kids in [their] neighborhood . . . who bully her because of the known involvement [the] family has in ongoing issues in [their] area." *Id.*

Appellants appealed the denial to Larry Bowers, Chief Operating Officer and Superintendent's designee, reiterating their concerns about the bullying and harassment due to their involvement in the neighborhood issues. (Motion, Ex.2). Mr. Bowers referred the matter to a hearing officer to conduct an investigation. The hearing officer, Janice Faden, spoke with Mrs. B, the acting principal of Clopper Mill, the principal of Great Seneca, and MB's preschool education teacher at Lake Seneca Elementary School where MB attended the 3 and 4 year old programs. She reported the following to Mr. Bowers:

According to Mrs. [ B.], the problems have included older children stealing her daughter's bicycle, giving obscene gestures to her and her daughter after she asked them to leave the baby pool, and accusing Mrs. [B.] of racism when she confronted them about having a pit bull. She stated that eventually she will move out of the neighborhood. She added that the school may be great, but the students are a problem. She stated that the street has crime and violence.

(Motion, Ex.3A). 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 indication that the difficulties in the neighborhood would translate into a dangerous situation for MB at school. She suggested that the Appellants meet with Clopper Mill staff to provide background information on MB to help plan for a smooth start of the school year. *Id.* On April 10, 2013, Mr. Bowers adopted the hearing officer's recommendation and denied the transfer request. (Motion, Ex.3).

Appellants further appealed to the local board. Appellants again reiterated their concerns that MB would be the subject of bullying and harassment at Clopper Mill based on MB's and the family's experiences with the neighborhood children who attend school there. (Motion, Ex.4). Appellants expressed that they do not believe Clopper Mill is safe for MB and that she needs to be in a school environment away from the bullying and harassment she has been exposed to as retribution for the Appellants' involvement in fighting crime in the neighborhood. Appellants stated that they have been taunted, have had things thrown at them, have had gestures made towards them and have had items stolen. Mrs. B. stated that although she had already met with the principal of Clopper Mill to discuss the situation, it did not change her position on requesting a transfer to Great Seneca. *Id.*

On May 1, 2013, the local superintendent responded to the appeal and argued that the local board should uphold the denial of the transfer due to lack of a unique hardship. While the local superintendent noted that the police report and report of a community meeting submitted by Appellants did not contain any details of bullying and harassment against MB and her family, he did not deny that such things took place. Rather, he maintained that there was no evidence that the behaviors in the community would extend into the school environment. (Motion, Ex.5). He stated that the Clopper Mill staff "has worked hard to create a safe and orderly environment." *Id.*

In a decision issued May 30, 2013, the local board affirmed the decision of the Chief Operating Officer denying the change of school assignment request. (Motion, Ex.6). It stated in the decision:

The Board appreciates [the Appellants'] concern for [their] daughter's safety. However, the record does not contain evidence that the concerns regarding the activity of neighborhood children will be present at Clopper Mill. At this time, the concerns regarding bullying at school are speculative. The Board is confident that the Clopper Mill school administration will continue to work to ensure an appropriate environment and that it will be responsive to any concerns that may arise on the part of [the Appellants].

*Id.*

Appellants appealed the local board's decision to the State Board of Education on June 3, 2013. Appellants reiterate the same concerns they raised before Mr. Bowers and the local board. They also add that Clopper Mill is a Title I school where 79.4% of the students participate in the free and reduced price meals (FARMS) program. They go on to say that they do not mind the high FARMS rate or the fact that only "7% of the kids are [MB's] race, but they conclude that "Great Seneca Creek will be a better educational environment for [their] daughter," citing higher Maryland School Assessment test scores for Great Seneca over Clopper Mill. Appellants ask the State Board to "see the big picture" and help their daughter and her education. (Appeal Letter, p.2).

#### STANDARD OF REVIEW

The standard of review that the State Board applies in reviewing a student transfer decision 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. *See Tom & Judy M. v. Bd. of Educ. of Montgomery County*, Op. No. 09-37 (2009). The Appellants have the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.05D

#### LEGAL ANALYSIS

The State Board has long held that there is no right to attend a particular school. *See, e.g. Bernstein v. Board of Education of Prince George's County*, 245 Md. 464 (1967); *Chacon v. Montgomery County Board of Education*, Opinions of MSBE, No. 01-39 (December 5, 2001); *Goldberg v. Montgomery County Board of Education*, Opinions of MSBE, No. 05-35 (2005). Thus, we have concluded that a local board's student transfer policies are permissive and not mandatory. In *D.D. v. Montgomery County Board of Educ.*, 6 Op. MSBE 35 (2006), the State Board explained that the local board's transfer policy gives the school system discretion to balance the interests of the students and schools.

Pursuant to the local board's policy, students are assigned to the schools in the areas in which they live. The school system may grant a student a transfer to a different school, however, under the following circumstances:

- Existence of a unique hardship;
- An older sibling is already attending the requested school at the same time in the regular program;
- The student is ready to move from middle school to high school, except for boundary change;
- The student has met the criteria for, and been admitted to a countywide program; or
- Family relocation within the county and the student prefers to remain in the original school for the current school year.

(*Id.*, MCPS Regulation JEE-RA(IV)(A) & (B); COSA Information Booklet). Appellants would like their daughter to attend Great Seneca because of their fears that she will be harassed and bullied at Clopper Mill by the neighborhood children who Appellants claim have retaliated against the family. Thus, the only applicable basis for the granting of a transfer is if a unique hardship exists.

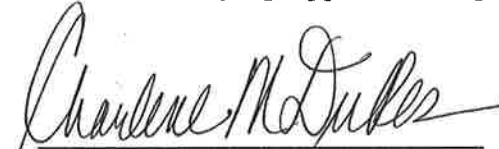
The safety of students in the school environment is always of paramount concern. The State Board and the local school systems have done a great deal of work to address the issue of bullying and harassment in the schools. Such efforts include the establishment of anti-bullying policies, and prevention and intervention training and programs.


This case is a difficult one because Appellants maintain that they are concerned for their daughter's safety at Clopper Mill based on experiences they have had while walking around the neighborhood near the school area. Without specifically identifying students, Appellants state that they have encountered unattended children who go to Clopper Mill who have taunted and harassed their daughter, followed her home, and stolen her bicycle. (Appeal).


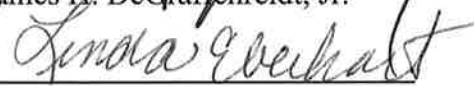
While we abhor the experiences Appellants maintain they and MB have endured in the neighborhood, we do not believe that the local board acted arbitrarily or unreasonably in denying the transfer request for lack of hardship. Unfortunately, it is not uncommon for parents to have concerns about how their children will be treated by other students in school based on events that transpire in the neighborhood. With that said, we take this situation very seriously given Appellants' description of what has happened. We expect that staff at Clopper Mill will keep a very close watch on this issue and maintain regular contact with the Appellants to continuously evaluate the situation. If bullying or harassment incidents arise targeting MB at school, Clopper Mill staff must take swift action to remedy the situation, including considering the transfer request anew if appropriate under the circumstances. Likewise, we expect Appellants to keep the school informed of any bullying or harassment incidents they believe are occurring at school.

CONCLUSION

For these reasons, we find that the local board's decision is not arbitrary, unreasonable, or illegal. Accordingly, we affirm the decision of the local board denying Appellants' request for a change of school assignment.


  
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Charlene M. Dukes  
President


  
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Mary Kay Finan  
Vice President


  
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James H. DeGraffenreidt, Jr.  
  
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Linda Eberhart

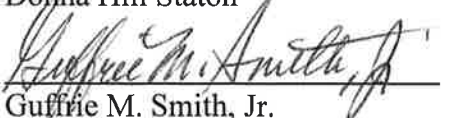
*Absent*  
\_\_\_\_\_  
S. James Gates, Jr.  
*Absent*

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Luisa Montero-Diaz

  
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Sayed M. Naved

  
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Madhu Sidhu

  
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Donna Hill Staton

  
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Guffie M. Smith, Jr.

September 24, 2013