

K.J.,

Appellant

v.

MONTGOMERY COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 14-18

OPINION

INTRODUCTION

Appellant appeals the Montgomery County Board of Education’s (local board) decision denying her son’s school transfer request from Montgomery Village Middle School (“Montgomery Village”) to William H. Farquhar Middle School (“Farquhar”). The local board filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal. The Appellant submitted a response in opposition to the Motion for Summary Affirmance and the local board responded.

FACTUAL BACKGROUND

The Appellant’s son, A.J., has epilepsy, attention deficit disorder, and a learning disability. A.J. attended elementary school at the Carl Sandburg Learning Center which is dedicated to meeting the educational needs of students with disabilities. For middle school, A.J. was assigned to attend Montgomery Village beginning in the 2013–2014 school year and was enrolled in a Learning for Independence (“LFI”) program.¹ A.J.’s diagnosis code under his Individualized Education Program (“IEP”) is labeled as “Other Health Impairment.” Appellant explains that her son’s IEP plan requires a consistent schedule and stable environment.

On April 22, 2013, Appellant submitted a request for Change of School Assignment (“COSA) based on unique hardship.² In this request, Appellant argued that Farquhar is closer to her work allowing her to quickly arrive to the school in the event that A.J. is suspected of having a seizure so that she may advise school staff of her son’s medical status. Appellant also wished for her son to attend Farquhar because the school is located in Olney. Appellant contended that A.J. is most familiar with Olney, and he would, thus, receive the most benefit when taking field trips in this area. (Motion, Ex. 2).

Gwendolyn Mason, the Director of the Department of Special Education Services, denied Appellant’s request for a transfer on June 21, 2013 reasoning that Appellant did not meet the

¹ The LFI program provides services to “students with complex learning and cognitive needs, including mild to moderate intellectual disabilities.” Department of Special Education Services, Montgomery County Public Schools, <http://www.montgomeryschoolsmd.org/departments/special-education/programs-services/age-elementary-to-secondary.aspx#LFI> (last visited Feb. 26, 2014).

² Appellant’s son was in the 5th grade when the COSA form was submitted.

criteria for COSA and A.J.'s IEP could be sufficiently implemented at Montgomery Village. (Motion, Ex. 4). Mason also noted the high enrollment in the special education program at Farquhar. *Id.*

Appellant then appealed the decision to Larry Bowers, the Chief Operating Officer and the superintendent's designee. On August 6, 2013, Bowers upheld the denial of A.J.'s COSA request. (Motion, Ex. 6). Based upon an investigation conducted by Chrisandra Richardson, Bowers concluded that Appellant did not document an unique hardship for the following reasons: (1) A.J. had only two recorded visits to the health room on April 10 and 11, 2012 and both were unrelated to seizure activity; (2) his last recorded seizure occurred May 1, 2007; (3) Montgomery Village is only .45 mile farther from Appellant's work than Farquhar; and (4) A.J., a 12 year old student, will be able to attend school until the age of 21 and thus, his educational experience will be in the same community for the next 10 years. (Motion, Ex. 6 & Motion, Ex. 6A).

On August 30, 2013, Appellant further appealed A.J.'s denial for transfer to the local board. In Appellant's appeal to the local board, she presented additional information in support of her claim for unique hardship. For instance, Appellant stated that A.J. has had seizures since he was two years old and he suffered his most recent seizure in June 2013. Moreover, in April 2012, A.J. had a seizure on a bus ride. The bus driver called Appellant and she met the ambulance and the bus to inform personnel of A.J.'s condition. Appellant explained that she was able to "prevent [A.J.] from an unnecessary and stressful hospital visit." (Motion, Ex. 7). Along with Appellant's appeal is a Neurology Clinic Letter from Dr. Amy Kao detailing A.J.'s medical history and reports that A.J. has seizures every few months.³

On October 8, 2013, the local board upheld the denial of A.J.'s COSA request based on Appellant's failure to show that A.J. would face a unique hardship. The local board reasoned that A.J.'s IEP and medical needs will be met at his assigned school. Further, the local board noted that there are other students at Montgomery Village who have seizure disorders and the school has protocols if a medical emergency were to arise. The local board concluded that any extra time spent traveling to Montgomery Village, in the event that Appellant needed to go to the school to address her son's condition, would not be significant.

This appeal to the State Board followed. In her appeal, Appellant raises two new issues: (1) she further explains that the basis for her transfer request is to prevent unnecessary trips to the hospital given her son's extreme reaction; and (2) she expresses concerns that her son's IEP is not being properly administered.

STANDARD OF REVIEW

When reviewing a local board's denial of a student transfer request, the local board's decision is considered *prima facie* correct. COMAR 13.A.01.05.05A. The State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. *Id.*

³ The report by Dr. Kao was written on August 29, 2013.

LEGAL ANALYSIS

New Evidence

As a preliminary matter, Appellant presents additional information in her appeal on two issues. This information, however, was not provided to the local board when the matter was decided. First, Appellant provides a more detailed explanation for wanting to prevent her son from experiencing an “unnecessary and stressful hospital visit.” She describes that for the past ten years, A.J. has incurred intense medical treatment and visits to the hospital have become a traumatic experience for her son. Appellant states that A.J. has been admitted to the hospital on four different occasions and throughout these visits her son has undergone an IV drip, blood draws, MRIs, CT scans, sedation, 60 electrodes glued to his head and had his movements restricted. These visits have been stressful for A.J., and Appellant states that she attempts to prevent her son from unnecessary hospital visits whenever possible.

Second, Appellant argues that A.J.’s IEP is not being properly administered at Montgomery Village. Appellant claims that at the beginning of the school year, A.J. had several different substitute teachers, which undermines the stability and consistency her son needs to successfully reach his IEP goals. Appellant attached a letter to her appeal that her husband wrote to a Special Education Teacher at Montgomery Village, Elaine Fors-MacKellar, where he raises concerns he noticed while attending an open house. He states that the substitute teacher did not know A.J.’s name and A.J. did not know hers.

Generally, the State Board does not review information that has not been presented to the local board absent narrow circumstances. *Donald and Natalie C. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 11-19 (2011); *Jenai B. v. Prince George’s County Bd. of Educ.*, MSBE Op. No. 08-22 (2008). We may consider the new information if the evidence is material to the case and the Appellant offers a good reason for failing to present the information to the local board. COMAR 13A.01.05.04(C). In this case, Appellant has not stated a reason for failing to present this information to the local board and has not argued why it should now be considered at this stage.

Notwithstanding our decision not to consider the additional evidence, we note that Appellant’s concerns regarding whether A.J.’s IEP objectives are being adequately addressed by Montgomery Village is a separate issue. A transfer appeal is not the proper forum to decide an IEP concern, but rather it should be addressed through the special education process. *Matthew W. v. Montgomery County Bd. of Educ.*, MSBE No. Op. 08-07 (2008); *see also Brado v. Montgomery County Bd. of Educ.*, MSBE Op. No. 06-23 (2006). We encourage open communication between Appellant and the school system regarding A.J.’s IEP.

Transfer Request

Montgomery County Public Schools (“MCPS”) assigns students to public schools based on their residence or according to the student’s IEP. To attend a school other than the one assigned, a student must have a documented unique hardship or satisfy an exemption listed by MCPS. MCPS Board Regulation JEE-RA. Whether a family or student has a unique hardship depends upon the circumstances of the 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.” Change of Assignment (COSA) Information Booklet, Montgomery County Public Schools (2013–2014).

The unique hardship at issue here is the mother’s desire to be closer to the school in order to refuse transportation to the hospital in the event school personnel determine that emergency medical care is necessary. Appellant argues that she works closer to Farquhar and would be able to arrive to Farquhar more quickly than she would to Montgomery Village in order to assess A.J.’s condition, advise personnel, and refuse transportation to the hospital in the event it is not needed. Appellant’s goal is to prevent A.J. from having unnecessary trips to the hospital.

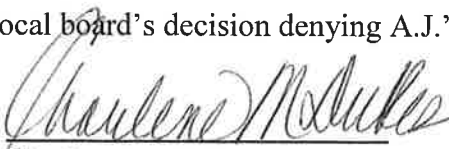
Conversely, the local board states that Montgomery Village can properly meet A.J.’s medical needs because the school has staff trained to respond to students having seizures and to implement health plans for emergencies. The local board contends that if the situation is not an emergency and the staff determines it is proper to wait for Appellant, then the additional time spent driving to the school would not be significant. (Motion, Ex. 9). The local board notes, however, that a student requiring emergency medical attention would be sent to the hospital and the parents would be notified. (Motion, Ex. 9).

To successfully assert a claim for unique hardship based on a medical condition, the Appellant must demonstrate a link between the student’s medical condition and the necessity to be transferred to the requested school. *Philip and Deborah W. v. Prince George’s County Bd. of Educ.*, MSBE Op. No. 11-48 (2011). A documented medical condition is not by itself sufficient to grant approval of a transfer. *Timothy and Michelle W. v. Howard County Bd. of Educ.*, MSBE Op. No. 09-18 (2009).

It is undisputed that Appellant’s son has a diagnosed medical condition. Appellant is unable to demonstrate, however, that a medical need exists that requires A.J. to attend the requested school. Appellant’s focus is on preventing A.J. from experiencing an unnecessary and stressful hospital visit, which she maintains is only possible if she is present to refuse hospital treatment. There is no evidence, however, that A.J.’s medical needs cannot be met at his assigned school, Montgomery Village, which has protocols in place to aid students having a seizure. There is also no indication that the school would not work with the Appellant to prevent an unnecessary hospital visit for her son. Although Appellant presents a medical report detailing A.J.’s medical history, there is no medical opinion stating that A.J.’s transfer to Farquhar is a medical necessity to show his enrollment at Montgomery Village creates a unique hardship. Thus, Appellant has failed to show a link between A.J.’s medical condition and the need to attend Farquhar that would satisfy the unique hardship requirement.

CONCLUSION

For the reasons stated above, we affirm the local board’s decision denying A.J.’s transfer to Farquhar.


Charlene M. Dukes
President

Mary Kay Finan
Mary Kay Finan
Vice President

Absent

James H. DeGraffenreidt, Jr.

Linda Eberhart
Linda Eberhart

S. James Gates, Jr.
S. James Gates, Jr.

Larry Giammo

Luisa Montero-Diaz
Luisa Montero-Diaz

Sayed M. Naved - MUP
Sayed M. Naved

Donna Hill Staton
Donna Hill Staton

Guffie M. Smith, Jr.
Guffie M. Smith, Jr.

April 22, 2014

Madhu Sidhu
Madhu Sidhu

I dissent and would find that a unique hardship exists in this case.