HIL & TERESA R.,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
ALLEGANY COUNTY BOARD OF EDUCATION,	OF EDUCATION
	Order No. OR11-02
Appellee	

ORDER

The Appellants have requested that this Board reconsider its October 26, 2010 Order in *Hil & Teresa R. v. Allegany County Bd. of Educ.*, MSBE Opinion No. 10-46. The Allegany County Board of Education (local board) has filed a Response to the Request for Reconsideration.

In *Hil & Teresa R. v. Allegany County Bd. of Educ., supra,* this Board affirmed the local board's decision denying the Appellants' request to have their daughters attend Frost Elementary School as out-of-district students for the 2010-2011 school year. This Board did so because the Appellants failed to present sufficient evidence to demonstrate the type of need for child care envisioned by the school transfer policy.

A decision on a request for reconsideration shall be made in the discretion of the State Board except that a decision may not be disturbed unless there is sufficient indication in the request that:

(1) The decision resulted from a mistake or error of law; or
(2) New facts material to the issues have been discovered or have occurred subsequent to the decision.

The State Board may refuse to consider facts that the party could have produced while the appeal was pending. The State Board may, in its discretion, abrogate, change, or modify the original decision. COMAR 13A.01.05.10D.

In their Request for Reconsideration, the Appellants allege that there are some factual errors in the Opinion but fail to raise any mistake or error of law, or any newly discovered or recently occurring facts that would affect the Opinion upholding the local board's decision.

With regard to the issue of factual error, the Appellants dispute the following statement in the first sentence of the factual background section of the Opinion: "Until December 2009, Appellants lived in the school attendance area in which their children went to Frost Elementary School." MSBE Opinion No. 10-46 at 1. Appellants maintain instead that they lived outside the

Frost attendance area and that their children attended Frost as out-of-area students for the 2008-2009 and 2009-2010 school years. We have reviewed again the transcript of proceedings before the local board and acknowledge that testimony supports the Appellants' assertion. (T. 20-21). This fact, however, does not alter the outcome of our decision. Under school system policy, the Appellants were required to seek approval for out-of-area attendance at Frost each school year. *See* JC-R1. As we explained in Opinion 10-46, their application for the 2010-2011 school year failed to present sufficient evidence to justify the request.

Therefore, this 25 day of January, 2011 by the Maryland State Board of Education it is, ORDERED, that the Request for Reconsideration be and the same is hereby denied. *See* COMAR 13A.01.05.10D.

MARYLAND STATE BOARD OF EDUCATION
By:

James H. DeGraffenreidt, Jr.
President

HIL & TERESA R.,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
ALLEGANY COUNTY BOARD OF EDUCATION,	OF EDUCATION
Appellee.	Opinion No. 10-46

OPINION

INTRODUCTION

The Appellants, Dr. and Mrs. Hil Rizvi, appealed the denial of their request that their two daughters be allowed to attend Frost Elementary School even though the Rizvi's live in the Beall Elementary School attendance area. The Allegany County Board of Education (local board) filed a Motion for Summary Affirmance to which the Appellants replied. The local board filed a Response to the Appellant's filing.

FACTUAL BACKGROUND

Until December 2009, Appellants lived in the school attendance area in which their children went to Frost Elementary School (*see* Motion at 1). (T. 20). At the end of 2009, the Appellants moved within the City of Frostburg. (T. 20). They wanted their two daughters to remain in Frost Elementary School. They were asked to submit an out-of-district application for the 2010-2011 school year. (T. 20). They did so on May 30, 2010 stating on the Request Form the four reasons for the request: (1) continuity from 2008 enrollment; (2) residence two miles from Frost Elementary and next door neighbors attend Frost Elementary; (3) unreasonable attitude of the principal backed by the Board of Education; and (4) babysitter for provisional use. (*See* Appeal, Request Form, attached thereto).

The principal denied the out-of-district request. The Appellants appealed that decision to the Superintendent. The Superintendent scheduled a fact-finding meeting with the Appellants on December 17, 2009. In attendance were the School Principal, the School Psychologist, and the Director of Student Services. (T. 14).

Apparently, the Appellants did not want those persons to be a part of the meeting. The Appellants declined to participate and left the meeting. (T. 15). Thereafter, the Superintendent issued a decision affirming the Principal's decision. The Appellants requested another meeting with the Superintendent. It was scheduled for March 3, 2010. Again, in attendance were the School Principal, School Psychologist, and Director of Student Services. Again, the Appellants

refused to meet with those parties present. (T. 15). Again, the Superintendent affirmed the decision of the Principal, but allowed the children to continue in Frost Elementary for the balance of the 2009-2010 school year. (T. 16).

The Appellants appealed that decision to the local board which held a hearing on April 8, 2010. (Motion, Ex. 12). In its decision of May 12, 2010, the local board found that the Appellants had failed to provide reasons to support the request for an out-of-district permit. They affirmed the Superintendent's decision. (*See* Motion, Decision attached thereto). This appeal ensued.

STANDARD OF REVIEW

Because this appeal involves a decision of the local board involving a local policy, the local board's decision is considered *prima facie* correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.03E(1).

LEGAL ANALYSIS

In Allegany County, a student must attend the school designated to serve the attendance area in which he/she resides unless he/she has been granted permission by the superintendent to attend another school. (*See* Motion, Ex. 15). The reasons for granting a request are: child care; school year completion; school employees in an out-of-district school; Title I accountability transfer; out-of-county/state student; and tuition students. (Motion, Ex. 15). The local board upheld the denial of the Appellants' out-of-district request because the Appellants provided no reason that met the requirements for granting the request.

On the Request Form that the Appellants submitted, they listed "babysitter for provisional use" as one of the reasons for the request. That reason is based on child care issues. The school policy states "a student whose parents are required to be outside the home and there is no responsible adult in the child's home to send him/her to or receive him/her from the home school may apply to attend another school in Allegany County." The parents must provide information to the school system about the child care provider. (Motion, Ex. 15). We note, however, that in the section of the Request Form that their child care provider was required to sign the words "regularly/daily" were crossed out. Specifically, the Request Form states: "I verify that I provide child care/supervision for the above student on a ~~regular/daily~~ basis." (Appeal, Request Form attached).

The child care issue was addressed in the hearing before the local board. The Superintendent explained that the School Principal had spoken to the babysitter and she said she was not giving child care to the students. The Superintendent further explained that he wanted to evaluate that issue with the Appellants at the fact-finding meetings he scheduled with them. (T. 22-23).

At the hearing, the Appellant explained the child care issue this way:

> Appellant: Occasionally. Occasionally, that is the reason for why we - we don't have - I want you to understand this. We're not - the way this has been presented by the other side, it is as if on every single school day the children are going to this babysitter. This is not what's happening. This is our standby arrangement because I work out of the area, and there are times that we need a sitter, and there are times that we don't, and when we need a sitter, we're talking about weeks in a row.
>
> Board Member: Let me ask the question again. Is that what you put on the application?
>
> Appellant: That's what we put on the application.
>
> Board Member: And, why would Ms. Lee have responded to the school that they're not receiving care from her after school?
>
> Appellant: There is no reason for that. That is not authentic. If somebody is representing that, they are not being genuine here.
>
> Board Member: O.K. Thank you.

(T. 24).

After the hearing, the local board concluded:

> that the Appellant failed to prove that the Superintendent's decision with regard to his out-of-district permit request was arbitrary, unreasonable or illegal. Appellant had two opportunities to be heard by the Superintendent but failed to present any evidence or arguments to support his contention that the Principal's decision was in error. Faced with a lack of any evidence or arguments that the Principal's decision was incorrect, the Superintendent had no choice but to deny Appellant's request to overrule the denial of his out-of-district permit. Based on these facts, we find no error in the Superintendent's decision. The Appellant failed to meet his burden of persuasion and his appeal is denied.

(Motion, Decision attached).

Based on the record before us, we agree with the local board. The Request Form itself reflects that child care was not going to be provided on a "regular or daily" basis. The

Appellant's testimony confirms that. Thus, in our view, the Appellants failed to present sufficient evidence to demonstrate the type of need for child care envisioned in the school policy. We find that the local board's decision is neither arbitrary, unreasonable or illegal.

CONCLUSION

We recommend that the decision of the local board be affirmed.

James H. DeGraffenreidt, Jr.
President

ABSENT
Charlene M. Dukes
Vice President

Mary Kay Finan
Mary Kay Finan

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October 26, 2010