

CHRISTINE C.,

Appellant

v.

MONTGOMERY COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 14-59

OPINION

INTRODUCTION

Appellant has appealed the denial of her request to transfer her son from his assigned school, Wheaton High School (“Wheaton”) to Albert Einstein High School (“Einstein”). The Montgomery County Board of Education (“local board”) has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal.

FACTUAL BACKGROUND

Appellant and her son, B.C., live in an area of Montgomery County in which students are assigned to one of five high schools within a consortium known as the Down County Consortium (“DCC”). The five DCC high schools are: Montgomery Blair (“Blair”), Einstein, John F. Kennedy (“Kennedy”), Northwood and Wheaton. In addition to the core academic and elective courses that comprise the comprehensive high school program at each of the schools, each school also offers a distinct academy program that includes sequences of courses designed around central themes of interest. (Motion, Ex.1).

Students are assigned to one of the five schools through a choice process. Eighth grade students residing in the DCC area rank the five DCC high schools in order of preference on a Choice Form. The school system assigns students to schools through a computer-assisted lottery process that considers the student’s choice ranking and other factors, such as school capacity; projected enrollment; gender; and socioeconomic status as indicated by whether students participate in the Free and Reduced Price Meals program (“FARMs”). Students are not guaranteed assignment to their first choice school unless their first choice is their base area school.¹ *Id.*

The choice process has two rounds. The first round takes place in November and is for DCC residents in the eighth grade. The second round takes place in February and is for students who did not get their first choice school in round one, new DCC residents, and eighth grade students who transferred into a DCC middle school. *Id.*

¹ A base area school is a school affiliated with a particular geographic area in the DCC. Students are guaranteed assignment to their base school if it is their first choice, or if the base school is their second choice and their first choice school is not available. *Id.*

On November 3, 2013, the Appellant and her son completed the DCC Choice Form. They ranked Montgomery Blair as first choice, Einstein as second choice, Wheaton as third choice, Kennedy (the base school) as fourth choice and Northwood as fifth choice. (Motion, Ex. 2). B.C. was assigned to Wheaton, his third choice. (Motion, Ex. 3).

Appellant participated in the second round of the process and B.C. was again assigned to Wheaton. (Motion, Ex. 4). The assignment notice advised that the decision could be appealed “for unique verifiable hardships or unforeseen circumstances that could warrant overriding [the] school assignment.” *Id.*

On April 2, 2014, B.C.’s parents wrote to Jeanie Franklin, the Director of the Division of Consortia Choice and Application Program Services (“DCCAPS”), to appeal B.C.’s assignment to Wheaton. They noted that B.C. has an interest in studying business and finance in high school and that both Blair and Einstein offer “excellent pathways and courses in business and finance,” while Wheaton does not. The parents indicated that B.C. was currently taking engineering and physics classes and that he realized that he did not want to continue with a path in science in high school. They also said that the “high school selection should be in the hands of the student and family to decide what is best for that student.” (Motion, Ex. 5).

By letter dated April 24, 2014, Ms. Franklin advised that the appeal was denied because program preference does not amount to a unique hardship. (Motion, Ex. 6). She stated that the number of requests for Blair far exceeded the number of spaces there. She explained that the only students assigned to Blair were those for whom it was their first choice and their base school or for whom it was their first choice with an older sibling attending. *Id.*

On May 9, 2014, the Appellant appealed to Larry A. Bowers, Chief Operating Officer, stating that B.C. wanted to attend Einstein because of its business and finance academy. (Motion, Ex. 7). Mr. Bowers referred the appeal to hearing officer Laurence Jeweler for review. Mr. Jeweler spoke to the Appellant and explained that accessing courses or signature programs at a particular school does not represent a unique hardship under school system policy. He explained that all of the consortium schools offer a comprehensive curriculum and he confirmed that the Appellant was aware of the Change of Choice process that would be available mid-year for the 2015-2016 school year. Mr. Jeweler recommended that the appeal be denied. By letter dated May 16, 2014, Mr. Bowers advised the Appellant that he was adopting Mr. Jeweler’s recommendation that B.C. remain assigned to Wheaton. (Motion, Ex. 8).

On May 23, 2014, Appellant appealed to the local board stating that “[w]e do not have a unique hardship, simply a strong desire to attend Einstein High School” because the school offers a business and finance academy that interests her son. (Motion, Ex. 9). Appellant also attached her letters of appeal to Ms. Franklin and Mr. Bowers. *Id.* The local Superintendent, Joshua Starr, responded to the appeal by memorandum maintaining that Mr. Bowers’ decision should be upheld because B.C.’s desire to access the Finance, Business Management and Marketing Academy at Einstein is not considered a unique hardship. (Motion, Ex. 10).

In a unanimous decision issued on June 30, 2014, the local board upheld the denial of the transfer request for lack of a unique hardship. The County Board also explained that while students are asked to determine their preference of school by rank order in the choice process, it is not possible to grant every student his or her preferred choice. (Motion, Ex. 11). The number of students selecting their base school of Blair or Einstein as their first choice exceeded the number of available placements for the 2014-2015 academic year. (Motion, Ex. 10).

Appellant filed this appeal with the State Board on July 31, 2014.²

STANDARD OF REVIEW

The standard of review in a student transfer decision is that the State Board will not substitute its judgment for that of the local board unless the Appellant demonstrates that the local board's decision is arbitrary, unreasonable or illegal. COMAR 13A.01.05.05. A decision may be arbitrary or unreasonable if it is contrary to sound educational policy or a reasoning mind could not have reasonably reached the conclusion of the local board. COMAR 13A.01.05.05(B). A decision may be illegal if it is unconstitutional, exceeds statutory authority or the jurisdiction of the local board, misconstrues the law, results from an unlawful procedure, is an abuse of discretionary power, or is affected by any other error of law. COMAR 13A.01.05.05(C).

ANALYSIS

Appellant seeks to have her son transferred from Wheaton to Einstein because he was not assigned to Einstein through the DCC choice process and he would like to participate in the Finance, Business Management and Marketing Academy that is offered there.

It is well settled that there is no right to attend a particular school. *Mr. and Mrs. David G. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 10-14 (2010). Students residing within the DCC are permitted to participate in two rounds of the choice process in order to seek assignment at their preferred schools. Thereafter, the students may seek transfers to their desired schools based on the existence of a unique hardship. The desire to participate in particular courses or a program of study is not considered a unique hardship sufficient to grant a transfer under the Montgomery County Public Schools' transfer policy. *See Tomas Y. & Sulma C. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 13-07 (2013); *Shirley B. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 09-45 (2009); *Mr. and Mrs. Danny J. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 08-47 (2008); *Goldberg v. Montgomery County Bd. of Educ.*, MSBE Op. No. 05-35 (2005). Thus, the local board's decision is not arbitrary, unreasonable or illegal.

² Although the appeal to the State Board was received 31 days after the local board's written decision, the local board has not sought dismissal of the appeal based on untimeliness. This is because the local board's cover letter transmitting the decision to the Appellant incorrectly advised her that the appeal needed to be received by the State Board within 30 days of the date of the transmittal letter, rather than 30 days from the date of the written decision. Finding this to be an extraordinary circumstance that allows us to overlook the mandatory 30 day deadline for transmitting an appeal to the State Board (COMAR 13A.01.05.02(B)), we will proceed to address this appeal on its merits.

CONCLUSION

Based on the above reasoning, we affirm the local board's decision to deny the transfer.

ABSENT

Charlene M. Dukes
President

Mary Kay Finan
Mary Kay Finan
Vice President

James H. DeGraffenreidt, Jr.
James H. DeGraffenreidt, Jr.

Linda Eberhart
Linda Eberhart

ABSTAIN

S. James Gates, Jr.

Larry Giammo
Larry Giammo

ABSENT

Luisa Montero-Diaz

ABSENT

Sayed M. Naved

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

October 28, 2014