

THERESA K.,
Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,
Appellee

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION
Opinion No. 06-27

OPINION

On June 21, 2006, Theresa K. appealed the decision of the Montgomery County Board of Education (local board) denying her request that her daughter be transferred back to Damascus High School. The local board filed a Motion for Summary Affirmance. Ms. K. responded to the Motion.

FACTUAL BACKGROUND

H. K., Appellant's daughter, attended Damascus High School in ninth and tenth grades. Within the last year, the local board redistricted her neighborhood as part of the process for drawing attendance boundaries for a new high school, Clarksburg High School. Clarksburg High School was built to relieve overcrowding in three high schools, one of which is Damascus High School which was projected to be at 121% of capacity in 2006-2007. (Motion for Summary Affirmance Ex.1). Over 1000 students from the three high schools were transferred to Clarksburg High School. H.K. was one of them.

On February 14, 2006, Ms. K. submitted a "Request for Change of School Assignment: In a letter attached to the request, H.K. explained that she wished to remain at Damascus High School because (1) she wanted to continue to play with the Damascus soccer team; (2) she was enrolled in the only Interior Design Program offered in the school system and she was planning a career in interior design; and (3) she had strong relationships with teachers and students that she did not want to lose.

Her coach and her interior design teacher wrote in support of her remaining at Dasmascus. (Motion, Ex. 4) Hearing Officer, Mr. Dennis S. Leighty, was assigned to Ms. K's appeal, and he spoke with her on February 17, 2006. Ms. K. reaffirmed the information in her daughter's letter and explained that her daughter's "primary focus" was on continuing in the Interior Design Program offered only at Damascus. Mr. Leighty also spoke to school staff who confirmed H.K.'s participation in junior varsity soccer and her enrollment in the interior design class, an elective. The Hearing Officer explained that transfer students are ineligible to participate in athletics for one year.

The Hearing Officer concluded that the “request [was] based on a preference for attending one school over another.” He recommended that the transfer request be denied given “the availability of athletic opportunities at Clarksburg High School, the availability of elective options at Clarksburg High School, and the absence of a unique hardship.” Mr. Bowers, the Chief Operating Officer, adopted the recommendation of the Hearing Officer by letter dated March 6, 2006. (Motion, Ex 5).

Ms. K. appealed that decision to the local board by letter dated April 3, 2006. She emphasized the stress that redistricting was causing her family and asked the local board to approve the transfer request. (Motion, Ex 6).

By memorandum dated May 1, 2006, the Superintendent recommended to the local board that the appeal be denied. He noted that as of March 1, there were 64 rising Grade 11 students who had submitted transfer requests to remain at their previous school of assignment. Of the 64 requests, 25 were approved for documented hardship. As of May 1, 14 appeals had been filed with the county board. The Superintendent noted that Appellant was concerned that her daughter might need counseling to handle the stress, but that “there [was] no indication from staff at her current school that she would be unable to handle the transition.” He concluded that:

A desire to compete does not present a compelling reason to approve a change of school assignment; nor does the desire to take a specific class qualify as a hardship. Clarksburg High School will have a field soccer team that [H.K.] will be eligible to try out for. Clarksburg High School will also offer a myriad of elective classes. Signature programs and unique courses have been designed for the school in which they are located. However, based on the time of day the course is offered, the student may be able to arrange to attend the course(s) at the requested school.

Because he found that the facts did not meet the level of unique hardship, he recommended that the denial be upheld. (Motion, Ex 7).

On May 9, 2006, the county board affirmed the decision of the Chief Operating Officer by unanimous vote. A written opinion was signed on May 22, 2006. (Motion, Ex 8).

The local board acknowledged that boundary changes implemented as a new school opens, by the very nature of the act, separate some students from friends and teammates with whom they attended school in the past. It concluded that “[t]he reasons advanced for [H.K.] to receive a transfer to remain at Damascus [did] not amount to a hardship.”

This appeal followed. The appeal letter contains the same reasons set forth above to support the transfer request, but included, for the first time in this case, a copy of a psychological assessment of H.K. conducted by Dr. Monroe Pray on June 19, 2006. Dr. Pray concluded that

Hilary was moderately depressed as a reaction to the proposed transfer.” He found her to be generally a stable person such that the “depressive reaction had considerably more meaning. . .”

He stated “‘separation anxiety’ currently remains an important component of her pattern of relationships. . . . I believe strongly that Hilary’s continuing at Damascus High will make a world of difference in the clinical picture and that no psychiatric treatment would be necessary. If the transfer is imperative, I would recommend that she enter therapy to work out the underlying separation issues. If the transfer can be avoided, these issues would likely be worked through and righted as she gets older, without therapeutic intervention.” (Letter of Pray, attached to Appeal).

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.01.05.05; *See, e.g., Breads v. Board of Education of Montgomery County*, 7 Op. MSBE 507 (1997). The State Board has noted that student transfer decisions require balancing county-wide considerations with those of the student and family. *See e.g., Marbach v. Board of Education of Montgomery County*, 6 MSBE 351, 356 (1992). Socio-economic level, building utilization, enrollment levels, and the educational program needs of the individual student are all legally permissible and proper subjects of consideration in weighing the impact of a request for a student to transfer from his or her assigned school to some other school of choice. *Slater v. Board of Education of Montgomery County*, 6 Op. MSBE 365, 371-72 (1992).

ANALYSIS

In this case, the local board considered the facts before it and found that H.K.’s request for a transfer, based on her desire to take Interior Design, play soccer with her team,¹ and stay with her friends and teachers did not meet the hardship standard. That decision is consistent with the prior rulings of this Board. *See, e.g., Goldberg v. Board of Education of Montgomery Co.*, MSBE No. 05-05 (October 26, 2005) (availability of unique electives at requested school, not hardship); *Iglesias v. Montgomery County Board of Education*; MSBE No. 02-05 (October 30, 2002) (separation from friends, not hardship).

If those were the only facts in evidence, we would without question affirm the local board’s decision. There is, however, new evidence presented to this Board - the psychological evaluation of H.K. done by Dr. Pray. When new, additional evidence is presented, and it is shown to the satisfaction of this Board that the additional evidence is material and that there were good reasons for the failure to offer the evidence in the proceedings before the local board, this Board may:

¹We note that if H.K. transfers back to Damascus, she will be ineligible to play interscholastic sports for one year.

- (1) Remand the appeal to the local board for the limited purpose of receiving the additional evidence upon conditions the State Board considers proper; or
- (2) Receive the additional evidence.

COMAR 13A.01.05.04 (C)


As to the materiality of the new evidence, it is our view that, if a transfer decision causes an illness, such as depression that needs to be treated therapeutically, that evidence is material.

Ms. K. explains in her response why the psychological evaluation was not presented to the local board. "The fact of the matter is, [H.K.'s] mother was concerned about the worsening state of [H.K.'s] depression which set in after the County Board's denial of her appeal, and it was as a result of that she felt a psychiatric examination was needed. It was not until Appellant received the expert conclusions that the ultimate decision to appeal this matter was made." That appears to us to be good reason why the psychological evaluation was not presented to the local board.


The issue is whether a diagnosis of moderate depression and separation anxiety caused by the decision that H.K. must go to Clarksburg High School is evidence of hardship. We remand this case to the local board for a decision on that issue.

CONCLUSION

Therefore, we remand this case to the local board and, because the first days of school have occurred, we order that the local board conduct an expedited review and issue a decision on this matter within thirty (30) days of the date of this decision.




Edward L. Root
President



Dunbar Brooks
Vice President

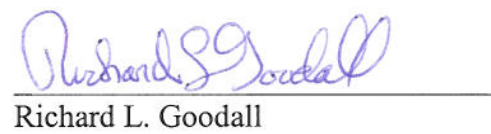


Lelia T. Allen



J. Henry Butta



Beverly A. Cooper

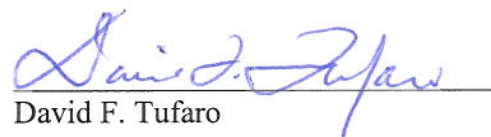

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August 29, 2006