

JERRY S.,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 06-28

OPINION

This is an appeal of the denial of Appellant's request to allow his daughter to attend Seneca Valley High School for the 2006-2007 school year rather than attend her assigned school, Clarksburg High School. The Montgomery County Board of Education (local board) has submitted a Motion for Summary Affirmance maintaining that the reasons advanced by Appellant do not constitute a hardship and that its decision is not arbitrary, unreasonable or illegal. Appellant responded to the motion.

FACTUAL BACKGROUND

Appellant resides in what is now the geographic attendance area for Clarksburg High School. Clarksburg was built to relieve severe overcrowding at three adjacent high schools, Damascus High School, Seneca Valley High School, and Watkins Mill High School. In order to populate the recently constructed high school, on November 17, 2005, the local board adopted a resolution establishing attendance boundaries for Clarksburg which was to open with grades 9 – 11 in order to avoid moving students entering their senior year. The redistricting resulted in over 1000 students being redistricted from their old schools to Clarksburg.¹ Appellant's daughter was one of those students.

On February 14, 2006, Appellant submitted a request to transfer his daughter, J.S.,² from Clarksburg High School to Seneca Valley High School, where she was currently attending 10th grade. Appellant listed the following factors as a basis for the transfer request: (1) J.S. is enrolled in the Academy of Arts and Media Studies at Seneca Valley and the course offerings at

¹This led to an increased number of transfer requests from individuals wishing to remain at Damascus, Seneca Valley, or Watkins Mill. In accordance with Montgomery County Public Schools' (MCPS) policy, transfer requests were granted for students with older siblings still attending the former school. *See* MCPS Regulation JEE-RA at IV.B.1. Per local board resolution, transfer requests were also granted to rising 11th grade students in the International Baccalaureate program at Watkins Mill or the Cambridge program at Seneca Valley. *See* 11/17/05 Local board Meeting Minutes.

²Throughout this memorandum we will refer to Appellant's daughter as J.S.

Clarksburg are not within the framework of an Academy and do not provide an “ending capstone experience”; (2) J.S. participates in after school activities at Seneca Valley, including field hockey and the school play; (3) J.S. has a ride sharing arrangement with another student; (4) most of J.S.’s friends from middle school will remain at Seneca Valley; and (5) J.S.’s older sister was a Seneca Valley graduate and the family is loyal to that school and has invested in items containing the school name and colors. *See* Attachment to Request for Change of School Assignment.

An expedited process and timeline were implemented in order to review Change of School Assignment requests related to Clarksburg High School. Thus, Appellant’s request was sent directly to Larry Bowers, MCPS’s chief operating officer, acting as the Superintendent’s designee. To assure consistency in the decisions, Mr. Bowers transferred this case, as well as all other transfer cases pertaining to Clarksburg, to a single hearing officer, Dennis S. Leighty, for review.

The hearing officer conducted an investigation. He spoke with Appellant who reiterated his desire that J.S. be permitted to transfer to Seneca Valley based on the reasons stated in the transfer request. The hearing officer also spoke with Seneca Valley staff who confirmed that J.S. was enrolled in honors classes for the past two years, earning an overall G.P.A. of 3.0; that J.S. was enrolled in the Arts and Media Academy with a career pathway in drama; that J.S. was currently enrolled in Theater 1 and 2 classes and had a part in the spring musical; and that J.S. was a member of the junior varsity field hockey team and planned to participate on the varsity squad. Hearing Officer Report at p. 2.

The hearing officer found a lack of unique hardship to justify the transfer under school system policy. He stated the following:

This request is based on a preference for attending one school over another. Given the above facts of the request, the availability of honors level coursework at Clarksburg High School, the availability of opportunities to participate in varsity sports at Clarksburg High School, and the absence of a unique hardship, I am recommending that this request be denied.

Id. at p.2. The Chief Executive Officer adopted the recommendation of the hearing officer and denied Appellant’s request to transfer J.S. from Clarksburg to Seneca Valley.

Appellant further appealed the denial of his transfer request to the local board. In a memorandum to the local board, the Superintendent elaborated on the Clarksburg transfer requests. He noted that 64 rising 11th grade students applied for a student transfer out of Clarksburg. Thirty six of those requests were approved – 5 to continue in the Cambridge program, 6 to continue in the International Baccalaureate Program, and 25 for documented hardship. The other 27 requests were denied due to lack of a documented hardship and 1 request

was withdrawn. Superintendent's Memorandum at p.1. He also stated that in April, the local board overturned 3 appeals and upheld the denial of 4 appeals, and that there were 7 additional appeals pending before the local board as of May 1.

In his memorandum, the Superintendent stated as follows, in part:

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 hockey team. Changing schools during high school presents many challenges for students; however, opportunities also present themselves under these circumstances. [J.S.] will have every opportunity at Clarksburg High School to pursue her academic, athletic, and career goals.

The Superintendent recommended that the decision of his designee be upheld. Superintendent's Memorandum at pp. 1 – 2.

In a 5 – 3 decision, the local board upheld the decision of the Superintendent's designee denying the transfer request based on a lack of hardship.³ In finding that the reasons advanced by the Appellant did not amount to a hardship, the local board stated,

As with all comprehensive high schools, Clarksburg will have a full range of courses that should prove challenging to [J.S.]. Moreover, Clarksburg will have numerous outlets for [J.S.'s] talents in drama. [J.S.] is not unlike many of the students who have been rooted in their existing school's community, having participated their [sic] school's sports and activities, and desiring to continue with the familiar and known. Nonetheless, as stated above, the nature of boundary decisions is that students must move in order to populate the new school, even when it may be more distant.

Local Board Decision at p. 2. The local board also stated that when boundary decisions are implemented due to a new school opening, students are separated from friends with whom they attended school in the past, but that difficult boundary choices must be made in order to balance enrollment. Local Board Decision at p.1.

³One local board member and the current student board member did not participate in the appeal. The former student board member participated in the local board's closed session deliberations concerning the appeal. He voted in favor of reversing the determination of the chief operating officer and signed the Order issued on June 27, 2005. However, his term of office expired before the adoption of the local board's Opinion.

The 3 dissenting board members would have reversed the decision of the chief operating officer and granted the requested transfer. They perceived the request as a “continuation of [J.S.’s] chosen pathway in an Academy previously offered to her at Seneca Valley, leading to a certificate” and viewed it as “adverse to her interests to deny her the opportunity to remain there to complete her course of studies, including the capstone experience.” Local Board Decision at p. 3.

This appeal to the State Board followed. Appellant asserts two bases for reversal of the local board’s decision:

1. Clarksburg High School does not provide an Academy leading to a certificate or the capstone experience; and
2. Clarksburg recently informed Appellant that [J.S.’s] foreign language of choice, Honors Latin 3, will not be offered but that she could change to French 1.⁴

State Board 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 home school to some other school of choice. *Slater v. Board of Education of Montgomery County*, 6 Op. MSBE 365, 371-72 (1992).

ANALYSIS

MCPS Regulation JEE-RA - Transfer of Students provides that absent qualifying under one of three exemptions, “[o]nly documented hardship situations will be considered for a change in school assignment.” The regulation lists the following three exemptions to this policy: (1) an older sibling attending the requested school at the same time; (2) the student is ready to move from middle school to high school, except for boundary change; or (3) the student has met the criteria for and been admitted to a countywide program. Also exempted from the hardship requirement for the 2006-2007 school year were rising 11th grade students in the International

⁴Appellant states that switching to French will not allow J.S. the opportunity to become a member of the Latin Honor Society.

Baccalaureate program at Watkins Mill or the Cambridge program at Seneca Valley who wished to remain at their current schools. Because J.S. does not qualify for any of these exemptions, the only applicable consideration for a transfer in this case is a documented hardship.

In his appeal to the State Board, Appellant cites the existence of courses clustered in an academy pathway at Seneca Valley “leading to a certificate or capstone experience.” Appellant maintains that a hardship exists because no such program is offered at Clarksburg. Appellant also maintains that the unavailability of an Honors Latin 3 course at Clarksburg creates a basis for reversal of the local board’s transfer denial. In a February 3, 2006 letter, the resource counselor and assistant principal at Clarksburg recommended that J.S. enroll in Honors Latin 3 for her foreign language course. See 2/3/06 letter. While the local hearing officer mentioned the availability of honors level coursework (Hearing Officer Report) and the local board stated that Clarksburg will have a full range of courses that should prove challenging for J.S. (Local Board Decision at p. 2), they made no specific reference to the Honors Latin course. It has recently come to Appellant’s attention, however, that no such course will be offered at Clarksburg this coming year. See State Board Appeal. See State Board Appeal.

The local board asserts that Clarksburg offers classes similar to the courses J.S. is taking at Seneca Valley, although the courses are not offered within the framework of an academy. Further the local board suggests that J.S. can switch from Latin to French.

The Court of Appeals has ruled that there is no right to attend a particular school. See *Bernstein v. Board of Education of Prince Georges County*, 245 Md. 464, 472 (1967). Nor is there any right to attend any particular program. See *Marshall v. Board of Education of Howard County*, 7 Op. MSBE 596 (1997) (no entitlement to attend four-year communications program offered at Mount Hebron); *Dennis v. Board of Education of Montgomery County*, 7 Op. MSBE 953 (1998) (desire to participate in particular courses does not constitute unique hardship sufficient to override utilization concerns); *Slater v. Board of Education of Montgomery County*, 6 Op. MSBE 365 (1992) (denial of transfer to school alleged to better serve student’s abilities and welfare). Thus, while disappointing to Appellant, his desire to have J.S. remain in the academy pathway at Seneca Valley is not a basis for finding a hardship here.

Of concern to this Board, however, is the recent information that the Honors Latin 3 course would not be available to J.S. at Clarksburg and that J.S. could take French instead. While we recognize our long line of cases stating that there is no guarantee of enrollment at a school with a particular program, we encourage the Montgomery County Public School System to take a closer look at the progress of, and the grade level of, a student already participating in a program, whether it is a capstone program or an honors program, such as Advanced Latin. We note that the local board exempted International Baccalaureate students from transfer. We agree with that position. At some subliminal level, however, that position sends a message that the special or advanced programs of some students are more important than the special or advanced programs of others.

We believe that there are numerous ways to get to success. Therefore, we encourage the local board to consider on a case by case basis exemptions for rising 11th and 12th graders who are in advanced, capstone, or other special instructional programs, particularly when it would be too late to start another such instructional sequence in the transfer school.

Although we affirm the decision of the local board in this instance because it applied its own transfer rules and parameters fairly, we encourage the local board to reevaluate its use of exemptions in cases such as this. In this regard, we note that three local board members would have granted the transfer request in this case.

CONCLUSION

For all the reasons herein, we affirm the decision of the local board because it was not arbitrary, unreasonable, or illegal, but encourage a reevaluation of the transfer rules applied in this case.



Edward L. Root
President



Dunbar Brooks
Vice President

ABSENT

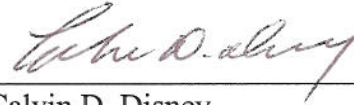
Lelia T. Allen



J. Henry Butta



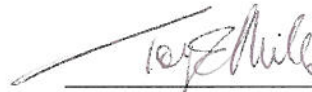
Beverly A. Cooper



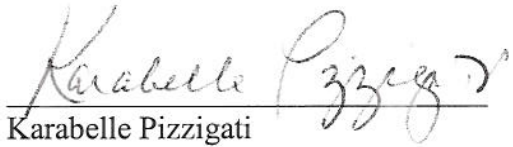
Calvin D. Disney



Richard L. Goodall



Tonya Miles



Karabelle Pizzigati



Maria C. Torres-Queral

DISSENT

In student transfer cases based on a recent redistricting, the local board should give academic hardship important priority in its determination of whether a documented hardship exists, particularly in cases involving rising eleventh and twelfth grade students. In this case, a rising eleventh grade student pursued a curriculum which included coursework in advanced Latin. It is important to give her the opportunity to continue that line of study. The fact that Latin is not offered at Clarksburg could have a significant impact on her high school academic program and her post high school academic plans.



David F. Tufaro

September 26, 2006