

A.W.

Appellants

v.

MONTGOMERY COUNTY BOARD
OF EDUCATION

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 06-39

OPINION

INTRODUCTION

This is an appeal of the denial of Appellant's request to attend Damascus High School (Damascus) for the 2006-2007 school year rather than attend his assigned school, Clarksburg High School (Clarksburg). The local board has submitted a Motion for Dismissal or 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 has 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 Damascus was the most over-enrolled school among the three which resulted in more students being redistricted from Damascus than Seneca Valley and Watkins Mill. Appellant was one of those students.

On February 13, 2006, Appellant's father submitted a request for the change of school assignment along with a letter from the Appellant explaining the reasons for the request. In his letter, Appellant explained his strong connection to Damascus, his coaches and wrestling

¹This led to an increased number of transfer requests from individuals wishing to remain at Damascus, Seneca Valley, or Watkins Mill. In accordance with 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.

teammates. He related his comfort with “the staff, schedule, students” and class selection at Damascus. He spoke of the pressures he felt as a rising junior who takes academically challenging courses and copes with being a teenager. He also expressed his concern about how this adjustment will affect his hopes for college. Appellant asked to remain where he is “comfortable with [his] classes, in [his] sports, and in [his] community”. (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, Montgomery County Public Schools (MCPS) Chief Operating Officer (COO), 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.

Mr. Leighty concluded that no unique hardship was present and that Appellant’s request was “based on a preference for attending one school over another.” He stated that there was no history presented to suggest that Alex could not make the change to the new school. He also noted the availability of athletic opportunities at Clarksburg. Therefore, Mr. Leighty recommended to the COO that the request be denied. (Hearing Officer Report). The Chief Operating Officer adopted the recommendation of the hearing officer and denied Appellant’s request to transfer from Clarksburg to Damascus.

On April 2, 2006, Appellant and his parents both wrote letters appealing the denial to the local board. (Letters to Charles Haughey, 4/2/06). Appellant’s parents stated that Appellant is “one of those people” who “suffer from change.” (*Id.* at 1). The Appellant’s parents pled that the local board would not “derail the happiness and confidence of [their] son by moving him to a new school.” (*Id.*). Appellant wrote a three-page, single-spaced letter explaining how detrimental it would be for him if he attended Clarksburg, citing for example, how such a change was detrimental to his sister when she had transferred from one school to another. (*Id.* at 4).

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. (Memorandum, p.1).

Dr. Weast recommended to the local board that the denial be upheld based on lack of a unique hardship. Dr. Weast stated the following:

[Appellant] is an articulate student who does not wish to leave

his friends. While his rationale for staying at Damascus High School is detailed, it does not rise to the level of a hardship. There is no reason to believe that with his skills and interests he will have difficulty with this transition.

Clarksburg High School will offer a full range of honors courses, electives, extracurricular activities, and athletics that can meet Alex's needs. Given his skills, there is every reason to believe that he will make friends easily and play a leadership role in the new school.

(*Id.*).

On May 9, 2006, the local board affirmed the decision of the Chief Operating Officer by unanimous vote. (Letter to Mr. and Mrs. Tom Wandres, 5/23/06). A written opinion was issued on May 22, 2006. The local board reasoned that the very nature of opening a new school requires the separation of "some students from friends and teammates with whom they attended school in the past." (Local Board Opinion, p. 1). The local board stated,

The reasons advanced for [Appellant] to receive a transfer to remain at Damascus do not amount to a hardship. This does not diminish the well-written and emotional letter received from [Appellant] as part of the appeal to the Board. [Appellant] is not unlike many of the students who have been rooted in their existing school's community, having participated in their 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.

(*Id.* at p.2).

This appeal followed.

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).

ANALYSIS

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

Appellant maintains that "the course of [his] education is being significantly altered" because several courses that he has requested are not being offered at Clarksburg. Specifically, Appellant is referring to AP philosophy, music theory, and guitar. Appellant explains that music theory and guitar, courses that he took last year at Damascus, are important to his future as a musician.

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); See *Sklar v. Board of Education of Montgomery County*, 5 Op. MSBE 443 (1989) (denial of request to attend school offering four years of Latin, note taking/study skills course, and piano); *Williams v. Board of Education of Montgomery County*, 5 Op. MSBE 507 (1990) (denial of transfer to program offering advanced German). Thus, while we are mindful that Appellant wishes to continue to participate in particular academic courses which he believes are important to his future career, his desire to take those specified courses is not a valid basis for finding a hardship here.

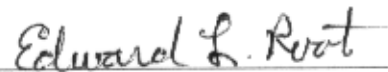
Appellant also requests this transfer so that he may continue to attend school with his friends and remain a part of the Damascus school community. The State Board has held that the desire to continue to attend school with friends or peer groups is not sufficient to constitute a hardship or to override the local decision. *Skardis v. Montgomery County Board of Education*, 7 Op. MSBE 1055 (1998) (desire to attend high school with middle school peer group not sufficient to approve transfer); *Diehl v. Montgomery County Board of Education*, 7 Op. MSBE 589 (1997) (desire to join peer group not sufficient to warrant student transfer); *Keels v. Board of*

Education of Howard County, Op. No. 01-12 (March 28, 2001)(allegation of a more desirable peer group not sufficient to approve transfer); *Chacon, v. Board of Education of Montgomery County*, Op. No. 01-39 (December 5, 2001) (desire to attend a school where familiar with some students not sufficient for transfer).

Appellant further maintains that his mental and emotional well being will be adversely affected if the transfer is not granted. We acknowledge the various difficulties faced by Appellant. Nevertheless, a new school must be populated and, consequently, students must be moved from one school to another. All of the students attending Clarksburg are new to the school as it opened in August 2006. We hope that in time, all of these students can immerse themselves in the daily life of the school and feel that they are a part of the Clarksburg school community.

CONCLUSION

Because the local board's decision is neither arbitrary, unreasonable nor illegal, we affirm the Montgomery County Board of Education's denial of Appellant's transfer request.



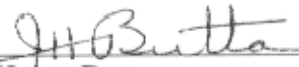
Edward L. Root
President



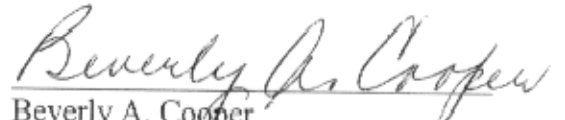
Dunbar Brooks
Vice President

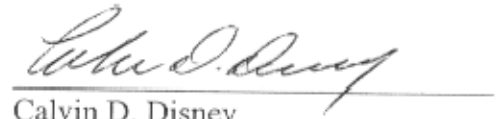


Lelia T. Allen



J. Henry Butta

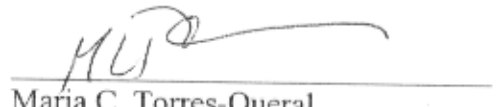

Beverly A. Cooper

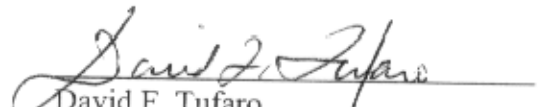

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December 12, 2006