

S. L.

Appellants

v.

MONTGOMERY COUNTY BOARD
OF EDUCATION

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 07-2

OPINION

INTRODUCTION

This is an appeal of the denial of Appellants' request to allow their son to attend Blake High School for the 2006-2007 school year rather than attend his assigned school, Springbrook High School. The local board has submitted a Motion for Summary Affirmance maintaining that the reasons advanced by Appellants do not constitute a hardship and that its decision is not arbitrary, unreasonable or illegal.

FACTUAL BACKGROUND

Appellants reside in the geographic attendance area served by three high schools, James Hubert Blake (Blake), Paint Branch, and Springbrook. Those schools are affiliated in a consortium to serve the attendance and educational interests of all the students populating the northeast area of Montgomery County. Each school offers a comprehensive high school curriculum and a "signature program" which emphasizes a special focus or theme. Blake's signature program is fine arts and humanities; Paint Branch's is science and media; and Springbrook's is information technology in a global society and international baccalaureate. (*See* Northeast Consortium Newsletter, Autumn 2004).

Students residing within the Northeast Consortium (NEC) are given an opportunity to participate in a Preferred Choice process by which they rank their preferences for the NEC school they wish to attend. Computer assisted school assignments are made based on individual student/parent preference, school enrollment, Free and Reduced-price Meal Service (FARMS), gender, and grade-level capacity for each school. Each high school within the NEC serves specific residential areas that constitute its base area for student assignment purposes. Students are guaranteed assignment to their base area school if they select it as their first choice, or as their second choice in the event that their first choice school is not available. (*See* Hearing Officer Report, 6/8/06).

On November 30, 2005, Appellants submitted the NEC Student Preferred Choice Form

indicating Blake as B.L.'s¹ first choice, Springbrook as his second and Paint Branch as his third. Appellants were notified by letter dated February 2, 2006 from the Division of Consortia Choice and Application Program Services (Consortia Office) that B.L. was assigned to Springbrook, his base area school and second choice. Because B.L. did not receive his first choice school in round 1 of the student assignment process, he participated in round 2. B.L. was again assigned to Springbrook.

Appellants appealed the assignment by letter to the county Consortia Office. Appellants asked that B.L. be permitted to attend Paint Branch instead of Springbrook, claiming that they were unaware of alleged gang activity at Springbrook at the time B.L. selected his preferences. The Consortia Office reviewed the appeal but denied the request on grounds that Paint Branch is over capacity.

On further appeal to the Chief Operating Officer, acting as the Superintendent's designee, Appellants requested that B.L. be permitted to attend Blake because of his interest in digital art, graphics, and the animation of video and movies. Appellants also mentioned that they could drive B.L. to school, that B.L. is a successful student, and that B.L.'s Hispanic heritage would contribute to the ethnic diversity of Blake's student population. Hearing Officer, Alex Dunn, recommended that the appeal be denied, finding no facts to document a hardship which would justify overriding the preferred choice process. The Chief Operating Officer concurred with the hearing officer's findings and adopted the recommendation that B.L. attend Springbrook, as assigned.

Appellants further appealed to the Montgomery County Board of Education, reiterating their earlier concerns. In a memorandum to the local board, the Superintendent recommended that the denial be upheld based on lack of a unique hardship which would override the lottery selection process:

Because the requested school is over capacity, [B.L.] received his second choice, Springbrook High School, in the choice process. Springbrook High School is [B.L.'s] base school. According to the Capital Improvements Program (CIP), James Hubert Blake High School's capacity is 1,716 with a 2006-2007 projected enrollment of 1,972. The school's current enrollment is 1,980. There were 200 Northeast Consortium students who did not receive their first choice of James Hubert Blake High School.

Throughout the appeal process, unique circumstances were taken into account and assignments were changed for individual students when the hardship standard was met. In this case, a unique hardship that would override the lottery selection process had not

¹Throughout this opinion we will refer to Appellants' son as B.L.

been established.

In a unanimous decision, the local board affirmed the decision of the Superintendent's designee denying Appellants' request. The local board found no record evidence warranting a departure from the assignment process and stated that "Springbrook High School can meet [B.L.'s] academic needs and challenge him to reach his full potential." The local board urged Appellants to work with school administrators to the extent that they had particular concerns about Springbrook. Local board Decision at p. 2.

This appeal to the State Board 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

Because of B.L.'s interest in digital art, he would like to attend Blake and take part in its signature program in fine arts and humanities. While B.L.'s desire to attend a school that appears most aligned with his interests is understandable, 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).

In numerous opinions, the State Board has noted that, at the local level, 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 for local boards to consider 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.

In *Warran v. Montgomery County Board of Education*, MSBE Opinion No. 00-25, the State Board considered an appeal involving the denial of a transfer request into Blake from Walter Johnson High School. In that case, the appellants cited their desire to have their daughter attend Blake because of her strong interest and talent in the fine arts and humanities that are a part of Blake's signature program. The facts in that case showed that Blake was already at capacity for grades nine and ten, and that many other NEC students were denied placement at Blake due to overcrowding in the ninth grade. In affirming the local board's decision, the State Board found that over enrollment of a particular grade level is a recognized basis for denying transfer requests. *See also, Henderson v. Board of Education of Montgomery County*, 7 Op. MSBE 1348 (1998) (affirming local board's denial of request for first choice assignment); *Longobardo v. Montgomery County Board of Education*, MSBE Op. No. 99-3 (affirming local board's denial of request to attend school in NEC other than one student was assigned to attend).

The decision of the local board regarding B.L.'s school placement is reasonable and not otherwise illegal. B.L.'s placement at Springbrook is entirely consistent with the procedures concerning the consortium student assignment process. Those procedures provide that students whose first choice is not their base school, but who are unable to receive their first choice, will be assigned to their base area school if it is selected as their second choice. (*See Hearing Officer Report, 6/8/06*). Here, B.L. was one of many students who did not receive his first choice because Blake was over capacity. Accordingly, he was assigned to his base area school which was his second choice selection on his NEC Student Preferred Choice Form.

Appellants make several other arguments in support of their appeal which lack merit. Appellants maintain that the fact that B.L. and other students in their neighborhood were not assigned to their first choice of Blake demonstrates that there was no choice in the process, however, there is no evidence that the school system failed to follow the lottery procedures. Appellants further maintain that transportation should not be an issue because they can drive B.L. to Blake, but evidence that transportation played a role in the lottery selection process is also lacking. Finally, Appellants believe that B.L. would be a benefit to the diversity of Blake's student population because of his Hispanic heritage. While that may be true, there is no evidence of hardship in this case which would warrant the transfer.

CONCLUSION

In light of these precedents and for the reasons stated above, we find that Appellants' desire to have B.L. attend a particular school that they feel can better serve his interest in arts and the humanities is not a hardship sufficient to grant his reassignment request. Accordingly, we affirm the decision of the local board denying the transfer request.

Edward L. Root

Edward L. Root
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Dunbar Brooks

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J. Henry Butta

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Tonya Miles

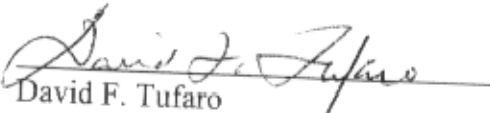
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Maria C. Torres-Queral

January 30, 2007


David F. Tufaro