

S. P.

Appellant

v.

MONTGOMERY COUNTY BOARD
OF EDUCATION

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 07-4

OPINION

INTRODUCTION

This is an appeal of the denial of Appellant's request to allow her son to attend James Hubert 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 reasons advanced by Appellant do not constitute a hardship and that its decision is not arbitrary, unreasonable or illegal.

FACTUAL BACKGROUND

Appellant resides 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 December 10, 2005, Appellant submitted the NEC Student Preferred Choice Form

indicating Blake as J.P.'s¹ first choice, Springbrook as his second and Paint Branch as his third. Appellant was notified by letter dated February 2, 2006 from the Division of Consortia Choice and Application Program Services (Consortia Office) that J.P. was assigned to Springbrook, his base area school and second choice.

Because J.P. did not receive his first choice school in round 1 of the student assignment process, he participated in round 2. In Appellant's round 2 letter of appeal, she stated that Blake is the only school in the consortium that offers the "correct curriculum for [J.P.]" as he is very talented in the performing arts. (Letter to Consortia Office, 6/13/06). The Consortia Office reviewed the appeal but denied the request on grounds that Blake is over capacity. (Letter to Appellant, 5/19/06).

Appellant next appealed to the Chief Operating Officer, as the superintendent's designee. The Chief Operating Officer concurred with the hearing officer's findings and adopted the recommendation that J.P. attend Springbrook as assigned. (Letter to Appellant, 6/15/06).

Appellant further appealed to the local board. In her letter of appeal, she maintained that Springbrook does not offer as many music and performing arts courses as Blake, and that the courses offered at Springbrook in those areas are inferior to Blake's. (Appeal to Local Board, pp.1-2). Appellant also claimed that Blake has an opening because of a particular student who decided to go elsewhere despite being accepted at Blake. (*Id.* at p. 2).

In a memorandum to the local board, the Superintendent recommended that the Appellant's request be denied based on the lack of a unique hardship. He stated:

Because the requested school is over capacity, [J.P.] received his second choice, Springbrook High School, in the choice process. Springbrook High School is [J.P.'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 has not been established.

(Memorandum to Local Board, p. 1). The Superintendent further stated that each of the NEC

¹Throughout this opinion we will refer to Appellant's son as J.P.

high schools is able to meet the academic needs of students, and that J.P. will have another opportunity next year to submit a request for change of choice and have his request to attend Blake reconsidered. (*Id.* at p. 2).

In a majority opinion² dated July 27, 2006, the local board affirmed the decision of the Chief Operating Officer, finding the basis for Appellant's appeal did not amount to a unique hardship. (Local Board Decision).

This appeal to the State Board followed.

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 decision is shown to be arbitrary, unreasonable, or illegal. See e.g., *Breads v. Board of Education of Montgomery County*, 7 Op. MSBE 507(1997).

ANALYSIS

Desire to Attend Blake for Special Programs and Courses

Appellant requested the assignment to Blake so that J.P. may attend a school that offers a specialized focus on arts and humanities to further develop his skills and interests. (See Appeal to Local Board, dated 6/24/06). While Appellant's desire to enroll J.P. in 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); *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); *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).

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

²Two local board members did not participate in the appeal.

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).

In light of these precedents, we find that the Appellant's desire to have her son attend a particular school that she feels can better serve her interests in arts and humanities is not a hardship sufficient to grant her reassignment request.

New Reasons Supporting Assignment to Blake

On appeal to the State Board, Appellant presents new reasons to support the hardship exception relating to past incidents against her son while riding the school bus when he attended Francis Scott Key Middle School. One incident involved an assault against J.P. on the school bus for which the perpetrator was expelled and criminally prosecuted. The second involved another student on the bus who possessed a knife and was also disciplined. Appellant claims that, as a result of these incidents and other "harassment," she has had to drive J.P. to and from school for the past two years. She is concerned that J.P. will face the same harassment on the bus if he is forced to attend Springbrook, his base area school, since many of the same kids will be riding the school bus. Appellant argues that if J.P. attends Springbrook she will be forced to drive him there each day, thus jeopardizing her employment. (Appeal to State Board, p. 1-2).

The State Board has consistently declined to address issues that have not been reviewed initially by the local board. *See e.g., McDaniel v. Montgomery County Board of Education*, MSBE Op. No. 03-22 (June 25, 2003)(additional complaints not a part of appeal before local board was not appropriate matters for consideration before the State Board); *Craven v. Board of Education of Montgomery County*, 7 Op. MSBE 970 (1997)(failure to challenge suspension before local board constituted waiver); *Hart v. Board of Education of St. Mary's County*, 7 Op. MSBE 740 (1997)(failure to raise issue of age discrimination below constituted waiver on appeal). Therefore, the State Board will not consider the new reasons asserted by Appellant because these matters were not first presented to the local board.

CONCLUSION

Based on the evidence presented in this case, we find that the decision of the local board is not arbitrary, unreasonable or illegal. Accordingly, we affirm the denial of Appellant's transfer request.

Edward L. Root
Edward L. Root
President

Dunbar Brooks
Dunbar Brooks
Vice President

Lelia T. Allen
Lelia T. Allen

J. Henry Butta
J. Henry Butta

Beverly A. Cooper
Beverly A. Cooper

Calvin D. Disney
Calvin D. Disney

Richard L. Goodall
Richard L. Goodall

Tonya Miles
Tonya Miles

Karabelle Pizzigati
Karabelle Pizzigati

Maria C. Torres-Queral
Maria C. Torres-Queral

January 30, 2007

A handwritten signature in cursive script, appearing to read "David F. Tufaro", written in black ink on a white background.

David F. Tufaro