

C. B.

Appellant

v.

MONTGOMERY COUNTY BOARD
OF EDUCATION

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 07-6

OPINION

INTRODUCTION

In this appeal, Appellants request that the State Board grant them a pre-approved transfer that would give them the option to have their son transfer from Greencastle Elementary School to Piney Branch Elementary School during the 2006-2007 school year in the event that Greencastle does not properly implement their son's Individual Performance Plan. The Montgomery County Board of Education has submitted a Motion for Summary Affirmance maintaining that the reasons advanced by Appellants for a transfer do not constitute a hardship and that its decision is not arbitrary, unreasonable or illegal. Appellants have submitted a response to the local board's Motion.

FACTUAL BACKGROUND

On February 8, 2006, the father¹ of A.B.² requested that his son be transferred to Piney Branch Elementary School for the 2006-2007 school year. He requested the transfer based on his belief that Piney Branch has a more rigorous academic program that is more appropriate for his son than is Greencastle's. In his request, A.B.'s father stated the following:

[A.B.] has been identified as a Gifted & Talented Student, who is currently working above grade level in all areas. He is not being effectively challenged to meet his full potential at Greencastle. Differentiation, extension, and enrichment activities for [A.B.] are non-existent (with the exception of Math) at Greencastle. We have spent much of our personal time presenting evidence of shortcomings concerning [A.B.'s] education to the classroom teacher and principal; they appear unable or unwilling to address

¹Mr. Bailey is the president of the Greencastle Elementary School PTA.

²We will refer to Appellants' son as A.B. throughout this memorandum.

the root causes. We continue to uncover practices occurring at Greencastle that are inconsistent with MCPS Policy and Procedure, thus do not believe the current situation is reversible in a reasonable timeframe. In addition, this ongoing advocacy for our child has resulted in a strained relationship between us and the Greencastle staff.

(Attachment to Request for Change of School Assignment). On April 25, 2006, Mr. Bailey's transfer request was denied by the field office supervisor who noted that the request did not meet the local guidelines for granting a transfer.

Appellants challenged the field office supervisor's decision.³ The Superintendent's designee assigned the matter to a hearing officer, Elaine Lessenco, to further investigate the transfer request. Ms. Lessenco spoke with the father, who reiterated his concerns that Greencastle cannot meet the advanced educational needs of his son. He agreed that this was not a hardship situation.

Ms. Lessenco reported that steps were underway to ensure the delivery of appropriate services to A.B. based on the community superintendent's directive that the principal of Greencastle develop an individualized academic program with benchmarks to track A.B's achievement. Ms. Lessenco recommended that the transfer request be denied given the absence of a unique hardship. (Hearing Officer Report). The Superintendent's designee adopted the hearing officer's report. (Letter from Bowers to Bailey dated 6/15/06).

Thereafter, Appellants appealed the denial to the local board. Appellants stated the following in their letter of appeal:

This appeal seeks to obtain a pre-approved transfer for [A.B.], if Greencastle Elementary School does not meet the letter and spirit of the Individual Performance Plan that was developed by Mr. Andrew Winter and concurred by Ms. Susan Marks. Greencastle staff must comply with this plan throughout the 2006-2007 School Year. In addition, the plan will be updated periodically within the school year; and a new plan will be developed and implemented for the 2007 - 2008 School Year with the same conditions of performance.

(Letter of appeal to local board).

The Appellants based the request for a "pre-approved" transfer on their experience at

³Although Mr. Bailey filed the initial transfer request, his wife joined him in the appeal of the field office supervisor's decision.

Greencastle in the past. They stated that Greencastle staff has been unable to provide evidence of differentiation and/or extension in writing, reading, social studies and science over the past nine months in the form of lesson plans, class work or homework. Appellants also stressed their frustration with the community supervisor and principal, whom they perceive as being unable to manage the staff at Greencastle to meet their son's academic needs. Additionally, Appellants stated their belief that Greencastle has "longstanding resource and structural issues that have made it ineffective in developing and nurturing the highly able student as evidenced by the number of students achieving 'Advanced' performance as measured by MSA Testing over the last four years." (*Id.* at p.1).

In response to the appeal, the Superintendent submitted a memorandum explaining that Appellants have had multiple meetings and discussions with school staff and the community superintendent which have resulted in the development of an Individual Performance Plan for their son. The newly appointed community superintendent and the school principal will monitor the progress of the plan throughout the year and will continue to work with Appellants to meet A.B.'s educational needs. The memorandum noted Appellants' acknowledgment of a lack of hardship and recommended that the local board uphold the denial of the transfer request. (Superintendent's 7/12/06 memorandum to local board).

In a unanimous decision, the local board found Appellants' request for a pre-approved transfer to be premature and deemed it inappropriate for review at the time. In addition, the local board stated that it was affirming the decision of the superintendent's designee. (Local board decision at pp. 1-2). We take this to mean that the local board denied both the pre-approved transfer request as well as the original transfer request.

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

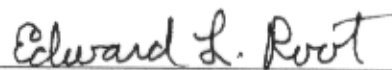
Appellants ask the State Board to grant them a pre-approved transfer in the event that they are not satisfied with Greencastle's implementation of A.B.'s Individual Performance Plan. Appellants requested the same from the local board. At the time this matter was before the local board, the plan was not yet underway and the local board deemed the request premature. We agree. Requests for students transfers are granted or denied in the present time. There is no provision in the student transfer policy or regulation that would permit a pre-approved transfer based on some future contingency that may or may not occur. If Appellants become unhappy

with the Individual Performance Plan and Greencastle's ability to implement it, they may explore their options for a remedy at such time.

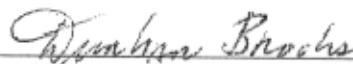
To the extent that the Appellants are challenging the local board's denial of the transfer, we agree with the local board that the request was not based on hardship. Moreover, the Court of Appeals has ruled that there is no right to attend a particular school. See *Bernstein v. Board of Education of Prince Georges County*, 245 Md. 464, 472 (1967); cf. *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); *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); *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); *Williams v. Board of Education of Montgomery County*, 5 Op. MSBE 507 (1990) (denial of transfer to program offering advanced German); *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).

CONCLUSION

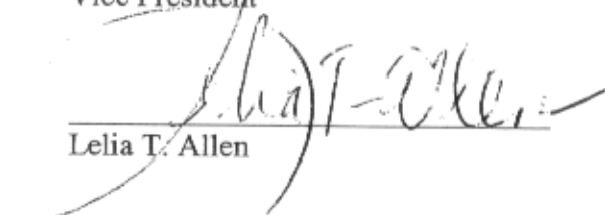
For these reasons, we affirm the decision of the local board denying Appellants' request for a pre-approved transfer as well as a current transfer for their son from Greencastle Elementary School to Piney Branch Elementary School.




Edward L. Root
President



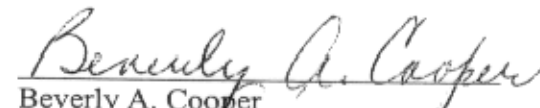
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February 27, 2007