

A. T.

Appellant

v.

MONTGOMERY COUNTY BOARD
OF EDUCATION

Appellee

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION
Opinion No. 07-9

OPINION

INTRODUCTION

This is an appeal of the denial of Appellant’s request to attend Seneca Valley High School for the 2006-2007 school year rather than attend his assigned school, Clarksburg High School. The Montgomery County Board of Education 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.

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 was one of those students.

On February 6, 2006, Appellant’s mother submitted a request to transfer him from Clarksburg High School to Seneca Valley High School. She attached information to the request detailing that Clarksburg was further away from her house than was Seneca Valley, at a distance of 4.2 miles rather than 2.5 miles. She also stated that areas along the walking route from her

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).

house to Clarksburg had no sidewalks. (See Attachment to Request for Change of School Assignment). At the time of the request, A.T.² was attending the 10th grade at Seneca Valley where he was enrolled in the Arts and Media Academy in the Instrumental Music Pathway and was a member of the band. (See Hearing Officer Report at p. 2).

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, 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.

After conducting an investigation, the hearing officer found a lack of unique hardship to justify the transfer under school system policy. Based on the facts of the request, and given the student's opportunity to participate in band at Clarksburg and the availability of alternative elective courses there, he recommended that the transfer request be denied. (Hearing Office Report at p.2). The Chief Executive Officer adopted the recommendation of the hearing officer and denied Appellant's request to transfer A.T. from Clarksburg to Seneca Valley.

Appellant further appealed the denial of his transfer request to the local board. Letters from Appellant and his mother noted that Seneca Valley is closer to their home, that A.T. helps take care of his younger sister after school, that he wishes to continue his musical academics with a familiar school and teachers, that he would like to be with his friends, and that his demeanor has been negatively affected and his school work has suffered since he learned about the redistricting. (See Letters from Appellant and mother).

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 four of those requests were approved – 5 to continue in the Cambridge program, 6 to continue in the International Baccalaureate Program, and 23 for documented hardship. The other 29 requests were denied due to lack of a documented hardship and 1 request was withdrawn. (Superintendent's Memorandum at p.1).

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

Opening a new high school with a Grade 11 requires a critical mass of students in order to offer a comprehensive program. It is important, therefore, to carefully assess transfer requests from students who were not subject to the automatic approval provisions in the Board resolution establishing the boundaries for the new high school. A difference in enrollment of one or two students in a

²Throughout this memorandum we will refer to Appellant as A.T.

situation where there already is a limited number of students, may adversely impact course offerings. It is important that we offer as many courses as possible using the staffing guidelines. Subsequently, the loss of even a few students has the potential to impact the decision of whether a course will be offered

The Superintendent noted that Clarksburg will offer music classes and will have a band. He also stated that because Clarksburg dismisses at 2:10 p.m. and Neelsville Middle School dismisses at 2:40 p.m., there is no conflict preventing A.T. from being home in time to care for his younger sister. The Superintendent recommended that the decision of his designee be upheld. (Superintendent's Memorandum at pp. 1 – 2).

In a unanimous decision, the local board upheld the decision of the Superintendent's designee denying the transfer request based on a lack of hardship. The local board stated as follows,

Whenever a boundary decision is implemented as a new school is opened, by its nature, some students will find themselves traveling further from their homes. Some students will be pleased as to their new school of assignment and some will be displeased. However, for enrollment to be balanced among schools, difficult decisions must be made.

(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

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 A.T. does not qualify for any of these exemptions, the only applicable consideration for a transfer in this case is a documented hardship.

Although Appellant wishes to remain at Seneca Valley to participate in the course offerings there and to participate in the band, 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).

Additionally, the policy and regulation contain no provision allowing a transfer to a school based on a desire to remain with a peer group. The State Board has previously upheld cases in which the local board deemed the desire to remain with a particular peer group insufficient to support a student transfer. See, e.g. *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).

While Appellant and his mother stress the need for Appellant to take care of his younger sister after school as a basis for the transfer request, the Superintendent's memorandum explains that there is no issue on this point given that the dismissal times for the two schools will allow Appellant sufficient time to get home before his sister. Nevertheless, child care concerns are not a valid consideration for what constitutes a hardship under the student transfer policy and regulation. On numerous occasions the State Board has found that child care problems alone do not suffice to justify a student transfer. See *Jamei and Esmaili v. Board of Education of Montgomery County*, MSBE Opinion No. 01-31 (September 26, 2001); *Hall v. Board of Education of Montgomery County*, MSBE Opinion No. 00-49 (December 5, 2000); *Sullivan v. Board of Education of Montgomery County*, MSBE Opinion No. 00-22 (April 19, 2000); *Gutierrez and Finn v. Board of Education of Montgomery County*, MSBE Opinion No. 00-1 (February 1, 2000); *Gelber v. Board of Education of Montgomery County*, 7 Op. MSBE 616 (1997); *Marbach v. Board of Education of Montgomery County*, 6 Op. MSBE 351 (1992).

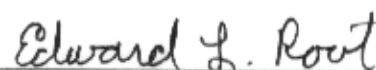
Finally, the State Board has also held that concerns about distance from a school are not sufficient to justify a hardship exemption. *Chicherio v. Montgomery County Board of*

Education, MSBE Opinion No. 06-3 (March 1, 2006); *Brande v. Montgomery County Board of Education*, MSBE Opinion No. 05-5 (February 23, 2005); *Wuu & Liu v. Montgomery County Board of Education*, MSBE Opinion No. 04-40 (October 27, 2004); *Longobardo v. Montgomery County Board of Education*, MSBE Opinion No. 99-3 (January 26, 1999); *Upchurch v. Montgomery County Board of Education*, MSBE Opinion No. 99-7 (January 26, 1999).

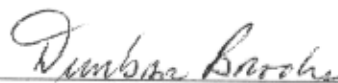
Thus, while disappointing to Appellant, his desire to remain at Seneca Valley is not a valid basis for finding a hardship here. This is consistent with other recent cases in which the State Board affirmed the denial of student requests to return to the schools they attended prior to the redistricting and their assignment to Clarksburg High School based on a lack of documented hardship. See, e.g., *Wandres v. Montgomery County Board of Education*, MSBE Opinion No. 06-39 (December 12, 2006); *Jerry S. v. Montgomery County Board of Education*, MSBE Opinion No. 06-28 (September 26, 2006).

CONCLUSION

Therefore, based on the evidence presented, we conclude that the decision of the Montgomery County Board of Education was not arbitrary, unreasonable or illegal. Accordingly, we affirm the denial of Appellant's transfer request.



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President



Dunbar Brooks
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Lelia T. Allen



J. Henry Butta



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February 27, 2007