

A. F.

Appellant

v.

PRINCE GEORGE'S COUNTY BOARD
OF EDUCATION

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 07-12

OPINION

INTRODUCTION

This is an appeal of the denial of Appellant's request to allow her son to attend Parkdale High School for the 2006-2007 school year rather than attend his assigned school, Fairmont Heights High School. The local board has submitted a Motion for Summary Affirmance maintaining that there were insufficient grounds to grant the transfer request in this case and that its decision is not arbitrary, unreasonable or illegal.

FACTUAL BACKGROUND

Appellant's son, R.Y.,¹ attended G. James Gholson Middle School as an eighth grade student during the 2005-2006 school year. For the 2006-2007 school year, he was assigned to attend the ninth grade at Fairmont Heights High School ("Fairmont") which serves the geographic attendance area in which Appellant resides. Appellant has an older son who is a graduating senior attending Parkdale High School ("Parkdale") as a voluntary transfer placement. Both of Appellant's sons are in special education programs.

On July 19, 2006, Appellant filed a Student Transfer Request with the Prince George's County Public Schools ("PGCPS") Office of Student Transfers to allow R.Y. to attend Parkdale, the same school his brother attends. Appellant stated that the reason for the request was to ensure a safer environment for her son's physical and mental well being. She stated her belief that Fairmont "does not have a positive reputation" and her concerns that "fear or threat of harm" at Fairmont could interfere with R.Y.'s learning ability. (Attachment to Student Transfer Request).

By letter dated July 21, 2006, Shirley Robinson, Supervisor of the Office of Student Transfers, notified Appellant that her transfer request was denied. She stated that "the reasons given for the transfer request do not meet the requirements for approval that have been

¹Throughout this memorandum we will refer to Appellant's son as R.Y.

established by the Board of Education". (Letter to Appellant, 07/21/06).

Appellant appealed the denial to the Office of Appeals. On August 8, 2006, Dorothy Stubbs, Special Assistant for Appeals, advised Appellant that her transfer request was again denied. (Letter to Appellant, 08/08/06). Ms. Stubbs explained that students are expected to attend the school serving their current address and grade level and she encouraged Appellant to discuss her safety concerns with school staff at Fairmont. She also noted that Parkdale is overcrowded, exceeding its state rated capacity.² Finally, she informed Appellant that transfers based upon the School Choice options mandated by the No Child Left Behind Act are processed through the Office of Federal Programs, but that no high schools were currently available.³ (*Id.*).

Appellant further appealed the denial to the local board. (Letter to Robert Anderson, 08/15/2006). She stated her belief that her son would be harassed if he were to attend Fairmont. (*Id.*). In response to the appeal, Ms. Stubbs submitted her recommendation for denial to the local board. Her recommendation was based on the following reasons:

- R.Y. attended G. James Gholson Middle School last year without incident with neighborhood children who will also attend Fairmont Heights High School.
- The older brother's placement at Parkdale is a voluntary transfer placement, not a placement made by the Special Education Department. Moreover, he is a senior who will graduate in June.
- Special Education placements are made by the Department of Special Education. Fairmont is equipped to provide R.Y.'s education program and deliver his IEP.
- R.Y. has never attended Fairmont, therefore, the parent should not assume that he would have problems.
- All high school are equipped to deal with behavioral issues if they occur. Parental concerns need to be discussed with

²Fairmont has a utilization rate of 90%. Parkdale is overcrowded at a utilization rate of 110%. (Local Board's Motion, p.2).

³Nowhere in the record does Appellant request a transfer pursuant to the school choice provisions of the No Child Left Behind Act. Ms. Stubbs' reference to the No Child Left Behind Act was likely in response to the comment in Appellant's appeal that every school in Prince George's County should "comply with the idea of no child left behind." (Letter of Appeal, 7/14/06).

the administration.

- Parkdale is overcrowded, exceeding its stated rated capacity.

(Recommendation to Local Board, p. 2). By letter dated August 28, 2006, Roger Thomas, General Counsel to the local board, notified Appellant that the local board denied her appeal. (Letter to Appellant, 08/28/06).

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. COMAR 13A.01.05.05; *See, e.g., Breads v. Board of Education of Montgomery County*, 7 Op. MSBE 507 (1997).

ANALYSIS

Safety Concerns

Appellant's primary basis for the transfer request is her claim that Parkdale will provide a safer school environment for her son than will Fairmont. She believes that R.Y. is at risk for physical or mental harm if he attends Fairmont as assigned. Appellant has offered no evidence to support her contention regarding a lack of safety at Fairmont. Rather, this concern appears to be based on Appellant's perceptions alone. In fact, Ms. Stubbs noted in her recommendation to the local board that R.Y. attended middle school without incident with the same neighborhood children who will attend Fairmont. We do not believe that Appellant's safety concern satisfies the hardship exception or any other basis for a transfer under the local board's policy.

In her appeal to the State Board, Appellant argues for the first time that R.Y. has a medical condition which places him at an increased risk of serious injury to his neck if he is in circumstances that can cause neck injury, and that the environment at Fairmont constitutes such circumstances. In support of her position, Appellant has submitted medical documentation from R.Y.'s doctors describing R.Y.'s medical condition,⁴ recommending that he not engage in any contact sports or be in situations that can cause extreme neck injury, and suggesting that he be "transferred to another school that has less violent behavior. . . ." (8/27/04 clinic letter from Robert F. Keating, MD; 9/22/06 report from Victoria Venida, MD; 10/17/06 report from Yunika Goodman, RN, CPNP). This appears to be an attempt by Appellant to justify the transfer request

⁴Dr. Keating diagnosed R.Y. with a widened predental space in his c-spine. (Letter from Keating, 8/27/04).

under the transfer policy provision that allows transfers based on a medical or psychological condition of the student.⁵ See Administrative Procedure 5110.3(III.A.3).

Appellant's argument concerning R.Y.'s medical condition fails for several reasons. First, Appellant asserts this position for the first time in her appeal to the State Board. The State Board has consistently declined to address issues that have not been reviewed initially by the local board. See *Craven v. Board of Education of Montgomery County*, 7 Op. MSBE 870 (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, Appellant has failed to preserve the matter for appeal and has waived her right to raise it before the State Board.

Second, as already mentioned above, Appellant has presented no evidence demonstrating that Fairmont is unsafe.

Finally, the medical documentation is new evidence which was not part of the record before the local board. COMAR 13A.01.04.04 provides that, if the Appellant can show to the satisfaction of the State Board that the additional evidence is material and that there were good reasons for the failure to offer the evidence in the proceedings before the local board, the State Board may receive the additional evidence or remand the appeal to the local board for the limited purpose of receiving the additional evidence. Based on our review of the documentation, we do not find that the evidence is material to the appeal. Nor has Appellant provided any reason why the medical documentation was not provided to the local board prior to its decision.

Sibling Transfer Provision

Appellant also asserts in her appeal that she would like R.Y. to attend Parkdale because his older brother, who is a special education student, goes to school there.⁶ Although the local board's transfer policy allows for the transfer of siblings of special education students to the school attended by the special education student in certain instances, this exception does not appear to apply in circumstances where the special education student is not required to attend the school to meet the student's special education needs. (See Recommendation to local board, p.2). Here, R.Y.'s brother attends Parkdale as a voluntary transfer student, not because his special education program dictates that he go there. In addition, R.Y.'s brother is a graduating senior and will no longer be at Parkdale next year. We find that R.Y.'s situation fails to justify a

⁵A transfer pursuant to this exception must also serve an additional educational benefit to the student that cannot otherwise be obtained were the student to remain at the assigned school. See Administrative Procedure 5110.3(III.A.3)

⁶The local board does not address this basis for a transfer in its motion, however, Ms. Stubbs addresses it in her recommendations to the local board. (Recommendation to Local Board, p. 2).

transfer under the sibling rule.

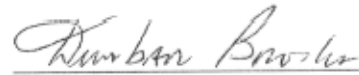
The Court of Appeals has ruled that there is no right to attend a particular school. See *Bernstein v. Board of Education of Prince George's County*, 245 Md. 464, 472 (1967); cf. *Dennis v. Board of Education of Montgomery County*, 7 Op. MSBE 953 (1998) (desire to participate in particular courses does 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). In this case, the local school system through three levels of review, determined that there were insufficient grounds to approve a transfer of R.Y. from his assigned school to a school preferred by his parent.

CONCLUSION

Based on the above reasoning, we do not find the local board's decision to be arbitrary, illegal or unreasonable. We therefore affirm the decision of the Prince George's County Board of Education denying Appellant's request to transfer R.Y. from Fairmont to Parkdale.



Edward L. Root
President



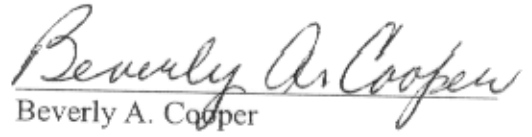
Dunbar Brooks
Vice President

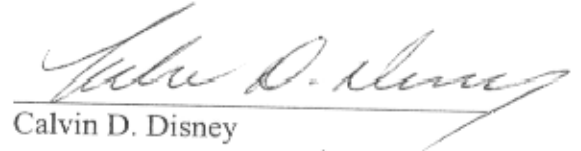


Lelia T. Allen



J. Henry Butta


Beverly A. Cooper

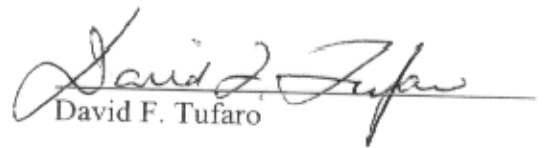

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March 27, 2007