

MEHDI K.,

Appellant

v.

MONTGOMERY COUNTY BOARD OF
EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 08-03

OPINION

INTRODUCTION

In this appeal, a parent challenges the decision of the Montgomery County Board of Education (Local Board) denying his request to transfer his son from Brown Station Elementary School (Brown Station) to Diamond Elementary School (Diamond). The Local Board filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal.

FACTUAL BACKGROUND

Appellant lives in the attendance area of Brown Station Elementary School. His son, S.K., entered kindergarten at Brown Station at the beginning of the 2007-2008 school year.

On or about February 12, 2007, Appellant submitted a "Request for Change of School Assignment" form asking that S.K. be permitted to attend Diamond, where he had been enrolled in the Bar-T preschool program the previous year. Appellant stated that he wanted to maintain the same arrangement he had while his son was in preschool, in which S.K. was dropped off and picked up from the home of a "close relative" who was responsible for walking S.K. to and from Diamond while Appellant and his wife were at work. He stated that this caretaker does not own a car, but lives within walking distance of Diamond, therefore having her walk S.K. to and from Diamond is the only option available to them. Appellant also expressed concern about the stress his son would suffer if he had to attend a new school rather than go to kindergarten at a familiar location with his friends from preschool. (Motion, Exhibits 4 & 5). The Field Officer Supervisor denied the request because it did not meet the guidelines for hardship.

On further appeal, the Chief Operating Officer (COO) assigned the matter to a hearing officer for review. The hearing officer informed Appellant that there are daycare centers serving Brown Station that open as early as 6:30 a.m., which would allow S.K.'s mother to get to her

place of work by 7:30. Appellant stated, however, that the family does not want to use a daycare center when they have a trusted friend available to care for their son. He also stated his concern that his son would be upset if he had to change schools. S.K.'s preschool teacher reported to the hearing officer that S.K. adapted well to the preschool program and she saw no reason why he would not make another good adjustment and make friends at another school. Finding no unique hardship, the hearing officer recommended that the transfer request be denied. The COO adopted the recommendation and denied the transfer. (Motion, Exhibits 7 & 7A).

Appellant appealed to the Local Board. In addition to reiterating his previous arguments, Appellant stated that it was important for his son to have a "mother like" care giver who can pick him up during school hours in the event of illness due to the frequency with which he has been getting ill – something not provided by daycare centers. Attached to the appeal letter was a note from S.K.'s physician stating that S.K. had several visits to the doctor between March and May 2007 for chronic sinusitis. The note stated that S.K.'s condition is under control. (Motion, Exhibits 8 & 8A).

On June 29, 2007, the Superintendent responded to the appeal. He recommended that the Local Board deny the transfer request. The Superintendent concluded that the circumstances did not rise to the level of hardship sufficient to overcome the restrictions on student transfers. (Motion, Exhibit 9).

The Local Board voted unanimously to uphold the Superintendent's decision. The Board stated that the appeal materials did not document unique hardship, but rather that they supported a request for a transfer based on a preference for a particular child care provider. The Board stated its belief that S.K. "can receive not only a quality education at Brown Station Elementary School, but that he will also make friends there as young students do throughout MCPS when they start at a new school." (Motion, Exhibit 10). This appeal 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).

LEGAL ANALYSIS

Pursuant to Local Board policy, students are assigned to the schools in the areas in which they live. In order to transfer to a different school, there must be evidence of hardship. Some transfer requests are exempt from the hardship criterion. Families need not demonstrate documented, unique hardship to obtain approval under the following circumstances:

- where there is an older sibling already attending the requested school and who will continue to be enrolled at the requested school for the next school year;
- when the student is already out of a feeder pattern on an approved transfer and wishes to continue from middle school to high school; or
- when a family moves within the county and prefers to remain in the original school until completion of that school year.

In addition, there are several programs for which admission is governed by lottery or application and which, therefore, are exempt from the hardship criterion. (Motion, Exhibit 3, JEE-RA).

Appellant would like his son to attend Diamond so that he can continue with the same child care provider that he had while attending preschool. This caretaker, who Appellant has described as a “close relative” and “friend”, would be able to walk S.K. to and from kindergarten while his parents are at work, and would also be available to pick up S.K. from school in the event of illness. He also would like his son to remain at a familiar school with his friends from preschool. Because none of the above exemptions apply, Appellant must demonstrate a unique hardship in order to justify the transfer request.

We agree with the Local Board that there is not sufficient evidence here of the types of hardship that would warrant a transfer. 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). Nor does S.K.’s chronic sinusitis, which his physician stated is under control, create any unique hardship here requiring this particular child care provider.

Additionally, the State Board has previously held that the desire to remain with a particular peer group is insufficient to support a student transfer. *See, e.g., Skardis v. Montgomery County Board of Education*, 7 Op. MSBE 1055 (1998); *Diehl v. Montgomery County Board of Education*, 7 Op. MSBE 589 (1997).

Finally, the State Board has long held that there is no right to attend a particular school or a particular class. *See Bernstein v. Board of Education of Prince George’s County*, 245 Md. 464 (1967); *Chacon v. Montgomery County Board of Education*, Opinions of MSBE, No. 01-39 (December 5, 2001); *Williams v. Board of Education of Montgomery County* 5 Opinions of

MSBE 507 (1990); *Goldberg v. Montgomery County Board of Education*, Opinions of MSBE, No. 05-35 (October 26, 2005).

CONCLUSION

For all these reasons, we affirm the decision of the Local Board denying Appellant's request for a transfer to Diamond Elementary School because it is not arbitrary, reasonable or illegal.




Dunbar Brooks
President



Beverly A. Cooper
Vice President



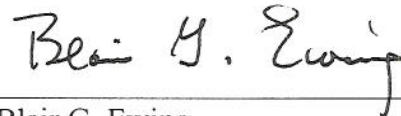
Lelia T. Allen



J. Henry Butta



Charlene M. Dukes



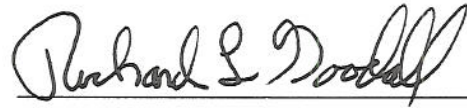
Blair G. Ewing



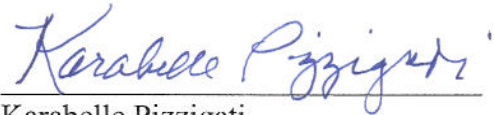
Mary Kay Finan



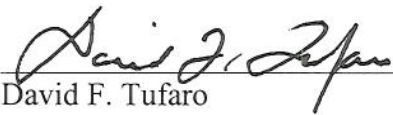
Rosa M. Garcia



Richard L. Goodall



Karabelle Pizzigati



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January 30, 2008