

RONALD A. ROMAN,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 04-42

OPINION

This is an appeal of the decision of the Montgomery County Board of Education (“MCPS”) denying Appellant’s request for the transfer of his daughter from Earle B. Wood Middle School to William H. Farquhar Middle School. The local board has filed a motion for summary affirmance maintaining that its finding of no documented hardship was consistent with existing policies and practices, was neither arbitrary, unreasonable, nor illegal, and there are no genuine issues of material fact. Although requested to do so, Appellant did not file a reply to the motion.

FACTUAL BACKGROUND

Appellant is the parent of an eighth grader attending Earle B. Wood Middle School (“Wood”) in Montgomery County, which is the assigned school based on residence. On April 13, 2004, Appellant submitted a “Request for Change of School Assignment” asking that his daughter be permitted to transfer to William H. Farquhar Middle School (“Farquhar”) on the basis of a hardship because: (1) Farquhar is in walking distance to their residence; (2) Wood is not in walking distance and is located directly across the street from a shopping center; (3) Wood is overpopulated while Farquhar is underpopulated; (4) classes are interrupted for children with behavioral problems, bilingual problems, and other associated problems; (5) his daughter is unable to receive extra help; and (6) Wood does not require homework assignments. (See Request for Change of School Assignment). On April 22, 2004, the request was denied by the field office supervisor, Jevoner L. Adams, because it did not meet the MCPS documented unique hardship exception for approving transfers.

By letter dated May 24, 2004, Appellant appealed the denial of transfer to Larry Bowers, Chief Operating Officer for MCPS, noting that the decision was based on “unfounded reasoning” (Letter of Appeal, May 24, 2004).

The matter was referred to the hearing officer, Alex Dunn, who recommended that the transfer be denied because he found absence of a unique hardship. (Memorandum dated June 30, 2004). Mr. Bowers adopted the hearing officer’s recommendation by letter dated June 30, 2004.

By letters dated July 15 and July 19, 2004, Mr. Roman appealed Mr. Bowers’ decision to the local board and restated his earlier position as well as noting these additional comments:

- a) no special transportation requirements are necessary for his daughter;
- b) she does not need an I.E.P. and she belongs in regular classes; and
- c) her grades have declined in several subjects.

Dr. Jerry Weast, the Superintendent of MCPS, replied to the appeal by memorandum dated July 23, 2004, stating that the Appellant provided no new information that would constitute a unique hardship; the transfer request is based upon a desire to attend a school other than the school of assignment which does not pose a hardship; there is no evidence to suggest that the child's educational needs cannot be met at the home school. Dr. Weast's recommendation was that the local board uphold the decision to deny the transfer. (Superintendent Memorandum, July 23, 2004).

On July 29, 2004, the local board issued an Order affirming the decision of the Superintendent's designee to deny the transfer request. On August 24, 2004, the local board issued a unanimous written opinion in which it denied the request for transfer for lack of documented hardship. Among other things, the board noted:

[a preference that Appellant's daughter] attend an elementary school which is more convenient to the family home...clearly does not constitute a hardship which would merit granting a transfer.

...there is no evidence to suggest that [the child's] educational needs cannot be met at Wood. (Local Board's Opinion, August 24, 2004, p.1).

This appeal to the State Board followed.

ANALYSIS

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 that 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).

Montgomery County Public Schools Change of School Assignment Information Booklet for 2004-2005 lists the criteria for consideration of a student transfer:

- (A) Documented unique hardship; or
- (B) Exemptions: (1) an older sibling attending the requested school at the same time; (2) continuation of a feeder pattern when the student is ready to move to the next education level, such as elementary to middle school or middle school to high school; (3) exempt programs; (4) family relocation within Montgomery County.

Appellant does not allege any of the criteria for an exemption; therefore the only issue is whether Appellant has a documented unique hardship.

Appellant requested the transfer of his daughter based on the following allegations: (1) Farquhar being in walking distance to his residence, while Wood, the assigned school is not; (2) Wood is located near a shopping center which poses a safety hazard; (3) Wood is overpopulated and classes are interrupted for a myriad of reasons; (4) Wood does not assign homework; and (5) his daughter is unable to receive extra help.

Although Appellant prefers that his daughter attend Farquhar for the reasons stated above, such reasons have not been deemed sufficient in other cases to support a student transfer. *See, e.g., Raul Chacon v. Board of Education of Montgomery County*, Op. No. 01-39 (December 5, 2001)(desire to attend a school where Latin is offered insufficient to justify transfer); *Eddie and Dorothy Keels v. Board of Education of Howard County*, Op. No. 01-12 (March 28, 2001)(desire to attend a technology magnet school not sufficient to approve transfer), *Alverton Holness v. Montgomery County Board of Education*, Op. No. 01-42 (December 5, 2001)(desire to have block scheduling and specific curriculum insufficient to approve transfer).

The Court of Appeals has held 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).

A transfer request must be supported by evidence that one of the criteria justifying a transfer has been met. Based upon our review of the record and relevant legal principles, we find that Appellant has not presented any evidence that satisfies any of the bases for a transfer. Nor has Appellant presented any evidence that the local board's decision is arbitrary, unreasonable, illegal, or a deviation from existing policy and procedures.

CONCLUSION

For all of these reasons, we affirm the denial of the student transfer request.

Edward L. Root
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December 8, 2004