

JENNIFER BECKER,
Appellant

BEFORE THE
MARYLAND

v.

STATE BOARD

CARROLL COUNTY
BOARD OF EDUCATION,

OF EDUCATION

Appellee

Opinion No. 03-01

OPINION

This is an appeal of the denial of Appellant's request to allow her son to continue as an out-of-district transfer at Winfield Elementary School for the 2nd grade rather than attend his in-district school, Piney Ridge Elementary School. The local board has submitted a motion to dismiss on grounds that the appeal is moot because Christopher attends Freedom Elementary School in the attendance area where his father, who has joint custody, resides. Appellant has filed a response opposing the motion.

FACTUAL BACKGROUND

On April 2, 2002, Appellant submitted an out-of-district of district request asking that her son Christopher, a then first grade student at Winfield Elementary, be allowed to remain at Winfield for the second grade rather than attend Piney Ridge Elementary, stating "Day care provider is grandmother who lives in district of Winfield Elementary, 4236 Arthur Shipley Road, Westminster, MD 21157." Christopher had attended Winfield as an out-of-district student for kindergarten and first grade. His younger brother, Eric attends a special pre-school program offered at Winfield. Appellant's request was denied because the application was received past the April 1 due date,¹ and because the application did not meet the requirements for an out-of-district transfer to a closed school.

Appellant appealed the decision stating that she had not submitted the application on time because, although her mother had signed it in mid-March, Appellant was waiting for a BGE bill to show proof of residence.² In her appeal, Appellant indicated that a change in her work schedule required her to place Christopher and his brother in daycare, which is provided by her mother. Appellant also stated that it would pose a hardship to attempt to get both boys ready to go to two different schools even though her mother provides the daycare in the district where Winfield is located and where her youngest son, Eric, is a student. Furthermore, Appellant maintained that if the transfer were not granted, she would have to find other daycare provisions for Christopher which she cannot afford and is not willing to do.

¹The request was received by the Pupil Services Department on April 5, 2002.

²There was no requirement for this.

The Director of Pupil Services, acting as the superintendent's designee, denied Appellant's request, citing Carroll County Public Schools' Administrative Regulations:

Winfield Elementary is a closed school for out-of-district enrollments meaning that the projected enrollment is more than 90% of the capacity of the school. Criteria for admission of out-of-district students to a closed school are outlined in administrative regulations.

. . .

The administrative regulations further state that an exception to the out-of-district regulation may be granted by the Director of Pupil Services in rare and unusual circumstances when a significant documented hardship is deemed to exist by Pupil Services staff...Exceptions will not be made for redistricting, family convenience, participation in extra curricula activities, provisions of daycare/supervision not otherwise covered by this regulation, separation/divorce, or the student's desire to remain with the same peer group/at the same school.

. . .

Although your desire for Christopher to attend Winfield Elementary School is certainly understandable, such a request does not meet the criteria for admission of an out-of-district student to a closed school as outlined in Carroll County Public Schools' out-of-district policy and administrative regulations. In addition, you did not meet the application deadline of April 1 which was the deadline for all out-of-district applications. Also, your reason for not meeting the deadline does not fall within the definition of exigent circumstances as defined in Policy JEA: "a sudden, unforeseen situation of such a dire nature that immediate assistance is required." Furthermore, the reasons for your request do not meet the criteria for admission of an out-of-district student to a "closed" school nor is it a "rare and unusual circumstance" or a "documented hardship" which is required by Carroll County Public Schools' regulations in order for an exception to be made to the out-of-district regulations.

See 6/14/02 letter from Cynthia Little.

Appellant further appealed the denial of her transfer request to the local board. The response of the superintendent's designee stated in part:

The decision made by Carroll County Public Schools' staff to deny the out-of-district placement of Christopher is aligned with Carroll County Public Schools' Policy JEA and the administrative regulations regarding out-of-district placement. Policy JEA and the accompanying administrative regulations do not provide for an out-of-district placement at a closed school when an application is received past the deadline date. Further, Ms. Becker's request does not meet the guideline for an exception to the regulation regarding a rare or unusual circumstance nor is it a documented hardship. The decision made by Carroll County Public Schools' staff is consistent with the decisions made regarding similar petitions for consideration of out-of-district placements. Furthermore, the decision is neither arbitrary, unreasonable, nor illegal.

The local board unanimously upheld the decision of the superintendent's designee denying the transfer request. The local board explained that due to the overcrowding problems throughout Carroll County and the large volume of out-of-district requests, the Board modified its Policy JEA in an effort to place countywide limitations on the ability of students to attend schools outside of their home attendance area. The local board further detailed the numerous steps that were undertaken by the school system to notify parents of the modification of Policy JEA and the April 1 deadline for out-of-district requests. Moreover, the local board stated that Ms. Becker had not provided a sufficient basis for missing the April 1 deadline. Finally, the local board reached the conclusion that Appellant's request for her son to remain at Winfield did not fall within one of the four stated criteria for attendance at an out-of-district closed school and that her reasons for the request did not rise to the level of a significant documented hardship. *See* 8/28/02 local board decision.

ANALYSIS

Mootness

_____ It is well established that a question is moot when "there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the courts [or agency] can provide." *In Re Michael B.*, 345 Md. 232, 234 (1997). *Accord, Arnold v. Carroll County Board of Education*, MSBE Op. No. 99-41 (1999). Although Christopher is now attending Freedom Elementary School in the attendance area where his father resides, the Appellant asserts that she still wants him to attend Winfield Elementary. Because there is a remedy that may be provided, we do not believe the appeal is moot.

Merits

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. *See, e.g., Breads v. Board of Education of Montgomery County*, 7 Op. MSBE 507 (1997). The State Board has noted that student transfer decisions require balancing county-wide considerations with those of the student and family. *See, e.g., Marbach v. Board of Education of Montgomery County*, 6 MSBE 351, 356 (1992). Socio-economic level, building utilization, enrollment levels, and the educational program needs of the individual student are all legally permissible and proper subjects of consideration in weighing the impact of a request for a student to transfer from his or her home school to some other school of choice. *Slater v. Board of Education of Montgomery County*, 6 Op. MSBE 365, 371-72 (1992).

In response to the tremendous increase in student enrollment in Carroll County Public Schools, Carroll County Board of Education Policy JEA - "Students Attending Schools Out-of-Attendance Areas" was revised on December 12, 2001, in an effort to tighten the out-of-district policy and reduce the number of out-of-district placements in the county. The administrative regulations implementing the policy were also revised for the 2002-2003 school year. Carroll County Board Policy JEA permits students to attend schools outside of their respective attendance area under certain circumstances upon the approval of the superintendent or his designee. The regulations also state that "[a]pplications and all supporting documentation must be received by Pupil Services no later than April 1." Regulations at IV.D. The April 1 deadline as set forth in the administrative regulations was one of the revisions made for filing of out-of-district requests for the 2002-2003 school year.

As explained in the local board's decision, there is a reasonable and rational basis for instituting the April 1 deadline. The deadline was intended to allow parents adequate time to make their requests for the following fall with sufficient time to appeal or make other arrangements if their requests were denied. Additionally, the deadline was intended to reduce the tremendous amount of time spent by staff reviewing out-of-district requests in the late spring and summer months when staffing decisions are made and planning for the school year occurs, since fluctuations in student enrollment affect the staffing and planning decisions.

Appellant maintains that she was unaware of the April 1 deadline.³ The local board notes, however, that significant steps were taken to notify parents of the deadline. Notice of the April 1 deadline is included and underlined at the bottom of the application form. It states: "Requests must be received by the Pupil Services Department no later than April 1st to be considered for the following year." (Emphasis in original). Additionally, on February 1, 2002, the school system mailed applications for out-of-district transfer requests to the parents of each student who was an out-of-district student the previous year. The cover letter stated: "If you wish

³In her appeal to the State Board, Appellant states that she never received notice of Policy JEA, that she has no access to local cable television or the internet to view its posting on the Carroll County Public Schools' website, and that she does not receive the local newspaper where it was advertised. She does acknowledge, however, that she had the application and her mother had filled it out in March before the deadline.

for your child to receive consideration to continue as an out-of-district student for the 2002-2003 school year, please complete the attached form and return all four copies to the Pupil Services Department by April 1, 2002.”

The school system also published the deadline in local newspapers, including the Carroll Sun on February 5, 2002, and the Carroll County Times on March 26, 2002. The deadline was posted on the Carroll County Public Schools’ website, and the out-of-district administrative regulations were discussed at a public local board work session which was advertised in various papers, on local television, and on the school system’s website. We believe that the school system took appropriate steps to inform the public of the deadline, and that the administrative regulation is clear concerning the April 1 deadline for consideration of an out-of-district request.

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). The local board’s policy does not provide for an out-of-district placement when an application is received past the deadline date. The only basis Appellant offered for missing the deadline was because she was waiting for a residential bill to show proof of residence which was not required. The State Board has strictly enforced the 30-day filing deadline for appeals. *See, e.g., Schwalm v. Montgomery County Board of Education*, 7 Op. MSBE 1326 (1998) and cases cited therein (appeal one day late dismissed for untimeliness.) Similarly, we find no basis not to uphold the local board’s enforcement of its out-of-district transfer deadline in this case. Furthermore, even if the application were timely filed, we note that Appellant’s stated reason of daycare does not meet the guideline for an exception to the regulation regarding a rare or unusual circumstance nor is it a documented hardship in that daycare is provided, although at a cost, at all elementary schools in Carroll County.

CONCLUSION

For these reasons, we affirm the decision of the Board of Education of Carroll County denying the student transfer request. *See Amy Rill v. Carroll County Board of Education*, MSBE 02-60 (December 4, 2002).

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January 29, 2003