

LISA ZEPP,

Appellant

v.

CARROLL COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 03-07

OPINION

This is an appeal of the denial of Appellant's request to allow her son to continue to attend Taneytown Elementary School for the fifth grade rather than attend his home school, Charles Carroll Elementary. The local board has submitted a motion to dismiss maintaining that the appeal is moot because Appellant has moved to a residence in the Taneytown district and her son, Wayne, has been attending Taneytown Elementary since the beginning of the school year. Appellant has submitted a reply asserting that the appeal is not moot because her residence in Taneytown is temporary.

FACTUAL BACKGROUND

On May 4, 2002, Appellant submitted an out-of-district request asking that her son Wayne Glass, then a fourth grade student at Taneytown Elementary, be allowed to remain at Taneytown for the fifth grade rather than attend Charles Carroll Elementary based on child care reasons. Wayne had attended Taneytown as an out-of-district student since kindergarten. Appellant's request was denied because the application was received past the April 1 due date.¹

Appellant appealed the denial of her out-of-district request, indicating that she had mistakenly overlooked the due date;² that Wayne had established lasting friendships at

¹On May 4 Appellant also submitted an out-of-district request asking that her younger son, Kyle Bruchey, be allowed to attend the first grade at Taneytown. Although this request was initially denied because the application was received past the April 1 due date but before May 31, it was later approved because the application deadline for kindergarten students was extended to May 31, 2002, for students who were in out-of-district kindergarten placements in Carroll County Public Schools during the 2001-02 school year and who applied for out-of-district placements in an "open" school for the 2002-03 school year. *See* 6/18/02 letter from Little to Zepp. Thus, this appeal does not concern the out-of-district request for Kyle.

²Appellant indicates that she received the out-of-district request forms while she and her family were vacationing in Georgia and while planning a move to their new home. However, she concedes that she had the forms in March prior to the April 1 deadline. *See* letter of appeal to local board dated 6/20/02.

Taneytown; that Wayne needed the stability of staying at Taneytown having had recent changes in his family circumstances and daycare; that Taneytown was convenient because it was on the way to Appellant's work; and that Taneytown was convenient because Appellant's stepchildren attend school there.³ The Director of Pupil Services, acting as the superintendent's designee, denied Appellant's request, stating:

Although your desire for Kyle and Wayne to attend Taneytown Elementary School is certainly understandable, your application was received past the due date of April 1, 2002. Had your application been received on time, your request would have met the criteria for admission of an out-of-district student to an "open" school. However, Carroll County Public Schools' staff is adhering strictly to the deadline date. As stated in Policy JEA, "In appropriate cases, where exigent circumstances arise that did not exist at an earlier date, an exception to these time lines may be made at the discretion of the Superintendent or the Board." Exigent circumstances are defined in Policy JEA as "a sudden, unforeseen situation of such a dire nature that immediate assistance is required."

Your sons were approved out-of-district students during the 2001-2002 school year. In February you were provided with an out-of-district application and a letter stating the due date. Although you explained your reasons for submitting the forms after the deadline date, the forms were, nonetheless, received by the Pupil Services Department thirty-six days late.

Appellant further appealed the denial of the transfer request to the local board. By a vote of 4 to 1, the local board upheld the decision of the superintendent's designee denying the transfer request. The local board explained that compliance with the April 1 deadline for out-of-district requests is necessary to ensure the proper administration of the schools so that decisions on such requests can be rendered by May 1, as set forth in the administrative regulation. The local board further explained the numerous steps that were undertaken by the school system to notify parents of the April 1 deadline.

Since filing the appeal of the transfer denial, Appellant and her children have moved in with her current husband's parents who reside in the Taneytown Elementary school district. Wayne has been attending Taneytown since the beginning of the 2002-03 school year. The

³Appellant's stepchildren, Ryan and Kyle Z., are also the stepchildren of Appellant's ex-husband who married the ex-wife of Appellant's current husband. Appellant maintains that having all of the children (Ryan and Kyle Z., Kyle B., and Wayne G.) attend one school is convenient for all parents involved.

family home is still in Westminster.

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 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).

Mootness

The local board has submitted a motion to dismiss maintaining that the appeal is moot because Ms. Zepp now resides within the Taneytown attendance area, and Wayne has been attending Taneytown since the beginning of the 2002-03 school year. Appellant, however, responds that the appeal is not moot because her living arrangements are only temporary during the pendency of the appeal. If the transfer request is granted, she intends to move with her children back to the family home, in the Charles Carroll attendance area.

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); *See also Arnold v. Carroll County Board of Education*, MSBE Opinion No. 99-41 (September 22, 1999); *Farver v. Carroll County Board of Education*; MSBE Opinion No. 99-42 (September 22, 1999); *Chappas v. Montgomery County Board of Education*, 7 Op. MSBE 1068 (1998). Since Wayne is currently attending Taneytown Elementary, there is no controversy between the parties and no effective remedy that the State Board can provide. We therefore find that the appeal is technically moot at this time.

Timeliness

Alternatively, on the merits the local board upheld the denial of the transfer request based on Ms. Zepp’s failure to meet the April 1 deadline by 36 days. The April 1 deadline as set forth in the administrative regulations implementing the Carroll County Board of Education Policy JEA - “Students Attending Schools Out-of-Attendance Areas” was a recent revision for the filing

of out-of-district requests for the 2002-2003 school year.⁴ 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 issue regarding the April 1 deadline was raised in *Rill v. Carroll County Board of Education*, MSBE Op. 02-60 (Dec. 4, 2002). There the local board denied the appellant’s transfer request asking that her son be allowed to continue as an out-of-district student at Taneytown Elementary because appellant had submitted the out-of-district request form eleven days after the deadline. The appellant in that case maintained that she was unaware of the April 1 deadline. The State Board unanimously affirmed the local board decision to adhere to the deadline in its policy.

Here, as in *Rill*, the local board notes that significant steps were taken to notify parents of the deadline. Notice of the April 1 deadline was included and underlined at the bottom of the application form. It stated: “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 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.” Moreover, as in *Rill*, the Appellant here does not dispute the fact that she received the form in advance of the filing deadline.

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.⁵

⁴In response to the tremendous increase in student enrollment in Carroll County Public Schools, Carroll County Board Policy JEA 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.

⁵We find that *L. Rodney Jones v. Carroll County Board of Education*, MSBE Opinion No. 01-02 (January 31, 2001), cited in the dissent to the local board’s decision, is distinguishable from this case. In *Jones*, the State Board overturned the local board’s decision not to consider information contained in an Appeal Information Form that was filed after the 10 day deadline for submitting the form. The State Board permitted the review of information contained in Mr. Jones’ Appeal Information Form only because Mr. Jones was not made aware of the 10 day deadline since neither the Appeal Information Form nor the letter informing Jones of the appeal procedures noted the deadline. Here, the record is clear that Appellant had received notice of the April 1st filing deadline.

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). While the local board's policy on out-of-district requests to open schools provides for transfers based on specified daycare reasons, the policy assumes compliance with the April 1st filing deadline. Appellant has not offered any basis other than forgetfulness for missing the deadline. We note that the State Board has strictly enforced the 30-day filing deadline for appeals and concur with the local board's strict enforcement of its deadline. *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.) Moreover, if Appellant so desires, she has the option of enrolling both of her children at Charles Carroll Elementary which has on-site before and after daycare provided by a licensed private provider.

CONCLUSION

For all of these reasons, we dismiss the appeal as moot; *see* COMAR 13A.01.01.03J. Alternatively, we affirm the decision of the Board of Education of Carroll County denying the transfer request.

Marilyn D. Maultsby
President

Reginald L. Dunn
Vice President

JoAnn T. Bell

Philip S. Benzil

Dunbar Brooks

Clarence A. Hawkins

Walter S. Levin, Esquire

Karabelle Pizzigati

Edward L. Root

Walter Sondheim, Jr.

John L. Wisthoff

January 29, 2003