

ROBERT E. WARD and
ALLISON L. SOKOLL,

Appellants

v.

HOWARD COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 03-17

OPINION

This is an appeal of the denial of Appellants' request to allow their son to transfer from Guilford Elementary School to Clarksville Elementary School in Howard County attended by two of Appellants' older children or, in the alternative, to another school that has not been identified as needing improvement. The local board has submitted a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal. Appellants have filed a reply in the form of a motion opposing the local board's motion.

FACTUAL BACKGROUND

Appellants are the parents of Jadon who lives in the Guilford Elementary School ("Guilford") attendance zone of the Howard County Public Schools ("HCPS") in Columbia, Maryland. Appellants' older children either attended or are currently attending Clarksville Elementary School ("Clarksville") through HCPS' Open Enrollment Policy. However, there is currently a moratorium on that policy due to overcrowding. On May 26, 2002, Appellants submitted an out-of-district transfer request under Howard County's Pupil Assignment Policy, #3211, asking that Jadon be allowed to enroll at Clarksville, rather than his designated school, Guilford. Mr. Roger L. Plunkett, the Superintendent's designee, denied Appellants request, noting the existing moratorium on open enrollment transfers and the abolishment of the sibling policy. (Letter of June 10, 2002).

Appellants appealed the denial for an out-of-district transfer on June 29, 2002, to the local board. In returning the appeal form, Appellants for the first time, noted that their request for transfer was based upon the *No Child Left Behind Act* of 2001 ("*NCLB*"). (Letter of July 29, 2002). Because there had not been an administrative decision on a request based upon *NCLB*, the local board forwarded Appellant's request to Mr. Plunkett for a decision. (Letter of August 6, 2002.)

Mr. Plunkett denied Appellants' request based upon *NCLB* on the following bases:

- The deadline for application for administrative transfers under *NCLB* Act was June 14, 2002 [sic]. No request

- submitted after that date will be accepted.
- Only students enrolled and attending an identified school are eligible to be considered for a transfer under NCLB. Jadon has not attended Guilford Elementary School.
- Gorman Crossing Elementary School is the designated school for students from Guilford Elementary School who were granted an administrative transfer under NCLB.
- Clarksville Elementary School is closed to students who live outside its service area.

(Letter of August 8, 2002). Mr. Plunkett noted that Appellants' concerns about having their children attending two different elementary schools could be remedied by having them all attend Guilford, their zoned school. Appellants enrolled Jadon in Guilford Elementary on August 20, 2002.

Appellants have appealed both of Mr. Plunkett's decisions to the local board. First, they contend that they are entitled to a transfer under the local board's Policy #3211, Pupil Assignment, based upon sibling attendance and transportation concerns. Second, they contend that they have a right under the *NCLB* to have Jadon transferred out of Guilford Elementary School. The local board considered the appeal on both bases and on November 8, 2002, issued a decision, affirming by a 5 to 0 vote, both of Mr. Plunkett's decisions denying the transfer request. (Local board's decision, 11/8/02). 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 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). Each of Appellant's claims is reviewed under this standard.

1. Pupil Assignment Policy #3211 Claim

The State Board has noted that student transfer decisions require balancing county-wide considerations with those of the student and family. *See, e.g., Warran v. Montgomery County Board of Education*, MSBE Opinion No. 00-25 (May 24, 2000); *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).

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).

Under County Board Policy #3211, Pupil Assignment, individual exceptions may be made by the Superintendent or his designee based upon documented hardship. Appellants have stated their preference for Jadon to attend Clarksville based upon sibling attendance and/or transportation concerns. The local board's Guidelines for Administrative Transfers, approved in April of 2002, state that "[F]or the purposes of these guidelines, problems that are common to large numbers of families such as need for a particular schedule, class/program, sibling enrolled or day care, do not constitute a hardship". Since Appellants have not presented any evidence of hardship, we believe that the local board's denial is not arbitrary, unreasonable, or illegal.

2. *No Child Left Behind* claim.

Under *NCLB*, the local education agency ("LEA") shall, in the case of a school identified for school improvement, provide "all students enrolled in the school with the option to transfer to another public school served by the local education agency." *NCLB*, § 1116(b)(1)(E). (Emphasis added). Section 1116(b)(6) requires that the local education agency

promptly provide to a parent or parents...of each student enrolled in an elementary school or secondary school identified for school improvement under paragraph(1), for corrective action under paragraph (7), or for restructuring under paragraph(8)...
(F) an explanation of the parents' option to transfer their child to another public school...

The local board has implemented the school choice provision of *NCLB* in an implementation plan that was approved by the Maryland State Department of Education. *See* HCPS Annual SAFE Program and Budget Updates 1/1/02 - 6/30/02. Under that plan, the Howard County Public School system accepted transfer requests from parents under *NCLB* until June 13, 2002. The deadline was established in conformity with *NCLB*. The federal regulations provide:

(a) Requirements: (1) In the case of a school identified for school improvement under §200.32, for corrective action under §200.34, or for restructuring under §200.34, the LEA must provide all students enrolled in the school with the option to transfer to another public school served by the LEA. (emphasis added)

(2) The LEA must offer this option not later than the first day of the school year following the year in which the LEA administered the assessments that resulted in its identification of the school for improvement, corrective action, or restructuring. (Emphasis added).

The deadline established by the school system, June 13, 2002, is “not later” than the beginning of the school year, which was August 26, 2002. Appellants filed their request on July 29, 2002, well past the deadline. Thus, the local school system acted within its discretion in dismissing the request as untimely.

Appellants further argue that they were entitled to but did not receive notice of the transfer procedures in accordance with *NCLB*. However, HCPS did provide the notice as required by *NCLB*. The parents of each child enrolled in a school targeted for improvement were sent two letters on May 24, 2002, one from the Superintendent and one from the school’s principal, informing the parents of the transfer option and of the deadline for filing transfer requests. Appellants’ child was not enrolled in school at that time and thus Appellants did not receive the letters.¹ Further, the public was notified of these requirements at a televised meeting of the local board on May 23, 2002. Finally, the information was posted on the school system’s website.

Appellants contend that once they enrolled their child in school on August 20, 2002, “due process” under *NCLB* entitled them to receive individualized notice and an opportunity to transfer. However, Appellants’ interpretation of *NCLB* is incorrect. Under *NCLB*, the school system must give priority in considering transfer requests to “the lowest-achieving children from low-income families.” 34 C.F.R. 200.44(e)(1). To do so, a school system must review all applications for transfer and rank each request based upon the criteria of achievement and income to give the federally-required priority to the lowest achieving students. Therefore, by necessity, there must be a deadline to the application process so that all students can have equal opportunity to apply for a transfer and the students federally identified for priority can be served. Transfer requests are approved in accordance with the federal criteria of achievement and income until the number of available spaces are filled. The number of spaces are dictated by the amount of federal funding associated with *NCLB*. As the local board notes, if a parent could come in after

¹In order to be enrolled, a child must be enrolled and attending a particular school. See letter from JoAnne L. Carter, MSDE Assistant Superintendent for Student and School Services, 8/26/02. Jadon was enrolled on August 20, 2002 but was not attending a HCPS school until August 26, 2002, the first day of the 2002-2003 school year.

the deadline and automatically receive a transfer, it would undermine the federal priorities required by the *NCLB*. See local board memorandum.

The reading suggested by Appellants would also result in administrative chaos. The school system must be given time, after the transfer requests have been granted, to plan for transportation, staffing, instructional materials and other resources at the schools. See *Rill v. Carroll County Board of Education*, MSBE Opinion No. 02-60 (upholding an out-of-district request deadline due to reasonable administrative concerns). In this matter, Jadon had not been enrolled in school at the time the applications were due. Appellants, however, were aware of *NCLB* provisions, since they filed their appeal based on *NCLB* claims prior to their enrollment of Jadon at Guilford Elementary.²

CONCLUSION

For these reasons and based on the evidence presented, we do not believe that the decision of the local board was arbitrary, unreasonable or illegal. Accordingly, we affirm the decision of the Board of Education of Howard County denying Appellants' transfer request.

Marilyn D. Maultsby
President

JoAnn T. Bell

Philip S. Benzil

Dunbar Brooks

Clarence A. Hawkins

Walter S. Levin, Esquire

Karabelle Pizzigati

²Appellants submitted their application on *NCLB* grounds on August 8, 2002, but did not enroll Jadon until August 20, 2002. See local board memorandum, ¶¶ 2 & 3.

Edward L. Root

Walter Sondheim, Jr.

John L. Wisthoff

March 25, 2003