

SANDRA O.,

Appellant

v.

MONTGOMERY COUNTY BOARD
OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

Opinion No. 09-16

OPINION

INTRODUCTION

In this appeal, Appellant disputes the decision of the Montgomery County Board of Education (local board) denying her request to allow her daughter to attend the A. Mario Loiederman Magnet School for the Creative and Performing Arts (Loiederman). The local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal.

FACTUAL BACKGROUND

Montgomery County Public Schools (MCPS) operates two high school consortia and one middle school consortium. A consortium allows students from within a combined attendance area to attend a consortium member school. The school system assigns students to consortium schools through the use of a computer assisted lottery which takes into consideration the ranking of student preferences and other criteria established by the school system. Students who live outside of the consortium attendance area are allowed to apply for a limited number of consortium seats. (Local Board Memorandum).

The Middle School Magnet Consortium (Consortium) is comprised of three schools: Argyle Middle School, A. Mario Loiederman Middle School and Parkland Middle School. These schools offer an accelerated core curriculum and specialty courses to create a themed instructional focus. (Hearing Officer Report). Loiederman offers a program focused on creative and performing arts. (MCPS Middle School Magnet Consortium Information).

Appellant's daughter, K.S., is a sixth grade student who lives in the geographic attendance area for Newport Mill Middle School. (Newport). Newport is not a school in the Consortium.

Because K.S. was interested in attending Loiederman, on November 1, 2007, Appellant submitted an application for one of the limited seats in the Consortium reserved for students residing outside of the Consortium attendance area. K.S. marked Loiederman as her first,

second, and third choice on the form, despite instructions advising applicants to mark each school only one time. By letter dated February 28, 2008, the school system advised Appellant that the number of applicants from outside the Consortium area exceeded the number of available seats and that K.S. did not get one of those seats. The school system encouraged Appellant to explore the opportunities available at Newport Mill, including the International Baccalaureate Organization Middle Years Program, the digital media pathway and elective courses dealing with the arts. (Letter, 2/28/08).

Appellant participated in the second round of lottery assignments in the early spring. (Second Round Request, 3/11/08). This lottery is for the additional seats that become available when students decline the Consortium assignment or move out of the Consortium area. (Letter, 2/28/08). K.S. did not receive a Consortium assignment to Loiederman in round two.

Appellant appealed the denial to the Jeannie Franklin, Director of the MCPS Division of Consortia Choice and Application Program Services. Appellant stated that Loiederman would provide her daughter with a "rich and challenging learning environment" with a rigor not available at Newport Mill due to the integrated arts program; that the exposure to different art forms at Loiederman is more fitting for K.S.'s "innate artistic tendencies;" and that Loiederman has a specialty in vocal music, K.S.'s area of interest. (Letter of Appeal, 4/30/08). Ms. Franklin advised Appellant that her request was denied due to a lack of a unique hardship warranting an exception. (Franklin Letter, 5/27/08).

Appellant appealed to the Chief Operating Officer. In addition to the reasons she had noted in her previous appeals, Appellant maintained that she would like her daughter to attend Loiederman for child care purposes. Appellant stated that she does not want her daughter walking to and from school without adult supervision. Because Appellant is a single mother who works and attends school herself, she claimed that she is unable to pick her daughter up after school due to a conflict with their schedules. Her day care provider, however, lives two blocks from Loiederman and can pick up K.S. and provide after-school care for her. Appellant also stated that K.S.'s father lives close to Loiederman and he would also be available to pick her up if she goes to school there. (Appellant's Letter, 6/9/08).

Larry A. Bowers, the Superintendent's Designee, assigned the matter to a hearing officer for review. The hearing officer, Laurence E. Jeweler, recommended that Appellant's request for her daughter to attend Loiederman be denied for the following reasons:

- Loiederman is over capacity and the school system is not granting requests to transfer there absent an extraordinary hardship.
- Child care is not considered a unique hardship for transfer purposes because it is a common concern for many parents.

(Hearing Officer Report). Mr. Bowers concurred with the recommendation and denied Appellant's request to have her daughter attend Loiederman. (Bowers Letter, 7/14/08).

Appellant appealed to the local board. The local board upheld the denial of the transfer request finding a lack of evidence demonstrating a unique hardship which would warrant a transfer to Loiederman. The local board explained that neither child care reasons nor the desire to take part in a particular school program constitute a hardship under local board policy. (Local Board Decision).

STANDARD OF REVIEW

The standard of review in 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.01.05.05A.

ANALYSIS

The local board determined that the circumstances described by Appellant failed to rise to the level of a unique hardship sufficient to grant K.S. a transfer to Loiederman. We concur for the reasons set forth below.

Although Appellant would like K.S. to attend a school aligned with her interests, 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). Nor is there any right to attend any particular program. *See Dennis v. Bd. of Educ. of Montgomery County*, 7 Ops. MSBE 953 (1998)(desire to participate in particular courses does not constitute unique hardship sufficient to override utilization concerns); *Marshall v. Bd. of Educ. of Howard County*, 7 Ops. MSBE 596 (1997)(no entitlement to attend four-year communications program offered at Mount Hebron); *Slater v. Bd. of Educ. of Montgomery County*, 6 Ops. MSBE 365 (1992)(denial of transfer to school alleged to better serve student's abilities and welfare); *Williams v. Bd. of Educ. of Montgomery County*, 5 Op. MSBE 507 (1990)(denial of transfer to program offering advanced German); *Sklar v. Bd. of Educ. of Montgomery County*, 5 Ops. MSBE 443 (1989)(denial of request to attend school offering four years of Latin, note taking/study skills course, and piano.).

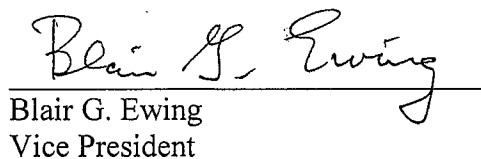
Appellant also requests the transfer to Loiederman for reasons related to child care. Child care concerns are not a valid consideration for what constitutes a hardship under MCPS policy. On numerous occasions the State Board has found that child care problems do not suffice to justify a student transfer. *See Jamei and Esmaili v. Bd. of Educ. of Montgomery County*, MSBE Opinion No. 01-31 (2001); *Hall v. Bd. of Educ. of Montgomery County*, MSBE Opinion No. 00-49 (2000); *Sullivan v. Bd. of Educ. of Montgomery County*, MSBE Opinion No. 00-22 (2000); *Gutierrez and Finn v. Bd. of Educ. of Montgomery County*, MSBE Opinion No. 00-1 (2000); *Gelber v. Bd. of Educ. of Montgomery County*, 7 Ops. MSBE 616 (1997); *Marbach v. Bd. of Educ. of Montgomery County*, 6 Ops. MSBE 351 (1992).

The local board's denial of Appellants' request to have her daughter attend Loiederman is consistent with the above precedents.

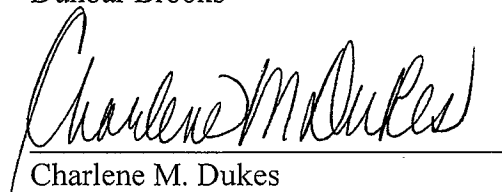
CONCLUSION

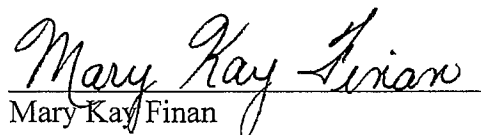
Because we do not find the local board's decision to be arbitrary, unreasonable or illegal, we affirm the denial of Appellant's request.

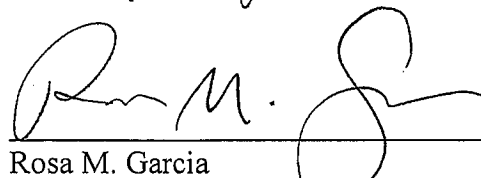

James H. DeGraffenreid, Jr.
President

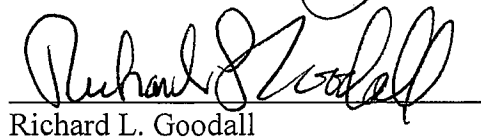

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April 28, 2009