

ANGELA AND DENNIS BOTZER,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 04-39

OPINION

This is an appeal of the denial of Appellants' request to allow their daughter to attend Silver Spring International Middle School for the 2004-2005 school year rather than her assigned school, Eastern Middle School. The local board has submitted a motion for summary affirmance maintaining that the reasons advanced by Appellants do not constitute a unique or compelling hardship and that the local board's decision is neither arbitrary, unreasonable, nor illegal. On September 23, 2004, Appellants filed a reply to the local board's motion stating that their daughter was enrolled in and attending Eastern Middle School.

FACTUAL BACKGROUND

Appellants reside in the geographic attendance area for Eastern Middle School. For the 2004-2005 school year, Appellants enrolled S.B. in the Montgomery County Public School System ("MCPS"). S.B. had previously attended Rock Creek International, a private school which offers an International Baccalaureate ("IB") program.

On February 29, 2004, Appellants submitted a request to transfer S.B. from Eastern Middle School to Silver Spring International Middle School. On the transfer request form, Appellants checked the box for "exempt countywide program" and wrote in "IB-Program - French." Silver Spring International offers the Middle Years IB program to attendance area students; the program is not a countywide program. Appellants' transfer request was denied by the field office supervisor because it did not meet the guidelines for a student transfer.

Appellants appealed the denial of the transfer. In their appeal letter, Appellants explained that they would like S.B. to attend Silver Spring International so that she can continue to participate in an IB program and continue taking French classes which are offered to 6th grade students at Silver Spring International.

The Chief Operating Officer, acting as the superintendent's designee referred the matter to hearing officer, Laurence E. Jeweler, for review. Mr. Jeweler explained to the Appellants the distinctions among magnet programs, signature programs, and the consortium concept in MCPS. He also explained that the IB program is a high school program in MCPS and that all MCPS middle schools can prepare students for entry into the IB high school program. He further

indicated that S.B. would have the opportunity to apply for entry into the IB program at Albert Einstein High School in the future. With regard to Appellants' concerns about French class, Mr. Jeweler suggested that Appellants contact the counselor at Eastern to discuss S.B.'s placement in French class there. Ultimately, the hearing officer found a lack of unique hardship to justify the transfer under school system policy and recommended that the request be denied. The CEO adopted the recommendation of the hearing officer and denied Appellants' request to transfer their daughter from Eastern to Silver Spring International.

Appellants further appealed the denial of their transfer request to the local board. In their letter of appeal, Appellants reiterated the fact that they wanted S.B. to be in the Middle Years IB program and in a 6th grade French class. Eastern does not have a 6th grade French class and Appellants stated their belief that placement in a 7th grade French class at Eastern would not be conducive to S.B.'s learning because she would not be with same age students. In a memorandum dated June 4, 2004, the superintendent, Jerry D. Weast, responded that many middle school students take classes with older peers in order to accommodate a higher level of proficiency in a particular subject area. Dr. Weast stated that "Eastern Middle School is absolutely able to meet S.B.'s academic needs and prepare her for entry into the high school IB program."

In a unanimous decision, the local board upheld the decision of the superintendent's designee denying the transfer request based on a lack of hardship.

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).

Montgomery County Public Schools ("MCPS") Regulation JEE-RA – Transfer of Students provides that absent qualifying under one of three exemptions, "[o]nly documented hardship situations will be considered for a change in school assignment." The regulation lists the following three exemptions to this policy: (1) an older sibling attending the requested school at the same time; (2) the student is ready to move from middle school to high school, except for a boundary change; or (3) the student has met the criteria for and been admitted to a countywide program. Because Appellants' daughter does not qualify for an exemption, the only applicable consideration for a transfer in this case is a documented hardship.

Appellants would like their daughter to attend a school that has the IB program and a 6th grade French class. The superintendent reported that Eastern could meet S.B.'s needs and sufficiently prepare her for entry into a high school IB program. He also reported that it is not unusual for middle school students to take courses with students of varying ages based on different proficiency levels. *See* Superintendent's 6/4/04 memorandum to local board.

In its decision, the local board stated as follows:

The transfer policy and regulation are not designed to permit a transfer to take a single course, such as French, as being requested here. S.B.'s parents have been advised previously that the option may exist to enroll her in a seventh grade French class at Eastern, given her level of proficiency, if their interest is truly to have her continue her French studies. As for the International Baccalaureate program, the new Middle Years Programme [sic] starting next year at Silver Spring International is designed for students in its attendance zone. Appellants have not demonstrated a hardship that would warrant granting a transfer into such a program. Nonetheless, upon reaching high school, S.B. will have the same opportunity as her classmates to exercise her choice to participate in the IB program at Einstein, should that remain her interest at the time.

Local board decision at 1 – 2. Based upon our review of the record in this case, we believe the local boards's rationale is reasonable.

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).

In light of these precedents, we find Appellants' desire to place their daughter in an educational environment that they feel can better serve her needs is not a recognized hardship sufficient to grant a transfer request. Therefore, based on our review of the record, we do not believe that the decision of the superintendent's designee was arbitrary, unreasonable or illegal.

CONCLUSION

For these reasons we affirm the decision of the Board of Education of Montgomery County denying Appellants' transfer request.

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October 27, 2004