

MR. & MRS. LLOYD JENKINS,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 04-36

OPINION

This is an appeal of the denial of Appellants' request to transfer their daughter from her assigned school, College Gardens Elementary, which has a half-day kindergarten program, to Beall Elementary School for the 2004-2005 school year because it has a full-day kindergarten program. 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 its decision is not arbitrary, unreasonable, or illegal. Appellants have not submitted a reply opposing the local board's motion.

FACTUAL BACKGROUND

Appellants reside in the geographic attendance area for College Gardens Elementary School which does not yet have a full-day kindergarten program.¹ Appellants submitted a request for change of school assignment, asking that their daughter Adrionne be transferred from College Gardens Elementary to Beall Elementary so that she could attend the full-day kindergarten offered at Beall. Adrionne's mother felt that Adrionne was ready for full-day kindergarten and indicated her belief that Adrionne's "academic success will be better suited at Beall" where her "thirst for knowledge will be quenched." At the time of the request, Adrionne was attending a half-day Head Start program at Beall.² At Beall, Adrionne was also participating in "The Curriculum Comparison and Coaching Study" by Georgetown University which is a

¹Section 7-101(e) of the Education Article requires that each local board provide full-day kindergarten programs for all kindergarten students by the 2007-2008 school year. Some school systems including Montgomery County have already started phasing in full day kindergarten programs. In its written decision, the Montgomery County Board of Education indicated that the overall educational needs of the student population of Beall met the profile of schools that were provided full-day kindergarten first among schools in the county.

²Head Start is a pre-kindergarten program for income eligible students which operates in selected elementary schools throughout the country.

study to promote children's language and early reading skills.³ Appellants' transfer request was denied by the field office supervisor because it did not meet the requirements for a student transfer.

Appellants appealed the denial to the Chief Operating Officer, Larry Bowers, acting as the superintendent's designee. Mr. Bowers transferred the matter to hearing officer, Elaine Lessenco, for review. The hearing officer noted as follows:

In their letter of appeal, Mr. and Mrs. Jenkins reported that Adrionne is a precocious child who has been identified as an early reader with many academic skills. Mrs. Jenkins reported that she has been an active volunteer at Beall Elementary School, and is aware that not all children are ready for a full-day kindergarten. However, she believes that Adrionne is yearning to be enriched, and wants to be sure that she can have the opportunity to reach her highest potential.

As part of my review, I spoke with Ms. Judith Mills, administrative secretary, College Gardens Elementary School, who reported that Bar-T Kids Club runs a kindergarten complement program at that location. She further reported that Bar-T Kids Club has a sliding scale for fees and that some scholarship funds are available. She noted that space is limited to 22 students, and that applications for the kindergarten complement program are taken at kindergarten orientation.

The hearing officer found a lack of unique hardship to justify the transfer under school system policy and recommended that the request be denied. She also noted that the kindergarten complement program should meet Adrionne's enrichment needs. Mr. Bowers adopted the recommendation of the hearing officer and denied Appellants' request to transfer Adrionne from College Gardens to Beall.

Appellants further appealed the denial of their transfer request to the local board. In their letter of appeal, Appellants stated that although they were initially advised that financial assistance for Bar-T was possible, they had learned that sliding scale fees had not been implemented and that scholarships were no longer available. Appellants indicated that placing Adrionne in the Bar-T program without financial assistance would be a hardship for the family.

³Among other things, this study involved assessing student pre-reading, reading, vocabulary, and math skills; classroom observations; rating student behavior and progress in learning; and parent interviews. The study is designed for pre-kindergarten students only and is concerned with how to help children get ready for kindergarten and later for elementary school. See 9/24/03 Georgetown University memorandum.

In a memorandum to the local board, the superintendent noted that, contrary to the letter of appeal, scholarship funds for the kindergarten complement program run by Bar-T Kids Club at College Gardens Elementary School were still available for the coming school year for children nominated for consideration by the principal.

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.⁴ The local board explained that Appellants sought to use the transfer process essentially to choose a program more to their liking, but that the process is not available to have a child placed in a school with a full-time kindergarten program when the child's assigned school offers a half day program.

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; or (3) the student has met the criteria for and been admitted to a countywide program. Because Adrionne does not qualify for an exemption, the only applicable consideration for a transfer in this case is a documented hardship.

Appellants would prefer that Adrionne attend a full-day kindergarten program because they feel that Adrionne would be more academically challenged in such an environment. During the course of the appeal at the local level, the local hearing officer provided Appellants with information concerning the Bar-T Kids Club kindergarten complement program at College Gardens and with information about scholarships to that program. On appeal to the State Board, Appellants indicate that although a scholarship is apparently available for Adrionne, the Bar T program at College Gardens is full and Adrionne is now on the waiting list. Appellants continue to seek a transfer to Beall so that Adrionne can attend full-day kindergarten.

⁴One board member did not participate in the appeal.

The local board did not condition its denial of the transfer in this case upon availability of or financial assistance for the Bar-T program. Rather, the local board decision states that “the transfer process is not available simply to permit parents to avail themselves of the opportunity to have their child placed in a full-day kindergarten program when their home school only offers a half-day program” and that “[m]any children find themselves in similar circumstances as Adrionne.” Local Board Decision at 2. Based on all the information in the appeal, the local board found insufficient evidence of hardship.

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); 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 Adrionne in an educational environment that they feel can better serve their daughter’s needs is not a recognized hardship sufficient to grant a transfer request.

CONCLUSION

For all of these reasons, we do not find that the decision of the superintendent’s designee was arbitrary, unreasonable, or illegal. Accordingly, we affirm the decision made by the Montgomery County Board of Education to deny Appellants’ transfer request.

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September 28, 2004