

WILLIAM WUU & LINDA LIU,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 04-40

OPINION

This is an appeal of the denial of Appellants' request to transfer their son S.W. from his assigned school, Northwest High School, to Quince Orchard High School for the 2004-2005 school year. 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. Although requested to do so, Appellants did not submit a reply to the motion.

FACTUAL BACKGROUND

Appellants reside in the geographic attendance area for Northwest High School. In February, 2004, Appellants submitted a request for change of school assignment, asking that their son S.W. be transferred from Northwest High School to Quince Orchard High School based upon "hardship". (Request for Change of School Assignment, 2/9/04). However, because Appellants did not provide any documentation of hardship, the request was denied. (Denial letter, 4/21/04). In an appeal letter dated May 1, 2004, Appellants provided the following reasons for their request: Quince Orchard offers more advanced studies in art and Chinese than Northwest; Quince Orchard is closer to their home so that S.W. could participate in extracurricular activities without relying for transportation on his parents, who both work full-time; and S.W.'s close friends from middle school and from his neighborhood will be attending Quince Orchard.

Appellants submitted a supplemental letter dated May 15, 2004. The letter elaborated on S.W.'s talent in art and desire for advanced courses in Chinese. It also elaborated on Appellants' demanding jobs; Mr. Wu is a consultant and frequently travels within and outside the United States; Dr. Liu has a "busy and unpredictable" schedule, has to respond to medical emergencies, and has to attend medical meetings and conferences after regular business hours. Thus, the parents cannot provide transportation for S.W. and consequently he would not be able to participate in extracurricular activities. Appellants noted that all of S.W.'s close friends attend Quince Orchard and that two neighbors were granted transfers to Quince Orchard. (Letter of May 15, 2004). Appellants also submitted letters in support of S.W.'s talent from his art and Chinese teachers.

Chief Operating Officer, Larry Bowers, acting as the superintendent's designee, assigned the matter to hearing officer, Laurence Jeweler, for review. The hearing officer found a lack of unique hardship to justify the transfer under school system policy and recommended that the request be denied. He did explain to Mr. Wu that S.W. would be able to enroll in a course in another school if space were available. He encouraged Mr. Wu to contact the guidance counselor at Northwest to discuss whether its Chinese program could accommodate S.W. and S.W.'s options there or at another school. (Memorandum of May 19, 2004). Mr. Bowers adopted the recommendation of the hearing officer and denied Appellants' request to transfer S.W. from Northwest to Quince Orchard. (Letter of May 21, 2004).

Appellants further appealed the denial of their transfer request to the local board. In their letter of appeal, Appellants reiterated their reasons for requesting a transfer for S.W.. They noted that S.W. is facing "the same degree of hardship" as other students in their neighborhood who had been granted transfers. (Letter of May 31, 2004).

On June 21, 2004, by a majority vote¹, the local board upheld the decision of the superintendent's designee denying the transfer request based on a lack of documented hardship. In a written decision dated July 6, 2004, the local board explained that transfers are not granted simply to allow a student to take an individual course at a particular school, particularly when the same course, albeit not as advanced, is available in the home school.² Similarly, transfers are not granted simply because a student's friends are attending a different school. Finally, the local board noted that many students who are transported to school on busses participate in extracurricular activities and that busses run to many neighborhoods from extracurricular activities. Local Board decision, p. 2. The board also noted that it is commonplace for high school students to obtain rides from friends engaged in the same activities, if transportation is a problem.

In their appeal letter to the State Board, Appellants cited additional reasons for their appeal, unrelated to S.W.'s academics. They identified as hardship Dr. Liu's ongoing treatment for cancer, which began in mid-2000 and Mr. Wu's new employment contract that will take him to Australia for approximately three months. Appellants had submitted this information to the local board on July 2, 2004, after the local board voted on the appeal on June 21, 2004, but four days before the board issued its written decision.

¹Five members affirmed the denial; board members Burnett and Lee did not participate in this appeal; student member Sanghvi dissented.

²The superintendent reported to the local board that the counselor at Northwest stated that Mr. Wu never contacted him about S.W.'s program and that S.W. had enrolled in Spanish, not Chinese.

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 S.W. does not qualify for an exemption, the only applicable consideration for a transfer in this case is a documented hardship.

Appellants would prefer that S.W. attend Quince Orchard because its has more advanced studies in Chinese and in art, because his friends attend Quince Orchard, and because S.W. could walk home from Quince Orchard, allowing him to participate in extracurricular activities. 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 program of study at 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).

Similarly, the State Board has consistently held that the desire to attend school with particular friends does not constitute hardship. *See Iglesias v. Montgomery County Board of Education*, MSBE Op. No. 02-50 (October, 30, 2002) (twin daughters attending a different school from close friends not a hardship); *Hard v. Carroll County Board of Education*, MSBE Op. No. 02-57 (December 4, 2002)(desire to remain with peer group does not constitute hardship).

Finally, the State Board has also held that concerns about distance from a school are not sufficient to justify a hardship exemption. *Longobardo v. Montgomery County Board of Education*, MSBE Op. No. 99-3 (January 26, 1999); *Upchurch v. Montgomery County Board of Education*, MSBE Op. No. 99-7 (January 26, 1999). Here the local board has noted that busses are available to transport students after extracurricular activities.

In light of these precedents, we find Appellants' desire to place S.W. in art and in Chinese programs in a school near his home so that he can participate in extracurricular activities and can be with his friends is not a recognized hardship sufficient to grant a transfer request.

As to the hardship concerning Dr. Liu's health and Mr. Wu's new consulting contract in Australia, these reasons for hardship were not presented at the various levels of appeal below or before the local board when it made its decision on June 21, 2004. The State Board has consistently declined to address issues that have not been reviewed initially by the local board. *See Craven v. Board of Education of Montgomery County*, 7 Op. MSBE 870 (1997) (failure to challenge suspension before local board constituted waiver); *Hart v. Board of Education of St. Mary's County*, 7 Op. MSBE 740 (1997) (failure to raise issue of age discrimination below constituted waiver on appeal). *McDaniel v. Montgomery County Board of Education*, MSBE Op. No 03-22 (June 27, 2003)(complaints from public not raised before local board deemed waived). Thus, we find that Appellants have waived their right to raise these matters for the first time on appeal to the State Board. Nonetheless, we note that the local board in its memorandum in support of motion for summary affirmance stated: "[I]f Appellants wish to have the information considered, they should petition the County Board to reopen and reconsider its decision". (Memorandum, p. 6)

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 denial of Appellants' transfer request.

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October 27, 2004