

JAMES AND ANDREA CARDER,
and
RICHARD AND PAULA PARSONS,

Appellants

v.

GARRETT COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE
MARYLAND STATE
STATE BOARD
OF EDUCATION

Opinion No. 05-03

OPINION

These two appeals challenge nearly identical decisions by the Garrett County Board of Education denying Appellants' children attendance free of charge at Westmar High School in Allegany County, a school near the Allegany and Garrett County boundaries. Both of these decisions were based on a recent policy change by the Garrett County Board of Education which eliminated the option for Bloomington attendance area students to attend school in neighboring Allegany County. Because the two appeals challenge the same policy revision, we have consolidated the two cases.

The local board has filed motions to dismiss the appeals maintaining that neither appeal sets forth the contents necessary for filing an appeal to the State Board of Education. Alternatively, the local board has filed motions for summary affirmance maintaining that its decisions are not arbitrary, unreasonable, or illegal because Appellants' requests for exceptions to the school attendance policy do not meet the criteria for granting exceptions. Although requested to do so, Appellants did not file responses to the local board's motions.

FACTUAL BACKGROUND

Legal Background

Section 4-121 of the Education Article, Annotated Code of Maryland, allows children who reside in one county to attend a school which is in another county and near the boundary of the two counties provided the two county boards have decided to enter into an agreement for the joint attendance of a school. The core of the law is set out in subsections (b) & (c) of § 4-121:

- (b) A school that is in one county and near the boundary of an adjoining county is free to the children of the adjoining county as provided in this section.
- (c)(1) The county boards of the two counties may:
 - (i) Provide jointly for the maintenance and support of the jointly attended school in the receiving county; and
 - (ii) Determine the geographical attendance areas and other

attendance policies of the two counties for all jointly attended schools in the receiving county.

- (2) If the two county boards fail to agree on a geographical attendance area or attendance policy, the State Superintendent shall decide the matter.¹

Under this statutory language, local boards have discretionary authority to allow for a jointly attended school. Based on the provisions of § 4-121, for many years, the Garrett County Board of Education and the Allegany County Board of Education had an agreement for the joint attendance of various schools in their jurisdictions.

Garrett County Board of Education Policy Change

Prior to January 13, 2004, the Garrett County Board of Education under its Policy 432 and its Administrative Procedure 432.01 allowed various Garrett County students to attend school in Allegany County without having to pay out-of-county tuition. Specifically, students living in the Bloomington attendance area were permitted to attend Westmar High School, a neighboring Allegany County public school.

On January 13, 2004, the Garrett County Board of Education adopted changes to Administrative Procedure 432.01 which altered this longstanding policy.² The new procedure states as follows:

As of the 2004-2005 school year, all Garrett County students in grades K – 8 who reside in the Bloomington School attendance area will attend the Bloomington School; all students in grades 9 – 12 will attend Southern Garrett High School. **The only exception will be for those students in the Bloomington attendance area who are currently attending an Allegany School.**

Effective with the 2004-2005 school year, all new students living in Garrett County in the Bloomington attendance area enrolling for the first time in school will be required to enroll in either Bloomington School or Southern Garrett High School pending grade of entry. **New enrollees from families residing in**

¹Subsection (c)(3) sets forth additional provisions that apply to Somerset and Worcester counties and are not relevant to these appeals regarding Garrett County in Western Maryland.

²To the extent that these appeals attempt to challenge changes to that policy and procedure, any such appeal would be untimely. *See* Md. Code Ann. Educ. § 4-205 (c) and COMAR 13A.01.05.02B (State law and regulation require appeals of local board decisions to be filed with the State Board within thirty days of the local board decision).

the Bloomington attendance area, who have children currently enrolled in Allegany County schools, shall be permitted to enroll in Allegany County schools to permit all students in a family to remain in the same school system.

Attendance of those students residing in the area designated as “The Elbow” may be enrolled at the Bloomington School and Southern Garrett High School, or Route 40 Elementary School, Northern Middle School, and Northern Garrett High Schools. Transportation arrangements will determine which school students will attend.

If transportation is not available in a specific area, exceptions to this procedure may be made on an individual basis. (Emphasis added.)

The primary basis for this procedure change was a result of the Allegany County Board’s decision to consolidate its schools, to close Westmar and Beall High Schools by 2007, and to renovate or to build a new high school in the western region of Allegany County. This consolidation and closing would necessitate that students attending Westmar be transferred to the new or renovated high school, increasing the distance of travel for Garrett County students in the Bloomington area. Additionally, the Garrett County Board did not want Garrett County students caught in the transition in the middle of their high school careers. Another consideration was the fact that over the past two years, students at the Bloomington Elementary School in Garrett County had opted to attend Southern Garrett County High School in Garrett County rather than attend Westmar due to the proposed closing of that school.

James and Andrea Carder v. Garrett County Board of Education

On March 8, 2004, James and Andrea Carder submitted a written request to Dr. Wendell Teets, Superintendent of Schools for Garrett County, asking that he consider “letting children who live this close to the borderline, the exception of going to Westmar, if they choose to do so, because of the inconvenience it would impose on our families.”³ Specifically, the Carders desired that their daughter, M.C., be permitted to attend Westmar High rather than Southern

³Prior to the policy change, on December 12, 2003, the Garrett County Board of Education received an e-mail written by Paula Parsons on behalf of herself and her husband, as well as on behalf of her brother-in-law and sister, James and Andrea Carder, requesting that the policy remain the same or, alternatively, that an exception be made for the Parsons’ son and the Carders’ daughter to attend Allegany County Public Schools. There is no explanation by any party of whether the school system officials responded to the e-mail.

Garrett High.⁴ The Carders raised the issue of travel time and physical distance to get from their home and places of work to Westmar High versus to Southern Garrett High, as well as their daughter's involvement in sports.⁵

Dr. Teets reviewed the matter, denied the Carders' request, and explained the local board's rationale for the procedure change. In response to the Carders' concerns about travel to and from school, as well as school sports and other activities, he indicated that there is an activity bus for students who are involved in sports and other extra-curricular activities. Dr. Teets also stated that the issues faced by the Carders with regard to distance, medical appointments, and emergencies are not unlike those faced by other Garrett County families.⁶ See 3/25/04 letter from Teets to Carders.

The Carders appealed Dr. Teets' decision to the Garrett County Board of Education. After conducting a hearing, the local board unanimously upheld Dr. Teets' decision denying M.C. an exception to attend Westmar High School.

Richard and Paula Parsons v. Garrett County Board of Education

On March 8, 2004, Richard and Paula Parsons submitted a written request to Dr. Teets asking that their son C.P. be granted an exception allowing him to attend Westmar High School.⁷ Appellants raised the following issues: (1) C.P.'s connection to and friendships with people from the Westmar attendance area community; (2) travel time and physical distance to get from their home and places of work to Westmar versus Southern Garrett, as well as the time to travel to and

⁴At the time the appeal request was initiated, M.C. was an 8th grade student at Bloomington Elementary School in Garrett County. She is currently attending Westmar High School as an out-of-county student paying tuition.

⁵At the appeal hearing before the local board, Mr. Carder explained that the distance between his house and Westmar is 8 miles which is approximately 15 minutes driving time. He also stated that the bus ride from his house to Southern Garrett takes approximately 77 minutes with several bus transfers.

⁶Garret County is a large county geographically with two high schools, Southern Garrett High School and Northern Garret High School. Consequently, many students travel a lengthy distance to attend school.

⁷At the time the appeal request was initiated, C.P. was a 7th grade student at Bloomington Elementary in Garrett County. The Parsons would like their son to attend Westmar High School in Allegany County beginning in the 2005-06 school year.

from doctor and dentist appointments in Cumberland, Lonaconing, and McCoole;⁸ (3) unsafe road conditions; (4) C.P.'s involvement in athletics; and (5) the fact that C.P. has always desired to attend Westmar throughout his entire academic career since it was the same school that his siblings attended. Dr. Teets reviewed the matter and denied the Parsons' request in writing, responding by letter similar to that sent to the Carders.

The Parsons appealed to the local board, reiterating their concerns. After conducting a hearing, the local board unanimously upheld Dr. Teets' decision denying C.P. an exception to attend Westmar High School.

ANALYSIS

Motion to Dismiss

As a preliminary issue, the local board has submitted a motion to dismiss each appeal maintaining that neither letter of appeal to the State Board sets forth the necessary contents as required by COMAR 13A.01.05.02. Specifically, the local board contends that the parties have not set forth the issues or charges for which the appeal is being taken, the reasons in support of the appeal, or a statement of the relief sought. However, based on our review of the appeal materials filed by all Appellants, we believe that the appeal letters contain sufficient information for an understanding of the charges, supporting bases, and relief sought in each appeal. Accordingly, we will deny the local board's motions to dismiss and proceed with the merits of these appeals.

Merits of Case

As already stated above, §4-121 of the Education Article permits local boards to enter into agreements for a jointly attended school near the boundaries of both counties, free of charge to students and their families. Section 4-121 is discretionary as there is nothing in the law or in regulation which would require local boards to enter into such arrangements.

In November 2002, the Allegany County Board adopted a long term proposal for school closings, consolidations, and renovating or building a new high school in the western region with a projected completion date by the beginning of school year 2007-2008. At that time Beall and Westmar High Schools would be closed and students would be reassigned to the renovated or new high school.

In anticipation of these changes, the Garrett County Board amended its policy and procedure on jointly attended schools because it did not want its students in the Bloomington district to attend Westmar or Beall High School for part of their high school career and then be

⁸At the hearing before the local board, Mrs. Parsons indicated that, traveling by car and not bus, her house is approximately 15 minutes from Westmar and 40 minutes from Southern.

required to transfer to the new or renovated high school for the other part, especially since the new or renovated high school would not be as close to the Garrett County boundary line as Westmar High School now is. Both Appellant Carders' daughter who began high school this school year (2004-2005) and Appellant Parsons' son who enters high school in 2005-2006 would be affected by the Allegany Board's projected school closings if they attended Westmar High School.

The State Board has long held that “[a]bsent a claim of deprivation of equal educational opportunity or unconstitutional discrimination because of race or religion, there is no right or privilege to attend a particular school.” *Bernstein v. Board of Education of Prince George's County*, 245 Md. 464, 472 (1966). While Appellants raise a variety of concerns which they believe substantiate the bases for their requests, including travel time, travel distance, road safety, weather conditions, participation in athletics, and ties to the community in which they live, these concerns are not entirely different from the concerns faced by other families throughout Garrett County. Despite Appellants' reasons for desiring a different outcome which would allow their children to attend Westmar High School in Allegany County, we do not find that there is anything arbitrary, unreasonable, or illegal about the local board's decision.

CONCLUSION

For these reasons, we affirm the Garrett County Board's decisions denying Appellants' requests for exceptions for their children to attend Westmar High School free of charge.

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January 26, 2005