

JANET AND ROBERT BELL,

Appellant

v.

MONTGOMERY COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 05-02

### OPINION

This is an appeal of the denial of Appellants' request to allow their son, R.B., to transfer from South Lake Elementary School to Goshen Elementary School for the 2004-2005 school year based on proximity to the family home, preference for a child care center which serves Goshen students, and R.B.'s unhappiness at South Lake and at the on-site child care center at South Lake. The local board has submitted a motion for summary affirmance maintaining that Appellants' reasons do not constitute a hardship justifying a transfer, and that its decision is neither arbitrary, unreasonable, nor illegal. Appellants have submitted a response opposing the local board's motion.

### FACTUAL BACKGROUND

Appellants reside in the geographic attendance area for South Lake Elementary School in Montgomery County. Appellants submitted a Request for Change of School Assignment dated March 17, 2004, requesting that R.B. be permitted to transfer to Goshen Elementary. The attached information indicated the following reasons for the transfer request:

- (1) Prior to attending South Lake, R.B. had been enrolled in Shady Grove KinderCare Learning Center which provides transportation to Goshen, not South Lake. Appellants were happy with this facility which is convenient to their home and offices and conducive to their work schedules. Appellants also found the environment safe and secure, and liked the fact that the facility groups children together by age.
- (2) For the 2003-2004 school year, R.B. has been enrolled in the before and after care program at KidsCo., Inc. which is based on-site at South Lake. R.B. has been unhappy attending South Lake and the KidsCo program. Appellants have safety and security concerns regarding KidsCo including the fact that the program places children of all elementary age groups together, rather than grouping by age; that a child attending KidsCo hit R.B. in the mouth and caused injury to R.B.; and that the program is located in South Lake's all purpose room without a security system in place or locked doors.

- (3) R.B. would like to be with his friends who attend Goshen. Appellants' residence is remote from the South Lake and children in the neighborhood attend Goshen. R.B. does not have school friends to socialize with after school and on weekends. Appellants and their son have a social network among the families at Goshen.

Appellants' request was denied by the Field Office Supervisor on April 21, 2004, as not meeting guidelines for hardship.

On further appeal, the matter was referred to Elaine Lessenco, Hearing Officer for Montgomery County Public Schools. Ms. Lessenco reviewed the matter and issued a report stating the following:

As part of my review, I spoke with Ms. Renee Shaw, attendance secretary, South Lake Elementary School, and learned that there are three child-care centers that serve that location in addition to the on-site center where [R.B.] is currently enrolled. I shared this information with Mrs. Janet Bell, who stated that she was not interested in the names and telephone numbers for these centers because she is happy with KinderCare. She stated that she had enrolled Robert at the Kentlands KinderCare and was happy with their security and their program. She reported that she is unhappy with South Lake Elementary School for many reasons: she stated that the school is unsafe, because the parking lot is across the street; that her neighbors all go to private school; that her son's friends all go to Goshen Elementary School; that her son is unhappy at South Lake Elementary School; and that her unhappiness is reflected on her son. She stated that she had not discussed the issues with the counselor at South Lake Elementary School. In response to my question, she stated that R.B. was not having trouble academically. I explained that transfers were approved only in the case of documented hardship.

As part of her investigation Ms. Lessenco spoke with the principal and the assistant principal at South Lake who reported that R.B. had been observed in class, in the cafeteria, and on the playground and appeared to be "an active and interactive child who was participating with his peers." They indicated that he has friends and has not seemed unhappy.<sup>1</sup> Mrs. Lessenco further

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<sup>1</sup>In their response to the local board's motion, Appellants note that their son is unhappy at his current school and he wants to transfer to Goshen despite the fact that he does not appear outwardly unhappy during school hours. Appellants state that "[R.B.] is not going to confide in his current school teacher, counselor, principal, or vice-principal of his unhappiness" and that

noted that Mrs. Bell is a cancer survivor and has been undergoing stress since the denial of the transfer request. Larry A. Bowers, Chief Executive Officer acting as the superintendent's designee, adopted the hearing officer's recommendation that R.B. not be permitted to transfer from South Lake to Goshen.

Appellants further appealed the denial of the transfer request to the local board. In the letter of appeal, Mrs. Bell reiterated the Appellants' desire for R.B. to attend school with friends from the Shady Grove KinderCare network. Mrs. Bell further elaborated on her physical and mental health issues. She indicated that the Appellants' support network is made up of neighbors and families with children at both Shady Grove KinderCare and Goshen Elementary. *See* 6/30/04 letter to Cox from Appellants. In a unanimous decision, the local board affirmed the decision of the chief operating officer denying Appellants' request to transfer R.B. to Goshen.

Subsequent to the local board's review, Appellants requested reconsideration of their transfer request and provided a letter of support from Mrs. Bell's psychologist regarding Mrs. Bell's current mental health issues which include an anxiety disorder that has adversely affected Mrs. Bell since the denial of the transfer request. In a memorandum to the local board, the superintendent, Jerry D. Weast, stated:

The hearing officer who had reviewed the case spoke with [Mrs. Bell's psychologist], who reported that Mrs. Bell's anxiety disorder is pronounced and is compounded by her medical problems. She agreed that Mrs. Bell's perception of the situation may not match reality, but it is her perception that her son is unhappy at school and unsafe in his current daycare center.

While Dr. Weast indicated he was sympathetic to Mrs. Bell's emotional state, he recommended that the local board allow the denial of the transfer to stand. The local board maintained its earlier decision affirming the denial of the transfer request.

## 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

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"[he] is not going to act sad in his classroom, during lunch, or on the playground with the other children even if he is unhappy at school – he is going to act like any normal child would and keep his emotions to himself." Appellants' Response at 3.

(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 one level to another such as from middle school to high school; or (3) the student has met the criteria for and been admitted to a countywide program. Because R.B. does not qualify for an exemption, the only applicable consideration for a transfer in this case is a documented hardship.

Initially, Appellants’ reasons supporting the transfer request involved their desire to have R.B. attend school at a location closer to home where they have a preference for before and after school care and where he and his family have a social network. Regarding the fact that Goshen Elementary is closer in distance to Appellants’ home than is South Lake Elementary, Dr. Weast explained in his July 23, 2004 memorandum to the local board that there are non-contiguous boundaries for South Lake Elementary school that resulted in Appellants’ home school being more distant from their home than Goshen. In this regard, we note that the school boundaries have been in place for several years and cannot be challenged as part of this appeal. Rather, challenges to school boundaries must be made at the time of the school redistricting decision.

With regard to Appellants’ other concerns, under local board policy and regulation, there is no provision allowing a transfer based on child care reasons. Nor are daycare concerns a valid consideration for what constitutes a hardship under the policy and regulation. On numerous occasions the State Board has found that day care problems alone do not suffice to justify a student transfer. *See Jamei and Esmaili v. Board of Education of Montgomery County*, MSBE Opinion No. 01-31 (September 26, 2001); *Hall v. Board of Education of Montgomery County*, MSBE Opinion No. 00-49 (December 5, 2000); *Sullivan v. Board of Education of Montgomery County*, MSBE Opinion No. 00-22 (April 19, 2000); *Gutierrez and Finn v. Board of Education of Montgomery County*, MSBE Opinion No. 00-1 (February 1, 2000); *Gelber v. Board of Education of Montgomery County*, 7 Op. MSBE 616 (1997); *Marbach v. Board of Education of Montgomery County*, 6 Op. MSBE 351 (1992).

Additionally, the MCPS policy and regulation contain no provision allowing a transfer to a school based on a desire to remain with a peer group. The State Board has previously upheld cases in which the local board deemed the desire to remain with a particular peer group insufficient to support a student transfer. *See, e.g., Skardis v. Montgomery County Board of Education*, 7 Op. MSBE 1055 (1998)(desire to attend high school with middle school peer group not sufficient to approve transfer); *Diehl v. Montgomery County Board of Education*, 7 Op.

MSBE 589 (1997)(desire to join peer group not sufficient to warrant student transfer).

In addition to these initial bases for the appeal, Appellants also indicate that Mrs. Bell suffers from some mental health issues which Appellants claim have been exacerbated by the denial of their transfer request. This fact was mentioned prior to the local board's decision and was elaborated upon in Appellants' request for reconsideration. Despite the additional documentation submitted by Mrs. Bell's psychologist which accompanied the request for reconsideration, the local board declined to disturb its previous determination. While we are sympathetic to Mrs. Bell's psychological issues, based on the record in this case, we do not believe that the local board acted arbitrarily, unreasonably, or illegally in finding that there was insufficient evidence of hardship presented here to justify the granting of the transfer request.

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).

## CONCLUSION

Based on the record in this case, we do not find that the Montgomery County Board's decision upholding the transfer denial was arbitrary, unreasonable, or illegal. Accordingly, we affirm the denial of Appellants' transfer request.

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January 26, 2005