

EVA & STANLEY GOLDBERG,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 05-35

OPINION

This is an appeal of the denial of Appellants' request to allow their daughter to attend Quince Orchard High School for the 2005-2006 school year rather than attend her assigned school, Gaithersburg High School. The local board has submitted a Motion for Summary Affirmance maintaining that the reasons advanced by Appellants do not constitute a hardship and that its decision is not arbitrary, unreasonable or illegal. Appellants responded to the motion.

FACTUAL BACKGROUND

Appellants reside in the geographic attendance area for Gaithersburg High School. On February 14, 2005, Appellants submitted a request to transfer their daughter, L.G.,¹ from Gaithersburg High School to Quince Orchard High School. Appellants request was based on L.G.'s participation and interest in music and singing and her desire to attend a school that caters to that interest. In their request, Appellants described their daughter's interest highlighting her participation in musicals and chorus during her middle school years, including the fact that she was selected each year to perform in the Montgomery County Honors Chorus and that she takes private singing and piano lessons. Appellants indicated that while Quince Orchard offers a Show Choir, a Barbershop Quartet, a Sweet Adeline Quartet, and an AP music theory class, Gaithersburg lacks all of these opportunities. 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 of the transfer, emphasizing L.G.'s wish to participate in the music program and offerings at Quince Orchard. The matter was referred to hearing officer, Laurence E. Jeweler, for review. The hearing officer spoke with Appellants who reiterated their desire that their daughter be permitted to transfer to Quince Orchard based on the musical program offerings there. The hearing officer explained to the Appellants that transfers are based on compelling hardships and not on requests to partake in specific course offerings. He advised, however, that even if L.G. attended Gaithersburg, she could still take a music class at Quince Orchard High School if space were available. 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 Chief Executive Officer, acting as the superintendent's designee, adopted the

¹Throughout this Opinion we will refer to Appellants' daughter as L.G.

recommendation of the hearing officer and denied Appellants' request to transfer L.G. from Gaithersburg to Quince Orchard.

Appellants further appealed the denial of their transfer request to the local board. In a memorandum to the local board, the superintendent responded to the appeal stating, in part:

In their appeal to the Board of Education, Mr. and Mrs. Goldberg present no additional information; however, they state that their request was based on "program" rather than "course offerings." In addition, they state that an older daughter had been granted a transfer based on a requested drama program. It should be noted that the older daughter was granted a transfer in 1998, under a very different Board of Education transfer policy.² Although music course offerings may differ in the various high schools, all of our high schools offer a comprehensive music program. Mr. and Mrs. Goldberg have not presented any compelling hardship that would necessitate overruling the Board of Education transfer policy.

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.³ The local board indicated in its opinion that even if L.G. were to attend Quince Orchard, there is no guarantee that she would be selected for the Show Choir, Barbershop Quartet, or the Sweet Adeline Quartet, each of which has a finite number of openings. The local board further noted that although these particular singing groups do not exist at Gaithersburg, there are other opportunities open to students there which would allow L.G. to continue to pursue her musical interests and advised that Appellants contact the principal and guidance counselor at Gaithersburg to inquire about those options.

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

²The 1998 transfer policy included over-utilization or under-utilization, need for stability, and impact on diversity as reasons to approve a transfer request, none of which exists in the current student transfer policy. *See* Local board's Motion to Dismiss at 3.

³One local board member and the current student board member did not participate in the appeal. The former student board member participated in the local board's closed session deliberations concerning the appeal. He voted in favor of reversing the determination of the chief operating officer and signed the Order issued on June 27, 2005. However, his term of office expired before the adoption of the local board's Opinion.

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

Appellants primary reason for requesting the transfer is so that L.G. may attend a school that offers a variety of music and singing activities. *See 7/18/05 letter of appeal to State Board.* 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). Nor is there any right to attend any particular program. *See 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); *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); *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); *Williams v. Board of Education of Montgomery County*, 5 Op. MSBE 507 (1990) (denial of transfer to program offering advanced German); *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).

In light of these precedents, we find Appellants’ desire to have their daughter attend a particular school that they feel can better serve her interest in music and singing through a program or activity is not a recognized hardship sufficient to grant a transfer request. Although Appellants also raise the issue of school utilization maintaining that while both schools are over-enrolled, Quince Orchard is less over-enrolled than Gaithersburg, the utilization of the two facilities is irrelevant in this case. The MCPS policy does not permit transfers based on the home school being more over-enrolled than the requested school. The only basis for a transfer here is the presence of a documented hardship which is lacking in this case.

CONCLUSION

Therefore, based on the evidence presented, 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.⁴

Edward L. Root
President

Dunbar Brooks
Vice President

Lelia T. Allen

JoAnn T. Bell

J. Henry Butta

Beverly A. Cooper

Calvin D. Disney

Richard L. Goodall

Karabelle Pizzigati

Maria C. Torres-Queral

⁴Because we affirm the denial of the transfer request, there is no reason to address Appellants' request that L.G. be given the opportunity to audition for the singing groups at Quince Orchard to determine whether or not she would be selected as a member.

David F. Tufaro

October 26, 2005