

ORIT LOWY CHICHERIO,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 06-03

OPINION

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

FACTUAL BACKGROUND

Appellant resides in the geographic attendance area, or base area, for Paint Branch High School, but wants her daughter, T.C., to be reassigned to James Hubert Blake High School. Paint Branch, Blake and Springbrook High Schools make up the Northeast Consortium ("NEC"). Each offers a comprehensive high school curriculum and "signature program" designed to attract students with particular interests, diverse abilities and achievement levels in the northeast area of the county. The signature program provides a distinguishing feature for each high school by emphasizing a special focus or theme. Blake High School's signature program is fine arts and humanities; Paint Branch's is science and media. *See* Northeast Consortium Newsletter, August 2004, at 1-2, 4.

Each high school within the NEC serves specific residential areas that constitute its base area for student assignment purposes. Students residing within the NEC are given an opportunity to participate in a Preferred Choice process by which they rank their preferences for the NEC school they wish to attend. By local board action, only students who selected their base area school as their first or second choice are guaranteed assignment to that school. All other assignments are made based on individual student/parent preference, school enrollment and grade-level capacity for each school. *See* Hearing Officer Memorandum, dated 6/24/05.

On December 11, 2004, Appellant submitted the NEC Student Preferred Choice Form indicating Blake as T.C.'s first high school choice, Paint Branch as her second and Springbrook as her third. Appellant was notified by letter dated February 2, 2005 from the county Consortia Office that T.C. was assigned to Paint Branch, her base school and second choice. In a letter dated March 10, 2005, Appellant requested that T.C.'s choice application be resubmitted in

Round 2. T.C. was again assigned to Paint Branch.¹

Appellant appealed the assignment by letter to the county Consortia Office. Appellant explained how T.C.'s enthusiasm for the arts has grown since she participated in her middle school's humanities magnet program. Consequently, T.C. only wants to attend Blake because its signature program is the best to develop her skills and interests. In addition, Appellant stated that her family purchased a house and relocated right across the street from the Blake base area in order to reduce their commuting time and increase their quality of life, particularly since T.C.'s younger sister's school is close to Blake. The Consortia Office reviewed the appeal but denied the request on grounds that Blake is overcapacity.

Appellant next appealed to the Chief Operating Officer, as the superintendent's designee. In addition to her previous grounds for appeal, Appellant also explained that while T.C. was accepted into the Communication Arts Program (CAP) at Montgomery Blair High School, a non-NEC school, she wanted to attend Blake for its fine arts signature focus. Moreover, Appellant asserted that Paint Branch does not offer the level or selection of advanced courses T.C. needs to further her artistic, musical and journalistic interests. Hearing Officer, Alex Dunn, recommended that the appeal be denied, finding Appellant did not provide new information to document a hardship that justified overriding the Choice process. The Chief Operating Officer concurred with the hearing officer's findings and adopted the recommendation that T.C. attend Paint Branch, as assigned.

Appellant further appealed to the Montgomery County Board of Education. Appellant conceded that Blake is overcrowded, but asserted that Montgomery Blair's CAP program, where T.C. planned to attend until resolution of her appeal, is also overcrowded and permitting T.C. to attend Blake would open a spot at CAP for a student currently on the waiting list. *See* Letter to Local Board, dated July 21, 2005.

In his recommendation to the local Board, the superintendent concludes that the Appellant provided no new information in her appeal and asked the Board to uphold the decision of the Chief Operating Officer denying the Appellant's request:

Because of over capacity at the requested school, [T.C.] received her second choice, Paint Branch High School, in the Choice process. Paint Branch High School is [T.C.'s] base school. According to the Capital Improvements Program (CIP), James Hubert Blake High School's capacity is 1,750 with a 2005-2006

¹Throughout her appeals, Appellant has emphasized that T.C. was accepted into and planned to attend the Communication Arts Program (CAP) at Montgomery Blair High School instead of her base school, Paint Branch, while awaiting reassignment to Blake. However, Appellant explained that their relocation over the summer resulted in miscommunication with the schools, and that T.C. was enrolled in and has been in attendance at Paint Branch since the start of the 2005-2006 school year.

projected enrollment of 1,936. The school's current enrollment is 2,040. There were 89 Northeast Consortium students who did not receive their first choice. All 89 students had selected James Hubert Blake High School as their first choice.

Throughout the appeal process, unique circumstances were taken into account and assignments were changed for individual students when the hardship standard was met. In this case, a unique hardship that would override the lottery selection process has not been established.

The superintendent further stated that each of the NEC high schools is able to meet the academic needs of students, "particularly at the Grade 9 level at which the course of study is similar." In addition, T.C. will have another opportunity in the 10th grade to submit a change of choice and have her request to attend Blake reconsidered. *See Superintendent's Memorandum to Local Board, dated 8/5/05.*

In a majority opinion² dated September 13, 2005, the Montgomery County Board of Education affirmed the decision of the Chief Operating Officer, finding the basis for Appellant's appeal did not amount to a unique hardship. The board acknowledged T.C.'s interest in the arts and humanities and her desire to attend Blake where many of her friends attend, but found that was not sufficient reason to override the established process to reassign her to Blake. In addition, the board held that "[i]nsofar as facilitating their route to [T.C.'s] younger sister's school in Rockville, that is a matter more of convenience, than of hardship."

This appeal to the State Board followed. Appellant has reiterated the educational, logistical, social and practical reasons for T.C.'s reassignment. Appellant further argues that T.C.'s honors classes at Paint Branch are not academically challenging for T.C., and Blake has more clubs and activities than Paint Branch. *See Letter of Appeal to State Board, dated Oct. 5, 2005.*

STANDARD OF REVIEW

The standard of review in 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).*

²Three local board members did not participate in the appeal.

ANALYSIS

The Appellant requests the transfer so that T.C. may attend a school that offers a specialized focus on arts and humanities to further develop her skills and interests. See letter of appeal to State Board, dated Oct. 5, 2005. While Appellant's desire to enroll T.C. in a school that appears most aligned with her interests is understandable, 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 that the Appellant's desire to have her daughter attend a particular school that she feels can better serve her interest in arts and humanities is not a hardship sufficient to grant her reassignment request.

Additional reasons lend support to that conclusion. First, the local board's Preferred Choice process, including the right to appeal, was provided to the Appellant. By all indication, the local board has fully followed its own process and Appellant has not asserted otherwise.

In addition, the decision to deny T.C.'s request for reassignment was not limited to her alone. Eighty-nine other students in the NEC who also listed Blake as their first choice were similarly denied assignment on the basis of Blake's overcapacity. While the needs of the student/family must be balanced with those of the school system, in this case the Appellant's primary desire for T.C. to be able to nurture her arts and humanities interests through Blake's signature program is, no doubt, shared by many other students who selected Blake as their first choice but were likewise denied.

Further, Appellant's argument that hardship is subjective and by definition arbitrary if no clear guidelines have been provided to explain the reason for a decision is unsupported. The factors articulated by the Appellant as amounting to hardship for her family have been found by the State Board to be insufficient for a finding of hardship. As stated previously, even if the student or family finds the school of choice more challenging academically, there is no right to attend any particular program or school. See *supra* at 4 (citation list). Moreover, the desire to attend a school with one's peer group has been found to be insufficient to support a finding of hardship. See, e.g., *Bell v. Montgomery County Board of Education*, MSBE Op. No. 05-02 (Jan. 26, 2005); *Iglesias v. Montgomery County Board of Education*, MSBE Op. No. 02-50 (Oct. 30, 2002); *Skardis v. Montgomery County Board of Education*, 7 Op. MSBE 1055 (1998).

Finally, the State Board has held that a family's concern about the distance a student lives from the school does not amount to a hardship. *See Brande v. Montgomery County Board of Education*, MSBE Op. No. 05-05 (Feb. 23, 2005) (Appellants' desire to place daughter in a school nearer to home so she can have a shorter bus ride and more time with her friends is not a recognized hardship); *Wuu & Liu v. Montgomery County Board of Education*, MSBE Op. No. 04-40 (Oct. 27, 2004) (family's desire for son to be in school closer to home so he could participate in extracurricular activities without relying on transportation from his parents did not amount to hardship).

CONCLUSION

Therefore, based on the evidence presented, we conclude that the decision of the local board was not arbitrary, unreasonable or illegal. Accordingly, we affirm the denial of Appellants' transfer request.

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March 1, 2006