

R. O.

Appellant

v.

MONTGOMERY COUNTY BOARD  
OF EDUCATION

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 07-3

### OPINION

#### INTRODUCTION

This is an appeal of the denial of Appellant's request to allow her son to attend Damascus High School for the 2006-2007 school year rather than attend his assigned school, Clarksburg High School. The Montgomery County Board of Education 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.

#### FACTUAL BACKGROUND

Appellant resides in what is now the geographic attendance area for Clarksburg High School. Clarksburg was built to relieve severe overcrowding at three adjacent high schools, Damascus High School, Seneca Valley High School, and Watkins Mill High School. In order to populate the recently constructed high school, on November 17, 2005, the local board adopted a resolution establishing attendance boundaries for Clarksburg which was to open with grades 9 – 11 in order to avoid moving students entering their senior year. The redistricting resulted in over 1000 students being redistricted from their old schools to Clarksburg.<sup>1</sup> Appellant's son was one of those students.

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<sup>1</sup>This led to an increased number of transfer requests from individuals wishing to remain at Damascus, Seneca Valley, or Watkins Mill. In accordance with MCPS policy, transfer requests were granted for students with older siblings still attending the former school. *See* MCPS Regulation JEE-RA at IV.B.1. Per local board resolution, transfer requests were also granted to rising 11<sup>th</sup> grade students in the International Baccalaureate program at Watkins Mill or the Cambridge program at Seneca Valley. *See* 11/17/05 Local board Meeting Minutes.

On February 1, 2006, Appellant submitted a request to transfer her son, R.O.,<sup>2</sup> from Clarksburg High School to Damascus High School, where he was currently attending 10th grade. Appellant attached a letter explaining the reasons for the request. Appellant explained that R.O. has grown academically and developed “strong goals and a structured path that will lead to a successful graduation and scholarship offers” which she attributes to the staff of educators and administrators at Damascus. She stated that R.O. is in the Automotive Technology Program at Damascus and that he plans to use his automotive skills to supplement his college education. She also stated that R.O. has been a member of the Damascus football team where he is a starting player. *See Attachment to Request for Change of School Assignment.*

An expedited process and timeline were implemented in order to review Change of School Assignment requests related to Clarksburg High School. Thus, Appellants’ request was sent directly to Larry Bowers, Montgomery County Public Schools (MCPS) chief operating officer, acting as the superintendent’s designee. To assure consistency in the decisions, Mr. Bowers transferred this case, as well as all other transfer cases pertaining to Clarksburg, to a single hearing officer, Dennis S. Leighty, for review.

After conducting an investigation, the hearing officer found a lack of unique hardship to justify the transfer under school system policy. He stated the following:

This request is based on a preference for attending one school over another. Given the above facts of the request, the student’s eligibility to enroll in the Automotive Technology Program at Damascus High School while enrolled at Clarksburg High School, the availability of opportunities to participate in varsity sports at Clarksburg High School, opportunities for scholarship offers and the absence of a unique hardship, I am recommending that this request be denied.

Hearing Office Report at p.2. The Chief Executive Officer adopted the recommendation of the hearing officer and denied Appellant’s request to transfer R.O. from Clarksburg to Damascus.

Appellant further appealed the denial of her transfer request to the local board. In her letter, Appellant stated that although R.O. will be permitted to take the Automotive Technology Program courses at Damascus while attending Clarksburg, it will be “impossible” for him to meet the time constraints of the commute.

In a memorandum to the local board, the Superintendent elaborated on the Clarksburg transfer requests. He noted that 64 rising 11<sup>th</sup> grade students applied for a student transfer out of Clarksburg. Thirty six of those requests were approved – 5 to continue in the Cambridge program, 6 to continue in the International Baccalaureate Program, and 25 for documented

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<sup>2</sup>Throughout this opinion we will refer to Appellant’s son as R.O.

hardship. The other 27 requests were denied due to lack of a documented hardship and 1 request was withdrawn. Superintendent's Memorandum at p.1. He also stated that in April, the local board overturned 3 appeals and upheld the denial of 4 appeals, and that there were 7 additional appeals pending before the local board as of May 1.

In his memorandum, the Superintendent stated as follows, in part:

A desire to compete does not present a compelling reason to approve a change of school assignment; nor does the desire to take a specific class qualify as a hardship. Clarksburg High School will field a football team that [R.O.] will be eligible to try out for. This school also will offer numerous electives that can serve as a program completer. Changing schools during high school presents many challenges for students; however, opportunities also present themselves under these circumstances. Changing schools will not in itself keep [R.O.] from graduating on time. [R.O.] will have every opportunity at Clarksburg High School to pursue his athletic and career goals. In addition, it is possible that he will be able to return to Damascus High School to continue his Automotive Trades class.

The Superintendent recommended that the decision of his designee be upheld. Superintendent's Memorandum at pp. 1 – 2.

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. In finding that the reasons advanced by the Appellant did not amount to a hardship, the local board stated,

The reasons advanced for [R.O.] to receive a transfer to remain at Damascus do not amount to a hardship. Clarksburg will have a football team, for which [R.O.] can try out, with a reasonable chance of making it. Unavailability of a single course is not a sufficient reason to grant a transfer. Should [R.O.] so desire, he may register to travel to Damascus to take the Automotive Technology class while remaining enrolled at Clarksburg for the remainder of his courses. Alternatively, he may register for other electives as will many of his new classmates attending Clarksburg. [R.O.] will find a wide range of course offerings that can satisfy his interests, inasmuch as Clarksburg is a comprehensive high school.

Local Board Decision at p. 2. The local board also stated that when boundary decisions are implemented due to a new school opening, students are separated from friends with whom they attended school in the past, but that difficult boundary choices must be made in order to balance

enrollment. Local Board Decision at p.1.

This appeal to the State Board followed.

### STANDARD OF REVIEW

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. COMAR 13A.01.05.05; *See, e.g., Breads v. Board of Education of Montgomery County*, 7 Op. MSBE 507 (1997).

### ANALYSIS

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, except for boundary change; or (3) the student has met the criteria for and been admitted to a countywide program. Also exempted from the hardship requirement for the 2006-2007 school year were rising 11<sup>th</sup> grade students in the International Baccalaureate program at Watkins Mill or the Cambridge program at Seneca Valley who wished to remain at their current schools. Because R.O. does not qualify for any of these exemptions, the only applicable consideration for a transfer in this case is a documented hardship.

In her appeal to the State Board, Appellant sets forth her preference for her son to attend Damascus because of the great strides he has made there academically and emotionally. She attributes this progress to the Damascus school community. She also explains that although R.O. may be permitted to take the automotive technology courses at Damascus while attending Clarksburg, he would have to miss several periods of class per day in order to do so.<sup>3</sup> *See* Appeal.

The State Board has noted that, at the local level, 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 for local boards to consider 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). We find that the local board weighed the impacts here.

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<sup>3</sup>The course meets for two consecutive class periods per day.

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); *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); See *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). Thus, while disappointing to Appellant, her desire to have R.O. remain at Damascus is not a valid basis for finding a hardship here.

Appellant also suggests in her appeal letter that her transfer request was not granted because her son is African-American. She states that “[o]f all the students from Damascus High School that (sic) were granted a change of school assignment, I don’t believe I counted one African-American student” and “[t]his is truly [an] unfair practice.” Appellant has not presented any evidence to support her claim. Nevertheless, we note that a student’s race is not printed on the Change of School Assignment Form. Nor is there any indication in the record whether any African-American students other than Appellant’s son requested to remain at Damascus.

In light of the above precedents, we find that Appellant’s desire to have her son attend a particular school that she feels can better serve his interests through a program, course or activity is not a recognized hardship sufficient to grant a transfer request. 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 conclude that the decision of the local board was not arbitrary, unreasonable or illegal. Accordingly, we affirm the denial of Appellant’s transfer request.



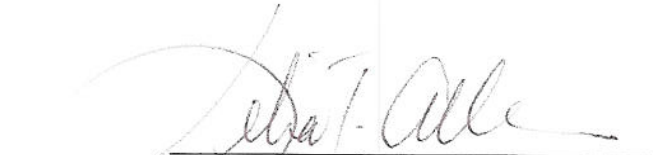
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Edward L. Root  
President





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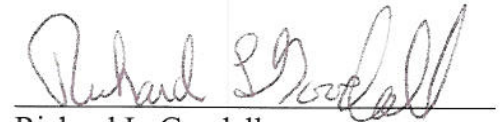
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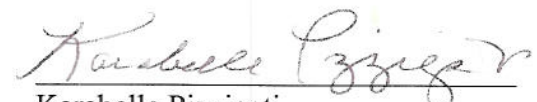
  
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January 30, 2007