

M. B.

Appellant

v.

MONTGOMERY COUNTY BOARD
OF EDUCATION

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 07-11

OPINION

INTRODUCTION

This is an appeal of the denial of Appellant's request to allow her son to attend James Hubert Blake High School for the 2006-2007 school year rather than attend his assigned school, Springbrook High School. The local board has submitted a Motion for Summary Affirmance maintaining that reasons advanced by Appellant do not constitute a hardship and that its decision is not arbitrary, unreasonable or illegal. Appellant has submitted a reply to the local board's motion.

FACTUAL BACKGROUND

Appellant resides in the geographic attendance area served by three high schools, James Hubert Blake (Blake), Paint Branch, and Springbrook. Those schools are affiliated in a consortium to serve the attendance and educational interests of all the students populating the northeast area of Montgomery County. Each school offers a comprehensive high school curriculum and a "signature program" which emphasizes a special focus or theme. Blake's signature program is fine arts and humanities; Paint Branch's is science and media; and Springbrook's is information technology in a global society and international baccalaureate. (*See* Northeast Consortium Newsletter, Autumn 2004).

Students residing within the Northeast Consortium ("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. Computer assisted school assignments are made based on individual student/parent preference, school enrollment, Free and Reduced-price Meal Service (FARMS), gender, and grade-level capacity for each school. Each high school within the NEC serves specific residential areas that constitute its base area for student assignment purposes. Students are guaranteed assignment to their base area school if they select it as their first choice, or as their second choice in the event that their first choice school is not available. (*See* Hearing Officer Report, 6/8/06).

On December 10, 2005, Appellant submitted the NEC Student Preferred Choice Form indicating Blake as J.B.'s¹ first choice, Springbrook as his second and Paint Branch as his third. By letter dated February 2, 2006, the Division of Consortia Choice and Application Program Services ("Consortia Office") notified Appellant that J. B. was assigned to Springbrook, his base area school and second choice.

Because J.B. did not receive his first choice school in round 1 of the student assignment process, he participated in round 2. In Appellant's round 2 letter of appeal, she stated that J.B.'s "interests are in the arts, and the emphasis of the signature program at Blake HS best suits his strengths, interests and talents." (Letter to Consortia Office, 3/7/06). The Consortia Office reviewed the appeal but denied the request. (Letter to Appellant, 4/20/06).

Appellant next appealed to Mr. Larry Hansch, Director of the Consortia Office. She reiterated J.B.'s interest in the arts. (Letter to Hansch, 4/26/06). By letter dated May 9, 2006, Mr. Hansch denied the appeal based on overcapacity at Blake. He also reminded the family that students within the consortium have the opportunity to choose again the following year by participating in the "Change of Choice" process. *Id.*

Appellant appealed further to Mr. Larry Bowers, the Chief Operating Officer, acting as the superintendent's designee. Mr. Bowers assigned hearing officer Alex Dunn to review the case. Mr. Dunn did not find a unique hardship that would justify overriding the selection process. He noted in his report that Springbrook offers a "full range of arts and humanities courses." (Hearing Officer Report). Mr. Bowers concurred with the hearing officer's findings and adopted the recommendation that J.B. attend Springbrook as assigned. (Letter to Appellant, 6/12/06).

Appellant appealed to the local board. In her letter of appeal, Appellant discussed J.B.'s demonstrated ability in the arts and humanities. She mentioned J.B.'s first place prize in an art competition, for which his painting was on exhibit at the Montgomery County Executive Offices and is now on exhibit at the Black Rock Center for the Arts in Germantown. She noted that J.B.'s English teacher recommended him for GT/Honors English. She also stated that J.B. is actively taking guitar lessons, learning photography, and has made several amateur videos. Appellant maintains that the depth and variety of art classes and the synergy of artistic people working together does not exist at Springbrook. (Letter to Haughey, 6/30/06).

In a memorandum to the local board, the Superintendent recommended that the Appellant's request be denied based on the lack of a unique hardship. He stated:

Because the requested school is over capacity, [J.B.] received his second choice, Springbrook High School, in the choice process. Springbrook High School is [J.B.'s] base-area school. According

¹Throughout this memorandum we will refer to Appellant's son as J.B.

to the Capital Improvements Program (CIP), James Hubert Blake High School's capacity is 1,716 with a 2006-2007 projected enrollment of 1,972. The school's current enrollment is 1,980. There were 200 Northeast Consortium students who did not receive their first choice of James Hubert Blake High School.

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.

(Memorandum to Local Board). The Superintendent further stated that each of the NEC high schools is able to meet the academic needs of students, and that J.B. will have another opportunity next year to submit a request for change of choice and have his request to attend Blake reconsidered. (*Id.*).

In a majority opinion issued August 24, 2006, the local board affirmed the decision of the Chief Operating Officer, finding the basis for Appellant's appeal did not amount to a unique hardship. (Local Board Decision).

This appeal to the State Board followed.

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

ANALYSIS

Desire to Attend Blake for Special Programs and Courses

Appellant requested the assignments to Blake so that J.B. may attend a school that offers a specialized focus on arts and humanities to further develop his skills and interest. (*See Appeal to Local Board*, 6/30/06). While Appellant's desire to enroll J.B. in a school that appears most aligned with his 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 ability and welfare).

Most recently, in *S.P. v. Montgomery County Board of Education*, MSBE Op. No. 07-04, the State Board considered an appeal involving the denial of a request to reassign a student into Blake from Springbrook. In that case, the appellant cited her desire to have her son attend Blake because of his strong interest and talent in music and the performing arts that are a part of Blake's signature program. The facts in that case showed that Blake was already overcapacity, and that many other NEC students were denied placement at Blake due to overcrowding. In affirming the local board's decision, the State Board continued to recognize over enrollment as a valid basis for denying transfer and reassignment requests. *See also, Henderson v. Board of Education of Montgomery County*, 7 Op. MSBE 1348 (1998) (affirming local board's denial of request for first choice assignment); *Longobardo v. Montgomery County Board of Education*, MSBE Op. No. 99-3 (affirming local board's denial of request to attend school in NEC other than one student was assigned to attend); *Warran v. Montgomery County Board of Education*, MSBE Op. No. 00-25 (affirming local board's denial of request to attend Blake).

In light of these precedents, we find that the Appellant's desire to have her son attend a particular school that she feels can better serve her interests in arts and humanities is not a hardship sufficient to grant her reassignment request.

New Argument on Appeal to State Board

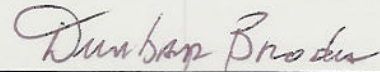
In her reply to the local board's Motion for Summary Affirmance, Appellant presents a new argument concerning the local board's denial of her assignment request. She maintains that the local board is giving students who receive FARMS preferential treatment in their high school selections while her son does not receive that same opportunity. The State Board has consistently declined to address issues that have not been reviewed initially by the local board. *See e.g., McDaniel v. Montgomery County Board of Education*, MSBE Op. No. 03-22 (additional complaints not a part of appeal before local board were not appropriate matters for consideration before the State Board); *Craven v. Board of Education of Montgomery County*, 7 Op. MSBE 970 (1997)(failure to challenge suspension before local board constituted waiver); *Hart v. Board of Education of St. Mary's County*, 7 Op. MSBE 740 (1997)(failure to raise issue of age discrimination below constituted waiver on appeal). Therefore, this Board will not consider the new argument asserted by Appellant because this issue was not first presented to the local board.

CONCLUSION

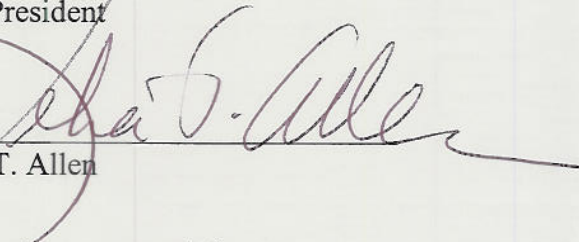
Based on the evidence presented in this case, we find that the decision of the local board is not arbitrary, unreasonable or illegal. Accordingly, we affirm the Montgomery County Board of Education's denial of Appellant's transfer request.



Edward L. Root
President



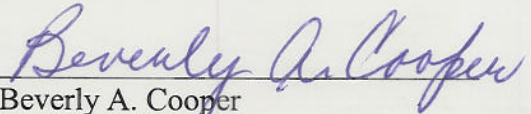
Dunbar Brooks
Vice President



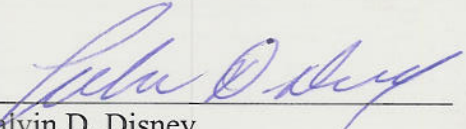
Lelia T. Allen



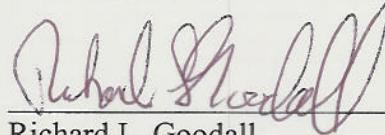
J. Henry Butta



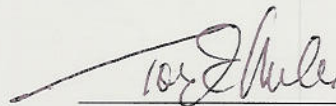
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March 27, 2007