

K. W.

Appellant

v.

MONTGOMERY COUNTY BOARD
OF EDUCATION

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 07-20

OPINION

INTRODUCTION

This is an appeal of the denial of Appellants' request to allow their son to attend Sherwood High School for the 2006-2007 school year rather than attend his assigned school, James Hubert Blake High School ("Blake"). 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.

FACTUAL BACKGROUND

Appellants reside in the geographic attendance area that was redistricted to the Northeast Consortium from Sherwood High School ("Sherwood").¹ The Northeast Consortium is comprised of three high schools, Blake, Paint Branch, and Springbrook, which 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.

¹Appellants reside in an area slated for attendance at Sherwood Elementary School and Farquhar Middle School. At the high school level, students from the area split with some assigned to Sherwood High School and some assigned to the Northeast Consortium.

At the time of the initial transfer request, Appellants' son, K.W. was a rising ninth grade student assigned to Blake, his base area school. K.W. is an accomplished guitar player who plays several different styles of guitar. K.W. has taken advanced guitar study and also teaches guitar. (Attachment to Request for Change of School Assignment).

In March 2006, Appellants submitted a "Request for Change of School Assignment" form asking for a transfer from Blake to Sherwood for the 2006-2007 school year. They requested the transfer claiming that Blake cannot meet K.W.'s needs as an advanced guitar player. They stated that K.W. has already learned the music taught in the tenth through twelfth grade guitar courses at Blake, and that "after speaking with the music director there appears to be no possibility for an incoming ninth grader to be in [the] music program playing guitar" given the limited guitarist slots in the program. Appellants stated that Sherwood offers jazz lab and music theory to ninth graders and also has many guitarist slots available in its music program. (Attachment to Request for Change of School Assignment form). On March 31, 2006, Appellants' transfer request was denied by the field office supervisor who noted that the request did not meet the local guidelines for granting a transfer.

Appellants challenged the field office supervisor's decision, emphasizing that Sherwood is better suited to K.W.'s needs. They stated that the students with whom K.W. has been playing in jazz and band groups will be attending Sherwood. They stated again the unavailability of guitar spaces for ninth graders in the music program at Blake, and the limited spaces in grades ten through twelve, while Sherwood provides opportunity throughout all grades. Appellants also stated that K.W.'s doctor "thinks [Blake] would be good for him as well." (Letter to COO, April 19, 2006).

The Chief Operating Officer, Larry A. Bowers, acting as the Superintendent's designee, assigned the matter to a hearing officer, Laurence E. Jeweler, to further investigate the transfer request. Mr. Jeweler spoke with the mother, who again stated her concerns that Blake cannot provide the advanced guitar program that K.W. requires and is lacking the specific guitar playing peer group with whom K.W. identifies. Mr. Jeweler also spoke with K.W.'s physician who stated that K.W. does not have a medical condition that would require his transfer, but that he would be happier at Blake. The resource counselor at Blake advised Mr. Jeweler that K.W. can sign up for the guitar class at Blake. The principal advised that the guitar class at Blake could be individualized for K.W. as an advanced guitar player. The principal also advised that the music teacher would allow K.W. to audition for the jazz band in the ninth grade.

Finding no compelling hardship, the hearing officer recommended that the transfer request be denied. He noted that K.W. could take a class at Sherwood if space were available, while still attending Blake, but that transportation would be the responsibility of the parents. Mr. Bowers adopted the recommendation of the hearing officer and denied Appellants' request to transfer K.W. from Blake to Sherwood.

Appellants further appealed the denial of their transfer request to the local board, reiterating their position. They added that if some exception were made for their son to perform in the jazz band in the ninth grade, it would be a social disaster for him given the likelihood of animosity over taking a coveted spot for which other students have been waiting. In addition, K.W. would like to play other music besides jazz. Appellants also mentioned that K.W.'s grades were now suffering due to his unhappiness over the prospect of attending Blake.

In a memorandum to the local board, the superintendent recommended that the local board uphold Mr. Bowers' decision due to a lack of unique hardship which would warrant overriding the transfer policy. He stated that the staff at Blake is willing to accommodate K.W.'s expertise in guitar to the greatest extent possible. (Memorandum to Local Board).

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.² The local board stated as follows:

The circumstances described by the appellant do not amount to a hardship that would necessitate a transfer under the Board's policy. The Board has no doubt that [K.W.'s] musical interests can be addressed at Blake, which is the school system's high school with an emphasis on the performing arts. Notwithstanding [K.W.'s] preference to attend Sherwood, no evidence has been submitted that Blake cannot accommodate [K.W.'s] needs. [K.W.'s] concern as to whether others will look askance at his participation in various groups as a ninth grader is speculative and premature at best. His interest in the Rock and Roll Revival, while understandable, evolves around an extracurricular activity; it does not amount to a hardship justifying a transfer.

(Local Board Decision, pp. 1-2).

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

²Two local board members 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 affirming the determination of the chief operating officer and signed the Order issued on June 26, 2006. However, his term of office expired before the adoption of the local board's Opinion which was issued on July 18, 2006.

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

Merits of Transfer Request

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. Because K.W. does not qualify for any of these exemptions, the only applicable consideration for a transfer in this case is a documented hardship.

Appellants requested the transfer to Sherwood so that K.W. may attend a school that offers challenging musical course work beginning in the ninth grade and that provides multiple opportunities for guitarists to participate in the music program throughout the high school years. (*See Appeal to Local Board*, 6/30/06). While Appellants’ desire to enroll K.W. 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 abilities and welfare).

Additionally, although Appellants would like their son to remain with a peer group that shares his same musical interest in guitar, the 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 light of these precedents, we find that the Appellants' request to have their son attend a particular school that they feel can better serve his interests in guitar is not a hardship sufficient to grant the reassignment request.

New Argument on Appeal to State Board

In their appeal to the State Board, Appellants maintain that their son is being "constructively denied" the "full benefits of a public education" based on alleged negative interactions between him and his music teacher. Appellants state the following:

Inappropriate interactions between [K.W.] and his music teacher at Blake High School concerning outlets for his talent have resulted in the student being derided and belittled, and have cast doubts on his social acceptability at that institution if he were to enroll there. Citing his parent's involvement in their son's activities, the music teacher (Mr. Damron) indicated that [K.W.] will never be accepted in the music department at Blake and that he was "already on a bad start with me (Mr. Damron)." This all occurred before [K.W.] even arrived at the school for his first encounter with the school on June 14, 2006.

(Letter of Appeal to State Board, p.1). Appellants also claim that as a result of this interaction, K.W. has abandoned his life's passion of becoming a musician rather than risk further exposure to and confrontations with Mr. Damron. They also state that he has withdrawn himself from social activities and has suffered declining grades. (*Id.* at p.2). Appellants argue that the local board made its decision based on an incomplete record because it did not have this information before it at the time of its decision. (*Id.*). They maintain that this new situation rises to the level of a compelling hardship. (*Id.*).

Despite the fact that the alleged interaction between K.W. and his music teacher happened several days prior to the local board's decision in this case, Appellants failed to present the matter to the local board by way of supplementing the record with the new information. 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 (June 25, 2003)(additional complaints not a part of appeal before local board was 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, the State Board will not consider the new argument asserted by Appellants 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 denial of Appellants' transfer request.

Edward L. Root

Edward L. Root
President

Dunbar Brooks

Dunbar Brooks
Vice President

Lelia T. Allen

Lelia T. Allen

J. Henry Butta

J. Henry Butta

Beverly A. Cooper

Beverly A. Cooper

absent

Calvin D. Disney

Richard L. Goodall

Richard L. Goodall

Tonya Miles

Tonya Miles

Karabelle Pizzigati
Karabelle Pizzigati

absent
Maria C. Torres-Queral

David F. Tufaro
David F. Tufaro

April 24, 2007