

PAMELA M.,

Appellant

v.

MONTGOMERY COUNTY BOARD OF  
EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 08-04

## OPINION

### INTRODUCTION

Appellants, parents of E.K. and J.K., have appealed the denial of their request to transfer their sons from Takoma Park Middle School (Takoma Park) to Westland Middle School (Westland). The Board of Education of Montgomery County (Local Board) filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. Appellants have submitted an opposition to the Local Board's Motion.

### FACTUAL BACKGROUND

Appellants live in the attendance area of Takoma Park Middle School. They want their three children to attend Westland. On April 20, 2007, their daughter L.K. was granted a transfer to attend Westland, rather than Takoma Park, beginning with the 2007-2008 school year. The transfer was granted at Appellants' request because L.K. was in an elementary language immersion program and was given the option of articulating to the middle school that continues the immersion experience. Westland is such a school.

In anticipation that L.K.'s transfer would be granted, on or about March 28, 2007, Appellants submitted a "Request for Change of School Assignment" form asking that their sons E.K. and J.K. be permitted to attend their last year of middle school at Westland rather than Takoma Park. On the form, Appellants checked the box for the hardship exemption. They also checked the exemption for "older sibling attends requested school," inserting "younger" in place of "older." Appellants stated that they were aware that transfers had been granted in the past for older siblings of students in the Spanish Immersion program at Westland. They also stated that if the transfers were not granted, when the children are all in high school it is likely that they will be in three different high schools because Takoma Park and Westland follow different

articulation patterns.<sup>1</sup> Appellants do not want to wait and request a transfer at that time.

The Field Officer Supervisor denied the requests because they did not meet the guidelines for hardship. On further appeal, the Chief Operating Officer also denied the requests, finding them based on convenience rather than compelling hardship. (Motion, Exhibit 7).

Appellants appealed to the Local Board. On June 19, 2007, the Superintendent recommended that the Local Board deny the transfer request. The Superintendent concluded that the circumstances did not rise to the level of hardship sufficient to override the presumption that students attend their school of assignment. (Motion, Exhibit 9).

The Local Board voted unanimously to uphold the Superintendent's decision. (Motion, Exhibit 10). They stated that there is no local policy of granting transfers to older siblings to a school where a younger sibling attends, therefore the transfer request must be supported by a finding of unique hardship to be approved. The Local Board found no such hardship present here. As to future hardship, the Local Board noted that it is speculative that the family will have children in three different high schools three years from now. Even if that were the case, the Local Board found that that situation alone does not constitute a hardship as other families have multiple children in different schools. This appeal followed.

#### STANDARD OF REVIEW

The State Board has determined that it will not substitute its judgment for that of the local boards of education in matters of local policy and will not disturb such local board decisions unless they are shown to be arbitrary, capricious or illegal. COMAR 13A.01.05.05.

#### LEGAL ANALYSIS

Pursuant to Local Board policy, students are assigned to the schools in the areas in which they live. In order to transfer to a different school, there must be evidence of hardship. Some transfer requests are exempt from the hardship criterion. Families need not demonstrate documented, unique hardship to obtain approval under the following circumstances:

- where there is an older sibling already attending the requested school and who will continue to be enrolled at the requested school for the next school year;

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<sup>1</sup>Students from Westland Middle are assigned to Bethesda Chevy Chase High School (B-CC). Students from Takoma Park Middle are assigned to one of five high schools comprising the Downcounty Consortium (DCC). The high schools are Montgomery Blair, Albert Einstein, John F. Kennedy, Northwood, and Wheaton.

- when the student is already out of a feeder pattern on an approved transfer and wishes to continue from middle school to high school; or
- when a family moves within the county and prefers to remain in the original school until completion of that school year.

In addition, there are several programs for which admission is governed by lottery or application and which, therefore, are exempt from the hardship criterion. (Motion, Exhibit 2, JEE-RA).

Appellants would like their three children to attend Westland so that they can all be in the same middle school for one year, and then articulate to the same high school where they would also be together for one year. Because none of the above exemptions apply, Appellants must demonstrate a unique hardship in order to justify the transfer request.

We agree with the Local Board that there is not sufficient evidence here of the types of hardship that would warrant a transfer. Having multiple children in different schools is a common problem. Problems that are common to large numbers of families do not constitute unique hardship.

The State Board has long held that there is no right to attend a particular school or a particular class. *See Bernstein v. Board of Education of Prince George's County*, 245 Md. 464 (1967); *Chacon v. Montgomery County Board of Education*, Opinions of MSBE, No. 01-39 (December 5, 2001); *Williams v. Board of Education of Montgomery County* 5 Opinions of MSBE 507 (1990); *Goldberg v. Montgomery County Board of Education*, Opinions of MSBE, No. 05-35 (October 26, 2005).

On appeal to the State Board, for the first time Appellants claim that the sibling rule, which guarantees that younger siblings will be assigned to the same school attended by their older siblings, is unconstitutional. (Motion, Exhibit 2, JEE-RA (IV.B.1)). The State Board has held that arguments not presented to the local board are deemed waived and will not be considered on appeal. *See, e.g. M.B. v. Montgomery County Board of Education*, MSBE Op. No. 07-11 (March 27, 2007); *McDaniel v. Montgomery County Board of Education*, MSBE Op. No. 93022; *Craven v. Board of Education of Montgomery County*, 7 Op. MSBE 970 (1997). Although Appellants argue that the State Board should consider the issue because they were not represented by counsel before the Local Board, the rule on waiver applies to all cases, including those with *pro se* Appellants. Thus, Appellants have waived the issue and cannot raise it for the first time on appeal to the State Board.

CONCLUSION

For all these reasons, we affirm the decision of the Local Board because it is not arbitrary, reasonable or illegal.



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Dunbar Brooks  
President



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Beverly A. Cooper  
Vice President



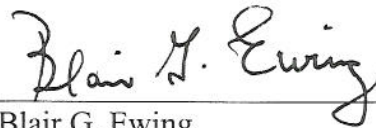
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Lelia T. Allen



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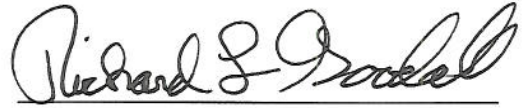
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Blair G. Ewing



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Mary Kay Finan



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Rosa M. Garcia



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David F. Tufaro

January 30, 2008