

MATTHEW W.,
Appellant

v.

MONTGOMERY COUNTY BOARD OF
EDUCATION,
Appellee

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION
Opinion No. 08-07

OPINION

INTRODUCTION

Appellants challenge the decision of the Montgomery County Board of Education (Local Board) denying their request to transfer their son from the Gifted and Talented/Learning Disabilities (GT/LD) Program at Montgomery Village Middle School (Montgomery Village) to the GT/LD Program at North Bethesda Middle School (North Bethesda). The Local Board filed a Motion to Dismiss for lack of jurisdiction. Alternatively, it filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal.

FACTUAL BACKGROUND

Appellants' son began the sixth grade at Montgomery Village at the beginning of the 2006-2007 school year. He is a student receiving special education services through the GT/LD Program there. He previously attended Thurgood Marshall Elementary School where he received GT/LD services.

On or about December 21, 2006, Appellants submitted a "Request for Change of School Assignment" form asking that their son, M.W., be permitted to transfer to the GT/LD program at North Bethesda at the start of the third quarter. Appellants stated that he is not adapting well to the new environment at Montgomery Village, as demonstrated by his increased inattentiveness to school, and his decline in academic performance and skill acquisition. They expressed their concern that continued attendance at Montgomery Village might escalate M.W.'s mental health issues. (Motion, Exhibits 1 & 2). Attached to the appeal was a letter from M.W.'s psychiatrist stating that M.W. has demonstrated signs of emerging depression since he began attending Montgomery Village. (Motion, Exhibit 3). Also attached was a letter from M.W.'s speech language pathologist who had noticed a recent decrease in M.W.'s decoding ability and motivation to read. (Motion, Exhibit 4).

Ellen L. Schaefer, Director of the Division of School-Based Special Education Services, denied the transfer request. She advised Appellants that their concerns related to the delivery of special education services to their son, stating as follows:

It appears that the concerns you raised are a special education/delivery and development of the Individualized Educational Program (IEP) issue and not an issue for a transfer request. The new information you included in your change of school placement application should be reviewed and discussed by the Montgomery Village Middle School IEP team. Since the documentation and rationale do not fall within the guidelines of a transfer, I am denying that request and redirecting you to the Montgomery Village Middle School IEP team.

(Motion, Exhibit 5).

Appellants appealed to the Chief Operating Officer (COO). They stated that the issue is not their son's IEP as written since his placement is at a GT/LD program, but rather that the GT/LD program at Montgomery Village "is not able to provide the small, structured, multisensory and interactive GT classes required for [M.W.] to be engaged and emotionally supported." Appellants detailed the following reasons why they believe that North Bethesda is a more suitable placement for M.W.: smaller GT/LD class size; the availability of GT reading; a more advanced reading program; participation in the National History Day program and Greek Day; a field trip to the Smithsonian Natural History Museum; flexibility in completing assignments; availability of assistive technology; a well organized website; and the posting of both assignments and grades on Edline. (Motion, Exhibit 6).

Attached to the appeal was another letter from M.W.'s psychiatrist stating that there are signs of reemerging depression in M.W. since the fall of 2006 when he began attending Montgomery Village.¹ She stated that M.W. needs an interactive, hands on setting to prevent further deterioration and the return of severe depression with suicidal ideation. She stated that, based on the parents' information about the GT/LD programs at Montgomery Village and North Bethesda, North Bethesda's program seemed to be a more appropriate placement for M.W. (Motion, Exhibit 7).

¹M.W. had been previously diagnosed with severe depression beginning in October 2003. Through treatment with antidepressant medication and psychotherapy over the course of several years, his condition improved. M.W. was also diagnosed with Attention Deficit Disorder, Executive Function Difficulties, Reading Disorder, and Disorder of Written Language and Speech Articulation Disorder. (Motion, Exhibit 7).

Dr. Carey M. Wright, Associate Superintendent in the Office of Special Education and Student Services, reviewed the appeal. In recommending that Appellants' request be denied, Dr. Wright stated the following:

Ms. Hollis Frick, special education resource teacher, Montgomery Village Middle School, and other staff members noted in telephone conversations with Ms. Paulina Masick, special education instructional specialist, Department of Special Education Services, on January 31, 2007, and February 1, 2007, that [M.W.] has made a smooth transition to middle school and has no behavioral problems. Ms. Tracey Trupp, [M.W.'s] teacher and case manager, indicated that [M.W.] was making good academic progress as evidenced by his report card grades, as well as progress on his IEP goals. The Montgomery Village Middle School IEP team met for a periodic review at the parents' request on January 19, 2007, to discuss [M.W.'s] progress and the GT/LD Program. At the meeting, Ms. Marissa Stemple, instructional specialist, GT/LD Program, confirmed that the GT/LD Program at Montgomery Village Middle School was comparable to the one at North Bethesda Middle School. In addition, Ms. Trupp offered to adjust assignments and incorporate more hands-on activities for [M.W.]. Also, at the meeting Ms. Jessica Layne, school psychologist, Montgomery Village Middle School, shared that she had reviewed [M.W.'s] records, consulted with Dr. Teresa Kurtz, [M.W.'s] psychiatrist, and offered [M.W.] direct services to monitor his emotional state. The family declined the services.²

(Motion, Exhibit 8). The COO adopted the recommendation and denied Appellants' request to transfer M.W. (Motion, Exhibit 10).

Appellants appealed to the local board. In the appeal, they reiterated their concerns about M.W.'s mental health and questioned why the recommendation of M.W.'s psychiatrist was not being followed. They also stated that because they both work in Washington, D.C., a transfer to North Bethesda would be more convenient in the event of an emergency. It would also be more convenient because M.W.'s speech pathologist is located a few miles from North Bethesda and he sees her on a weekly basis. Appellants further expressed concern about some bullying incidents. (Motion, Exhibit 11).

²Appellants declined the services because M.W. already had a relationship with a private psychiatrist. (Motion, Exhibit 12).

On March 30, 2007, the Superintendent responded to the appeal. He noted that the IEP team met in January and incorporated more multisensory activities into M.W.'s classes, adjusted his assignments, offered direct psychological services, and added goals related to participation onto the IEP. M.W.'s case manager confirmed that all of the goals, as well as supplementary aids and services, are being implemented on a regular basis. The Superintendent noted that there were a few bullying incidents early in the school year that were addressed and have not recurred since that time. He also stated that the two GT/LD programs are comparable, although they may differ in specific daily activities. He highlighted that M.W. is more engaged in all classroom activities, is talkative, seems to be in good spirits, and that he is currently attaining A's and B's in all classes except for mathematics, where he attained 76%. Finally, he noted that M.W.'s psychiatrist reported that she sees M.W. intermittently, that he has no treatment plan with her, and that she has not prescribed medication for depression. He recommended that the Local Board deny the transfer request based on his conclusion that the circumstances did not rise to the level of hardship sufficient to overcome the restrictions on student transfers. (Motion, Exhibit 12).

The Local Board voted unanimously to uphold the Superintendent's decision finding that the request did not rise to the level of a documented hardship. (Motion, Exhibit 13). This appeal ensued.

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).

LEGAL ANALYSIS

In their appeal to the State Board, Appellants maintain that their transfer request is justified based on compelling recommendations from their son's psychiatrist and speech pathologist. They argue that despite the IEP changes and additional supports, M.W. has not shown improvement. They state that their son's "IEP is not being followed and all his accommodations are not being provided" and that "North Bethesda has a more comprehensive and appropriate program for [M.W.'s] disabilities." They attached a psychological evaluation from April/May 2007, that states that M.W. "clearly is not receiving the intensity and/or quality of supports necessary to remediate his learning challenges." (Appeal).

The Local Board maintains that the appeal should be dismissed because an appeal to the State Board is not the appropriate forum to address a special education dispute of this nature. We concur. The concerns expressed by the Appellants all pertain to their belief that the GT/LD Program at North Bethesda can better meet the learning challenges and special needs of their

child. Thus, this appeal challenges to the appropriateness of M.W.'s special education placement at Montgomery Village. Such concerns should be addressed through the special education process. See *Brado v. Montgomery County Board of Education*, MSBE Opinion No. 06-23; *Frye v. Montgomery County Board of Education*, MSBE Opinion No. 01-30.

There are three specific processes in place for resolving special education disputes regarding the provision of a Free Appropriate Public Education (FAPE). There is a due process hearing conducted at the Office of Administrative Hearings, the results of which are appealable directly to court. 20 U.S.C. §1415(f); COMAR 13A.05.01.15C. In conjunction with or in lieu of the due process hearing, there is a mediation process. 20 U.S.C. §1415(e); COMAR 13A.05.01.15B. There is also a complaint investigation process in place at the Maryland State Department of Education. COMAR 13A.05.01.15A.

Prior to this appeal to the State Board, Appellants initiated the dispute resolution mechanism available to them to resolve their special education concerns. On May 11, 2007, they filed a request for a special education due process hearing seeking "a change in placement to the GT/LD program at North Bethesda Middle School." (Motion, Exhibit 14). They withdrew the request, however, at a May 23, 2007 resolution meeting to enable the IEP team to consider their newly obtained psychological evaluation, although they specifically reserved the right to re-file a due process request at a later time. (Motion, Exhibit 16).

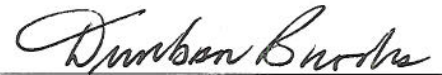
To the extent that Appellants seek a transfer to North Bethesda on some other basis, we do not believe that there is sufficient evidence of the types of hardship that would warrant a transfer here. Proximity to work and convenience of a school are not valid reasons for granting a transfer. Problems that are common to large numbers of families do not constitute unique hardship. (Motion, Exhibit 20, JEE.C.1). In addition, the bullying incidents were resolved and have not reoccurred.

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).

CONCLUSION

Because the State Board is not the appropriate forum to address Appellants' special education concerns, we dismiss that portion of Appellants' transfer request that pertains to the

special education issues. We affirm the Local Board's decision denying the transfer request for lack of hardship with regard to any other claims.



Dunbar Brooks
President



Beverly A. Cooper
Vice President



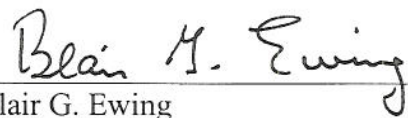
Lelia T. Allen



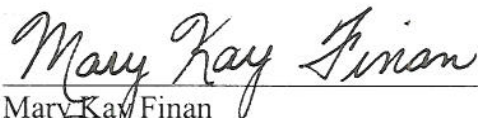
J. Henry Butta



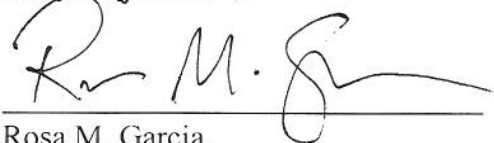
Charlene M. Dukes



Blair G. Ewing



Mary Kay Finan



Rosa M. Garcia



Richard L. Goodall

Karabelle Pizzigati
Karabelle Pizzigati

David F. Tufaro
David F. Tufaro

January 30, 2008