

MICHAEL & ANA PINEDA,

Appellants

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 03-12

OPINION

This is an appeal of the decision of the Montgomery County Board of Education denying Appellants request for the transfers of their two children. The local board has submitted a Motion to Dismiss, or, in the Alternative, Motion for Summary Affirmance maintaining that its decision was consistent with existing policies and practices and was neither arbitrary, unreasonable, nor illegal. Although requested to do so, Appellants have not filed a reply.

FACTUAL BACKGROUND

Appellants are the parents of Manuel and Jonathan who live in Wheaton, Maryland. Both Manuel and Jonathan are students within Montgomery County Public Schools (“MCPS”). The geographic area in which the family resides is within the attendance area of Wheaton Woods. Wheaton Woods is one of ten Title I schools in Montgomery County identified by the Maryland State Department of Education whose students must be provided the option to enroll in a different school because of the school’s failure to demonstrate two years of sustained improvement in overall student performance in accordance with the *No Child Left Behind Act*. In Montgomery County, alternative schools were selected for each of the ten identified schools based upon transportation time and distance, utilization, and the performance of each school based upon the State School Performance Index. Belmont Elementary School was designated as the alternative school for Wheaton Woods.

On or about March 25, 2002, Appellants submitted two “Request[s] for Change of School Assignment” (one for each child) asking that their children be permitted to transfer not to Belmont, the alternative school for Wheaton Woods under the Title I option, but to Wayside Elementary in Potomac, Maryland. The requests were denied because they did not fit the hardship exception that is the only basis for accepting new transfers that are not Title I transfers. (*See Request for Change of School Assignment*).

Appellants appealed the denials to the Deputy Superintendent. (Letter of Appeal, May 14, 2002). He assigned the matter to a hearing officer, Alex Dunn, who spoke with Appellants, the principal of Wheaton Woods, Manuel’s classroom teacher, and Manuel’s school counselor. Mr. Pineda stated that he decided on Wayside after looking at test scores on the internet. (Motion to Dismiss, October 23, 2002). Mr. Dunn filed a report with the Deputy Superintendent of

Schools, Dr. Williams, in which he recommended against approval of the transfer request due to absence of hardship. (Memorandum of Recommendation, June 13, 2002). Dr. Williams adopted that recommendation. (Letter of Response, June 14, 2002).

Appellants appealed the denial of the transfer requests to the local board, expressing their desire that their children attend Wayside. (Letter of Appeal, July 1, 2002). The Superintendent replied that MCPS had made transfers to Belmont Elementary available under the *No Child Left Behind Act* and that Appellants had chosen not to exercise that option. He noted that Belmont was a successful school based upon the School Performance Index and was underutilized (86%), while Wayside Elementary was over-utilized (103%). Because Appellants presented no evidence of hardship, the Superintendent recommended against granting the transfers. (Letter of Response, July 18, 2002).

On August 26, 2002, the local board issued a written opinion in which it denied the requests for transfers for lack of documented hardship. (Local Board's Opinion, August 26, 2002). This appeal to the State Board followed.

ANALYSIS

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. *See, e.g., Breads v. Board of Education of Montgomery County*, 7 Op. MSBE 507 (1997). The State Board has noted that 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 of consideration 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).

The *No Child Left Behind Act* requires that parents of children in certain low performing schools be given the option of transferring their children to better performing schools.¹ Montgomery County implemented this requirement by designating an alternative school for each Title I underperforming school. The alternative school had to have a School Performance Index at or above State level. Transportation time and distance and school utilization were also taken into account. Belmont's School Performance Index was 84.5, above the State average of 64.6 and its utilization rate was 86%. However, Appellants chose not to exercise the option of transferring their children to Belmont. Accordingly, their request must be analyzed in light of MCPS' regular transfer policy.

¹See Federal regulations at 34 CFR § 200.44.

Montgomery County Public Schools Regulation JEE-RA - Transfer of Students sets forth the criteria for consideration of a student transfer. Under that regulation, only documented hardship situations will be considered for a change in school assignment, unless the transfer request is based on one of the following: (1) an older sibling attending the requested school at the same time; (2) the student is ready to move to the next education level, such as elementary to middle school or middle school to high school, except for a boundary change; or (3) the student has met the criteria for and been admitted to a countywide program. Because Appellants do not base their request upon any of the three exceptions, the only issue is whether Appellants have a documented hardship.

Although Appellants prefer that their sons attend Wayside based upon the school's performance, this reason has not been deemed sufficient in other cases to support a student transfer. *See, e.g., Marie McNamara v. Montgomery County Board of Education*, Op. No. 02-53 (April 24, 2002)(test scores, among other things, insufficient to justify transfer); *Slater v. Board of Education of Montgomery County*, 6 Op. MSBE 365, 371-72 (1992)(upholding denial of transfer to school to better serve the child).

The Court of Appeals has held that there is no right to attend a particular school. *See Bernstein v. Board of Education of Prince George's County*, 245 Md. 464, 472 (1967); *cf. 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); *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); *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); *Williams v. Board of Education of Montgomery County*, 5 Op. MSBE 507 (1990) (denial of transfer to program offering advanced German); *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). A transfer request must be supported by evidence that one of the criteria justifying a transfer has been met. Based upon our review of the record in this case, we find that Appellants have not provided documentation of a hardship in order to justify a transfer.

CONCLUSION

For all of these reasons, we do not find that the local board acted arbitrarily, unreasonably or illegally in this matter. Accordingly, we affirm the decision of the Board of Education of Montgomery County denying Appellants' transfer requests.

Marilyn D. Maulsby
President

JoAnn T. Bell

Philip S. Benzil

Dunbar Brooks

Clarence A. Hawkins

Walter S. Levin, Esquire

Karabelle Pizzigati

Edward L. Root

Walter Sondheim, Jr.

John L. Wisthoff

Reginald L. Dunn participated in the deliberations on this appeal and voted to affirm the local board decision, but passed away prior to the issuance of this opinion.

February 26, 2003