

MR. & MRS. DANNY J.,

Appellant

v.

MONTGOMERY COUNTY BOARD
OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

Opinion No. 08-47

OPINION

INTRODUCTION

This is an appeal of the denial of Appellants' request to allow their daughter to attend Sherwood High School for the 2008-2009 school year rather than her assigned school, James Hubert Blake High School. The Montgomery County Board of Education (local board) has submitted a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. Appellants have responded to this motion.

FACTUAL BACKGROUND

Appellants' daughter, A.J., is assigned to James Hubert Blake High School (Blake). Blake is one of three high schools in the Northeast Consortium in Montgomery County, Blake, Paint Branch and Springbrook High Schools. The school system assigns students in the Northeast Consortium to a school by means of a preferred choice method which takes into consideration the student's preference for a particular school. (Local Board's Motion).

On February 1, 2008, Appellants submitted a Request for Change of School Assignment form for A.J. for the 2008-2009 school year. Appellants requested that A.J. be permitted to attend Sherwood High School (Sherwood). Sherwood is not one of the schools in the Northeast Consortium. At the time of this request, A.J. was an 8th grader at Farquhar Middle School.

As the basis for the request, Appellants checked the box for an exemption based on the fact that A.J.'s older sister was currently in the 12th grade at Sherwood. (Request for Change of School Assignment Form). They also attached a brief letter stating that A.J. had a lifelong dream of becoming a chef, and that Sherwood offered a Pathways Pro Start Program centered on students with an interest in the culinary arts. (2/1/08 Letter).

On March 18, 2008, the field officer denied the request for change of assignment because it did not meet the school system guidelines for a transfer. Although Appellants claimed the sibling exemption as one of the bases for the request, A.J.'s sister was due to graduate from

Sherwood in June 2008, prior to the time A.J. was to begin high school. Under school system policy, siblings must attend the school at the same time under the transfer for the sibling exemption to apply. Policy JEE-RA(IV)(B)(1).

Appellants appealed the field officer's decision to Larry Bowers, the Chief Operating Officer (COO). They stated that the reason for their request was that Sherwood is the closest school that offers the Pathways Pro Start Program and that Blake does not offer a comparable program. Appellants live one mile from Sherwood and were willing to provide their own transportation for A.J. They highlighted A.J.'s excellence in school and her desire to become a chef. They claimed that they were informed that this particular program is new and in need of dedicated students like A.J. (Letter of Appeal to COO).

The matter was assigned to hearing officer, Laurence E. Jeweler, for review. In an April 9, 2008 memorandum to Mr. Bowers, Mr. Jeweler recommended that the request be denied because the desire to access a particular course, academy, or signature program is not considered a unique hardship for transfer purposes. Mr. Jeweler stated that he explained other options to the Appellants. One option would be for A.J. to request to be assigned to Paint Branch for the 2009-2010 school year where there is a culinary program. Like Blake, Paint Branch is a Northeast Consortium high school for which transportation would be provided. Another option would be for A.J. to enroll in the two year restaurant management program at Thomas Edison High School of Technology (Thomas Edison) which is geared towards 11th and 12th graders. (Jeweler Memorandum). Mr. Bowers adopted Mr. Jeweler's recommendation and denied Appellants' transfer request. (Bowers' Letter, 4/11/07).

Appellants appealed to the local board. In a May 14, 2008 memorandum, the local superintendent recommended that the local board uphold Mr. Bowers' decision to deny the Appellants' request. He stated that although the Appellants have a history with Sherwood, the desire to access a particular program is not considered a unique hardship that would override the local board's transfer policy. Further, he reminded the Appellants of the program at Paint Branch, to which A.J. can request a transfer as a Northeast Consortium student, and the program at Thomas Edison, which is available to 11th and 12th graders, regardless of which high school they attend. (Weast Letter).

The Appellants responded to the superintendent's memorandum. They alleged that, as Jews of Iraqi descent, their children had been victims of anti-Semitism in the Montgomery County Public School System. They also questioned why two of A.J.'s friends, one an African American and one of Hispanic descent, were permitted to transfer, suggesting that the denial of their transfer request was reverse discrimination. (Letters to Local Board).

In a June 10, 2008 decision, the local board affirmed the COO's denial of Appellants' transfer request. The local board stated as follows:

After consideration of all the materials submitted, the Board agrees

with the chief operating officer that the materials submitted by the parents do not document a unique hardship; rather, the materials support a finding that the request for a change of school assignment is based on a preference for one school over another. The Board has previously held that the desire to attend a particular program is not a hardship warranting transfer. Moreover, the Board is confident that [A.J.] has opportunities available to her to support her career choice. Thus, [Appellants'] request does not rise to the level of a unique hardship as required by Board policy.

(Local Board Decision at 2).

Appellants appealed the local board's decision to the State Board on June 23, 2008. The local board filed a Motion for Summary Affirmance on July 14. Appellants responded to the local board's motion on August 4 and the local board submitted a surreply a few days later. Appellants submitted a response to the surreply on August 8, 2008.

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

ANALYSIS

Northeast Consortium Background

As mentioned above, Blake is one of three high schools comprising the Northeast Consortium. The Northeast Consortium includes the geographic attendance areas that were formerly served by Springbrook and Paint Branch High Schools, and some areas formerly served by Sherwood High School. Blake was first opened for the 1998-99 school year to relieve overcrowding at those schools. This resulted in some students from Sherwood's traditional middle school feeder, Farquhar, attending Sherwood while others attended schools in the Northeast Consortium – Blake, Paint Branch or Springbrook. Some families whose children had traditionally attended Sherwood High School, but were reassigned to the Northeast Consortium, were not happy with the local board's decision regarding changes to the Sherwood attendance area. Montgomery County residents challenged the redistricting decision. The State Board affirmed the local board's redistricting decision in *Glixon and Coyle v. Board of Educ. of Montgomery County*, 7 Ops. MSBE 764 (1997).

Over the years, families have sought to have their children attend Sherwood through the school system's student transfer policy. Some of these cases have been reviewed on appeal by the State Board. See *Upchurch v. Montgomery County Bd. of Educ.*, MSBE Op. No. 99-7 (1999)

(denial of request to transfer from Blake to Sherwood affirmed); *K.W. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 07-20 (2007)(denial of request to transfer from Blake to Sherwood affirmed).

Lack of Documented Hardship

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) students who attend middle school on a change of school assignment request who are ready to move from middle school to high school; or (3) the student has met the criteria for and been admitted to a countywide program. Because A.J. does not qualify for any of those exemptions, the only applicable consideration for a transfer in this case is a documented hardship. JEE-RA(A & B).

Appellants requested the transfer to Sherwood so that A.J. may attend a school that offers a program centered on students with an interest in the culinary arts because A.J. is interested in becoming a chef. (Appellants’ Letter, 2/1/08). The local board has determined that a transfer request based on participation in a particular course or a program of study does not satisfy the hardship standard set forth in the student transfer policy. That determination is supported by a long line of cases.

While the Appellants’ desire to enroll A.J. in a school aligned with her 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 George’s County*, 245 Md. 464, 472 (1967). Nor is there any right to attend any particular program. *See Marshall v. Bd. of Educ. of Howard County*, 7 Ops. MSBE 596 (1997)(no entitlement to attend four-year communications program offered at Mount Hebron); *Dennis v. Bd. of Educ. of Montgomery County*, 7 Ops. MSBE 953 (1998)(desire to participate in particular courses does not constitute unique hardship sufficient to override utilization concerns); *Sklar v. Bd. of Educ. of Montgomery County*, 5 Ops. MSBE 443 (1989)(denial of request to attend school offering four years of Latin, note taking/study skills course, and piano.); *Williams v. Bd. of Educ. of Montgomery County*, 5 Op. MSBE 507 (1990)(denial of transfer to program offering advanced German); *Slater v. Bd. of Educ. of Montgomery County*, 6 Ops. MSBE 365 (1992)(denial of transfer to school alleged to better serve student’s abilities and welfare). The local board’s denial of Appellants’ transfer request is consistent with the above precedents.

In support of the transfer request, Appellants maintain that they live close to Sherwood and are willing to provide transportation for A.J. The State Board has held that proximity to a school is not sufficient to justify the hardship exemption. *Chicherio v. Montgomery County Bd. of Educ.*, MSBE Op. No. 06-3; *Brandt v. Montgomery County Bd. of Educ.*, MSBE Op. No. 05-5; *Wuu & Liu v. Montgomery County Bd. of Educ.*, MSBE Op. No. 04-40; *Longobardo v. Montgomery County Bd. of Educ.*, MSBE Op. No. 99-3; *Upchurch v. Montgomery County Bd. of Educ.*, MSBE Op. No. 99-7.

Appellants further maintain that A.J. should be permitted to attend Sherwood because her middle school, Farquhar, serves as a feeder school for Sherwood. As mentioned above, Farquhar feeds into Sherwood High School and schools in the Northeast Consortium. Whether a student attends Sherwood or a school in the Northeast Consortium is based on the student's geographic attendance area. The fact that some students who attend Farquhar are assigned to Sherwood based on their residence, and some students are assigned to Consortium schools, is not a basis for a transfer. Many middle schools feed into multiple high schools. Students are assigned to the school serving their geographic attendance area. JEE-RA(II).

Appellants also state that they want A.J. to attend Sherwood based on their family history with the school and the many generations of relatives connected to it, including A.J.'s three older siblings. (*Id.*). We find that a desire to attend a school based on a family connection fails to satisfy the hardship standard.

Discrimination Claim

Appellants argue that the local board's decision has resulted in reverse discrimination against A.J. because two of A.J.'s friends, one an African American and one of Hispanic origin, were granted transfers while A.J. was not. Mary Dempsey, acting Director of the Appeals/Transfer Team, addressed the circumstances of the transfers of the two individuals. Ms. Dempsey has advised that both of these students were enrolled at Farquhar Middle School as transfer students. Pursuant to the student transfer policy, a student attending a middle school as transfer student is given the option of matriculating to the high school in the feeder pattern for that middle school or to the high school serving the student's residential area. JEE-RA(IV)(D)(c). A transfer student who wants to remain in the feeder pattern for the middle school must submit a change of school assignment form for high school. The school system automatically grants the change of school assignment request because the student is exempted from demonstrating hardship under the student transfer policy. JEE-RA(IV)(B)(2).

With regard to the two students at issue, as transfer students at Farquhar, they had the option of finishing their secondary education at Sherwood, which is one of Farquhar's feeder schools. They chose to attend Sherwood rather than the high school in their geographic attendance zone. (Dempsey Affidavit). The school system automatically granted the request pursuant to the student transfer policy. A.J. did not have the option of seeking a student transfer on the same basis as her friends given that A.J. attended Farquhar based on her attendance area, not as a transfer student. Rather, A.J. had to submit a change of school assignment request and demonstrate hardship under the transfer policy. Thus, the fact that these two students were granted transfers to Sherwood fails to provide support for Appellants' discrimination argument.

Appellants make other various allegations that the denial of their transfer request was based on discrimination because they are Jewish and of Iraqi descent. They make these assertions based on prior incidents involving their family and the school system, which they also attribute to discrimination.

The State Board has consistently held that an Appellant must support allegations of

illegality with factual evidence. See *Ewing v. Cecil County Board of Education*, 6 Op. MSBE 818 (1995); *Stepper v. Board of Education of Anne Arundel County*, 7 Op. MSBE 324 (1996). As the State Board articulated in *Ewing*:

In order to defeat a motion the opposing party must demonstrate that there is a genuine dispute as to a material fact 'by producing factual assertions, under oath, based on personal knowledge.' Unsupported statements or conclusions are insufficient.


Ewing v. Cecil County Board of Education, 6 Op. MSBE at 820; See also *Hurl v. Howard County Board of Education*, 6 MSBE Op. 602 (1993) (mere allegation of discrimination without any supporting factual specifics is insufficient to sustain a claim). Appellants' claims of discrimination are mere allegations. We therefore find that Appellants have not met their burden regarding the claim of discrimination here.

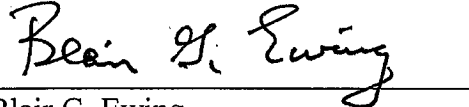
Emotional and Physical Distress

Appellants claim that A.J. suffers from emotional and physical distress as a result of the transfer request process and her desire to attend Sherwood. This issue was not presented to or considered by the local board. The State Board has consistently declined to address issues that have not been reviewed initially by the local board. See *Craven v. Bd. of Educ. of Montgomery County*, 7 Op. MSBE 870 (1997) (failure to challenge suspension before local board constituted waiver); *Hart v. Bd. of Educ. of St. Mary's County*, 7 Op. MSBE 740 (1997) (failure to raise issue of age discrimination below constituted waiver on appeal). Because the issue was not first reviewed by the local board, the State Board cannot review it on appeal.

CONCLUSION

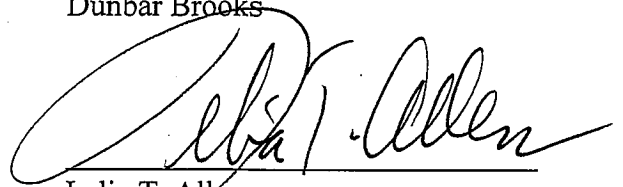
Based on our review of the record, we find that Appellants have failed to present any evidence that the local board's decision is arbitrary, unreasonable, or illegal. Accordingly, we affirm the local board's decision to deny Appellants' transfer request.


James H. DeGraffenreidt, Jr.
President

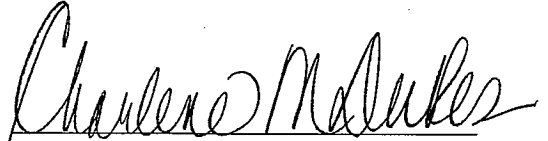

Blair G. Ewing
Vice President

Absent

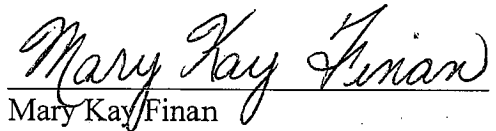
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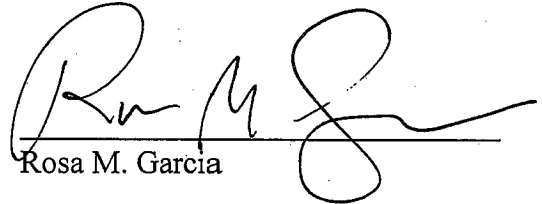
Lelia T. Allen



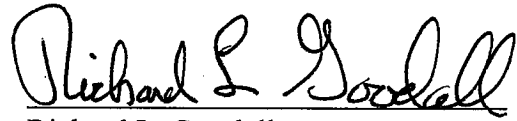
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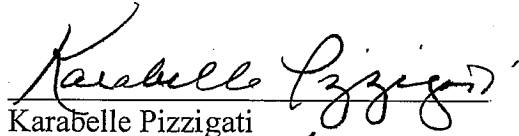
Mary Kay Finan



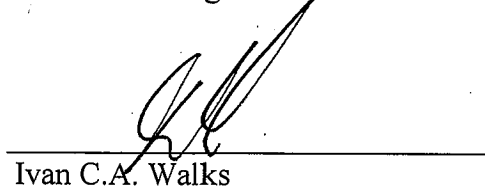
Rosa M. Garcia



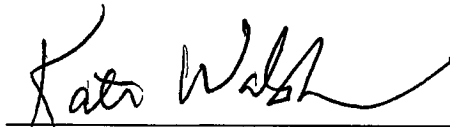
Richard L. Goodall



Karabelle Pizzigati



Ivan C.A. Walks



Kate Walsh

September 23, 2008