

SHERRY WARREN,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 03-41

OPINION

This is an appeal of the decision of the Montgomery County Board of Education (“MCPS”) denying Appellant’s request for the transfer of her three children from Bel Pre and Strathmore Elementary Schools to Stonegate Elementary School. The local board has filed a Motion for Summary Affirmance maintaining that its finding of no documented hardship was consistent with existing policies and practices, was neither arbitrary, unreasonable, nor illegal, and there are no genuine issues of material fact. Appellant has submitted an opposition to the Motion.

FACTUAL BACKGROUND

Appellant is the parent of first grade twins, DeShawna and D’Marco, and a fourth grade daughter, Dawnya. The family lives in Silver Spring. The geographic area in which the family resides is within the attendance area of Bel Pre (K-2) and Strathmore (3-5) Elementary Schools. MCPS refers to such schools as “paired schools”, as opposed to a regular K-5 elementary school. For the 2002-2003 school year Dawnya attended Strathmore; DeShawna and D’Marco attended kindergarten at Bel Pre.

On January 30, 2003, Appellant submitted a “Request for Change of School Assignment,” asking that her three children be permitted to transfer to Stonegate because a hardship is presented with her children located in two different schools. (Request for Change of School Assignment). On March 26, 2003, the request was denied because it did not meet the MCPS hardship exception for approving transfers.

On April 15, 2003 Appellant appealed the denial of transfer to Larry Bowers, Chief Operating Officer for MCPS, noting that “[t]he hardship is due to the children being in separate elementary schools and not having resources available to pick them up during my work schedule”; and “Stonegate...is a neighboring school that I pass on my daily commute, but more importantly we have extended resources near the school to aide in picking up my children in times of need, especially with my commute and business schedule being as is.” (Letter of Appeal, April 15, 2003).

The matter was referred to the hearing officer, Elaine B. Lessenco, who recommended that the transfer be denied because she found absence of a unique hardship. (Memorandum of Recommendation, May 16, 2003). Ms. Lessenco spoke with the Principal of Stonegate Elementary School and found that Stonegate had been paired with three other schools for the Federal Title I School Choice Option, creating concern about the numbers of students who may be enrolling at Stonegate. Ms. Lessenco also reported that Dawnyae was doing well at Strathmore and that Strathmore expects to have 23 students in each of its Grade 4 classes for the 2003-2004 school year. In addition, Bel Pre Elementary School reported that D'Marco and DeShawna were doing well and that they expect to have 15-17 students in their grade one classes for the 2003-2004 school year. In the absence of a unique hardship, the hearing officer recommended that denial of the transfer be upheld. (Memorandum of Recommendation, May 16, 2003). Mr. Bowers adopted the recommendation by letter dated May 20, 2003.

By letter dated June 18, 2003, Ms. Warren appealed Mr. Bowers' decision to the local board, stating that it is necessary for her three children to "attend a K-5 elementary school for consistency, continuity and to have a stable permanent primary learning environment during their primary educational years." (Letter of Appeal, June 18, 2003). Dr. Jerry Weast, the Superintendent of MCPS, replied to the appeal by memorandum dated June 26, 2003, stating that the Appellant provided no information that would constitute a unique hardship; Bel Pre and Strathmore Elementary Schools are paired schools and are considered as one unit; the schools have many joint programs including PTA meetings, the spring fair and other PTA sponsored activities; and there is at least one day-care center that serves both schools and remains open until 6:30 p.m. but that Ms. Warren has chosen to have her children in two different day-care centers. He also stated that Ms. Warren appealed to the local board last year for Dawnyae and her appeal was denied based upon lack of hardship.¹ (Superintendent Memorandum, June 26, 2003).

On July 29, 2002, the local board issued a unanimous written opinion in which it denied the request for transfer for lack of documented hardship. Among other things, the board noted:

...it is no different than a family having one student in attendance at an elementary school and another one in attendance at a middle school. It would undoubtedly be convenient to have them attending classes in the same building. However, the absence of this opportunity does not arise to the level of a hardship, warranting a transfer..

The local board also noted that the desire to volunteer at more than one school site also does not constitute a hardship. (Local Board's Opinion, July 29, 2002, pp. 1-2). This appeal to the State Board followed.

¹The State Board affirmed the denial of the transfer request in *Sherry Warren v. Montgomery County Board of Education*, Op. No. 02-53 (October 30, 2002).

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 that 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).

Montgomery County Public Schools Change of School Assignment Information Booklet for 2003-2004 lists the criteria for consideration of a student transfer:

- (A) Documented unique hardship and
- (B) Exemptions: (1) an older sibling attending the requested school at the same time; (2) continuation of a feeder pattern when the student is ready to move to the next education level, such as elementary to middle school or middle school to high school; (3) exempt programs; (4) family relocation within Montgomery County.

Appellant does not allege any of the criterion in the exemptions, therefore the only issue is whether Appellant has a documented unique hardship.

Appellant requested the transfers of her three children based on: (1) her children attending paired K-2 and 3-5 schools rather than a K-5 school; and (2) Stonegate is closer to Appellant's home and on her way to work so as to provide easier access to her children because of her job constraints.

Although Appellant prefers that her children attend Stonegate for the reasons stated above, similar reasons have not been deemed sufficient in other cases to support a student transfer. *See, e.g., Raul Chacon v. Board of Education of Montgomery County*, Op. No. 01-39 (December 5, 2001)(desire to attend a school where Latin is offered insufficient to justify transfer); *Eddie and Dorothy Keels v. Board of Education of Howard County*, Op. No. 01-12 (March 28, 2001)(desire to attend a technology magnet school not sufficient to approve transfer), *Alverton Holness v. Montgomery County Board of Education*, Op. No. 01-42 (December 5, 2001)(desire to have block scheduling and specific curriculum insufficient to approve transfer).

Moreover, there is at least one daycare center, Bel Pre Children's Center, that serves both Bel Pre and Strathmore schools and is open until 6:30 p.m. *See Lessenco's Memorandum.*

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.

As the local board notes, Appellant asks the State Board to find in effect that it is a hardship for students in Maryland to attend any school arranged in a nontraditional configuration, such as K-2, 3-5. Such a finding would be unprecedented. Last year the State Board rejected this contention in Opinion 02-53 and we again do so here.

CONCLUSION

Based upon our review of the record and relevant legal principles, we find that Appellant has presented no evidence that the local board's decision is arbitrary, unreasonable, illegal or a deviation from existing policy and procedures. We therefore affirm the decision of the Board of Education of Montgomery County denying the student transfer requests.

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December 3, 2003