

TOM & JUDY M.,

Appellant

v.

MONTGOMERY COUNTY BOARD  
OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 09-37

### OPINION

#### INTRODUCTION

Appellants, parents of L.M., have appealed the denial of their request to transfer their daughter from Northwest High School (Northwest) to Quince Orchard High School (Quince Orchard). The Board of Education of Montgomery County (Local Board) has filed a Response to the appeal. Appellants have replied to the Local Board's Response.

#### FACTUAL BACKGROUND

Appellants live in the attendance area of Northwest High School. On March 23, 2009, Appellants submitted a "Request for Change of School Assignment" seeking to transfer their daughter from Northwest to Quince Orchard. As the basis for the transfer, Appellants checked the exemption listed on the form to continue the student in the feeder pattern from middle school to high school.<sup>1</sup> (Motion, Exhibit 1). The Field Office Director denied the transfer request because it failed to meet the guidelines for a change of school assignment. (*Id.*). As explained in the MCPS Change of School Assignment Booklet, the exemption for continuation in a feeder pattern applies only to middle school students who are already on an approved change of school assignment so that they may continue in the school's feeder pattern for high school. The exemption was inapplicable here because L.M. attended Lakelands Park Middle School as her "home" or assigned school, not as a result of an approved transfer.

Appellants appealed the denial to Larry A. Bowers, the Chief Operating Officer. In the appeal, Appellants requested the transfer to Quince Orchard because (1) L.M. feels she will not be safe at Northwest; (2) Quince Orchard is closer to Appellants' home; (3) most of L.M.'s friends are attending Quince Orchard; and (4) there is more room at Quince Orchard than there has been in recent years. (Motion, Exhibit 3).

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<sup>1</sup>Appellants probably selected this exemption because students at L.M.'s middle school, Lakelands Park Middle, feed into Northwest as well as Quince Orchard.

Mr. Bowers referred the matter to Hearing Officer, Laurence M. Jeweler, for review. After conducting an investigation, Mr. Jeweler recommended that the transfer request be denied due to the absence of a unique hardship. (Motion, Exhibit 4). Mr. Bowers adopted Mr. Jeweler's recommendation and denied the transfer. (Motion, Exhibit 5).

Appellants appealed to the Local Board, reiterating the reasons they set forth in the appeal to Mr. Bowers. (Motion, Exhibit 6). They attached to their appeal a letter from L.M.'s pediatrician stating that the Appellants have reported concern about L.M.'s transition to Northwest and desire L.M. to attend Quince Orchard where they believe she will have an easier adjustment. The pediatrician makes no recommendation of her own regarding where L.M. should attend school. (Motion, Exhibit 7).

The Superintendent responded to the appeal by memorandum requesting that the Local Board uphold the denial of the transfer due to lack of a unique hardship. The Superintendent acknowledged the pediatrician's letter, but pointed out that it fails to indicate any physical or emotional medical condition that would impact L.M.'s transition to Northwest. (Motion, Exhibit 8).

The Local Board voted unanimously to uphold the Superintendent's decision based on the lack of a unique hardship. (Motion, Exhibit 9). This appeal followed.

#### 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 Breads v. Bd. of Educ. of Montgomery County*, 7 Ops. MSBE 507 (1997).

#### 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 a documented, unique hardship to obtain approval under the following circumstances:

- where there is an older sibling already attending the requested school and will continue to be enrolled at the requested school for the next school year;
- 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 daughter to attend Quince Orchard because it is closer to their home, most of L.M.'s friends will be attending school there, and L.M. does not feel she will be safe at Northwest. Because none of the above exemptions apply, Appellants must demonstrate a unique hardship in order to justify the transfer request. Problems that are common to large numbers of families do not constitute unique hardship. (Motion, Exhibit 2).

We agree with the Local Board that there is not sufficient evidence here of the types of hardship that would warrant a transfer.

Appellants would like their daughter to attend Quince Orchard because it is closer to their home than Northwest making it a more convenient location. The State Board has repeatedly held, however, that a family's concern over the distance that a student lives from a school does not satisfy the requirements for a transfer. See *Brande v. Montgomery County Bd. of Educ.*, MSBE Op. No. 05-05 (2005); *Wuu & Liu v. Montgomery County Bd. of Educ.*, MSBE Op. No. 04-40 (2004); *Upchurch v. Montgomery County Bd. of Educ.*, MSBE Op. No. 99-7 (1999); *Longobardo v. Montgomery County Bd. of Educ.*, MSBE Op. No. 99-3 (1999).


Appellants would also like their daughter to attend Quince Orchard because she has friends there. As this Board has stated previously, failure to attend a school with a particular peer group does not constitute a unique hardship. See *Iglesias v. Montgomery County Bd. of Educ.*, MSBE Op. No. 02-50 (2002); *Skardis v. Montgomery County Bd. of Educ.*, 7 Op. MSBE 1055 (1998); *Diehl v. Montgomery County Bd. of Educ.*, 7 Op. MSBE 589 (1997).

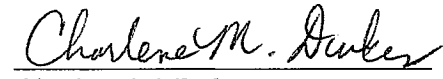
Although Appellants have cited a safety concern as one of the bases for the transfer request, they have presented no evidence that Northwest cannot provide their daughter with a safe school environment.

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); *Goldberg v. Montgomery County Board of Education*, Opinions of MSBE, No. 05-35 (2005); *Chacon v. Montgomery County Board of Education*, Opinions of MSBE, No. 01-39 (2001); *Williams v. Board of Education of Montgomery County* 5 Opinions of MSBE 507 (1990).


CONCLUSION

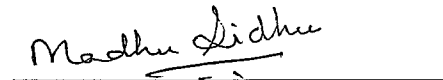
For all these reasons, we affirm the decision of the Local Board because it is not arbitrary, reasonable or illegal.

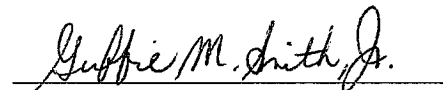
  
James H. DeGraffenreidt, Jr.  
President

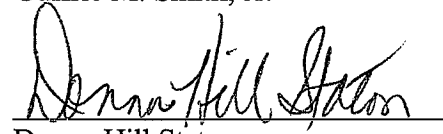
  
Charlene M. Dukes  
Vice President

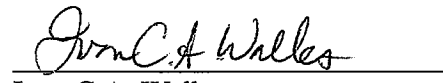
  
Mary Kay Finan

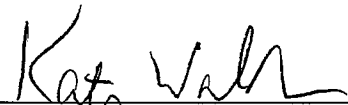
  
S. James Gates, Jr.

  
Madhu Sidhu

  
Guffie M. Smith, Jr.

  
Donna Hill Staton

  
Ivan C.A. Walks

  
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Kate Walsh

October 27, 2009