

JOHN C. SPEER & COLLEEN A. ALLEN,

Appellants

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 04-37

OPINION

This is an appeal of the denial of Appellants' request to allow their children to attend Forest Knolls Elementary School for the 2004-2005 school year rather than attend their assigned school, Sligo Creek Elementary. The local board has submitted a Motion for Summary Affirmance maintaining that the reasons advanced by Appellants do not constitute a unique or compelling hardship and that its decision is not arbitrary, unreasonable, or illegal. Appellants have submitted a reply opposing the local board's motion.

FACTUAL BACKGROUND

Appellants reside in the geographic attendance area for Sligo Creek Elementary School. For the 2003-2004 school year, Appellants transferred their son, Robert, from a private parochial school and enrolled him in the second grade at Sligo Creek. Appellants also enrolled Robert's younger sister in kindergarten at Sligo Creek. Sligo Creek houses one of two French immersion programs in Montgomery County. Appellants' children are enrolled in the regular education program and not the French immersion program at the school.

On February 27, 2004, Appellants submitted requests to transfer both children from Sligo Creek to Forest Knolls Elementary School. Appellants' primary objection was based on their belief that the resources of Sligo Creek's dual program environment did not meet the needs of their children. Specifically, they indicated that Robert had failed to thrive academically and socially and that he was having difficulty fitting in with his peers for reasons other than regular transitional issues and adjustments to a new environment. Appellants had previously met with school staff who suggested that Robert be evaluated by the family physician due to behaviors and academic difficulties that staff had noticed. Appellants indicated in their transfer request that they felt the school was unfairly categorizing their son in a way that was not justified. They also indicated that the interventions undertaken by the homeroom teacher had done nothing more than diminish Robert's self esteem which has impacted other aspects of his life. Appellants stated their belief that their children would be better served at Forest Knolls because the one program system appears more equitable and suitable for their needs.¹ Appellants' transfer requests were denied by the field office supervisor because they did not meet the requirements for a student

¹Appellants desired both children to attend the same school.

transfer.

In their appeal of the denial of the transfers, Appellants emphasized their concern that their son could “not be well served in the current environment” at Sligo Creek because he had been “labeled at his current school by his teacher as well as by his classmates.” The Chief Operating Officer, acting as the superintendent’s designee, referred the matter to hearing officer, Elaine Lessenco, for review. The hearing officer noted as follows:

As part of my review, I spoke with several staff members at Sligo Creek Elementary School. Ms. Franka Dennis, assistant principal, reported that there have been several meetings regarding Robert in an attempt to help him. Ms. Carol Ahrens, Robert’s homeroom teacher, reported that Robert is doing well academically except for listening comprehension and spelling. Her concerns were with Robert’s difficulty staying on task. She had tried using a contract with him where he would check off tasks himself, but this had been discontinued. She reported that Robert had recently been assigned to another teacher for language arts. Ms. Diane Hoagland, [the new] language arts teacher, reported that Robert has been in her classroom for about a month and has made a good adjustment to his peers and his reading group.

I spoke with both Mr. Speer and Ms. Allen, parents of Anne and Robert. Mr. Speer reported his discomfort with the two separate programs at Sligo Creek Elementary School. It is his belief that the French Immersion students are more academically inclined and better behaved than the students in the regular program. He noted that there had been some improvement since Robert had been assigned to a different teacher for language arts, but he still feels that transfer to a school with only one program would be beneficial to Robert. Ms. Allen voiced her objection to medicating and labeling her son; actions that she feels are unjustified. I explained the restrictions against transfer, and told both parents that I did not feel their concerns would be sufficient to overcome these restrictions.

The hearing officer found a lack of unique hardship to justify the transfer under school system policy and recommended that the request be denied. The CEO adopted the recommendation of the hearing officer and denied Appellants’ request to transfer their children from Sligo Creek to Forest Knolls.

Appellants further appealed the denial of their transfer request to the local board. In their letter of appeal, Appellants reiterated the fact that they did not want their children to attend a

school with dual programs. Appellants also emphasized Robert's difficulty at Sligo Creek, citing that he "was nearly having what appeared to be a nervous breakdown prior to removing him from his homeroom teacher's language arts class" and his difficulty "developing close friendships at school due to the lack of fit." Appellants were also concerned because the principal had advised them that two parents had requested that their children not be placed in the same class as Robert for the 3rd grade.

In a unanimous decision, the local board upheld the decision of the superintendent's designee denying the transfer request based on a lack of hardship.

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).

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) the student is 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 Appellants' children do not qualify for an exemption, the only applicable consideration for a transfer in this case is a documented hardship.

Appellants would like their children to attend a school that does not house an immersion program and a regular education program at the same location because they believe there is an inequity in such environments. Appellants also believe that their son has not been doing well socially at Sligo Creek because the environment is not a good fit for him and because he has been labeled in some way. They want both children to attend the same school.

The principal of Sligo Creek reported that students in the two programs at Sligo Creek have physical education, music, lunch, and recess together and that the school takes great effort to make the students feel that they are one community. The students in the regular program, in which Appellants' children are enrolled, also have some privileges not accorded to the French

Immersion students such as reduced class size for grades k – 2 and access to a science lab. Superintendent’s memorandum at 2.

Two of Robert’s teachers had expressed concern about Robert’s lack of focus in class. Although the issue was discussed at an Educational Management Team meeting and it was suggested that Ms. Allen raise the concern with her son’s pediatrician, the idea was not pursued due to Ms. Allen’s strong objections to an evaluation. Despite Appellants’ complaints of Robert’s unhappiness, the principal of Sligo Creek had not observed evidence of Robert’s unhappiness or of a “nervous breakdown,” nor is there any medical documentation supporting this.² Furthermore, in response to a request from Appellants, the principal arranged for Robert to have a different teacher for language arts. Superintendent’s memorandum at 1–2.

In its decision, the local board stated as follows:

Although it is unfortunate that Robert has found his first year in public school to be a difficult year of transition, there is no evidence to suggest that something inherent to Sligo Creek would act as an impediment to his success there. Mr. Speer has argued that the fact that Sligo Creek houses two distinct educational programs side by side creates an environment that has contributed to an ill fit for Robert to succeed, thereby justifying a transfer. Yet, not only do students at Sligo Creek succeed, irrespective of the immersion program being there, but numerous schools throughout the county similarly house special programs situated alongside of a regular program, without triggering transfers of students from their home schools.

Local board decision at 2. Based upon our review of the record in this case, we believe the local boards’ rationale is reasonable.

The Court of Appeals has ruled that there is no right to attend a particular school. *See Bernstein v. Board of Education of Prince Georges 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*

²Appellants attached a letter from Robert’s pediatrician indicating that they had discussed concerns about Robert’s classroom behavior and achievements at school, and that the pediatrician had made some suggestions about further evaluation. The pediatrician stated that “it may be wise to consider placement at another school while we continue these considerations.” *See* 3/26/04 letter from Dr. Janet L. Adams. We believe that the plain language of this letter fails to set forth any medical necessity for a transfer.

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).

In light of these precedents, we find Appellants' desire to place their children in an educational environment that they feel can better serve their needs is not a recognized hardship sufficient to grant a transfer request. Therefore, based on the evidence presented, we do not find that the decision of the superintendent's designee was arbitrary, unreasonable or illegal.

CONCLUSION

For these reasons, we affirm the decision made by the Montgomery County Board of Education to deny the student transfer requests.

Edward L. Root
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David F. Tufaro

September 28, 2004