

LISA SHEARARD,

Appellant

v.

PRINCE GEORGE'S COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 04-43

OPINION

This is an appeal of the denial of Appellant's request to allow her son Ja'an to attend Gaywood Elementary School for the 2004-2005 school year rather than his assigned school, Matthew Henson Elementary School. The local board has submitted a motion for summary affirmance maintaining that the local board's decision is neither arbitrary, unreasonable, nor illegal. Appellant has submitted a reply opposing the local board's motion.

FACTUAL BACKGROUND

Appellant resides in the geographic attendance area for Matthew Henson Elementary School. Ja'an's older brother, Jonathon, is currently a 5th grade student at Gaywood Elementary School. Jonathon was a student attending Gaywood at the time a boundary change occurred. As part of the implementation process, students who were already attending Gaywood were given the option of continuing at Gaywood for the remainder of their elementary school years without the provision of transportation by the school system. Jonathan's mother chose to have him stay and transports him to Gaywood Elementary.

Before the start of the 2004-2005 school year, Appellant submitted a student transfer request asking that Ja'an, an entering kindergartner, be permitted to attend Gaywood Elementary School rather than his assigned school. In a statement of reasons submitted with the transfer request, Appellant stated that "all of my children have attended [Gaywood] and I would very much like for my youngest to do the same. My family has grown with this school and most of the teachers there have seen my children from the time they were infants." Appellant stated her belief that Gaywood would give Ja'an a good start. She also stated "[m]y other son named Jonathon you allow my son to attend there and I must thank you so much for that he has made such progress [sic]. He isn't around the bad elements that use [sic] to attend there, and he is doing very well."

Appellant's request was denied by the Office of Student Transfers for two reasons. The first reason was that, as of the date of the transfer request, Ja'an had not yet been enrolled as a student in the school system and the Office of Student Transfers does not grant transfers unless the student is enrolled. The second more substantive reason was that the request failed to meet any of the criteria for a student transfer as set forth in Administrative Procedure No. 5110.3, thus

the request lacked a compelling reason for approval. *See* 7/1/04 letter from Robinson to Appellant and Affidavit of Shirley C. Robinson. On further appeal, Appellant's transfer request was also denied by the Office of Appeals, acting as the designee for the Chief Executive Officer, which indicated that transfers are not granted based on the perceived superiority of one school over another or on prior relationships with the school. *See* 7/15/04 letter from Stubbs to Appellant.

Appellant further appealed the denial of the transfer request to the local board. In her letter of appeal, Appellant indicated that she has an older son attending Gaywood and she is unable to have two children in two different elementary schools because she cannot pick them up and drop them off at the same time. She also stated that the principal at Gaywood had already approved the transfer for Ja'an pending final approval by the local board. *See* 7/26/04 letter from Appellant to local board. After reviewing the record, the local board denied Appellant's request to transfer Ja'an to Gaywood. *See* 8/5/04 letter from Thomas to Appellant.

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).

At the time this appeal was processed at the local level, Prince George's County Public Schools' Administrative Procedure No. 5110.3 on student transfers permitted the Office of Student Transfers to approve the following types of transfers:

- adjustment transfers;
- program of instruction transfers;
- medical transfers;
- change of residence transfers;
- hardship transfers; and
- twelfth grade completion transfers.

(Section IV). Transfers based on hardship included a transfer to permit an elementary school sibling to attend the same school which an older sibling attends by virtue of a transfer. (Section IV.E.5). Based on the record in this case, we find that the only relevant exception for

Appellant's request is a hardship transfer based on an older sibling attending the requested elementary school.

Appellant maintains in her appeal to the State Board that Ja'an's transfer denial has created a serious hardship for her because Ja'an's older brother Jonathon was already attending school at Gaywood, and now Jonathon and Ja'an need to be at different elementary schools at the same time in the morning and need to be picked up at the same time in the afternoon. She also explains that she cannot have five year old Ja'an take the bus home and wait for her alone while she picks up her older son up at Gaywood.¹

In her affidavit, Shirley Robinson, Supervisor of the Office of Student Transfers, states that the Office of Student Transfers was unaware that Ja'an had a sibling already in attendance at Gaywood at the time that Appellant's transfer request was considered. Nevertheless, she indicates that had that information been known, the Office of Student Transfers would have made the same determination denying the request. Ms. Robinson explains that in making transfer decisions, the Office of Student Transfers considers whether the parent will be able to get the student to school on a regular and timely basis. In some cases, the Office of Student Transfers looks to the attendance record of siblings to aid in that determination. The language of the sibling exception specifies that "[t]he Office of Student Transfers will verify the placement, enrollment, attendance of the sibling as well as other general, applicable transfer factors." Administrative Procedure No. 5110.3 (IV.E.5.a) (July 1, 1999 Procedures). Ms. Robinson states that in Ja'an's case, the poor attendance record of two of his siblings would have caused the transfer to be denied.²

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 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).

¹In this regard, we note that if both Jonathan and Ja'an attended their area school, Matthew Henson Elementary, this issue would be eliminated because the school system would be providing the transportation.

²Jonathon was absent from school 32 days in 2002-2003; absent 17 days in 2003-2004; and absent 2 days and tardy 1 day as of September 21, 2004 for the 2004-2005 school year. *See* Affidavit of Shirley Robinson.

CONCLUSION

Based on the record in this case, we do not find that the decision of the Prince George's County Board of Education upholding the transfer denial was arbitrary, unreasonable, or illegal. For all of these reasons, we affirm the denial of Appellant's transfer request.

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December 8, 2004