

JESSE AND DIANE BRANDE,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 05-05

OPINION

This is an appeal of the denial of Appellants' request to transfer their daughter, H.B., from her assigned school, Francis Scott Key Middle School, to William H. Farquhar Middle School for the 2004-2005 school year, based on hardship. Appellants would like their daughter to spend less time on the school bus to accommodate her rigorous gymnastics training schedule. 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. Although requested to do so, Appellants did not file a reply to the motion.

FACTUAL BACKGROUND

Appellants reside in the geographic attendance area for Francis Scott Key Middle School ("Key"). Appellants submitted a request for change of school assignment, asking that their daughter, H.B., be transferred from Key to William H. Farquhar Middle School ("Farquhar") based upon hardship. (Request for Change of School Assignment, May 5, 2004). Appellants provided the following reasons for their request: (1) Key is over-capacity and Farquhar is under capacity; (2) Key is farther from the family home; (3) H.B.'s friends in the neighborhood have transferred to Farquhar; (4) H.B.'s community and social activities are in the vicinity of Key and (5) H.B. trains 23 hours a week as a competitive gymnast and the family would prefer that she spend less time traveling to and from school. (Request for Change, Attachment 1). The family also submitted a document authored by their neighborhood homeowners' association in support of the neighborhood's efforts to get their school boundary change to access Farquhar. (Homeowner Association, Key Points, undated). Appellants' request was denied on May 14, 2004 because their reasons did not constitute a hardship.

Appellants appealed on May 25, 2004. They elaborated that H.B. frequently has to work late into the evening because of her after school gymnastics practice. They asserted that if H.B. had a shorter bus ride, she would have more time to do her homework before practice and thus would not have to stay up so late. They also maintained that H.B. would feel closer to the community at Farquhar because Farquhar is closer to the family home than Key. (Memorandum of Appeal, May, 25, 2004).

Chief Operating Officer, Larry Bowers, acting as the superintendent's designee, assigned the matter to hearing officer Alex Dunn for review. The hearing officer found a lack of unique hardship to justify the transfer under school system policy and recommended that the request be denied. He noted that the parents stated that their home is closer to three other middle schools than to Key. However, he found that the reasons given did not support the request for school reassignment. (Memorandum of June 28, 2004). Mr. Bowers adopted the recommendation of the hearing officer and denied Appellants' request to transfer H.B. from Key to Farquhar. (Letter of June 28, 2004).

Appellants further appealed the denial of their transfer request to the local board. In their letter of appeal, Appellants reiterated their reasons for requesting a transfer for H.B., noting again that H.B. spends between 30 and 45 minutes more per day on the school bus to Key than she would if she were attending Farquhar; that H.B. is a competitive level-eight gymnast and that the time spent on the bus could be used by H.B. to complete her work assignments. (Letter of Appeal, July 27, 2004). They also submitted a letter from her gymnastics program director who confirmed H.B.'s busy practice schedule at his Laurel, Maryland facility.¹

On August 25, 2004, by a unanimous vote², the local board upheld the decision of the superintendent's designee denying the transfer request based on a lack of hardship. In a written decision dated September 15, 2004, the local board explained that transfers are not granted simply to shorten a particular student's bus ride. The local board noted that a boundary review process "is currently underway and the Board will consider such a possible change in the future. However, the transfer process is not the proper vehicle to effectuate a boundary change". (Local board Decision, p. 1-2) Because Appellant did not present any evidence of unique hardship, the local board affirmed the superintendent's decision to deny the transfer request.

In their appeal letter to the State Board, Appellants reiterated their reasons for their request for transfer. They also claimed that "the Board of Education of Montgomery County is allowing the pending boundary study [to] influence their ability to evaluate our daughter H.B. on an individual basis," and that "the local board states that they will not look at our daughter's individual situation". (Letter of Appeal, September 24, 2004).

ANALYSIS

The standard of review that the State Board applies in reviewing a student transfer

¹H.B. has been by choice a competitive gymnast for four years. Ping Yang, the Fairland Gymnastics Team Program Director at the Laurel facility, noted that H.B.'s training schedule is Monday, Tuesday, Thursday, and Friday 4:15 to 8:30 p.m. and Saturday 11:30 a.m. to 3:30 p.m. See 8/2/04 Letter from Ping Yang to Alex Duan.

² Seven members affirmed the denial; board member Burnett was not present and did not participate in this appeal.

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 one level to another such as from middle school to high school; or (3) the student has met the criteria for and been admitted to a countywide program. Because H.B. does not qualify for an exemption, the only applicable consideration for a transfer in this case is a documented hardship.

Appellants would prefer that H.B. attend Farquhar as it is closer to the family home and would require a shorter school bus ride. It would also permit H.B. more time to do school work as she practices gymnastics more than 21 hours per week. However, as noted in the Superintendent’s Memorandum before the local board, H.B.’s schedule is “rigorous by choice and has not impacted her academic achievement.” Based on all the information in the appeal, the local board found insufficient evidence of hardship.

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).

Similarly, the State Board has consistently held that the desire to attend school with particular friends does not constitute hardship. *See Iglesias v. Montgomery County Board of Education*, MSBE Op. No. 02-50 (October, 30, 2002) (twin daughters attending a different school from that attended by close friends not a hardship); *Hard v. Carroll County Board of*

Education, MSBE Op. No. 02-57 (December 4, 2002)(desire to remain with peer group does not constitute hardship).

Finally, the State Board has also held that concerns about distance from a school are not sufficient to justify a hardship exemption. *Wuu & Liu v. Montgomery County Board of Education*, MSBE Op. 04-40 (October 27, 2004); *Longobardo v. Montgomery County Board of Education*, MSBE Op. No. 99-3 (January 26, 1999); *Upchurch v. Montgomery County Board of Education*, MSBE Op. No. 99-7 (January 26, 1999).

In light of these precedents, we find Appellants' desire to place H.B. in a school nearer her home so that she can have a shorter bus ride and can be with her friends is not a recognized hardship sufficient to grant a transfer request.

Appellants' allegation that the local board did not consider Appellants' request for H.B. as an individual is unfounded. The local board specifically found that "the fact that one is subject to a long bus ride or attends school with non-neighborhood children is not a hardship". (Local board opinion, p. 2). Thus, the local board did consider the specifics of H.B.'s appeal. Although the local board noted that the transfer process is not the proper vehicle to effectuate a boundary change, Appellants presented no evidence that the pendency of a boundary review had any influence on the local board's decision. Rather, the local board indicated that it was currently reviewing the boundary in question and would consider a change in the future.

CONCLUSION

For all of these reasons, we do not find that the decision of the Montgomery County Board of Education was arbitrary, unreasonable, or illegal. Accordingly, we affirm the denial of Appellants' transfer request.

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February 23, 2005