

CHARLOTTE BINAKONSKY,

Appellant

v.

MONTGOMERY COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 05-29

### OPINION

This is an appeal of the denial of Appellant's request to transfer her daughter E.B. from her assigned school, Julius West Middle School, to Robert Frost Middle School for the 2004-2005 school year, and although she did not raise the issue of the 2005-2006 school year before the local board, she raises it in this appeal. The local board found that a transfer from Julius West was appropriate under the circumstances and granted that request. The board rejected Appellant's request for a transfer to Robert Frost and offered her placement in Earle B. Wood Middle School which was not over capacity as was Frost. The local board submitted a Motion for Summary Affirmance maintaining that the reasons advanced by Appellant did not constitute a unique or compelling hardship and that its decision was not arbitrary, unreasonable, or illegal. Although requested to do so, Appellant did not file a reply to the Motion.

### FACTUAL BACKGROUND

The Appellant resides in the geographic attendance area for Julius West Middle School. For the 2004-2005 school year, Appellant's daughter was in sixth grade. On January 24, 2005, Appellant withdrew E.B. from school and submitted a request for change of school assignment, asking that her daughter E.B. be transferred immediately from Julius West Middle School to Robert Frost Middle School ("Frost") for the remainder of the 2004 -2005 school year.. The request was based upon "hardship", specifically harassment and bullying from other students. Appellant provided a letter describing the incidents of harassment and bullying. Appellant also provided two letters from two students who apologized for calling E.B. names and for poking her with an umbrella.

On January 27, 2005, the principal, Mrs. Poirier, called Appellant to discuss changing E.B.'s classes and guidance counselor. Appellant declined this option. The transfer request was denied.

Appellant appealed the denial. Chief Operating Officer, Larry Bowers, acting as the superintendent's designee, assigned the matter to hearing officer, Laurence Jeweler, for review. The hearing officer investigated the matter and found that the community superintendent, Mark Kelsch, and Lauree Hemke, instructional specialist, Metro Field Office, were aware of Appellant's concerns. They agreed that a transfer from Julius West was appropriate, However,

they noted that at that time Frost was over optimal capacity and suggested that Mr. Jeweler offer a transfer to Earle B. Wood Middle School (“Wood”) which was under capacity.

Appellant rejected the transfer to Wood. Mr. Jeweler recommended that the transfer to Frost be denied. Mr. Bowers accepted the hearing officer’s recommendation and denied the transfer to Frost.

Appellant further appealed the denial of the transfer request to the local board.<sup>1</sup> In her letter of appeal, Appellant stated that she chose Frost on the basis of proximity to her home, rush hour traffic patterns and her familiarity with persons who had attended Frost. She also stated the E.B. was much like the students she knew who attended Frost.

On April 25, 2005, by a seven to one vote, the local board upheld the decision of the superintendent’s designee denying the transfer request specifically to Frost. In a written decision dated May 10, 2005, the local board explained that while a transfer from Julius West Middle School was appropriate in this case, a transfer to a school that is over enrolled, as is Frost, is not appropriate. It found that there was a rational basis for Mr. Bowers’ decision to deny the requested transfer *to* a specific school in contrast to acceding to the request for a transfer *from* Julius West. A transfer to Wood remained an option.

This appeal followed.

## ANALYSIS

The standard of review that this 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). We have 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

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<sup>1</sup>Since March 18, 2005, Appellant has been home schooling her daughter.

student has met the criteria for and been admitted to a countywide program. Because E.B. does not qualify for an exemption, the only applicable consideration for a transfer in this case is a documented hardship.

Applying the hardship standard, the local board found that a transfer was appropriate for E.B. She was offered a placement at Wood. The local board also found as a fact that Frost was over its optimal capacity and Wood was under its capacity.

The Appellant does not dispute that for the 2004-2005 school year Frost was oversubscribed by 74 seats and Wood was under subscribed by 44 seats. Because of that capacity issue, it is our opinion that the local board acted reasonably in offering the Appellant a transfer to Earle B. Wood Middle School. For the same reason, it is our opinion that the local board's decision to deny the Appellant's request to transfer her daughter to a different, specific school was neither arbitrary, unreasonable, or illegal.<sup>2</sup>

We point out that the Court of Appeals has ruled that there is no right to attend a particular program of study at 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, this 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 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).

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<sup>2</sup>Appellant raised for the first time in this appeal the question of a transfer for the 2005-2006 school year. We have consistently declined to address issues that have not been reviewed initially by the local board. See *Craven v. Board of Education of Montgomery County*, 7 Op. MSBE 870 (1997) (failure to challenge suspension before local board constituted waiver); *Hart v. Board of Education of St. Mary's County*, 7 Op. MSBE 740 (1997) (failure to raise issue of age discrimination below constituted waiver on appeal). *McDaniel v. Montgomery County Board of Education*, MSBE Op. No 03-22 (June 27, 2003)(complaints from public not raised before local board deemed waived). Thus, Appellant has waived her right to raise these matters for the first time on appeal to the State Board.

Finally, we have also held that concerns about distance from a school are not sufficient to justify a hardship exemption. *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). Here, however, the two middle schools are both within minutes of Appellant's house.<sup>3</sup>

## CONCLUSION

For all of these reasons, we affirm the Montgomery County Board of Education's denial of Appellant's request for a transfer to Robert Frost Middle School.

Edward L. Root  
President

Dunbar Brooks  
Vice President

Lelia T. Allen

JoAnn T. Bell

J. Henry Butta

Beverly A. Cooper

Calvin D. Disney

Richard L. Goodall

Karabelle Pizzigati

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<sup>3</sup>The local board notes that Frost is 4.5 miles from Appellant's house while Wood is 5.6 miles from Appellant's house.

Maria C. Torres-Queral

David F. Tufaro

September 27, 2005