

NATHAN ANTILA,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 06-01

OPINION

This is an appeal of the denial of Appellants' request to allow their daughter to attend the Rock Creek Forest Elementary School Spanish Immersion Program in Grade 1 for the 2005-2006 school year rather than attending the Partial Spanish Immersion Program at Rolling Terrace Elementary School in which she is currently enrolled. The local board has filed a Motion to Dismiss on jurisdictional grounds maintaining that the appeal process is an inappropriate vehicle for challenging the local board's admission policy for the Rock Creek Forest program. Alternatively, the local board has filed a Motion for Summary Affirmance maintaining that its decision denying Appellants' request is not arbitrary, unreasonable, or illegal. Appellant has not submitted a reply to the local board's motion.

FACTUAL BACKGROUND

Appellants reside in the geographic attendance area for Rock Creek Forest Elementary School. Last year, however, Appellants enrolled their daughter, A.A.¹ in the Partial Spanish Immersion Program at Rolling Terrace because she did not gain admission to the countywide program housed at Rock Creek Forest, her home school. The Rock Creek Forest program is a countywide program in which admission is open to all students in the county. If there are more applicants than spaces available, a lottery is held. The Rolling Terrace program is a local school program in which seats are made available first to the local school population. If the local school population does not fill the seats, the program is opened up to other students in the county. A.A. completed kindergarten in the Rolling Terrace program.

For the first grade, Appellants requested that A.A. be permitted to transfer to the program at Rock Creek Forest. Through the lottery selection process held on April 28, 2005, A.A. was placed tenth on the waiting list for Grade 1 Spanish Immersion at Rock Creek Forest.² The waiting list is effective until April 1, 2006.

¹Throughout this opinion we will refer to Appellants' daughter as A.A.

²For first grade, there were 33 students who applied for the 2 seats that were initially available at Rock Creek Forest.

Appellants appealed to the superintendent the result of the lottery process. They argued that the admissions policies for the two immersion programs were inequitable because students living in the Rolling Terrace attendance area are given preference to enroll in that program while those living in the Rock Creek Forest attendance area are not given preference to enroll in the program at their home school. They maintain that this arbitrary difference in policies has forced their daughter to attend a school other than her neighborhood school which requires her to commute further away from her home to participate in a program that is offered a half mile away from where she lives.³ In addition, Appellants complained that the Grade 1 Spanish Immersion Program at Rolling Terrace will be a partial immersion program for the 2005-2006 school year compared to the total immersion program projected for Grade 1 at Rock Creek Forest.

The matter was referred to hearing officer, Elaine Lessenco, for review. The hearing officer spoke with Appellants who reiterated their concerns. The hearing officer ultimately recommended that Appellants' request be denied given the results of the lottery and the absence of a unique hardship. She indicated that each year there are more applicants for system-wide language immersion programs than there are spaces available and that the lottery is the only fair way to assure access to these popular programs.

The Chief Executive Officer, acting as the superintendent's designee, adopted the recommendation of the hearing officer and denied Appellants' request to transfer A.A. from Rolling Terrace Elementary School to Rock Creek Forest Elementary School.

Appellants further appealed the denial of their transfer request to the local board. In a unanimous decision, the local board upheld the decision of the superintendent's designee denying the transfer request. In its decision, the local board stated the following:

While [A.A.'s] parents prefer her to attend and benefit from the Spanish Immersion Program that is located closer to their home, such a preference clearly does not constitute a hardship which would merit granting a transfer. Furthermore, the fact that [A.A.] will not attend a full immersion program does not amount to a unique hardship. Precisely because the number of applicants who wish to benefit from a particular immersion program exceeds the capacity of the program, the school system uses a lottery system as the fairest means of determining who gets admitted. In this instance, there were a number of applicants to the Rock Creek Forest Elementary School program and [A.A.] originally ended up as #10 on the waiting list. Given the absence of documentation supporting a unique hardship, the results of the lottery preclude the granting of this appeal.

³A.A. is driven to school in the mornings and rides a bus for approximately one hour to Rock Creek Forest in the afternoon to attend an aftercare program there.

STANDARD OF REVIEW

The standard of review in a student transfer case 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).

ANALYSIS

In this case, Appellants submitted a request for change of school assignment for A.A. to transfer from the Spanish Immersion Program at Rolling Terrace Elementary School to the Rock Creek Forest Elementary School Spanish Immersion Program. In Montgomery County, students are permitted to transfer from their assigned school based on a documented unique hardship. There are certain specified exemptions from this requirement. The applicable exemption here is admission by lottery to a language immersion program. The local board upheld the denial of A.A.'s transfer request based on the results of the lottery which precluded her admission to the program and based on the lack of a unique hardship.

Appellants argue that the difference in the admission policies of the two programs has denied their daughter equal access to the immersion program at her home school, Rock Creek Elementary, because the program at Rolling Terrace gives preference to students residing in the school's attendance area while the program at Rock Creek does not. There is no legal right, however, to attend a particular school program. *See 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); *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); *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); *Williams v. Board of Education of Montgomery County*, 5 Op. MSBE 507 (1990) (denial of transfer to program offering advanced German); *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).

Many school systems offer specialized programs and courses with varying admissions requirements for different reasons. Such programs are often popular and inevitably there are those who wish to participate but are unable due to insufficient space. There is nothing which requires the school system to limit participation in the Rock Creek Forest Elementary program to the school's attendance area or which prevents the school system from offering a program at Rolling Terrace that is limited to the school's attendance area. In fact, the Montgomery County Public Schools offers two Chinese Immersion Programs. One is open only to students who are

zoned for Potomac Elementary School and makes seats not filled by students from the school zone available to others by lottery. The other is a countywide program at College Gardens Elementary School where all seats are filled by countywide lottery if there are more requests than available slots. We find those differing admissions policies to be reasonable and equitable

In addition, Appellants have presented no evidence that MCPS failed to fairly and consistently apply the admissions policy for the program. A.A. applied to the Spanish Immersion Program at Rock Creek where admission is determined by lottery. She did not gain entry through the lottery process for kindergarten or for first grade. Fortunately, there was space for A.A. in the program at Rolling Terrace, and she has been able to benefit from participation in that program.

To the extent that Appellants are attempting to change the admission policies for the two language immersion programs, the State Board has previously held that individuals may not use the administrative appeal process set forth in §2-205(c) of the Education Article to force a change in local board policy. *See Montgomery v. Howard County Board of Education*, MSBE Opinion No. 04-35 (appeal of local board's decision not to adopt age of entry waiver policy is attempt to force policy change which is not appealable to State Board); *Regan v. Montgomery County Board of Education*, MSBE Opinion No. 02-48 (appeal of the presence of a Washington Redskins' marching band member as a guest reader at school seeks to establish or modify curriculum, policies, or procedures used by MCPS and is not appealable under Section 4-205(c)); *Regan v. Montgomery County Board of Education*, MSBE Opinion No. 02-29 (appeal challenging an instructional activity is not appropriate vehicle for modifying the existing curriculum or adopting a new policy governing the teaching of the curriculum); *Astrove v. Montgomery County Board of Education*, MSBE Opinion No 02-14 (appeal challenging the format of CTBS test result reporting is an attempt to force a policy change and is not appealable under Section 4-205(c)).

CONCLUSION

Therefore, based on the law and the evidence presented, we affirm the local board's decision to deny Appellants' transfer request.

Edward L. Root
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