

FRAN S.,

Appellant

v.

ANNE ARUNDEL COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 10-03

OPINION

INTRODUCTION

In this appeal, the Appellant challenges the decision of the Anne Arundel County Board of Education ("local board") denying her out of area transfer requests for her son. The local board has submitted a Motion for Summary Affirmance arguing that its decision was not arbitrary, unreasonable or illegal and should be upheld.

FACTUAL BACKGROUND

During the 2008-2009 school year, the Appellant's son, G.S., received preschool services through the Early Childhood Intervention program (ECI) at Benfield Elementary School. Benfield housed the regionalized ECI program that provided special education services for G.S.'s part of the county. G.S.'s home school was Southgate Elementary, where he was scheduled to begin kindergarten at the start of 2009-2010 school year.

The Appellant wanted G.S. to attend kindergarten at Benfield, not his home school, and in spring 2009, she submitted three out of area transfer requests. The first transfer request was filed on March 25, 2009, requesting a "continuation of transfer" for G.S. to attend kindergarten at Benfield. The Appellant included a letter from Dr. Lisa Horton, who recommended that G.S. remain at Benfield because he was comfortable in the ECI setting and would lose the progress he gained over the last two years if he were required to attend another school. (Local Bd. Motion, Att. 1.) The local school system denied this request on April 1, 2009 and the Appellant appealed to the local superintendent.

On April 17, 2009, the local superintendent's designee, Sarah S. Pelham, denied the appeal. Ms. Pelham noted that the attendance at Benfield was at 129% capacity, which exceeded the State-rated capacity for the school. In addition, Ms. Pelham found that if G.S. attended kindergarten at Benfield, he would not stay enrolled in the ECI program, thus he would still have to transition to a new program. Further, Ms. Pelham found that the transfer request was not warranted for special education because G.S.'s home school, Southgate, could fully implement his IEP for the coming school year. (Local Bd. Motion, Att. 2.)

On April 24, 2009, the Appellant filed two more out of area transfer requests for G.S. to attend either Pasadena Elementary School or Oak Hill Elementary School. The Appellant indicated daycare as the reason she sought a transfer to either school. On the Pasadena request, the Appellant wrote: “[G.S.] has special needs and his daycare/sitter is able to provide the assistance he needs and [G.S.] has known since he was an infant. This will be my before and after care.” (Local Bd. Motion, Att. 3; all caps used in original.) On the Oak Hill transfer request, the Appellant stated the reason for the request as: “Daycare/sitter is before and after care. Will be able to care for [G.S.] and his special needs. This is a family member. I have no other help.” (Local Bd. Motion, Att. 4; all caps used in original.)

The school system denied the Appellant’s requests because both schools were overcrowded and exceeded the county teacher-student ratio for kindergarten classes. (Local Bd. Motion, Att. 5.) The Appellant appealed the denials to the local board.

While the appeal was pending, an IEP team meeting for G.S. was held at Benfield on April 27, 2009. The principal of Southgate, G.S.’s home school, and other school staff were present at the IEP meeting. The Appellant and her husband raised their concerns regarding G.S.’s transition to a new school and the IEP team advised that all students who leave an ECI class are assisted with transitioning to the school they will be attending. The IEP team also determined that G.S.’s 2009-2010 IEP could be implemented at Southgate.

In her appeal to the local board, the Appellant explained that she filed multiple transfer requests based on information given to her by school system staff that a “professional request supersedes a daycare request”. The Appellant explained that the family has daycare arrangements in all three areas where they requested a transfer and that they want G.S. to remain at Benfield to minimize transition related setbacks for him. The Appellant further indicated her belief that G.S. was being discriminated against because other out of area transfer requests were granted.

The local board upheld the decision of the local superintendent’s designee.¹ The local board found that the staff followed established criteria under local board regulations and that the denials were based on overcrowding at both schools. The local board further found that there was no indication in the record that G.S.’s IEP could not be implemented at Southgate.

This appeal to the State Board followed.

¹ After filing her appeal with the local board, the Appellant withdrew her transfer request to Oak Hill School because it was an open space school. Thus, the transfer denials to Benfield and Pasadena were the only ones before the local board.

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. COMAR 13A.01.05.05A.

LEGAL ANALYSIS

The Appellant argues that the local board's decision denying her transfer requests should be overturned because it discriminated against G.S. on the basis of his disability, and because it disregards daycare challenges she has if G.S. is required to attend his home school. We address each issue below.

Discrimination Against G.S.

The Appellant argues that Benfield is the best place for G.S. to attend kindergarten and that she believes the real reason her requests have been denied is because G.S. has an IEP and special education needs. In support of her argument, she includes the names of some neighbors who were granted transfers from Southgate to Benfield, when G.S. was not.

In response, the local board argues that there is no evidence in the record that G.S. has been treated unfairly on the basis of his disability. The local board contends that school officials followed the local board's regulations and based each transfer denial on overcrowding at each of the schools. The local board further argues that Southgate is able to fully implement G.S.'s IEP.

Based on our review of the record, we find no evidence that G.S. has been discriminated against because of his special needs. The record shows that before G.S. exited the ECI program at Benfield, school officials from Benfield and Southgate met with the Appellant and her husband to allay their concerns about G.S.'s transition to kindergarten. The record also shows that the IEP team determined that G.S.'s IEP could be fully implemented at Southgate.

In addition, local board policy JAB-RA clearly requires principals to deny out of area transfer requests once a school's projected enrollment exceeds 90% of state-rated capacity. The record shows that benchmark was either met or exceeded at each of the schools where the Appellant requested a transfer. (Local Bd. Motion, Att. 1.)

Despite this, the Appellant believes that the school system's denial is based on a discriminatory motive because some of her neighbors were granted out of area transfers to Benfield and G.S. was not. The only evidence of this included in the record is the Appellant's observation, not any documentation or other information that would provide more substance to the Appellant's contention. For example, it remains unclear when the Appellant's neighbors applied for transfers; if their transfers were submitted for kindergarten classes; and if the projected enrollment capacity at Benfield was overcrowded when the neighbors' transfer requests were granted. In short, our view is that the Appellant has not produced any evidence in the

record to demonstrate that the school system improperly granted transfer requests submitted at the same time, under the same circumstances, as hers.

The Appellant's desire to have her son remain at a school where he has done well and with which he is familiar is understandable. However, it is well settled that there is no right to attend a particular school. *See Bernstein v. Bd. of Educ. of Prince Georges County*, 245 Md. 464, 472 (1967); *cf. Dennis v. Bd. of Educ. 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. Bd. of Educ. of Howard County*, 7 Op. MSBE 596 (1997) (no entitlement to attend four-year communications program offered at Mount Hebron); *Slater v. Bd. of Educ. of Montgomery County*, 6 Op. MSBE 365 (1992) (denial of transfer to school alleged to better serve student's abilities and welfare); *Williams v. Bd. of Educ. of Montgomery County*, 5 Op. MSBE 507 (1990) (denial of transfer to program offering advanced German); *Sklar v. Bd. of Educ. 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).

Day Care Challenges

The Appellant also argues that the local board's decision should be overturned because it ignores day care arrangements she already has in other areas. The Appellant argues that she has three different day care arrangements for G.S. because he attended three different preschool programs last year, but she does not have any day care in the Southgate area, which is furthest from their home. The Appellant explains that she does not want to go through the difficulty and expense of finding another day care provider, especially given G.S.'s special needs and his comfort with the providers they already have.

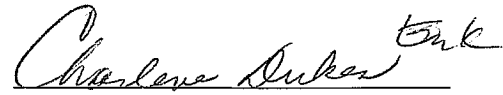
The State Board has opined on numerous occasions that day care problems alone do not suffice to justify a student transfer. *See Bell v. Montgomery County Bd. of Educ.*, MSBE Op. No. 05-02 (2002); *Jamei and Esmaili v. Bd. of Educ. of Montgomery County*, MSBE Op. No. 01-31 (2001); *Hall v. Bd. of Educ. of Montgomery County*, MSBE Op. No. 00-49 (2000); *Sullivan v. Bd. of Educ. of Montgomery County*, MSBE Op. No. 00-22 (2000); *Gutierrez and Finn v. Bd. of Educ. of Montgomery County*, MSBE Op. No. 00-1 (2000); *Gelber v. Bd. of Educ. of Montgomery County*, 7 Op. MSBE 616 (1997); *Marbach v. Bd. of Educ. of Montgomery County*, 6 Op. MSBE 351 (1992).


Therefore, based on our review of the record, the local board's decision upholding the transfer denials was not arbitrary, unreasonable or illegal.

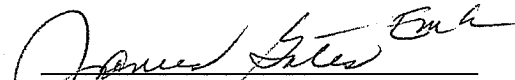
CONCLUSION

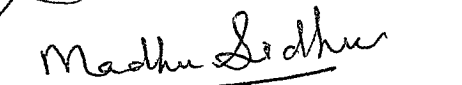
For all these reasons, we affirm the decision of the Anne Arundel County Board of Education.

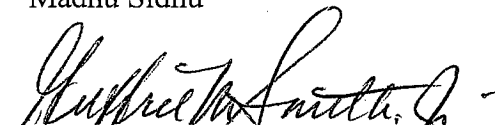

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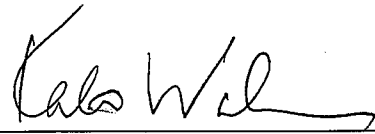

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January 26, 2010