

ERIK & SUSAN E., ET AL.,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 10-08

OPINION

INTRODUCTION

Montgomery County Board of Education (local board) filed a motion to reconsider this Board's decision in a school transfer case involving "paired schools." The local board does not seek to change the outcome for the three Appellants whose children were ultimately granted transfers. The local board asks for reconsideration of the portion of this Board's decision "holding that the paired school analysis and the non-paired school analysis are mutually exclusive."

FACTUAL BACKGROUND

The factual background leading up to this case is set forth in MSBE Op. 09-23 which is attached here. For the purposes of this request for reconsideration, the following facts are relevant.

Students living in East Bethesda are assigned to Rosemary Hills Elementary for grades K-2. Upon completion of second grade, these same students are assigned to Bethesda Elementary for grades 3-5. Bethesda Elementary also houses grades K-2, but East Bethesda students are not assigned there for those grades.

Rosemary Hills (K-2) and Bethesda Elementary (3-5) are considered paired schools. Under local board policy "paired elementary schools are considered one school for change of school assignment purposes." (Reg. JEE-RA). The "transfer" of a K-2 student in Rosemary Hills to K-2 at Bethesda Elementary does not fit the "transfer" concept, because they are conceptually the same school. Transfers did occur, however, because "Montgomery County Public School . . . officials . . . historically provided flexible transfer options for East Bethesda residents under an unofficial "agreement." MSBE Op. 09-23 at 2.

The local board, in its Motion for Reconsideration, explained the unofficial agreement:

The so-called "unofficial agreement" was an informal attempt to accommodate the community's desire to be redistricted to Bethesda Elementary K-5¹ and avoid attending Rosemary Hills altogether. It permitted East Bethesda K-2 students to transfer from their assigned K-2 school, Rosemary Hills, to Grades K-2 at Bethesda Elementary using space, rather than hardship, as the primary consideration for approval. Students from East Bethesda were not approved to transfer from Rosemary Hills to Bethesda [Elementary] for kindergarten or Grades 1 and 2 based on the presence of an older sibling in Grades 3-5; the only consideration was space.

Motion at 4-5.

Space ran out in the K-2 grades at Bethesda Elementary. Therefore, the Appellants in the this case requested the transfer of their K-2 students from Rosemary Hills to Bethesda Elementary under the official student transfer rules which require that the student show hardship or that a sibling attends the school to which the transfer would occur.

The local superintendent recommended denial of the transfer for two reasons - - the students did not prove hardship and because the sibling exemption did not apply when the transfer requested was to the other school in the "paired school" arrangement. On appeal, the local board did not reach a majority vote on the issue and the superintendent's recommendation stood.

Upon review, this Board considered how the official transfer rules were applied in paired school situations. The Board concluded that the rules were not applied consistently because the board would apply the hardship exemption, but would not apply the older sibling exemption. This Board held that:

Either the schools are paired, and the applicable transfer policy is the flexible "agreement", or they are not, and the applicable transfer policy is hardship or the older sibling exemption. If the usual transfer policy never applied to paired schools, as the local board contends, the local board should not have considered hardship in these appeals or reversed transfer denials between Rosemary Hills/Bethesda ES on that basis. Therefore, our view is that the local board's inconsistent application of the student transfer policy was arbitrary and capricious.

MSBE Op. 09-23 at 7.

¹ This "accommodation" was not sanctioned by the County Board.

It is that “mutually exclusive” analysis that the local board requests us to reconsider.

ANALYSIS

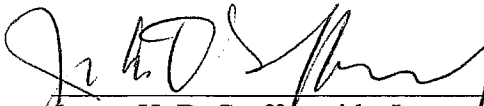
We begin our analysis recognizing that the three Appellants in this case were granted the transfers they requested. For them, this case is moot. For the local board, however, it is not. The local board views this Board’s decision, that the transfer rules in paired and non-paired schools are mutually exclusive, as an illegal incursion into the county board’s authority to determine geographic boundaries for schools within its jurisdiction. The gravamen of the local board’s argument appears to be that the State Board failed to understand the distinction between Bethesda Elementary as a school paired with Rosemary Hills for grades 3-5 and Bethesda Elementary as a separate school, for grades K-5. It is true that we did not understand that distinction - - that a school could be both a paired school for some grades and a stand-alone school for all grades. We believed that being a paired school and a stand-alone school were mutually exclusive situations.

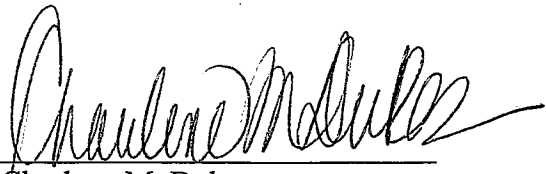
To eliminate misunderstanding and any fear that this Board intended to usurp the county board’s authority to determine geographic boundaries for its schools and because the case is now moot for the Appellants, we will vacate our previous decision, MSDE Op. 09-23. While we vacate our previous decision, this Board remains concerned about clarity in the transfer policy.

In our view, there remains confusion surrounding the rules governing the transfer of students between paired schools. In its Motion for Reconsideration, the local board explained if an East Bethesda student now assigned to Rosemary Hills for grades K-2 “wishes to attend a school other than Rosemary Hills for kindergarten, Grade 1 or Grade 2, the family must show hardship or the presence of an older sibling at the receiving school.” That explanation seems to say that the older sibling exemption applies in a paired school transfer case. The local board further states, however, that an East Bethesda kindergarten student at Rosemary Hills could transfer to Bethesda Elementary kindergarten only if “the student has an older sibling who is attending Bethesda Elementary in Grade 1 or Grade 2 *based on an approved transfer . . .*” *Id.* (emphasis added). We do not understand the distinction being made, but further explanation need not be made to us. It should be made to parents with children in paired schools so that they understand when the sibling exemption applies and when it does not.

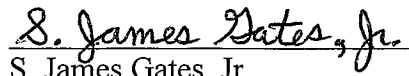
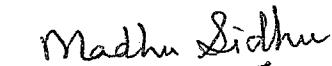
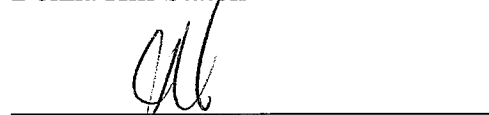
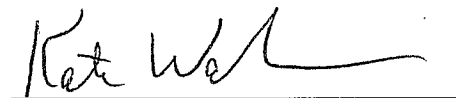
CONCLUSION

For the reasons stated herein, we vacate Opinion 09-23.


James H. DeGraffenreidt, Jr.
President



Charlene M. Dukes
Vice President


Mary Kay Finan
S. James Gates, Jr.
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Kate Walsh

February 23, 2010