

MARCIA A.,

Appellant

v.

MONTGOMERY COUNTY BOARD OF
EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 11-47

OPINION

INTRODUCTION

Appellant has appealed the decision of the Montgomery County Board of Education (local board) denying her request to have her son transferred to Richard Montgomery High School. The local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. The Appellant has responded to that motion and the local board has replied.

FACTUAL BACKGROUND

On or about March 29, 2011, Appellant submitted a request to transfer her son, S.A., from Albert Einstein High School (Einstein), where he was attending the tenth grade, to Richard Montgomery High School (Richard Montgomery), where his younger sister had been accepted into the International Baccalaureate (IB) Magnet Program for the following school year. Appellant listed "hardship" and "other sibling attends requested school" as the basis for the request. (Motion, Attach. 1). The Disciplinary Review and School Assignment Unit Supervisor denied the transfer on March 31, 2011, because it did not meet the guidelines for approval. (*Id.*).

On April 14, 2011, Appellant appealed the denial to the Superintendent's Designee. Appellant stated that she prefers to drive her children to and from school in order to spend quality time with them, but that driving them to two different schools with considerable distance between them is a hardship. She also argued that the sibling preference exemption that allows transfers for younger siblings who have older siblings attending the requested school should be extended to allow transfers for older siblings who have younger siblings at the requested school. (Motion, Attach. 4).

The Superintendent's Designee transferred the matter to a hearing officer for review. The hearing officer recommended denial of the transfer due to lack of hardship. He noted that

Appellant's decision to drive her children to school does not represent a unique hardship, and that bus transportation is available for both schools. He further noted that the sibling preference exemption for student transfers does not apply to the scenario here where the older sibling seeks to enroll in the school in which the younger sibling is enrolled. On May 4, 2011, the Superintendent's Designee adopted the hearing officer's recommendation and denied the transfer. (Motion, Attach. 5).

Appellant appealed to the local board. (Motion, Attach. 6). On June 27, 2011, the local board affirmed the decision of the Superintendent's Designee and denied the transfer request. (Motion, Attach. 8).

This appeal ensued.

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.01.05.05; see *Mr. & Mrs. David G. v. Montgomery Co. Bd. of Educ.*, MSBE Op. No.10-14 (2010); *Bell v. Montgomery County Bd. of Educ.*, MSBE Op. No. 05-02 (2002); *Breads v. Bd. of Educ. of Montgomery County*, 7 Op. MSBE 507 (1997).

LEGAL ANALYSIS

Appellant seeks to have her son transferred to the same school as her daughter. In Montgomery County, transfers are only approved for documented, unique hardship or because the circumstances fall within one of several exemptions. While "hardship depends on the family's individual and personal situation," [p]roblems that are common to large numbers of families . . . do not constitute a hardship, absent additional compelling factors." (Motion, Attach. 3, p. 2).

Appellant would like the children to attend the same school so they can spend "quality time" together driving to and from school. She claims that driving them to two different schools a considerable distance apart where they need to be at the same time is a hardship. It is not unusual for parents to have to transport children to different schools, especially when they have chosen to enroll one of the children in a special program. In this case, Appellant chose to have her daughter attend the IB Magnet Program at Richard Montgomery knowing it would place S.A. and his sister in two different schools. Appellant's desire to have the children at the same location so that she can spend quality family time driving them to and from school is not a recognized hardship.

To the extent the logistics of driving the children to and from school is an issue, there is bus service available for both students. While the Appellant has voiced concern over her children being exposed to inclement weather while waiting at the bus stop, the exposure of students to varying weather conditions is not a hardship sufficient to justify a transfer as this is common to all students who take bus transportation that does not stop in front of the home.

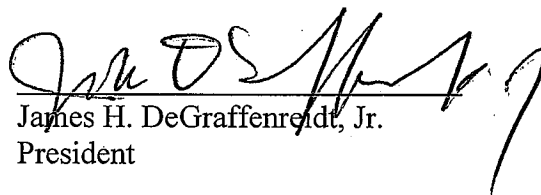
As stated above, transfers are also approved when circumstances fall within a recognized exemption set forth in the transfer policy. Once such exemption is the sibling preference policy which allows the requested transfer of a younger sibling when “an older sibling attending the requested school at the same time [is] in the regular program.” (Motion, Attach. 3, MCPS Regulation JEE-RA.IV.B.1). The school system provides explanation of the policy in the Change of School Assignment Booklet. (*Id.*, Attach. 3, COSA Booklet).

Appellant maintains that the sibling preference exemption is ambiguous. In our view, however, the transfer policy and guidance make clear that the exemption does not apply to older siblings seeking a transfer to the school attended by the younger sibling. (*Id.*, Attach. 3). The exemption is simply inapplicable to Appellant’s situation.¹

It is well established that absent a claim of deprivation of equal educational opportunity or unconstitutional discrimination, there is no right or privilege to attend a particular school. *Bernstein v. Board of Educ. of Prince George’s County*, 245 Md. 464, 472 (1967). The State Board has held on many occasions that there is no entitlement for a student to attend a particular school or program of study. *Thelma W. v. Prince George’s County Bd. of Educ.*, MSBE Op. No. 08-14 (2008); *P.H. v. Prince George’s County Bd. of Educ.*, MSBE Op. No. 07-7 (2007); *Slater v. Board of Educ. of Montgomery County*, 6 Op. MSBE 365 (1992).

CONCLUSION

For these reasons, we affirm the local board’s decision to deny the transfer.


James H. DeGraffenreidt, Jr.
President

Absent

Charlene M. Dukes
Vice President

¹ Appellant suggests that the sibling exemption should also apply in cases where the older sibling seeks to enroll at the school attended by the younger sibling. Appellant cannot use the §4-205 appeal process to force a change in existing policy. See *Regan v. Montgomery County Bd. of Educ.*, MSBE op. No. 03-05 (2003) and cases cited therein.

Mary Kay Finan
Mary Kay Finan

S. James Gates, Jr.
S. James Gates, Jr.

Luisa Montero-Diaz
Luisa Montero-Diaz
Absent

Sayed M. Naved
Sayed M. Naved

Madhu Sidhu
Madhu Sidhu

Guffie M. Smith, Jr.
Guffie M. Smith, Jr.

Donna Hill Staton
Donna Hill Staton

Ivan C.A. Walks
Ivan C.A. Walks

Kate Walsh
Kate Walsh

October 25, 2011