

JOE AND DONNA M.

Appellants

v.

MONTGOMERY COUNTY BOARD  
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 11-54

### OPINION

#### INTRODUCTION

Appellants challenge the decision of the Montgomery County Board of Education (local board) denying their request to transfer their daughter to Colonel Zadok A. Magruder High School from Gaithersburg High School. The local board filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal.

#### FACTUAL BACKGROUND

Appellants live in the attendance area for Gaithersburg High School (Gaithersburg). On March 27, 2011, Appellants submitted a "Request for Change of School Assignment" asking that their daughter, K.M., be permitted to attend Colonel Zadok A. Magruder High School (Magruder). At the time of the request, K.M. was in the tenth grade at a small parochial school. (Motion, Attach. 2). Appellants checked the box for "Exempt countywide program" as the reason for the request. (Motion, Attach. 1).

By letter dated March 30, 2011, Appellants provided additional explanation for their transfer request. They stated their belief that K.M.'s transfer from a small private school to a public high school would be best achieved at Magruder, which houses the Pursuing Excellence through Academic Curriculum ("PEAC") Scholars program. Their hope was that K.M. would be admitted to PEAC where she would be academically challenged and could more easily form close relationships with the smaller group of PEAC students. Appellants also indicated that the transition would be easier because K.M.'s best friend, who attends Magruder, would be a source of support. Additionally, the friend's family was willing to car-pool with Appellants. (Motion, Attach. 2). The Disciplinary Review and School Assignment Unit denied the request because PEAC is not a countywide program exempt from the hardship criterion and the request did not meet transfer guidelines. (Motion, Attach. 1).

On April 26, 2011, Appellants appealed the denial of their transfer request. They reiterated their desire that K.M. participate in the PEAC program, which is not offered at Gaithersburg.<sup>1</sup> They stated that they are “much more comfortable in [K.M.] transitioning from a parochial school to Magruder.” They also noted that they were in the initial stages of looking to purchase a home in the residential area served by Magruder and did not want K.M. to have to transition again should they move. (Motion, Attach. 3).

Larry A. Bowers, the Chief Operating Officer and Superintendent’s Designee, assigned the matter to Hearing Officer, Mary B. Dempsey. Hearing Officer Dempsey investigated the case. She concluded that the denial of the transfer request should be upheld based on the absence of a unique hardship. (Motion, Attach. 4A). On May 10, 2011, Mr. Bowers adopted the recommendation of the Hearing Officer and denied the transfer. (Motion, Attach. 4).

On May 17, 2011, Appellants appealed Mr. Bowers’ denial of their request, reiterating their prior arguments. (Motion, Attach. 5). The local Superintendent responded to the appeal in a June 7, 2011 memorandum to the local board. The Superintendent recommended that the local board deny the transfer request due to lack of a unique hardship. (Motion, Attach. 6).

On June 27, 2011, the local board upheld the denial of the transfer request. The board stated:

The Board is confident that Gaithersburg has programs and supports to help [K.M.] be successful in the coming year, as it does with other students transitioning from different environments. The Board has repeatedly held that the desire to attend a particular school, access a particular program, or attend school with friends does not constitute a unique hardship. Further, the [Appellants] have not demonstrated that [K.M.’s] attendance at a larger school will constitute a hardship; in any event, her preferred school is not significantly smaller than her assigned school.

(Motion, Attach. 7).

This appeal followed. In their letter of appeal to the State Board, Appellants state that K.M. is afraid to attend Gaithersburg because she fears that she will be bullied there.

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<sup>1</sup> Gaithersburg offers an academy program which is similar to the PEAC Program. (Motion, Attach. 4A).

## 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 *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); *Mr. & Mrs. David G. v. Montgomery Co. Bd. of Educ.*, MSBE Op. No.10-14 (2010).

## LEGAL ANALYSIS

It is well settled that there is no right to attend a particular school. *Bernstein v. Bd. of Educ. of Prince George's County*, 245 MD 464, 472 (1967); *Mr. & Mrs. David G. v. Montgomery Co. Bd. of Educ.*, MSBE Op. No. 10-14 (2010). Montgomery County's transfer policy provides that transfer requests will be granted if a student demonstrates a documented, unique hardship. Documented hardships do not include problems that are common to large numbers of families absent additional compelling factors.

Appellants request the transfer based on the belief that Magruder will provide their daughter with the strongest academic experience and wish to have their daughter participate in the PEAC program. The State Board has repeatedly held that there is no entitlement for a student to attend a particular school or program of study. See, e.g. *Dennis v. Bd. of Educ. of Montgomery County*, 7 Op. MSBE 953 (1998); *Marshall v. Bd. of Educ. of Howard County*, 7 Op. MSBE 596 (1997). Thus, the desire to have K.M. attend a school that Appellants' believe is academically better than the assigned school does not rise to the level of a unique hardship.

Appellants also believe that K.M.'s transition to a large public high school will be easier at Magruder because her best friend attends school there. The State Board has consistently held that the desire to be with ones friends or peer group does not constitute as a unique hardship. *Mary Ann K. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 10-52 (2010); *Tom & Judy M. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 09-37 (2009).

The Appellants also claim that they want to eventually move to the Magruder attendance area and do not want K.M. to have to transition to another school once they do. They state that they are in the initial stages of the process and have looked at a few houses. The Appellants, however, are only in the beginning stages of the process. There is no degree of certainty that such a move will actually take place. The eventuality of a move does not meet the hardship standard.

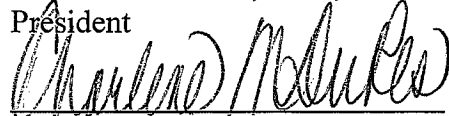
Appellants present for the first time in their appeal to the State Board a new basis for their transfer request. They maintain that the transfer should be granted based on K.M.'s fear of bullying and physical harm if she attends Gaithersburg. The State Board has consistently declined to review matters that have not been reviewed initially by the local board. *Donald and Natalia C. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 11-19 (2011), and cases cited therein. Moreover, the Appellants have presented no evidence supporting these new safety concerns.

CONCLUSION

For the reasons stated above, we affirm the decision of the Montgomery County Board of Education denying the Appellants' request to transfer their daughter to Magruder High School.



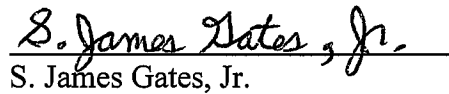
James H. DeGraffenreidt, Jr.  
President



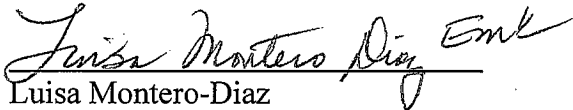
Charlene M. Dukes  
Vice President




Mary Kay Finan



S. James Gates, Jr.



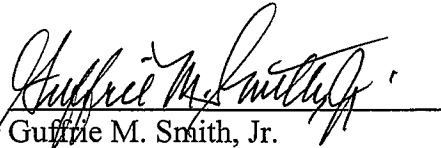
Luisa Montero-Diaz



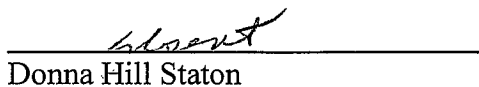
Sayed M. Naved



Madhu Sidhu



Guifre M. Smith, Jr.



Donna Hill Staton

*absent*  
Ivan C.A. Walks

*Kate Walsh*  
Kate Walsh

December 6, 2011