

ROBERT BOLTON,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 99-49

INTERIM OPINION

In this appeal, a parent of a student in the Northeast Consortium in Montgomery County contests the denial of his request to reassign his son from Paint Branch High School to Blake High School. Appellant cites his desire to have his son attend Blake due to his son's interest in music, and his intent to pursue a career in that field. The local board has filed a Motion for Summary Affirmance maintaining that its decision was not arbitrary, unreasonable or illegal. Appellant has filed an opposition to the motion.

On September 24, 1999, the U.S. Court of Appeals for the Fourth Circuit issued an opinion finding that a public school system's use of a weighted lottery in admissions to promote racial and ethnic diversity in its student body violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. *See Tuttle v. Arlington County School Board*, 1999 WL 759986 (4th Cir. 1999). Two weeks after issuing its opinion in *Tuttle*, the Fourth Circuit issued its opinion in *Eisenberg v. Montgomery County Public Schools*, 1999 WL 795652 (4th Cir. 1999) striking down Montgomery County Public School's ("MCPS") use of race as a factor in its student transfer process. In light of these decisions, the State Board requested and heard oral argument from the parties on the impact, if any, of *Tuttle* and *Eisenberg* on this appeal.

A review of the record in this matter discloses that by letter to Appellant dated June 30, 1999, the Acting Deputy Superintendent, Mr. Larry Bowers, stated that Appellant's transfer request was considered "in light of school capacity and grade-level space availability, as well as the gender and *diversity criteria* mentioned above." (Emphasis added.) At oral argument, however, the local board attorney indicated that the reason for the denial of Appellant's transfer request was over-enrollment at Blake High School. We therefore find the record unclear as to the basis for the denial of the transfer request.

For these reasons, we are transferring this appeal to the State Office of Administrative Hearings for an evidentiary hearing to determine whether the decision to deny Appellant's

transfer request was made in accordance with or in violation of the *Tuttle* and *Eisenberg* opinions.

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November 12, 1999