

KODI D. FRENCH,

Appellant

v.

MONTGOMERY COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 99-33

### OPINION

In this appeal, a parent of a student in the Northeast Consortium in Montgomery County, contests the denial of his request to transfer the student from Blake High School to Sherwood High School.<sup>1</sup> Appellant cites his desire to have his daughter transferred to Sherwood because Kodi is “very depressed” as a result of attending Blake rather than Sherwood with her peers, and his belief that Kodi’s “mental stability” would improve if she were permitted to attend Sherwood. Appellant also expresses his concern that Kodi was threatened with bodily harm by another student while in the cafeteria line at Blake. The local board has filed a Motion for Summary Affirmance maintaining that Appellants have presented no unique hardship sufficient to override the adverse impact that a transfer would have on the stabilization needs of Blake High School and the overutilization concerns of Sherwood High School. Appellant has filed a reply reiterating his concerns.<sup>2</sup>

### BACKGROUND

Blake High School was opened for the 1998-99 school year to relieve overcrowding at nearby area schools in communities designated as part of the Northeast Consortium. The Consortium consists of those areas formerly served by Springbrook and Paint Branch High Schools, and some areas formerly served by Sherwood. Although Sherwood High School was excluded from the Consortium at its request, a portion of the Sherwood attendance area was redistricted to the Northeast Consortium to help alleviate overcrowding.<sup>3</sup> Students in the Northeast Consortium were assigned to schools by means of a “preferred choice” system which guaranteed admission to the school associated with the geographic area forming the base

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<sup>1</sup>Blake High School is in the Consortium and Sherwood High School is not.

<sup>2</sup>This appeal was not filed with the State Board until March, 1999. It has moved as quickly as possible through the State Board appeal process given the prescribed response time constraints.

<sup>3</sup>The redistricting of that area was affirmed by this Board in *Linda Glixon & Daryl Coyle v. Board of Education of Montgomery County*, MSBE Opinion No. 97-34 (July 31, 1997).

population for that particular facility, while also providing some choice among the three high schools: Blake, Paint Branch, and Springbrook. The parameters for selecting students based on their preferred choice were adopted by the local board on November 25, 1996. At that time, the local board directed that the three high schools involved “operate within the 80 to 100 percent utilization range and with race/ethnic compositions that fall within the range currently existing in the three high schools, and with male or female composition of each of the three high schools falling in the 45 to 55 percent range.” Memo dated November 25, 1996 from Vance to local board members.

Parents and students were asked to choose from among the three schools of attendance for the 1998-99 school year and to rank their choices in order of preference. Each school offered a regular high school curriculum plus a distinctive “signature program” focusing on a particular area of study: Science and Media for Paint Branch; Information Technology, Global Society and the International Baccalaureate for Springbrook; and Fine Arts and Humanities for Blake. All ninth grade students received their first choice from among the Consortium high schools or were assigned to their base area school if no preference were expressed.

Kodi is currently a ninth grade student at the newly opened Blake High School. (She lived in an area that had been redistricted out of the Sherwood zone to the Northeast Consortium area.) In October 1998, her father requested that Kodi be transferred to Sherwood High School for the remainder of the 1998-99 school year based on Kodi’s diminished desire to attend school, her growing despondency, and the family’s “uneasy feeling” after an incident in the school cafeteria where Kodi was threatened with physical harm by another student. Appellant indicated his belief that placing Kodi in an environment where she is comfortable would be more conducive to her learning experience.

Appellant’s transfer request was denied by the field officer based on the status of Blake as a Consortium school and on the overutilization of Sherwood. Appellant challenged this decision, reiterating his desire to have Kodi transfer to Sherwood where the environment “would be more beneficial to her achieving a better education.” The superintendent assigned a hearing officer to further investigate the transfer request.

The hearing officer recommended that Kodi not be allowed to transfer from Blake to Sherwood based on boundary changes and overutilization at Sherwood, the similarity in denying other requests, and lack of unique hardship. He stated:

In reviewing the appeal, I spoke with Mr. and Mrs. French, Kodi’s parents, Ms. Jackie Miller, pupil personnel worker, James Hubert Blake High School, and Ms. Carole Goodman, principal, James Hubert Blake High School. These conversations confirmed that James Hubert Blake High School is a new high school undergoing boundary changes as part of the new Northeast Consortium. Sherwood High School is overutilized at 103.7% and is also

undergoing boundary changes, and therefore both schools are closed to transfers. When I spoke with the pupil personnel worker, I explained that Kodi is very unhappy at James Hubert Blake High School but that her mother is not sure of the basic cause of her unhappiness. In speaking with the principal at James Hubert Blake High School, I was told that Kodi is earning A's and B's in all classes, and also that Kodi has never been to her counselor or an administrator to indicate that anything is wrong at school.

The hearing officer also noted his recommendation that the family contact Kodi's school counselor or school administrator to discuss issues that might be bothering Kodi, and work with the school to resolve any problems.<sup>4</sup> The local superintendent adopted the hearing officer's recommendation and denied the transfer request.

Appellant appealed the superintendent's denial. In support, Kodi submitted her own letter expressing her unhappiness with attending Blake, and requesting that the local board allow her to transfer to Sherwood. In a unanimous decision (7-0),<sup>5</sup> the local board upheld the superintendent's denial based on the reasons contained in the reports of the superintendent and the hearing examiner.<sup>6</sup> The local superintendent's memorandum explained in part:

As you know, maintaining the enrollment for a comprehensive academic program is essential to the opening of the new James Hubert Blake High School. In reviewing this case, Mr. Laurence E. Jeweler, hearing officer, found nothing that would justify approval. As of January 5, 1999, 39 students, including 14 ninth graders, requested transfers from James Hubert Blake High School to Sherwood High School. Many of these requests cited program continuity or stress as primary reasons for the transfer. The Board of Education's adopted school boundaries would be compromised and program delivery at James Hubert Blake High School would be seriously affected if all of these requests were approved. The Board should note that 14 of the total requests have been approved

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<sup>4</sup>In his letter of appeal to the local board, Appellant indicates that he heeded the hearing officer's recommendation and spoke with Kodi's school counselor, as well as several teachers. From the documents in this record it appears that Appellant's discussions with these individuals focused on the transfer request, and not on any other solutions to problems that Kodi might have. No documentation from the counselor or the teachers has been submitted.

<sup>5</sup>Local board member Beatrice B. Gordon did not participate in the decision.

<sup>6</sup>The local board's order affirming the superintendent's decision was issued February 9, 1999. The local board's written opinion was issued on February 24, 1999.

based on documented unique hardship circumstances of each request.

## ANALYSIS

In numerous opinions, the State Board has noted that student transfer decisions require balancing county-wide considerations with those of the student and family. *See, e.g., Marbach v. Board of Education of Montgomery County*, 6 MSBE 351, 356 (1992). “Race, socio-economic level, building utilization, enrollment levels, and the educational program needs of the individual student are all legally permissible and proper subjects of consideration in weighing the impact of a request for a student to transfer from his or her ‘home’ school to some other school of choice.” *Slater v. Board of Education of Montgomery County*, 6 Op. MSBE 365, 371-72 (1992). The standard of review that the State Board applies in reviewing student transfer decisions is that the State Board will not substitute its judgment for that of the local board unless the local board decision is shown to be arbitrary, unreasonable or illegal. *Michael & Barbara Breads v. Board of Education of Montgomery County*, MSBE Opinion No. 97-1 (January 29, 1997).

Here, for the following reasons we find the decision of the local board reasonable and not otherwise illegal. The need for maintaining school stability is a recognized basis for denying transfer requests. *See David Mays v. Board of Education of Montgomery County*, MSBE Opinion No. 98-11 (February 25, 1998) (upholding transfer denial of student diagnosed with Attention Deficit Hyperactivity Disorder based on the need for school stability and overutilization, despite claim that the new school could better accommodate the student’s needs). Recently, the State Board upheld the denial of similar requests to transfer students out of Blake High School based on the need to ensure adequate enrollment and to stabilize school boundaries. *See Heather Upchurch v. Board of Education of Montgomery County*, MSBE Opinion No. 99-7 (January 26, 1999) (majority opinion, 7-2, with 2 abstentions, upholding denial of request to transfer from Blake High School to Sherwood High School based on school stability and the need to ensure adequate enrollment at Blake High School); *Alexander Longobardo v. Board of Education of Montgomery County*, MSBE Opinion No. 99-3 (January 26, 1999)(upholding transfer denial in order to ensure an instructionally viable program at Blake High School); *Kellen Henderson v. Board of Education of Montgomery County*, MSBE Opinion No 98-54 (December 9, 1998)(upholding transfer denial in order to ensure adequate enrollment at Blake High School).

The denial of requests based on school utilization and stability is also supported by school policy. *See* MCPS Regulation JEE-RA. Here, there was a demonstrated concern regarding the stability of enrollment at Blake to ensure an operative academic program there, as well as a concern about the overutilization of Sherwood. Further, we note that the total number of students requesting transfers to or from a school can also affect whether transfers are approved or denied. *School Transfer Booklet* at 1; *Steven Zhou v. Board of Education of Montgomery County*, MSBE Opinion No. 98-25 (April 29, 1998).

After weighing the reasons advanced by the Appellants in support of the transfer against the school system’s concerns, the local board decided that the circumstances did not present a unique hardship when balanced against the adverse impact to the schools. The local board’s decision is consistent with prior similar transfer cases. While Appellant’s concerns about Kodi’s

mental state and the threat of harm made against her by another student should be taken very seriously, based on the record before us it does not appear that these problems were brought to the attention of school officials until the transfer request was initiated. Thus, the school was not given any prior opportunity to address concerns that Kodi might have had regarding her assignment to Blake High School. Further, her grades have not declined. Moreover, with regard to Kodi's alleged "depression," Appellant has submitted no evidence to support his contention that Kodi suffers from any psychological condition caused by her attending Blake High School.

### CONCLUSION

For these reasons, we do not find that the local board acted arbitrarily, unreasonably, or illegally in this matter. We therefore affirm the decision of the Board of Education of Montgomery County.

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June 30, 1999