

HOWARD AND JUDITH HERING,

Appellants

v.

MONTGOMERY COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 99-51

### OPINION

This appeal contests the denial of the transfer request of Stacie Hering from Kennedy High School to James Hubert Blake High School in Montgomery County based on concerns of racial imbalance at Kennedy and over-enrollment of the 9<sup>th</sup> grade at Blake. Appellants claim that the local board's decision is "unjustified and flies in the face of Montgomery County Public School's philosophy of 'success for every student.'" The local board has filed a Motion for Summary Affirmance maintaining that the local board's decision should be upheld because it is not arbitrary, unreasonable or illegal. Appellants have filed an opposition to the motion.

When this matter was considered by the local superintendent and the local board, Appellants resided in the Kennedy High School district. Since that time, Appellants have relocated to the area served by Sherwood High School, where Stacie currently attends school. Although the Appellants assert that they still want Stacie to attend Blake, the record does not show that they have filed a formal request for a transfer from Sherwood to Blake.

### BACKGROUND

On January 2, 1999, Stacie's mother requested that Stacie be transferred from Kennedy High School to Blake High School for the 1999-2000 school year.<sup>1</sup> In her transfer request,

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<sup>1</sup>Blake High School is one of three high schools in the Northeast Consortium. The other two are Paint Branch High and Springbrook High. Students residing within the Northeast Consortium are assigned to schools through the preferred choice method, in which the students list the schools that they want to attend in order of preference. 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 October 27, 1997 from Vance to local board members (emphasis added).

Appellants expressed Stacie's strong interest in attending Blake because of its signature program in the performing arts. On May 14, 1999, the transfer request was denied based on the impact on diversity at Kennedy High School and over-enrollment in grade nine at Blake.

Appellants challenged the decision of the Office of Student Transfers, reiterating their desire to have Stacie attend Blake based on its specialized programs that they believe would aid their daughter in her pursuit of a career in the performing arts. The matter was referred to a hearing officer who investigated the case and recommended that the transfer request be denied. The hearing officer noted that Blake High School was already at capacity for grades nine and ten, and that many Northeast Consortium students were denied placement at Blake due to the overcrowding in the ninth grade. The superintendent's designee reviewed the hearing officer's report and concurred with his recommendation that the transfer be denied.

Appellants appealed the denial to the local board. In their letter dated June 21, 1999, Appellants challenged the indication that the ninth grade at Blake was overutilized, and also challenged the use of race as a factor in preventing the transfer. In a memorandum to the local board, the superintendent emphasized that the transfer should be disallowed based on the over-enrollment of the ninth grade at Blake. The local board reviewed the matter and was unable to reach a majority vote of its membership to either affirm or reverse the transfer decision. Thus, the decision of the superintendent's designee denying the request was allowed to stand.

Subsequent to the local board decision, the Herings moved to an area they thought was in the Northeast Consortium so that Stacie could attend Blake. However, they moved to the Sherwood High School area where the residents had opted to remain out of the Northeast Consortium. Stacie is currently a 9<sup>th</sup> grade student in Sherwood High School.

### ANALYSIS

Because Appellants no longer reside in the Kennedy High School district, they no longer challenge that aspect of the transfer decision that denied Stacie's admission based on the impact on diversity at Kennedy. Rather, Appellants' challenge focuses on that aspect of the denial that concerns utilization at Blake High School. The local board asserts that any aspect of the Kennedy to Blake transfer is moot by virtue of the relocation of the Hering residence. We concur. Furthermore, since the Herings have not pursued a transfer request from Sherwood to Blake, we find that this aspect of the appeal must be dismissed for failure to raise this issue at the local level.

### CONCLUSION

For these reasons, we dismiss the appeal. *See* COMAR 13A.01.01.03J that sets out grounds for dismissal of appeals.

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December 8, 1999