

DANTE SAUNDERS,

Appellant

v.

MONTGOMERY COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 99-12

### OPINION

In this appeal, a mother contests the transfer denial of her son Dante from Harmony Hills Elementary School to Bel Pre Elementary School in Montgomery County. Specifically, Appellant asserts that Dante was exhibiting symptoms of stress and anxiety as a result of being bullied at lunch and recess by students who were not being controlled by the school personnel on duty. The local board has filed a Motion for Summary Affirmance maintaining that Appellant's claimed hardship is insufficient to override the school's concerns about enrollment stability and ethnic diversity.

### BACKGROUND

Dante is currently a second grade (white) student enrolled at Harmony Hills Elementary School in Montgomery County.<sup>1</sup> On April 27, 1998, Dante's mother requested that Dante be transferred to Bel Pre Elementary School for the 1998-99 school year based on her dissatisfaction with the playground behavior of other students and what she felt was the principal's lack of an adequate response. Attached to this request was a letter dated April 27, 1998 from Menika A. Pesce, M.D. which indicated that she had met with Dante and his mother. Dr. Pesce concluded that Dante was experiencing stress due to the school yard environment which had been described to her as violent and unsafe.

The transfer request was denied by the field officer on May 15, 1998 based on the need for school stability. Appellant challenged the field officer's decision, reiterating her desire to remove Dante from Harmony Hills where he was allegedly being bullied by students during lunch and recess. The superintendent assigned a hearing officer, Dr. Alex E. Dunn, to further investigate the transfer request. The hearing officer recommended that Dante not be allowed to transfer out of Harmony Hills based on school stability, school diversity, lack of unique hardship and the similarity in denying other requests. The local superintendent adopted this recommendation and denied the transfer request.

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<sup>1</sup>Dante had been removed from the Montgomery County Public School System by his mother to be home schooled. As of September 29, 1998, however, she re-enrolled Dante at Harmony Hills.



Appellant appealed the superintendent's denial to the local board. In a memorandum to the local board dated July 22, 1998, the superintendent explained the following:

Dr. Dunn reports that his investigation indicated that Dante is doing well at Harmony Hills Elementary School; has been identified as a gifted and talented student; and according to Ms. Robin Weaver, principal at Harmony Hills Elementary School, appears to be at ease in the school setting and doing quite well. On the other hand, there is an affidavit<sup>[2]</sup> filed by Menika A. Pesce, M.D. who stated, in part, "Donte [sic] was accompanied by his mother to our office on several occasions for possible stress related symptoms. Mom felt that this may be secondary to this child's school environment. No other contributing factors were identified at this time." Dr. Pesce noted that Ms. Harris described the school environment as "violent and unsafe for Dante." Dr. Pesce concluded, "I feel this situation has caused stress for this family and it would be to their benefit that this transfer process not be prolonged." However, Ms. Weaver advised Dr. Dunn that Dante's schedule will be further enriched this coming school year in that he will be in a small math class, and will be afforded other enrichment interventions that are necessary.

The superintendent also referenced a monitoring process wherein pupil personnel staff and school staff were to monitor Dante's progress at Harmony Hills. The school was to consider transferring Dante to another setting if the monitors determined that Dante evidenced great difficulties in one or more areas of academic, social, and emotional well being.

On appeal to the local board, the decision of the superintendent remained unchanged because the local board was unable to affirm or reverse the decision by a majority vote of its full membership. Three board members voted to affirm the decision based on the reasons contained in the hearing examiner's memorandum dated July 1, 1998, and the superintendent's memorandum dated July 22, 1998. Four members voted to reverse the superintendent's decision based on his failure "to recognize the extent of the effects of bullying upon Dante's psychological health and its likely impact upon his educational achievement were he to continue in such an atmosphere." One member did not participate.

## 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. Montgomery County Board of Education*, 6 MSBE 351, 356 (1992). "Race, socio-economic

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<sup>2</sup>The described item is actually a letter from Dr. Pesce and not an affidavit.

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. Montgomery County Board of Education*, 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. Montgomery County Board of Education*, MSBE Opinion No. 97-1 (January 29, 1997).

Here, we find that the decision of the local board is consistent with prior decisions and not otherwise illegal. The School Transfer Booklet indicates that school stability is a factor that affects transfer decisions when a school is undergoing renovation which requires students to attend school at another site. This factor has been recognized by the State Board as a basis for denying transfer requests. *See David Mays v. Montgomery County Board of Education*, MSBE Opinion No. 98-11 (February 25, 1998) (upholding transfer denial based on the need for school stability and over utilization). At the time of the transfer request, Harmony Hills Elementary School was temporarily in a holding facility while its building was being modernized. It was therefore appropriate to consider school stability as a factor in the denial of Dante's transfer request.

A transfer denial based on diversity factors is also consistent with school policy. *See* MCPS Regulation JEE-RA. The percentage of white students at Harmony Hills was lower than the county-wide average range and declining. During the 1997- 98 school year white students constituted only 16.4% of the total school population and had been declining an average of 1.8% per year over the past four years. Affidavit of Dr. Marlene Hartzman, Director of the Department of Educational Accountability for MCPS. As such, white students at Harmony Hills were designated as diversity category three and were generally not permitted to transfer out absent a showing of a unique hardship. *See* MCPS School Transfer Information Booklet. The State Board has determined that the need to maintain racial diversity is an appropriate factor when considering a transfer request. *See Michael & Barbara Breads v. Montgomery County Board of Education*, MSBE Opinion No. 97-1 (January 29, 1997).

After initially reviewing the documentation filed in this appeal, the State Board found that the only issue that had not been adequately addressed by the local board was Dante's adjustment and well-being at Harmony Hills Elementary School. The State Board therefore requested follow-up information regarding the staff's monitoring of Dante with respect to his well-being and progress in all areas at school. In response, the local board attorney noted that based on the monitoring performed by school staff, specifically Dante's classroom teacher together with the reading specialist and school principal, Dante's adjustment to second grade and his relationships with peers and adults have been good. Consequently, there did not appear to be a need for involving additional personnel. Moreover, Dante's mother has not made any specific complaints or brought problems to the school's attention this year that were not handled to her satisfaction.

As a result, further interventions including monitoring by other professional staff were not sought. The board attorney also submitted a 3-page document entitled Summary of Parent Conference which disclosed no unresolved issues.

### CONCLUSION

For the reasons noted above, we find that the local board did not act arbitrarily, unreasonably, or illegally in this matter. We therefore affirm the decision of the Board of Education of Montgomery County.

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February 23, 1999