

ANIT SHARMA,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 99-6

OPINION

In this appeal, Appellants contest the transfer denial of their son Anit from Twinbrook Elementary School to Cold Spring Elementary School in Montgomery County. The local board has filed a Motion for Summary Affirmance maintaining that Appellants have not presented any unique hardship for granting a transfer in this case. Appellants have submitted a reply.

BACKGROUND

Anit is currently a fifth grade student at Twinbrook Elementary School. On June 10, 1998, his parents requested that Anit be transferred to Cold Spring Elementary School for the 1998-99 school year because they believed that Cold Spring was a “better place for Anit’s mental and emotional development” and that they intended to move into the Cold Spring attendance area during the school year.

Their request was denied by the supervisor of pupil services on June 16, 1998 based on restrictions on transfers of students out of Twinbrook Elementary.¹ Thereafter, Appellants challenged this decision, reiterating their desire to have Anit attend Cold Spring Elementary.

The superintendent assigned a hearing officer to further investigate the transfer request. The hearing officer recommended that Anit not be allowed to transfer from Twinbrook to Cold Spring based on class size factors at Cold Spring, the underutilization at Twinbrook, the similarity in denying other requests, and lack of evidence of change in residence. He stated:

In reviewing this matter, I spoke with Dr. Sharma, parent; and Mrs. Parker, secretary at Twinbrook Elementary School; and Mr. Barnett, principal at Cold Spring Elementary School. These

¹Although Appellants’ transfer request was submitted after the filing deadline, the letter from the supervisor of pupil services indicates that Appellants’ request was considered and processed because it constituted an exception within the policy provisions.

conversations confirmed that Twinbrook Elementary School is underutilized and no space is available in Grade 5 at Cold Spring Elementary School. *Further, the family has submitted no documentation to support the assertion that they will be living in the Cold Spring Elementary School area next year.* (emphasis added)

The hearing officer also noted that both Twinbrook and Cold Spring were underutilized; Twinbrook at 79.7% and Cold Spring at 73.6%. The local superintendent adopted the hearing officer's recommendation and denied the transfer request.

Appellants' appealed the superintendent's denial. In a 6-1 decision,² the local board upheld the superintendent's denial based on the reasons contained in the reports of the superintendent and the hearing examiner.³ The local superintendent's memorandum explained that:

The focus of this transfer centers on the parents' request to transfer Anit from Twinbrook Elementary School to Cold Spring Elementary School. The family plans to move into the Cold Spring area next year and wants Anit to begin the school year at Cold Spring Elementary School. The parents further state that they want to avoid changing Anit's school in the middle of the year since he had 'a very hard time adjusting to school in Houston. . .when [the family] moved from Tyler, Texas.'

In reviewing this request, Dr. Alex Dunn, hearing officer, determined that there are 26 students presently enrolled in the Cold Spring Elementary School Grade 5 class and 27 students enrolled in the 4/5 combination class. The principal expressed concerns about increasing the size of these classes. It also should be noted that since Dr. Sharma submitted his request for a student transfer on June 11, 1998, he has not provided any documentation to support his assertion of a planned move into the Cold Spring Elementary School area next year.

²One board member was absent.

³The local board's order affirming the superintendent's decision was issued September 8, 1998. It indicated that a written opinion would be issued at a later date. That opinion was rendered on September 22, 1998.

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).

In making its decision, the local board relied upon the reasons identified by the local superintendent and the hearing officer in support of the denial of the transfer request. These reasons were underutilization of Twinbrook, no space available in Grade 5 at Cold Spring,⁴ and the fact that the family presented no documentation to support their assertion that they would be moving to the Cold Spring attendance area.

In order to justify a transfer, Appellants have to show a unique hardship. They indicate a possibility that they might move to the Cold Spring attendance area during the year and a belief that Cold Spring is the appropriate school for Anit. Both rationales are unsubstantiated. To date, they still reside in the same apartment and have produced no evidence to show that they are moving. Appellants’ failure to provide documentation concerning the proposed move to the Cold Spring attendance area was addressed in the report of the hearing officer and the local superintendent, upon which the local board relied. Accordingly, we find nothing arbitrary, unreasonable, or illegal in the board’s actions.

CONCLUSION

For these reasons, we affirm the decision of the Board of Education of Montgomery County.

Walter Sondheim, Jr.
President

Edward Andrews

⁴It is appropriate in certain cases to consider class size in denying a transfer request. *See Deborah Heilizer and Keith Weissman v. Board of Education of Montgomery County*, MSBE Opinion No. 98-5 (Jan. 28, 1998) (upholding class size as a factor because of the number of students requesting transfer into the same class).

Vice President

Raymond V. Bartlett

ABSTAIN*

JoAnn T. Bell

Philip S. Benzil

George W. Fisher, Sr.

Morris Jones

ABSTAIN*

Marilyn D. Maulsby

Judith McHale

Adrienne L. Ottaviani

John Wisthoff

* Ms. Bell and Ms. Maulsby are newly appointed members of the State Board of Education and did not participate in the review of this appeal.

January 26, 1999