

HEATHER UPCHURCH,

Appellant

v.

MONTGOMERY COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 99-7

### OPINION

In this appeal, a parent and her daughter, a student in the Northeast Consortium in Montgomery County, contest the denial of their request to transfer the student from Blake High School to Sherwood High School.<sup>1</sup> Appellants cite their desire to have Heather attend Sherwood because four generations of her family attended school there; Heather has an established support structure of friends there; Sherwood is closer to their home than Blake; and transportation for after-school activities is more accessible at Sherwood.<sup>2</sup> 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 over utilization concerns of Sherwood High School. Appellants have filed a reply reiterating their concerns.

### 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

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

<sup>2</sup>Appellants also cite a litany of concerns with regard to Blake High School now that school is in session. These issues were not raised below, and therefore were not considered as part of the transfer decision. While it may be appropriate for the local superintendent to investigate these allegations as a matter of procedure and proper administration of the school system, they are not relevant to the decision currently before the State Board. *See, e.g., Melissa Allen v. Board of Education of Anne Arundel County*, MSBE Opinion No. 98-40 (July 29, 1998) (failure to raise procedural due process issue before local board was waiver of issue on appeal); *Theresa Fentress v. Board of Education of Howard County*, MSBE Opinion No. 96-37 (Sept. 26, 1996) (failure to challenge suspension before local board constituted waiver of matter on appeal to State Board).

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 population for that particular facility, while also providing some choice among the three high schools.

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 Dr. 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. There were first and second round assignments. At the completion of the first round assignments at the end of January, 1998, the superintendent reported the following to the local board members:

As anticipated, the percent of Grade 10 students who received their first choice was lower than that for ninth grade students because a significant number of tenth graders included in the base area for James Hubert Blake High School had chosen to remain, not surprisingly, at their current high school. This would have resulted in a Grade 10 enrollment that was too small to offer an instructionally viable program at the new James Hubert Blake High School.

Heather is currently a tenth grade student at the newly opened Blake High School. In Spring 1997, her mother requested that Heather be transferred to Sherwood High School for the 1998-99 school year based on her family’s long history of attendance there, Heather’s desire to remain at the same school with her established friends and Girl Scout Troop, and her desire to continue to participate in extracurricular activities there.

Heather’s request was denied by the field officer based on overutilization and enrollment, and on the need for school stability due to the recent boundary change. Appellants challenged this decision, reiterating their desire to have Heather remain in the Sherwood environment where she was thriving academically and socially. Heather’s letter to the superintendent refers to her

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<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).

established support structure at Sherwood, her participation in after-school activities there and her desire to take courses offered by Sherwood. The superintendent assigned a hearing officer to further investigate the transfer request.

The hearing officer recommended that Heather not be allowed to transfer from Blake to Sherwood based on school space constraints and boundary changes at Sherwood, and the similarity in denying other requests. He stated:

I spoke with Mrs. Shirley Upchurch, Heather's mother; Mr. James Fish, principal of Sherwood High School; and Mrs. Carole Goodman, principal of James Hubert Blake High School. These conversations confirmed that a unique hardship has not been demonstrated that overrides school stability and building utilization issues. Additionally, during my conversation with Mrs. Upchurch, I explained that other similar requests that had to be denied in order to stabilize school enrollment and transfers are not approved the year a boundary change goes into effect unless a unique hardship is present. I further explained to Mrs. Upchurch that James Hubert Blake High School can meet Heather's educational needs and school staff members are available to meet with her and provide a smooth transition for Heather.

The hearing officer also indicated in his report that Sherwood High School is overutilized at 103.7%. The local superintendent adopted this recommendation and denied the transfer request.

Appellants appealed the superintendent's denial. In a 5-3 decision, the local board upheld the superintendent's denial based on the reasons contained in the reports of the superintendent and the hearing examiner.<sup>4</sup> The local superintendent's memorandum explained that:

As you know, maintaining the enrollment for a comprehensive academic program at the tenth grade is essential to the opening of the new James Hubert Blake High School. In reviewing this case, Mr. Terrill Meyer, hearing officer, found no unique hardship that would justify approval.

As of July 1, 1998, 29 students, including 22 tenth graders, requested transfers from James Hubert Blake High School to remain at their previously assigned schools. The majority of these requests cited program continuity as the primary reason for the

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<sup>4</sup>The local board's order affirming the superintendent's decision was issued August 26, 1998. It indicated that a written opinion would be provided at a later date. That opinion was issued on September 8, 1998.

transfer or participation in athletics or other extracurricular programs. 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 these requests were approved.

## 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).

Having reviewed the record, we find the decision of the local board in this case to be reasonable and not otherwise illegal. The need for 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 based on the need for school stability and over utilization). The denial of requests based on stability issues is consistent with school policy. *See* MCPS Regulation JEE-RA. Here, there was a demonstrated concern regarding enrollment at Blake to ensure an instructionally viable tenth grade program there.<sup>5</sup> 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).

Additionally, with respect to Appellants' desire to have Heather partake in courses offered at Sherwood, the State Board has repeatedly held that there is no entitlement for a student to attend a particular program of study. *See, e.g., Peter Dennis v. Board of Education of Montgomery County*, MSBE Opinion No. 98-2 (January 25, 1998) (desire to participate in particular courses does not constitute unique hardship sufficient to override utilization concerns);

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<sup>5</sup>There are two other appeals concerning transfer requests out of Blake High School: *Kellen Henderson v. Board of Education of Montgomery County* (MSBE Opinion No. 98-54, Dec. 9, 1998) (upholding transfer denial in order to ensure adequate enrollment at Blake High School); *Alexander Longobardo v. Board of Education of Montgomery County* (MSBE Opinion No. 99-3, Jan. 26, 1999) (upholding transfer denial in order to ensure adequate enrollment at Blake High School).

*Thomas & Kathleen Marshall v. Board of Education of Howard County*, MSBE Opinion No. 97-10 (February 26, 1997) (no entitlement to attend four-year communications program offered at Mount Hebron); *Slater v. Board of Education of Montgomery County*, 6 Op. MSBE 365 (1992) (denial of transfer to school alleged to better serve student’s abilities and welfare); *Williams v. Board of Education of Montgomery County*, 5 Op. MSBE 507 (1990) (denial of transfer to program offering advanced German); *Sklar v. Board of Education of Montgomery County*, 5 Op. MSBE 443 (1989) (denial of request to attend school offering four years of Latin, note taking/study skills course, and piano).

In sum, 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. 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

Raymond V. Bartlett

ABSTAIN\*  
JoAnn T. Bell

Philip S. Benzil

George W. Fisher, Sr.

Morris Jones

ABSTAIN\*  
Marilyn D. Maultsby

Adrienne L. Ottaviani

John Wisthoff

DISSENT

Because we find the denial of the transfer request arbitrary in this instance, we would reverse the local board decision.

Edward Andrews  
Vice President

Judith McHale

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

January 26, 1999