

ALBERTO GUTIERREZ AND
THERESA FINN,

Appellants

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 00-1

OPINION

In this appeal, parents of a sixth grade student contest the denial of a transfer request for their daughter from Earle B. Wood Middle School to North Bethesda Middle School in Montgomery County. Appellants assert that Emma would be happier academically and socially at a school where she has an already existing peer group, and that the location of Wood Middle School's holding facility is inconvenient to Appellants' child care arrangements for Emma's brothers, as well as inconvenient to Appellants' work locations. The local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. Appellants have filed an opposition to the local board's motion.

BACKGROUND

On February 22, 1999, Appellants requested that Emma be transferred from Earle B. Wood Middle School to North Bethesda Middle School¹ for the 1999-2000 school year based on their concern that her attendance at Wood would be "detrimental to [her] academic and personal development." Appellants mentioned other problems related to their child care arrangements,² and that the proximity of their jobs to the North Bethesda school site would facilitate their involvement as parents in school events.

The request was denied by the field officer on May 14, 1999 based on the need for school stability. Appellants challenged the field officer's decision, reiterating their concerns about Emma's transition to a new environment without the presence and support of her friends. The superintendent's designee assigned a hearing officer, Elaine Lessenco, to further investigate the transfer request. The hearing officer's report explained the following with regard to Earle B. Wood Middle School: (1) that the school is at its optimum enrollment level at 96.8%; (2) that the

¹North Bethesda Middle School is a new school which opened in September, 1999. During its construction it was referred to as Walter Johnson Middle School #2.

²Emma's two brothers attend Wyngate Elementary School which is close to North Bethesda Middle School.

school will be in a holding facility in the Bethesda/Rockville area for the 1999-2000 school year, precluding transfers in or out; (3) that the holding facility for the school is located close to North Bethesda Middle School; (4) that the school has student orientation days scheduled in July to help students with the adjustment to a new school; and (5) that there will be activity buses to transport students home from Wood three days per week during the school year in order to accommodate after school activities.

With regard to North Bethesda Middle School, the report stated that the school would open in September 1999, and was restricted for transfers in and out for the first year of operation in order to promote a stable environment. The report further noted that while Emma had some learning difficulties at one time, she appeared to be doing much better. The hearing officer recommended that the transfer request be denied. The superintendent's designee adopted the hearing officer's recommendation and denied the transfer request.

Appellants appealed the denial to the local board. In a memorandum dated July 22, 1999, the superintendent responded:

Earle B. Wood Middle School will be in a holding facility for the 1999-2000 school year and is closed to transfers in and out in the absence of a unique hardship. Likewise, North Bethesda Middle School will open in September 1999, and is closed to transfers in and out for its first year of operation, unless a unique hardship can be documented. Every effort is being made to stabilize the population of Earle B. Wood Middle School while the school is in a holding facility, as well as the first year of operation for North Bethesda Middle School. Although North Bethesda Middle School is underutilized as a whole, staff allocations have been made on the basis of projected enrollment in each grade level given the new boundaries between North Bethesda Middle School and Tilden Middle School. There is concern about the feeder pattern in the cluster because the high school, Walter Johnson High School, is currently overenrolled and projected for continued overenrollment for years to come.

The superintendent further stated that “[m]aintaining school stability in light of boundary changes and facility relocation at these schools is a priority,” and that “maintaining the appropriate class size, at both the home and the requested school, is also of equal importance.”

Because the local board was unable to affirm or reverse the decision by a majority vote of its full membership, the decision of the superintendent stands. Four board members voted to affirm the decision; two members voted to reverse the superintendent's decision finding evidence of undue hardship; and two members did not participate.

ANALYSIS

The standard of review that the State Board applies in reviewing a student transfer decision is that the State Board will not substitute its judgment for that of local school system unless the local school system decision is shown to be arbitrary, unreasonable, or illegal. *See, e.g., Michael & Barbara Breads v. Board of Education of Montgomery County*, 7 Op. MSBE 507 (1997).

For the following reasons, we believe that the denial of the transfer request is consistent with prior State Board decisions and is not otherwise illegal. The denial of requests based on stability issues is consistent with school policy. The Montgomery County 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. *See* MCPS Regulation JEE-RA. This factor is a recognized basis for denying transfer requests. *See David Mays v. Board of Education of Montgomery County*, 7 Op. MSBE 1043 (1998) (upholding transfer denial based on the need for school stability and over-utilization). At the time of the transfer request, Wood Middle School was temporarily in a holding facility while its building was being modernized. Additionally, North Bethesda Middle School was opening for the first time in September 1999, and there was a demonstrated concern for stabilizing enrollment there. We therefore find that it was appropriate to consider school stability as a primary factor in the denial of Emma's transfer request.

Appellants have expressed their strong desire for their daughter to attend middle school with her elementary school peer group. While it is not uncommon for students to experience trepidation when entering a new school where the environment is unfamiliar and few fellow students are known, the State Board has not found this factor sufficient in other cases to override school system concerns about school stability. *See, e.g., Vassilis & Barbara Skardis v. Montgomery County Board of Education*, 7 Op. MSBE 1055 (1998) (desire to attend high school with middle school peer group not sufficient to override concerns regarding overenrollment); *Debra Diehl v. Montgomery County Board of Education*, 7 Op. MSBE 589 (1997) (desire to join peer group not sufficient to override concerns about overcrowding).

Additionally, regarding Appellants' concerns about child care arrangements, under the Montgomery County Policy a desire to have more favorable day care arrangements is not viewed as evidence of extreme hardship. *See Regulation JEE-RA* at 4 ("child care needs for elementary students will be accommodated within the parameters of this regulation."). Indeed, on numerous occasions, the State Board has upheld the local determination that day care problems do not suffice to justify a transfer. *See Rand Gelber v. Board of Education of Montgomery County*, 7 Op. MSBE 616 (1997); *Michael & Barbara Breads v. Montgomery County Board of Education*, 7 Op. MSBE 507 (1997); *Paul D. Marbach v. Montgomery County Board of Education*, 6 Op. MSBE 351 (1992).

CONCLUSION

For these reasons, we find that the local superintendent of schools has not acted arbitrarily, unreasonably, or illegally in this matter. We therefore affirm the decision of the Montgomery County Superintendent of Schools.

Edward Andrews
President

Raymond V. Bartlett

JoAnn T. Bell

Philip S. Benzil

Reginald Dunn

George W. Fisher, Sr.

Marilyn D. Maultsby

Judith McHale

Edward Root

Walter Sondheim, Jr.

John Wisthoff

February 1, 2000