

BRIAN HALL,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 00-49

OPINION

This is an appeal of the denial of Appellant's request to transfer his son from Brown Station Elementary School to DuFief Elementary School in Montgomery County. The local board has submitted a Motion for Summary Affirmance maintaining that Appellant's transfer request failed to meet any of the criteria for approving a student transfer and that the local board's decision is not arbitrary, unreasonable or illegal. Appellant has not submitted an opposition to the local board's motion.

FACTUAL BACKGROUND

This dispute arose when Aidan was enrolled to attend kindergarten at Brown Station Elementary School for the 2000-01 school year. On March 2, 2000, Appellant requested that Aidan be transferred to DuFief Elementary School for the 2000-2001 school year based on child care arrangements for Aidan and his three-year-old brother.¹ At the time of the request, Aidan and his brother were both enrolled in day care at Academy Child Development Center located on the premises of DuFief Elementary School. Appellant contended that Brown Station does not have before and after school care for Aidan or his younger brother and that "[t]he move to Brown Station would necessitate transportation for Aidan to and from an offsite day care during normal work hours. . . ." Appellant requested the transfer so that he would not have to make separate child care arrangements for his two children. Appellant also claimed that separate arrangements would be emotionally disruptive for the children.

Appellant's transfer request was denied by the field office supervisor. Appellant challenged the field office supervisor's decision, stating "I am unable to transport my two children to two separate schools (as would be the case if my child is forced to attend Brown Station – one child would attend Dufief's daycare, one at Brown Station, who would then need to be transported to before-care and after-care)." The superintendent's designee assigned a hearing officer, Elaine Lessenco, to further investigate the transfer request. The hearing officer's report confirmed space availability for Aidan and his brother at Kindercare, a day care center used by

¹Both Brown Station and DuFief are located in Gaithersburg, Maryland. Appellant and his family reside in Gaithersburg and Appellant works in Gaithersburg.

Brown Station students, and the availability of bus transportation between the day care center and Brown Station. The hearing officer shared this information with Appellant, providing him with the rates and scheduled opening and closing times. Finding no unique hardship in this case, the hearing officer recommended that the transfer request be denied. The superintendent's designee adopted the hearing officer's report.

Thereafter, Appellant appealed the denial to the local board. Appellant again highlighted the problems with child care arrangements, and indicated that he and his wife had visited Kindercare "long before [their] son was of school age and were overall displeased with the facility." Because Kindercare provided transportation to Brown Station, Appellant and his wife rethought the decision, but "realized that Kindercare was not an appropriate solution for either of [their] children." For the first time, Appellant also raised the fact that Brown Station is ranked 495th in the State on the most recently available Maryland School Performance Assessment Program ("MSPAP") test scores, while DuFief is ranked 7th in the State.

In response to the appeal, the superintendent submitted a memorandum dated June 21, 2000 stating as follows:

Brown Station Elementary School is underutilized, with 75.27% utilization projected for 2000-2001. Space is available in their kindergarten classes. DuFief Elementary School is reporting kindergarten classes at capacity, although their overall enrollment is at an optimal level with 89.89% projected for 2000-2001. There have been 15 requests for transfer from Brown Station Elementary School. Of this number, 10 have been approved in accordance with the current Board of Education policy on transfers. There have been 7 requests for transfer to DuFief Elementary School. Of this number, 3 have been approved in accordance with the current Board of Education policy on transfers.

There is no reason to believe that Brown Station Elementary School could not meet Aidan's needs. In a conversation with the principal at Brown Station Elementary School on June 20, 2000, the hearing officer learned that Aidan's mother has not contacted the school. The principal, Ms. Paula Gordon, expressed willingness to conduct a tour with the parents and to discuss the school program with them.

The superintendent further indicated that Appellant had not presented a compelling hardship that would justify the transfer.

In a decision issued July 6, 2000, the local board unanimously upheld the decision to deny the transfer request based on the reasons contained in the superintendent's June 21, 2000

memorandum and the hearing officer's June 7, 2000 report.

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 the local board unless that decision is shown to be arbitrary, unreasonable or illegal. *See, e.g., Breads v. Board of Education of Montgomery County*, 7 Op. MSBE 507 (1997).

Montgomery County Public Schools Regulation JEE-RA - Transfer of Students lists three criteria for consideration of a student transfer: (1) an older sibling attending the requested school at the same time; (2) continuation of a feeder pattern at the time the student is ready to move to the next education level, such as elementary to middle school or middle school to high school; or (3) a documented hardship. Appellant requested his son's transfer primarily based on concerns about child care arrangements. Because the first two criteria do not apply in this case, the only issue here is whether Appellant has a documented hardship.

Under Montgomery County Public Schools ("MCPS") policy, a desire to have more favorable day care arrangements is not viewed as evidence of documented hardship. The MCPS School Transfer Information Booklet explains that "[p]roblems that are common to large numbers of families, such as issues involving provision of day care, do not constitute a hardship, absent additional compelling factors." Booklet at 2. On numerous occasions, the State Board has upheld a local determination that day care problems do not suffice to justify a transfer. *See Charles and Michelle Sullivan v. Board of Education of Montgomery County*, MSBE Opinion No. 00-22 (April 19, 2000); *Alberto Gutierrez and Theresa Finn v. Board of Education of Montgomery County*, MSBE Opinion No. 00-1 (February 1, 2000); *Gelber v. Board of Education of Montgomery County*, 7 Op. MSBE 616 (1997); *Breads v. Montgomery County Board of Education*, 7 Op. MSBE 507 (1997); *Marbach v. Montgomery County Board of Education*, 6 Op. MSBE 351 (1992). Moreover, the record discloses that there is at least one alternative available to Appellant which would be enrolling both his children at a day care center that has availability and transportation to Brown Station Elementary.

With respect to Appellant's desire to have Aidan attend a school with a higher MSPAP ranking, the Court of Appeals has ruled that there is no right to attend a particular school. *See Bernstein v. Board of Education of Prince Georges County*, 245 Md. 464, 472 (1967); *accord, Dennis v. Board of Education of Montgomery County*, 7 Op. MSBE 953 (1998) (desire to participate in particular courses does not constitute unique hardship sufficient to override utilization concerns); *Marshall v. Board of Education of Howard County*, 7 Op. MSBE 596 (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).

CONCLUSION

For these reasons, we find that Appellant has not met his burden of proving that the local board's decision was arbitrary, unreasonable or illegal. We therefore affirm the decision of the Board of Education of Montgomery County.

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December 5, 2000