

SHARON HEMSLEY,

Appellant

v.

MONTGOMERY COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 00-31

### OPINION

In this appeal, the mother of a third grade student contests the denial of a transfer request for her son from Cresthaven Elementary School to either Sligo Creek or Piney Branch Elementary Schools in Montgomery County. Appellant has concerns regarding her son's safety and his treatment by school staff. The local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. Appellant has not filed an opposition to the local board's motion.

### FACTUAL BACKGROUND

On December 17, 1999, Appellant requested that her son, a third grade student, be transferred from Cresthaven Elementary School to Sligo Creek Elementary School or to Piney Branch Elementary. She indicated, among other things, that her son "is being stigmatized" and that she is "not sure how safe her child is [at Cresthaven]." Appellant's request for a transfer to Sligo Creek, or alternatively to Piney Branch, was denied by the field officer based on overenrollment.

Appellant challenged the field officer's decision, reiterating her concerns regarding her son's safety and complaining about mistreatment by school staff. The superintendent's designee assigned a hearing officer, Elaine Lessenco, to further investigate the transfer request. As indicated in the superintendent's report:

Mrs. Lessenco spoke with Mr. Lee Meiners, principal at Cresthaven Elementary School. It is his impression that Stephon has been treated fairly. He reported that the incident that Mrs. Hemsley characterized as an attack was actually a group of boys who were pretending to wrestle. The boys were called into the office and were placed on recess restriction. Mr. Meiners reported that he had met with Mrs. Hemsley on several occasions and had listened to her complaints about Stephon's mistreatment by his former Grade 3 teacher. He had arranged for Stephon's transfer to a different class, where he was reported to be doing well. Mr. Meiners apologized

for the one time that Stephon was asked to sit on the blacktop and noted that this was an oversight.

Ms. Beth Kane, counselor at Cresthaven Elementary School, reported to Mrs. Lessenco that she had been trying to help Stephon with his peer relations by weekly counseling and by referral to a mentoring program with a Springbrook High School student. She reported that she had met with the new class prior to Stephon's transfer to encourage them to welcome him. She was surprised that Mrs. Hemsley perceived this as a negative event.

Nevertheless, in an attempt to accommodate Appellant's request, Ms. Lessenco found a school that was not overenrolled and made arrangements for an administrative transfer of Stephon to Cannon Road Elementary School where he was enrolled on February 14, 2000. However, a day and a half later Appellant removed her son from Cannon Road claiming that he had been mistreated by school staff.<sup>1</sup> Specifically, she complained about an incident involving her son's homework and her son cleaning up after a Valentine's Day party.

Mrs. Lessenco investigated the situation. As reported by the superintendent:

Mrs. Lessenco contacted Dr. Theiss, principal at Cannon Road Elementary School, who reported that the staff had made every effort to welcome Stephon. He was included in the Valentine's Day party and was not kept after school to clean the room, as alleged. In fact, when the teacher was advised that Mrs. Hemsley had come to pick up Stephon, she walked him down the hall to greet Mrs. Hemsley. It is standard practice at Cannon Road Elementary for parents to be advised when students do not turn in assignments.

Appellant appealed the transfer denial to the local board. On March 27, 2000, the local board determined by a 5 to 3 vote that Appellant's son may attend Cresthaven or Cannon Road, or remain on home instruction. The local board noted Appellant's failure to demonstrate a unique hardship which would merit granting a transfer under these circumstances, as well as the fact that the two schools requested by Appellant are overutilized at the third grade level and cannot accommodate the transfer. Finally, the local board directed its Ombudsman to intercede in a further effort to ameliorate differences between Appellant and the two schools, Cresthaven and Cannon Road.

## ANALYSIS

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<sup>1</sup>Appellant has been teaching her son at home since removing him from school.

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., Michael & Barbara Breads v. Board of Education of Montgomery County*, 7 Op. MSBE 507 (1997).

In *Eisenberg v. Montgomery County Public Schools*, 197 F. 3<sup>rd</sup> 123 (1999), the United States Court of Appeals for the Fourth Circuit prohibited any consideration of race or ethnicity as a factor in approving student transfers. In light of this ruling, at its December 14, 1999 meeting, the local board suspended “the portions of policies, regulations, or procedures that require consideration of race or ethnicity of an individual student in a school or program assignment decision.” The local board also suspended Policy JEE -- Student Transfers and directed the superintendent to revise Regulation JEE-RA -- Transfer of Students to allow student transfers “on the basis of documented hardship, the presence of an older sibling simultaneously attending the same school, and/or the continuation of a feeder pattern at transition points.” *See* minutes of December 14, 1999 local board meeting.

The revised 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) the student is ready to move to the next education level; or (3) a documented hardship. Because the first two criteria do not apply in this case, the only issue here is whether Appellant has a documented hardship. Appellant requested her son’s transfer based on concerns about the treatment he was receiving at Cresthaven. Additionally, Appellant removed her son from Cannon Road based on concerns about his treatment there.

The record discloses that Appellant’s concerns regarding Cresthaven were investigated by the school system and found to be without merit. It also reveals that, despite this determination, the school system attempted to work with Appellant to accommodate her request by finding a reasonable alternative arrangement for Stephon. When Appellant raised concerns regarding her son’s transfer to Cannon Road, the school system investigated these allegations as well and also found them to be without merit. After reviewing the reasons advanced by the Appellant in support of the transfer, a majority of the local board decided that the circumstances did not present a documented hardship which would serve as a basis to grant a student transfer.<sup>2</sup> Based upon our review of the record, we find that the decision of the local board is consistent with Regulation JEE-RA.

## CONCLUSION

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<sup>2</sup>The School Transfer Information Booklet for the 2000-2001 school year states that “[b]y definition, hardship depends on the family’s individual and personal situation. Problems that are common to large numbers of families, such as issues involving provision of day care, do not constitute a hardship, absent compelling factors.” Thus, the determination is made on a case by case basis.

For these reasons, we find nothing arbitrary, unreasonable, or illegal in the local board's actions and affirm the decision of the Board of Education of Montgomery County. *See Nora Aintabi v. Montgomery County Board of Education*, 7 Op. MSBE 1060 (1998) (Hardship claim insufficient to override school system's legitimate concerns).

Raymond V. Bartlett

Philip S. Benzil

JoAnn T. Bell

Reginald Dunn

George W. Fisher, Sr.

ABSTAIN\*

Walter S. Levin, Esquire

Marilyn D. Maultsby

Judith McHale

Edward Root

Walter Sondheim, Jr.

John Wisthoff

\*Walter S. Levin, Esquire, a newly appointed member of the State Board of Education, did not participate in the deliberation of this appeal.

July 25, 2000