

JUNE AND KENNETH KEE,

Appellants

v.

MONTGOMERY COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 00-50

### OPINION

This is an appeal of the denial of Appellants' request to transfer their twin sons from Strathmore Elementary School to Barnsley Elementary School in Montgomery County. In their letter of appeal to the State Board, Appellants state that the main reason for requesting the transfer is that they are "in tens of thousands of dollars in debt because of all the medical problems [their] family has had to endure. . . . Transferring [the] twins, Jeffrey and Timothy to Lucy Barnsley would save [Appellants] several hundreds a month with [their] cousin offering to pick them up directly from Barnsley several times a week after school." Appellants explained that their cousin refuses to drive beyond her own neighborhood where Barnsley is located. The local board has submitted a Motion for Summary Affirmance maintaining that Appellants' 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.

### FACTUAL BACKGROUND

Appellants reside in the geographic attendance area for Bel Pre/Strathmore Elementary Schools. These two elementary schools are paired and students attend Bel Pre for grades K-2 and Strathmore for grades 3-5. Appellants' twins, Jeffrey and Timothy, are third grade students at Strathmore. The boys attend the Children's Learning Center ("CLC") in Rockville, and Appellants pay an additional transportation cost of \$100/month to transport their sons to and from school to day care. On March 19, 2000, Appellants requested that their sons be transferred to Barnsley Elementary School for the 2000-2001 school year in order to reduce the cost of transportation to the family's before and after school child care facility.

Appellants' transfer request was denied by the field office supervisor who indicated that the basis for the request did not support a hardship. In their appeal to the superintendent, Appellants indicated that their family has had health problems and financial problems, and that the transfer to Barnsley would reduce their child care costs because a relative was willing to pick the boys up after school at Barnsley a couple of days per week. Appellants also mentioned that their sons would like to attend Barnsley because many of their friends from CLC attend school there. Additionally, Appellants maintained that because Strathmore has low test scores and there is a new principal, "Strathmore would not meet their [sons'] intellectual and social expectations to learn and broaden their horizons."

The superintendent's designee assigned a hearing officer, Elaine Lessenco, to further investigate the transfer request. In her report, the hearing officer stated:

I spoke with Ms. Nancy Douglas, acting principal at Strathmore Elementary School, about the changes anticipated at that school and their focus on raising the test scores. I also spoke with Ms. Sherry Gordon, guidance counselor, who assured me that the Children's Learning Center does serve Strathmore Elementary School. Both Ms. Douglas and Ms. Gordon expressed willingness to discuss the Strathmore Elementary School program with Mrs. Kee.

I also spoke with Ms. Laura Annan, principal at Lucy V. Barnsley Elementary School, who reported that she is not familiar with this case but is expecting fairly large Grade 3 classes for next year. She further noted that Lucy V. Barnsley Elementary School and Strathmore Elementary School are not very far apart. My conversation with the Montgomery County Public Schools' Department of Planning and Capital Programming resulted in an estimate of the distance between the two schools at less than five miles, and probably closer to three miles. If alternate transportation is needed, it does not seem burdensome to ask that Jeffrey and Timothy be picked up from Strathmore Elementary School rather than Lucy V. Barnsley Elementary School.

Finding no unique hardship in this case, the hearing officer recommended that the transfer request be denied. The superintendent's designee, Chief Operating Officer Larry A. Bowers, adopted the hearing officer's report.

In their appeal to the local board, Appellants again highlighted their problems with child care arrangements, and indicated that their cousin who offered to pick the boys up from Barnsley after school "will not drive any further than around her own neighborhood because she has a tight schedule to conform to and also does not want to be carting her own 2 youngsters all around." (Emphasis in original). In response to the appeal, the superintendent by memorandum dated June 19, 2000 recommended upholding the denial of the transfer request due to lack of documented hardship. The superintendent advised the local board that there had been six requests for transfer out of Strathmore for the 2000-2001 school year, with two being approved on the basis of a documented hardship.

In a decision issued July 6, 2000, the local board voted 6-1 to uphold the denial of the transfer request based on the reasons contained in the superintendent's June 19, 2000 memorandum and the hearing officer's May 30, 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 the 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. Appellants requested that their sons be transferred primarily based on financial concerns related to reducing transportation costs between school and day care. Because the first two criteria do not apply in this case, the only issue here is whether Appellants have a documented hardship.

Here, the local board did not find that partial reduction of a \$100 per month day care transportation cost constituted a hardship when all of the facts and circumstances were examined. The twins are entering third grade. Transportation has been provided from The Children's Learning Center to Bel Pre Elementary School and it is available to the paired Strathmore school as well. It is unfortunate that Mrs. Kee's cousin is apparently unwilling or unable to drive an additional 3 miles or so to Strathmore to help the Kee family somewhat reduce the day care transportation expenses, given the family's stated need to begin to reduce the cost of child care. It was the judgment of the local board, however, that many families on tight budgets would like to reduce expenses and that the Kee family situation does not pose a unique hardship justifying transfer from the assigned school.

On numerous occasions, the State Board has upheld a local determination that day care related problems do not suffice to justify a student 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). For all of these reasons, we do not find that the local board acted arbitrarily in this case.

With respect to Appellants' desire to have their sons attend Barnsley because they believe that Strathmore cannot meet their sons' "intellectual and social expectations to learn and broaden their horizons," the Court of Appeals has held 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).

Finally, although Appellants would like their sons to attend the same school where some of their friends from CLC are enrolled, this factor has not been deemed sufficient in other cases to support a student transfer. *See, e.g., 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 approve transfer); *Diehl v. Montgomery County Board of Education*, 7 Op. MSBE 589 (1997) (desire to join peer group not sufficient to warrant student transfer).

## CONCLUSION

For these reasons, we find that Appellants have not met their 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