

EUGENE MORAN AND
ROSEANNE SKINNER,

Appellants

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 00-08

OPINION

In this appeal, parents of a sixth grade student contest the denial of the transfer request of their son from Gaithersburg Middle School to Forest Oak Middle School in Montgomery County. Appellants want their son to attend middle school with his friends from elementary school so that he can “go through the most exciting time [of his] life with [his] friends by [his] side.” Additionally, Appellants want Harry to attend Forest Oak because he had been taking separate gifted and talented classes in reading and English in elementary school, and Forest Oak offers separate gifted and talented classes in English, reading, and social studies, while Gaithersburg does not.¹ Appellants also indicate that they would like Harry to attend Forest Oak because that is where his brother attended school. 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

Harry is currently a sixth grade student enrolled at Gaithersburg Middle School in Montgomery County. On March 22, 1999, Appellants requested that Harry be transferred to Forest Oak Middle School for the 1999-2000 school year based on their desire that Harry attend middle school with his friends. Appellants indicated that “[i]t would be devastating for Harry to have to leave [his friends] behind during a time in his life that will bring so many changes.” Appellants also mentioned that Harry’s brother had attended Forest Oak.

The request was denied by the field officer on May 15, 1999 based on underutilization of Gaithersburg Middle School. Appellants challenged the field officer’s decision, reiterating their

¹Appellants have raised the issue of the gifted and talented classes for the first time in their letter of appeal to the State Board. They claim that they did not raise the matter earlier in the process because they believed that the course offerings were the same at both Gaithersburg and Forest Oak, and that they only became aware of the difference in course offerings when Harry began school in the fall.

concerns about Harry's transition to a new environment without the presence and support of his friends. The superintendent's designee assigned a hearing officer, Kenneth Garrison, to further investigate the transfer request. The hearing officer's report explained that: (1) Gaithersburg Middle is underutilized at 76.5%; (2) new boundaries for the Col. Zaddock Magruder High School cluster will reduce the number of elementary schools feeding into Gaithersburg Middle, causing further underutilization of the school; and (3) Grade 6 at Forest Oak is overenrolled with additional students expected to enroll over the summer. 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 recommendation.

Appellants appealed the denial to the local board. Harry personally wrote to the board stating that "[i]t would be quite sad for [him] if [he] didn't attend Forest Oak with all of [his] friends." In a memorandum dated August 9, 1998, the superintendent responded that Gaithersburg was underutilized, and Forest Oak's grade 6 classes were overutilized, with additional enrollment anticipated over the summer. The superintendent also indicated that Appellants had not presented a unique hardship that would justify the transfer.

On appeal to the local board, Appellants were unable to overturn the decision of the superintendent by a majority vote. Three board members voted to affirm the decision; three members voted to reverse the superintendent's decision finding evidence of undue hardship; and two members did not participate.

ANALYSIS

The standard of review in a student transfer appeal 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. Montgomery County Board of Education*, MSBE Opinion No. 97-1 (January 29, 1997). The State Board in prior opinions has recognized school utilization as a valid basis for denying transfer requests. *See Norman Roskin v. Montgomery County Board of Education*, MSBE Opinion No. 98-18 (March 25, 1998) (upholding denial of transfer out of Gaithersburg Middle School based on concerns regarding underutilization); *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 transfer requests based on utilization issues is consistent with school policy. Montgomery County Public School ("MCPS") Regulation JEE-RA indicates that school utilization is a factor that impacts transfer decisions. *See* MCPS Policy JEE-RA at III.A.1. Additionally, the MCPS School Transfer Information Booklet states that "[t]ransfers are usually not permitted *from* a school that is underutilized or *to* a school that is overutilized."² *See* Information Booklet at 2 (Emphasis in original).

²A school is underutilized if it is operating below 80% of capacity. *See* Information Booklet at 2.

The record discloses that at the time of the transfer request, Gaithersburg Middle School was underutilized. Additionally, there were concerns that further underutilization would persist due to the boundary changes reducing the number of elementary schools feeding into Gaithersburg Middle. Furthermore, the sixth grade class at Forest Oak was overenrolled, and enrollment numbers were expected to increase further before the start of the 1999-2000 school year. We therefore find that it was appropriate for the local board to consider school stability as a primary factor in the denial of Harry's transfer request.

Appellants and their son have expressed their strong desire for Harry to attend middle school with his friends from elementary school. We understand that most students want to continue attending school with their peer group, and that it is more comforting to be around those who are familiar while adjusting to a new and unfamiliar environment. This factor, however, has not been deemed sufficient in other cases to override school system concerns about school stability. *See, e.g., Vassilis & Barbara Skardis v. Montgomery County Board of Education*, MSBE Opinion No. 98-13 (February 25, 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*, MSBE Opinion No. 97-8 (February 26, 1997) (desire to join peer group not sufficient to override concerns about overcrowding).

Additionally, with respect to Appellants' concerns about Harry participating in separate gifted and talented classes, 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); *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). Accordingly, we find that the denial of the transfer request is consistent with prior State Board decisions and is not otherwise arbitrary, unreasonable, or illegal.

CONCLUSION

For these reasons, we affirm the decision of the Superintendent of Schools for Montgomery County.

Edward Andrews
President

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Vice President

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John Wisthoff

February 23, 2000