

CHARLES AND MICHELLE SULLIVAN,

Appellants

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 00-22

OPINION

In this appeal, Appellants contest the transfer denial of their son Frank to Cabin John Middle School in Montgomery County maintaining that (1) the practice of allowing the student board member to vote in a student transfer case is flawed; (2) the assigned school is more overcrowded than the requested school; and (3) Appellants' child care situation is an undue hardship warranting the approval of the transfer. 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

Frank is currently a sixth grade student enrolled at Kingsview Middle School in Montgomery County. On March 3, 1999, Appellants requested that Frank be transferred to Cabin John Middle School for the 1999-2000 school year based on Frank's desire to be with friends as well as on after school child care arrangements for Frank and his younger brother. Frank and his brother had both previously attended Cold Spring Elementary School, a feeder school for Cabin John Middle, as out-of-area transfer students.¹

Appellants' transfer request was denied by the field office supervisor based on overutilization of the requested school and overenrollment of the 6th grade at Cabin John. Appellants challenged the field officer's decision, reiterating that their after school child care arrangements necessitated Frank's transfer to Cabin John. Appellants also indicated that Frank would like to remain with his peer group from Cold Spring Elementary. The superintendent's designee assigned a hearing officer, Arch Webster, to further investigate the transfer request. The hearing officer's report explained that Cabin John Middle School is overutilized, with significant overcrowding in grade six classes. 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.

¹Frank's younger brother still attends Cold Spring Elementary.

Thereafter, Appellants appealed the denial to the local board. In addition to highlighting their problems with after school child care arrangements, Appellants rejected the school system's argument regarding school utilization, claiming that "[o]n a relative basis, Kingsview is more 'overcrowded' than Cabin John." With regard to Frank attending middle school with his already established peer group, Appellants stated that

Frank knows few boys attending Kingsview; as we mentioned, his classmates are attending Cabin John. Frank is already depressed about attending a school where he will know virtually no one. Frank started school early and is one year younger than his class. The middle-school years can be challenging for children. According to the family therapist, perhaps the best solution is to re-enroll Frank at Cold Spring to repeat the fifth-grade year.

In response to the appeal, the local superintendent submitted a memorandum dated September 10, 1999, indicating that the transfer request was originally denied by the field officer because Cabin John Middle School is overutilized at 118 percent and overenrolled at the sixth grade level. He stated that as of June 30, 1999, there were 20 requests for transfer into Cabin John Middle School -- four which were approved for verified hardships, one which was withdrawn, and 15 which were denied. The superintendent further indicated that the fact that Kingsview Middle School is also overutilized, does not justify adding to Cabin John Middle School's already overcrowded conditions.

The decision of the superintendent's designee stands since the local board was unable to affirm or reverse the decision by a majority vote of its full membership. Four board members voted to affirm the decision, and four board members voted to reverse the decision because Frank had been in attendance as a transfer student at a feeder school to Cabin John Middle School and his brother attends the same feeder school.

ANALYSIS

As a preliminary matter, Appellants argue that the practice of allowing a student board member to vote in a student transfer case is "flawed" and "imprudent," and that student representatives "should be precluded from voting on matters affecting a single student." *See* Letter of Appeal to State Board at 1 (10/6/99). The General Assembly, however, has authorized the student member of the Montgomery County Board of Education to vote on such matters. Section 3-901 of the Education Article, Annotated Code of Maryland, prohibits the student member from voting only on matters involving teacher suspensions and dismissals; collective bargaining; capital and operating budgets; and school closings, reopenings, and boundaries. Thus, Appellants' challenge of the local board decision on this basis lacks merit.

On the substance of the appeal, 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*, 7 Op. MSBE (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*, 7 Op. MSBE 1071 (1998) (upholding denial of transfer out of Gaithersburg Middle School based on concerns regarding underutilization); *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 overutilization). Additionally, the denial of transfer requests based on utilization and enrollment issues is consistent with school policy. Montgomery County Public School (“MCPS”) Regulation JEE-RA indicates that school utilization and preferred ranges of enrollment are factors that impact transfer decisions. See MCPS Policy JEE-RA at III.A.1.

The record discloses that at the time of the transfer request, Cabin John Middle School, the requested school, was overutilized at 118 percent and overenrolled at the sixth grade level. Thus, we find that it was appropriate to consider school utilization and enrollment as primary factors in the denial of Frank’s transfer request. Although both Cabin John and Kingsview were overutilized at the time of the request, and Kingsview is projected to remain overutilized in coming years, we do not find it unreasonable for the school system to deny student transfers from one overcrowded school into another already overcrowded school.

Additionally, under the Montgomery County Policy, a desire to have more favorable day care arrangements is not viewed as evidence of extreme hardship. This is especially true for middle and high school students. 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 (1997); *Michael & Barbara Breads v. Montgomery County Board of Education*, 7 Op. MSBE (1997); *Paul D. Marbach v. Montgomery County Board of Education*, 6 Op. MSBE 351 (1992).²

Moreover, in response to a request from the State Board for further information, the local board has indicated that of the 15 transfer requests to Cabin John Middle School that were denied, two additional students – for a total of three – listed child care as the primary reason for

²Although not raised in the appeal to the State Board, throughout the appeal process Appellants have expressed Frank’s desire to attend middle school with his friends from elementary school. While most students naturally want to continue attending school with their friends, this factor 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*, 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).

the transfer request. Thus, we find that the Appellants were not treated differently from other parents who listed child care as a basis for the transfer request. Thus, based on our review of the record, we do not find that the local board acted arbitrarily, unreasonably or illegally in this matter.

CONCLUSION

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

Edward Andrews
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John Wisthoff

April 19, 2000