

JASON AND SANDRA WARRAN,

Appellant

v.

MONTGOMERY COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 00-25

### OPINION

In this appeal, parents of a ninth grade student in Montgomery County contest the denial of their request to transfer their daughter from Walter Johnson High School to James Hubert Blake High School. Appellants cite their desire to have their daughter attend Blake because of Sarah's strong interest and talent in the fine arts and humanities that are part of Blake's signature program, and because of their belief that Blake's emphasis in fine arts and humanities offers the supportive environment that Sarah needs. The local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal.

### BACKGROUND

Sarah lives in the geographic attendance area for Walter Johnson High School, but attended private school for 7<sup>th</sup> and 8<sup>th</sup> grade. On March 24, 1999, Appellants requested that Sarah be transferred from Walter Johnson High School to Blake High School for the 1999-2000 school year.<sup>1</sup> In the transfer request, Appellants expressed Sarah's strong interest in attending Blake because of its signature program in fine arts and humanities. Appellants highlighted Sarah's creative talents and their belief that she needs a supportive educational environment with other creative students. On May 14, 1999, the transfer request was denied based on the over-enrollment of grade nine at Blake.

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<sup>1</sup>Blake High School is one of 3 high schools in the Northeast Consortium. The other two are Paintbranch High and Springbrook High. Students residing within the Northeast Consortium are assigned to schools through the preferred choice method in which the students list the schools that they want to attend in order of preference. The parameters for selecting students based on their preferred choice were adopted by the local board on November 25, 1996. At that time, the local board directed that the three high schools involved "operate within the 80 to 100 percent utilization range and with race/ethnic compositions that fall within the range currently existing in the three high schools, and with male or female composition of each of the three high schools falling in the 45 to 55 percent range." Memo dated October 27, 1997 from Vance to local board members (emphasis added).

Appellants challenged the decision of the Office of Student Transfers, reiterating their desire to have Sarah attend Blake based on its specialized programs and learning environment. Included in the appeal were letters of support from the principal at Thornton Friends School where Sarah had been attending, from Sarah's music teacher at Thornton Friends, and from the music director of the Children's Chorus of Washington in which Sarah was involved. The matter was referred to a hearing officer who investigated the case and recommended that the transfer request be denied. The hearing officer noted that Blake High School was already at capacity for grades nine and ten, and that many Northeast Consortium students were denied placement at Blake due to the overcrowding in the ninth grade. The superintendent's designee reviewed the hearing officer's report and concurred with his recommendation that the transfer be denied.

Appellants appealed the denial to the local board. In their letter dated June 9, 1999, Appellants claimed that Sarah has a unique hardship based on issues of self esteem which they believe require that Sarah be in an environment where her creativity is appreciated and encouraged. They also mentioned their concern for Sarah's transition from a small school and supportive private school to a large public school. In a memorandum to the local board, the superintendent stated:

During further review of this case, Mr. Jeweler determined that the James Hubert Blake High School Grade 9 is still overenrolled. Information provided by Dr. Sullivan indicated that at this time there remain 15 Grade 8 consortium students unable to attend the school because of Grade 9 being at capacity. As you are aware, the signature arts program at James Hubert Blake High School is part of the total Northeast Consortium program. Although three out-of-area transfer appeals have been approved at the superintendent's level based on unique hardship situations, the programs at consortium schools are designed to serve the consortium first.

Because Grade 9 at James Hubert Blake High School is at capacity, there are currently 15 Northeast Consortium students unable to attend James Hubert Blake High School, and Mr. and Mrs. Warran have not provided any indication of a hardship situation. I recommend that the Board of Education uphold the decision . . . to deny this appeal.

The local board reviewed the matter and affirmed the superintendent's decision denying the transfer request. In its opinion, the local board referenced Walter Johnson's excellent music and theater program, and directed the superintendent's office to advise the music teacher at Walter Johnson of Sarah's interests.

This appeal to the State Board followed.<sup>2</sup>

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<sup>2</sup>In their documentation with their appeal to the State Board, Appellants include a letter from a therapist who asserts that Sarah has learning disabilities and is clinically depressed. It does

## ANALYSIS

The standard of review that the State Board applies in reviewing student transfer decisions 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. Board of Education of Montgomery County*, 7 Op. MSBE 507 (1997). In numerous opinions, the State Board has noted that student transfer decisions require balancing county-wide considerations with those of the student and family. *See, e.g., Marbach v. Board of Education of Montgomery County*, 6 Op. MSBE 351, 356 (1992). Building utilization, enrollment levels, and the educational program needs of the individual student are permissible and proper subjects of consideration in weighing the impact of a request for a student to transfer from her home school to some other school of choice. *Slater v. Board of Education of Montgomery County*, 6 Op. MSBE 365, 371-72 (1992).

Overenrollment of a particular grade level is also a recognized basis for denying transfer requests. *See Anit Sharma v. Montgomery County Board of Education*, MSBE Opinion No. 99-6 (January 26, 1999) (acknowledging class size as an appropriate consideration in denying a student transfer request); *Deborah Heilizer and Keith Weissman v. Board of Education of Montgomery County*, 7 Op. MSBE 978 (1998) (upholding class size as factor because of the number of students requesting transfer into the same class). The denial of requests based on enrollment levels is consistent with school policy. *See* MCPS Regulation JEE-RA. Here, there was documented over-enrollment in the ninth grade class at Blake.

Additionally, with respect to Appellants' desire to have Sarah partake in courses offered at Blake, 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*, 7 Op. MSBE 953 (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*, 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).

In February, 2000, the State Board referred this appeal to the State Office of Administrative Hearings for an evidentiary hearing to determine whether the local board's decision upholding the denial of the transfer request was made in accordance with or in violation

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not appear that this letter was presented to the local board. In any event, if Appellants believe their daughter requires special education services, they need to request an assessment and evaluation by the local school system.

of *Tuttle v. Arlington County School Board*, 195 F. 3d 698 (4<sup>th</sup> Cir. 1999), and *Eisenberg v. Montgomery County Public Schools*, 197 F. 3d 123 (4<sup>th</sup> Cir. 1999), *cert. denied* 120 S.Ct. 1420 (2000). The appeal has been returned to the State Board for consideration because the parties agreed that race was not a factor in the decision, thus making *Tuttle* and *Eisenberg* inapplicable to the case.

Since the issue of race is not a factor, there is no unique hardship, and there are 15 students in the attendance area on a waiting list to attend Blake who have priority over Sarah, we find that the local board did not act arbitrarily, unreasonably, or illegally in denying Appellant's transfer request.

### CONCLUSION

For these reasons, we affirm the decision of the Board of Education of Montgomery County.

Edward Andrews  
President

Philip S. Benzil  
Vice President

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Walter Sondheim, Jr.

John Wisthoff

May 24, 2000