

RAUL CHACON,

Appellant

v.

MONTGOMERY COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 01-39

### OPINION

This is an appeal of the denial of Appellant's request to transfer his son from Gaithersburg High School to Colonel Zadok Magruder High School in Montgomery County. The local board has submitted a motion for summary affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. Appellant has submitted a reply opposing the local board's motion.

### FACTUAL BACKGROUND

Ryan was assigned to attend ninth grade at Gaithersburg High School for the 2001-2002 school year. On January 27, 2001, Appellant requested that Ryan be permitted to transfer to Colonel Zadok Magruder High School for the 2001-2002 school year. The transfer request explained that Ryan's parents wanted their son to attend Magruder because Magruder is closer to their home than Gaithersburg; Ryan is interested in learning Latin which is offered at Magruder but not at Gaithersburg; and Ryan knows many students at Magruder which would make the transition to high school easier for him.

Appellant's request was denied by the field office supervisor on April 11, 2001. An appeal to the deputy superintendent of schools was referred to a hearing officer, Ms. Terrill Meyer, who conducted a review of the matter and recommended that the denial of the transfer be affirmed because of the absence of a hardship. On the basis of this recommendation, the superintendent's designee affirmed the denial of the transfer request on May 25, 2001.

Thereafter, Appellant appealed the denial to the local board, indicating that the "main reason for this transfer is so that Ryan can learn Latin."<sup>1</sup> By memorandum dated June 27, 2001, the superintendent responded, in part:

Board of Education policy does not permit a student to transfer schools in order to take a particular course offering. However, Montgomery County Public Schools does permit a student at one

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<sup>1</sup>Appellant also expressed bewilderment with the established school boundaries and feeder system because of the distance between certain homes and schools.

high school to take a course at another high school, assuming there is space available in the course, and the student can provide his/her own transportation between schools.<sup>2</sup>

The superintendent noted that there were 50 requests for transfer from Gaithersburg High School for the 2001-2002 academic year. Of this number, 31 were approved: 9 to attend special programs, 9 to continue in the feeder pattern, 9 on the basis of having siblings in the requested school, 2 on the basis of scheduled moves, and 2 on the basis of documented hardship. There were 23 requests for transfer to Col. Zadok Magruder High School for the 2001-2002 academic year. Of this number, 13 were approved: 5 to continue in the feeder pattern, 6 on the basis of having a sibling at the school, and 2 on the basis of documented hardship. Both schools were projected for over-enrollment for the 2001-2002 academic year: Gaithersburg High School at 106.40 percent and Col. Zadok Magruder High School at 100.35 percent.

In a decision issued July 26, 2001, the local board unanimously upheld the denial of the transfer request stating, in pertinent part:

Ryan's father has failed to document a hardship which would merit granting a transfer. For this reason, and the reasons contained in the superintendent's memorandum dated June 27, 2001, and the hearing officer's report of May 22, 2001, the decision of the deputy superintendent should be affirmed.

The transfer policy does not support the granting of a transfer for a student to be able to take a particular course. To be expected, Ryan's father would like him to attend the school closest to his home. However, as with most school attendance zones, some students live closer to one school but are assigned to another school. Absent a documented hardship, the attendance zone boundaries must be honored.

Local Board Decision at 1-2.<sup>3</sup>

## 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 the decision is shown to be arbitrary, unreasonable, or illegal. *See, e.g., Breads v. Board of*

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<sup>2</sup>There is no further mention of this option in the appeal materials.

<sup>3</sup>One board member and the student board member did not participate in consideration of the appeal.

*Education of Montgomery County*, 7 Op. MSBE 507 (1997). 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 MSBE 351, 356 (1992). Socio-economic level, building utilization, enrollment levels, and the educational program needs of the individual student are all legally permissible and proper subjects of consideration in weighing the impact of a request for a student to transfer from his or her home school to some other school of choice. *Slater v. Board of Education of Montgomery County*, 6 Op. MSBE 365, 371-72 (1992).

Montgomery County Public Schools (“MCPS”) 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 a feeder pattern when 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. Appellant requested his son’s transfer based primarily on his son’s desire to take a Latin course. Therefore hardship is the only applicable criteria to support transfer in this case.

With respect to Ryan’s desire to take the Latin course offered at Magruder, the State Board has repeatedly held that there is no entitlement for a student to attend a particular program of study. See, e.g., *Dennis v. Board of Education of Montgomery County*, 7 Op. MSBE 953 (1998) (desire to participate in particular courses does not constitute hardship); *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); *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).

Additionally, although Appellant would like his son to attend a school where he is already familiar with some of the students, 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).

Finally, the fact that Magruder is closer to Appellant’s home than Gaithersburg fails to justify a transfer because it is not a documented hardship.<sup>4</sup> Attendance zone boundaries do not

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<sup>4</sup>We note that in Appellant’s reply to the local board’s motion for summary affirmance, he has raised safety issues regarding school bus transportation. Because these matters were not raised before the local board, they are deemed waived. See *Chase Craven v. Board of Education of Montgomery County*, 7 Op. MSBE 870 (1997) (failure to challenge suspension before local board constituted waiver); *Earl Hart v. Board of Education of St. Mary’s County*, 7 Op. MSBE

always place students at the schools that are closest to their homes.

CONCLUSION

Based on all of the above reasons, we do not find that the local board has acted arbitrarily, unreasonably or illegally in this matter. Accordingly, we affirm the decision of the Board of Education of Montgomery County.

Raymond V. Bartlett  
President

Marilyn D. Maulsby  
Vice President

JoAnn T. Bell

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Clarence A. Hawkins

Walter S. Levin, Esquire

Karabelle Pizzigati

Edward L. Root

Walter Sondheim, Jr.

John L. Wisthoff

December 5, 2001

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740 (1997) (failure to raise issue of age discrimination before local board constituted waiver on appeal). Nevertheless, we trust that the local board will have staff review the concerns he has raised.