

KEITH FRYE,
Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION

Opinion No. 01-30

OPINION

This is an appeal of the local board's decision affirming the denial of Appellant's request for financial support for his son to attend Montgomery College. 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 motion.

FACTUAL BACKGROUND

Appellant's son, Cameron, attended Montgomery County Public Schools ("MCPS") for kindergarten through the 8th grade.¹ On July 13, 1998, an individualized education program ("IEP") committee recommended that Cameron attend the special education Bridge School program located at Winston Churchill High School for the 1998-99 school year. Appellant disagreed with the recommendation and requested an administrative due process hearing pursuant to the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400, *et seq.*

Appellant was represented by counsel at the due process hearing. In a decision rendered December 10, 1998, the Administrative law Judge ("ALJ") found that "Montgomery County Public Schools' proposed placement of the Child in the Bridge School program located in Churchill High School can fully implement the individualized goals and objectives contained in the Child's July 13, 1998 IEP, and thus would provide the Child with a free, appropriate education." *See* ALJ decision, p. 27. Appellant disagreed with this decision. However, rather than appealing the ALJ decision to court, Appellant and his wife voluntarily chose to home school Cameron and withdrew Cameron from MCPS in July, 1999.

On January 2, 2001, Appellant submitted a "Complaint from the Public" with MCPS requesting that the school system provide financial support for his son to take courses at Montgomery College.² Specifically, Appellant maintained that he removed his son from MCPS to pursue private options because although Cameron's doctors had recommended that he receive home and hospital teaching support due to his medical conditions, MCPS school personnel denied

¹Cameron was born on April 13, 1984. *See* ALJ decision, p. 6.

²Appellant requested compensation for tuition, books, and supplies.

that request.

The superintendent's designee appointed a hearing officer, Elaine Lessenco, to review the matter. Appellant indicated that the request was for tuition and books for an essay writing course Cameron had previously taken at Montgomery College and a drawing course he was planning to take the following semester. Pursuant to her investigation, Ms. Lessenco found "no rationale for the school system to fund college courses, books, or materials for Cameron, with accommodations for his special needs." Hearing Officer Memorandum at 2. The superintendent's designee adopted the hearing officer's recommendation and denied Appellant's request.

Appellant appealed to the local board. In his appeal he again explained his family's negative experience with the special education process at MCPS, including problems with mediation and due process hearings. In response to the appeal, the local superintendent submitted a memorandum dated March 13, 2001, stating as follows:

Cameron was offered placement at the Bridge Program housed at Winston Churchill High School in March 1999. Mr. and Mrs. Frye did not accept this placement, citing Cameron's medical condition and the distance of the program from home as their rationale for refusal. Following mediation, a modified program of home instruction and enrollment at the Bridge program was offered. Mr. and Mrs. Frye filed an appeal for a due process hearing that resulted in the school system's recommendation being upheld. In July 1999, Mr. and Mrs. Frye withdrew Cameron from Montgomery County Public Schools and enrolled him in a private, home teaching program. This program was one approved by the Maryland State Department of Education and did not require monitoring by the school system.

Montgomery County Public Schools has no responsibility to fund Cameron's program at Montgomery College on either a full or partial basis. An appropriate recommendation has been made to meet Cameron's educational needs, including accommodations for his medical condition. Mr. and Mrs. Frye chose not to accept the recommendation. They exercised their right of due process and were unsuccessful in their appeal of the recommendation. The private options they chose for Cameron should be their financial responsibility.

In a unanimous decision issued April 23, 2001, the local board upheld the decision to deny compensation for Cameron's tuition, books, and other expenses at Montgomery College based on the reasons contained in the superintendent's March 13, 2001 memorandum.

ANALYSIS

Appellant's request for compensation is essentially based on his disagreement with the handling of his son's special education needs by MCPS. A review of the materials submitted by Appellant discloses that Appellant is attempting to contest the outcome of the special education due process hearing decision of December 10, 1998, in his appeal to the State Board. Appellant indicates in his letter of appeal that the placement recommended by the school system for his son was "incompatible with medical advice" and that "MCPS thus constructively forced a private teaching strategy." *See* 5/21/01 letter to State Board. In another letter to the State Board, Appellant reiterates this position stating that he is "being constructively denied public support for learning and education in Montgomery County." *See* 6/5/01 letter to State Board.

To the extent that Appellant is contesting the school system's decisions regarding the provision of special education and related services for his son, the State Board is not the appropriate forum for redress. Appellant's remedy is through the due process procedures set forth in IDEA. Appellant did pursue a special education due process hearing regarding his concerns, and an ALJ issued a decision finding that the school system had offered Cameron a free appropriate public education as required by IDEA. Appellant's next avenue of redress pursuant to IDEA was to appeal the ALJ decision to the State circuit court or to the federal district court. *See* 20 U.S.C. § 1415.

Appellant did not avail himself of either avenue. Rather Appellant rejected a public program that was found to be appropriate and, on his own accord, chose to obtain services privately. Appellant cannot now have issues pertaining to special education addressed through the State Board camouflaged as a request for compensation of college tuition and expenses. We therefore find that Appellant is responsible for the financial burden of that decision.

The State Board is not the appropriate forum to entertain Appellant's special education concerns. If Appellant wishes the school system to provide educational services to his son, he needs to re-initiate the special education decision making process. If Appellant is dissatisfied with the outcome of the IEP process, a special education due process hearing may again be requested.

CONCLUSION

For these reasons, we find that the local board's decision is not arbitrary, unreasonable or illegal. Accordingly, we affirm the decision of the Board of Education of Montgomery County denying compensation to Appellant for college tuition and other related expenses.

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September 26, 2001