

PAMELA F. GOGOL,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 01-08

OPINION

This is an appeal of the denial of Appellant's request to transfer her daughter from Woodlin Elementary School to Sligo Creek Elementary School in Montgomery County. The local board has submitted a Motion for Summary Affirmance maintaining that Appellant's transfer request failed to meet any of the criteria for approving a student transfer and that the local board's decision was not arbitrary, unreasonable or illegal. Appellant has submitted an opposition to the local board's motion.

FACTUAL BACKGROUND

Samantha is a third grade student at Woodlin Elementary School.¹ On March 20, 2000, Appellant requested that Samantha be transferred to Sligo Creek Elementary School for the 2000-2001 school year based on the fact that Samantha's younger brother was enrolled in first grade in the French Immersion Program there.² At the time of the request, Samantha was in the second grade at Takoma Park Elementary School in the gifted and talented program.³

On July 28, 2000, Appellant's transfer request was denied by the field office supervisor who noted that the request failed to meet the transfer criteria. Appellant challenged the field office supervisor's decision indicating that her concern was one of safety. Appellant explained that the Woodlin school bus drops her daughter off at the same time her son must be picked up from Sligo Creek, and her child care provider cannot be in both places at the same time.

¹Woodlin is the home school for Samantha and her brother.

²On March 20, 2000, Appellant simultaneously requested that her daughter be transferred from Woodlin to North Chevy Chase Elementary given the percentage of students scoring in the excellent range on the third grade MSPAP there. This request was denied. The denial of that request is not the subject of this appeal.

³Takoma Park Elementary School houses grades K-2 and is paired with Piney Branch Elementary School which houses the upper elementary grades. The gifted and talented program continues at Piney Branch for those upper grades. Appellant did not continue her daughter in the program at Piney Branch due to transportation problems.

Although there is a Sligo Creek bus that can drop her son off about 5 blocks from Appellant's home, Appellant is concerned that the safety of her five year old son would be at risk in the event that her child care provider were late as a result of waiting for her eight year old daughter, who is too young to come home to an empty house.⁴

The superintendent's designee assigned a hearing officer, Elaine Lessenco, to further investigate the transfer request. The hearing officer's report confirmed that the third grade class at Sligo Creek is overcrowded. The hearing officer also shared with Appellant the names of several day care centers that provide transportation for children at Woodlin. 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.

Thereafter, Appellant appealed the denial to the local board. Appellant again highlighted the problems with child care related arrangements. Appellant indicated that she pursued the various day care options suggested, but that they were either full or her daughter did not qualify. Appellant also disclosed that she considered alternative child care arrangements to no avail.

In response to the appeal, the superintendent submitted a memorandum dated September 6, 2000, stating in relevant part:

When this appeal was received, the hearing officer called Sligo Creek Elementary School and learned that the Grade 3 classes were even more crowded and that transfers could not be accommodated.

It seems that there could be two solutions to the dilemma. Since Samantha had been enrolled in the gifted and talented program at Takoma Park Elementary School, she could have continued in that program at Piney Branch Elementary School. It was Ms. Gogul's [sic] decision not to accept this opportunity. Dismissal time from Piney Branch Elementary School is 3:25 p.m., the same as that at Sligo Creek Elementary School. A second choice could have been to have the younger child attend Woodlin Elementary School with his sister.

There have been 44 requests for transfer from Woodlin Elementary School. Of this number, 18 requests have been approved, 13 for students to attend a special program, two on the basis of having siblings in the school of request, and three on the basis of documented hardship. There have been 186 requests for transfer to Sligo Creek Elementary School. Most of these requests were for the French Immersion Program. Other requests that were approved

⁴Appellant has in-home child care.

include one student on the basis of continuation in the school, and three on the basis of documented hardship.

The superintendent further indicated that Appellant had not presented a compelling hardship that would justify the transfer.

In a 6-2 decision issued September 25, 2000, the local board upheld the superintendent's decision to deny the transfer request based on the reasons contained in the superintendent's September 6, 2000 memorandum and the hearing officer's August 11, 2000 report. The decision stated in part:

The need for child care, in and of itself, does not justify this transfer. Moreover, the fact that Samantha's brother applied for and was accepted into the French Immersion program does not justify compelling the same school to make space for Samantha as an out-of-zone student. The admission processes are not one and the same. In any event, we endorse the superintendent's offer to have both siblings attend Woodlin, their home school, should their mother feel that having them released at the same time from school is an overriding consideration at this juncture. Alternatively, Samantha remains free to enroll at Piney branch, as the school to which her program at Takoma Park articulated.

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 that decision is shown to be arbitrary, unreasonable or illegal. *See, e.g., Breads v. Board of Education of Montgomery County*, 7 Op. MSBE 507 (1997).

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. With regard to sibling preference, Regulation JEE-RA states that "[t]ransfer requests for younger siblings of students . . . for whom transfers have been approved will be given a preference for transfer provided that the older sibling will also be in attendance at the receiving school." Thus, as to transfer requests involving siblings, the Regulation JEE-RA only contemplates circumstances in which the transfer request comes from a younger sibling who wants to transfer to a school where an older sibling is enrolled; not vice

versa.⁵ In a situation such as this, where the older sibling wants to transfer to the younger sibling's school, a documented hardship must be demonstrated.

Appellant requested her daughter's transfer primarily based on concerns related to child care arrangements while the in-home provider picks up Samantha's younger brother from the French Immersion Program. Under MCPS policy, a desire to have more favorable day care arrangements is not viewed as evidence of documented hardship. The MCPS School Transfer Information Booklet explains that "[p]roblems that are common to large numbers of families, such as issues involving provision of day care, do not constitute a hardship, absent additional compelling factors." Booklet at 2. Indeed, on numerous occasions, the State Board has upheld the local determination that day care related problems do not suffice to justify a transfer. See *Charles and Michelle Sullivan v. Board of Education of Montgomery County*, MSBE Opinion No. 00-22 (April 19, 2000); *Alberto Gutierrez and Theresa Finn v. Board of Education of Montgomery County*, MSBE Opinion No. 00-1 (February 1, 2000); *Gelber v. Board of Education of Montgomery County*, 7 Op. MSBE 616 (1997); *Breads v. Montgomery County Board of Education*, 7 Op. MSBE 507 (1997); *Marbach v. Montgomery County Board of Education*, 6 Op. MSBE 351 (1992). Appellant has chosen to enroll her son in a special program at a school other than Woodlin, his home school. The record discloses that there is at least one alternative available to Appellant which would be enrolling both of her children at their home school.

The Court of Appeals has ruled that there is no right to attend a particular school. See *Bernstein v. Board of Education of Prince Georges County*, 245 Md. 464, 472 (1967); cf. *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); *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).

CONCLUSION

Based on our review of the record, we do not find that the local board's decision was arbitrary, unreasonable or illegal. Accordingly, we affirm the transfer decision of the Board of Education of Montgomery County.

Philip S. Benzil
President

⁵Generally the younger sibling follows the older sibling; therefore it is unusual to have the older sibling request a transfer to a school where the younger sibling is in attendance.

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February 27, 2001