

THOMAS H. HORN,

Appellant

v.

CARROLL COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 01-43

OPINION

In this appeal, Appellants challenge the local board's decision denying the transfer request for their son to attend Sykesville Middle School so that he would be able to retain the same day care provider he has had since he was three months old. The local board has submitted a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal. Although requested to do so, Appellants have not submitted a reply to the local board's motion.

FACTUAL BACKGROUND

Appellants reside within the Oklahoma Road Middle School attendance area. The local board identified Sykesville as a closed school for the 2001-2001 school year due to overcrowding. Once a school is declared closed as a result of population growth, local board policy places limitations on the admission to the closed school of students who do not reside within the school's attendance area.

For the 2001–2002 school year, Appellants requested that their son Joseph be allowed to attend Sykesville Middle School so that he could continue with a chosen child care provider who resides in the Sykesville Middle School district. Joseph, an entering sixth grade student, has been in daycare with this particular provider for many years. Cynthia A. Little, Director of Pupil Services, advised Appellants that the request was denied, stating:

After a thorough review of this information, I am denying your request for an out of district approval because the reason for your request does not meet the criteria for approving out of district requests. In your letter, you stated, "He has been in the same daycare situation since he has been 3 months old. . . If Joey is not allowed to go to Sykesville Middle then we will have to disrupt his daycare situation, along with that of two of his other siblings. . . Additionally, we do not have any family in the area that can assist with daycare." Sykesville Middle School is a closed school. According to Carroll County Public Schools' out of district regulations, child care is not an allowable reason for out of district placement in a closed school unless that child care is provided by a family member.

See 4/27/01 letter from Little. Ms. Little also indicated that Joseph would be considered in a random selection process if one or more students from Sykesville Middle meeting the requirements for an open school requested and were denied admission to Oklahoma Road Middle.¹

Appellants appealed the denial of their request to the superintendent. By letter dated May 15, 2001, Ms. Dorothy Mangle, serving as the superintendent's designee, advised Appellants that she was upholding the decision denying their son's out of district transfer request. Ms. Mangle indicated that the decision complied with Carroll County Public Schools' criteria for out of district attendance in closed schools.

Appellants further appealed the denial of their transfer request to the local board. In a decision issued June 27, 2001, the local board upheld the denial of the transfer request stating, in pertinent part:

The administrative regulations implementing Board Policy JEA are designed to accommodate the needs of families subject to the limitations of facility adequacy. Once a school population has grown to the point that it becomes necessary to declare the school "closed," it also becomes necessary to place further limits on the admission of students who do not reside in that school's attendance area. . . .

. . . The fact that the administrative regulations set forth certain criteria by which students may be approved for an out-of-district placement does not render the regulations arbitrary, unreasonable, or illegal.

Local Board Decision at 3-4.

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.² See, e.g., *Breads v. Board of*

¹Joseph was not randomly selected to transfer to Sykesville.

²Although not raised by the local board, Appellants filed their letter of appeal that was eventually received by the State Board beyond the 30 day deadline for noting an appeal to the State Board. However, the local board has not challenged the timeliness of the appeal. We note that had this issue been raised, we would have found the appeal timely filed because extenuating circumstances justified the delayed receipt by the State Board.

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).

Carroll County Board Policy JEA permits students to attend schools outside of their respective attendance area under certain circumstances upon the approval of the superintendent or his designee. The local board regulations implementing Policy JEA set forth guidelines for out of district student transfers to closed schools. The guidelines specify that such transfer applications will be denied unless one of the following conditions is met:

1. An in-coming Kindergarten student may pre-enroll in the requested Out-of-District school. Once the Out-of-District application has been approved, the enrollment process can be completed at the Out-of-District school. (This is for the Kindergarten year only. As a First Grader, the student will be considered a *new* Out-of-District applicant.)
2. A student was previously an Out-of-District student (last year), for grades 1 through 11, in the requested school, and continues to meet one of the criteria for “Open” schools.
3. Babysitting or supervising of the student will be provided by a family member.
4. An in-county family with specific proof of plans to move into the requested out-of-district attendance area within 90 school days.
5. A senior student who wishes to complete the high school program where the student attended and successfully completed the eleventh grade.

See JEA Regulations at III.A.

Here, Appellants requested their son’s transfer primarily based on concerns related to child care arrangements. Under local board policy and regulation, a transfer to a closed school from out of district is permitted only when child care is provided by a family member. Joseph’s before

and after school daycare provider is not a family member. Thus, we find that none of the above criteria supports the transfer request.

Additionally, the State Board has previously held that day care problems alone do not suffice to justify a student transfer. *See, e.g., Jamei and Esmaili v. Board of Education of Montgomery County*, MSBE Opinion No. 01-31 (September 26, 2001); *Hall v. Board of Education of Montgomery County*, MSBE Opinion No. 00-49 (December 5, 2000); *Sullivan v. Board of Education of Montgomery County*, MSBE Opinion No. 00-22 (April 19, 2000); *Gutierrez and 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); *Marbach v. Board of Education of Montgomery County*, 6 Op. MSBE 351 (1992).

As the Court of Appeals has long held, there is no right to attend a particular school. *Bernstein v. Board of Education of Prince George's County*, 245 Md. 464, 472 (1967); cf. *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). Consistent with these decisions, we do not find that Appellants have met their burden of proving that the local board acted arbitrarily, unreasonably, or illegally in this matter.

CONCLUSION

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

Raymond V. Bartlett
President

Marilyn D. Maultsby
Vice President

Philip S. Benzil

Reginald L. Dunn

Clarence A. Hawkins

Walter S. Levin, Esquire

Karabelle Pizzigati

Edward L. Root

Walter Sondheim, Jr.

John L. Wisthoff

Dissent

JoAnn T. Bell

December 5, 2001