

BAHRAM JAMEI AND YASAMIN
ESMAILI,

Appellants

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 01-31

OPINION

This is an appeal of the denial of Appellants' request to transfer their daughter from Fields Road Elementary School to Stone Mill Elementary School in Montgomery County in order to keep their daughter in a day care center near Stone Mill. The local board has submitted a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal because the reasons advanced in Appellants' transfer request do not constitute a hardship. Although requested to do so, Appellants have not submitted a reply.

FACTUAL BACKGROUND

Hanna will be entering kindergarten at the start of the 2001-2002 school year. For the past year, Hanna has been attending preschool at the Academy Child Development Center ("the Academy") which is located adjacent to Stone Mill Elementary School. On February 7, 2001, Appellants requested that Hanna be transferred to Stone Mill Elementary for the 2001-2001 school year based on child care arrangements. In their request, Appellants indicated their desire for Hanna to remain at the Academy to provide her with continuity of care and an environment in which she is comfortable. Appellants explained that Hanna had previously attended two other child care centers which "did not work for Hanna." See 2/5/01 letter attached to transfer request. Additionally, Appellants noted that the Academy is on Mr. Jamei's route to work.

On March 5, 2001, Appellants' transfer request was denied by the field office supervisor who noted that the request failed to meet the transfer criteria because child care alone does not constitute a basis for hardship. Appellants challenged the field office supervisor's decision.

The superintendent's designee assigned a hearing officer to further investigate the transfer request. The hearing officer spoke with Ms. Esmaili and indicated as follows regarding that conversation:

I spoke with Ms. Esmaili, who reported that Hanna had not made a successful adjustment to her two previous day care centers. She noted that the staff at [the Academy] have reported that Hanna has only recently begun talking to her peers and playing with them. Ms.

Esmaili does not want to move Hanna to another day care center and begin another period of adjustment. It is Ms. Esmaili's opinion that Hanna's difficulty in adjusting to new situations and making friends qualifies as a hardship. I noted that it is a positive sign that Hanna has begun to make friends and may be able to adjust more easily to new situations in the future. I encouraged Ms. Esmaili to visit Fields Road Elementary School and the Bar-T Kids Club located there.¹

The hearing officer's report confirmed that Stone Mill Elementary is over capacity for the 2001-2002 school year and that the kindergarten classes are expected to be full. The report further confirmed that the kindergarten classes at Fields Road Elementary are expected to have twenty students each and that the school counselor will be devoting time to helping new students make a successful transition. Finding no documented 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, Appellants appealed the denial to the local board. Appellants expressed their concern that changing Hanna's environment "would cause unnecessary hardship and may create psychological impacts beyond restoration." *See* 4/16/01 letter of appeal to local board. They also indicated their understanding that the Academy has a teacher to child ratio of 1 to 7 compared to the Bar-T Kids Club which has a ratio of 1 to 20. Included in the appeal materials was a letter from the Director of the Academy documenting Hanna's adjustment problems, the progress she made since she initially began the preschool program there, and concern about altering Hanna's environment.

In response to the appeal, the local superintendent submitted a memorandum dated May 2, 2001, stating as follows:

The hearing officer assigned to the case, Mrs. Elaine Lessenco, spoke to Ms. Heather Roberts, area director at Bar-T Kids Club, the on-site day care center at Fields Road Elementary School. Ms. Roberts reported that the center is open from 7:00 a.m. to 6:30 p.m. She also reported that the ratio for the kindergarten enrichment portion of the program is 1:11 while the after-school program is 1:10. She further noted that each teacher is certified and has an assistant and that the state of Maryland inspects and licenses the facility on an annual basis.

¹The Bar-T Kids Club is open from 7:00 a.m. to 6:30 p.m., providing before and after school care, as well as a kindergarten enrichment program for students enrolled in either morning or afternoon classes. The teachers at the Bar-T Kids Club are certified and provide an academic program.

Mrs. Lessenco then spoke with Ms. Lesley Walsh-Everhart, director of the Academy Child Development Center. Ms. Walsh-Everhart reported that her hours of operation are the same as those at Bar-T Kids club at Fields Road Elementary School. Ms. Walsh-Everhart confirmed the 1:7 ratio for the kindergarten enrichment portion of her program but stated that the after-school ratio was 1:10, identical to that reported by Bar-T Kids Club.

Both schools concerned will be overenrolled for the 2001-2002 academic year. Current statistics show that Stone Mill Elementary School's enrollment is projected at 108.78%. Enrollment for Fields Road Elementary School is projected at 117.40%. There have been eight requests for transfer from Fields Road Elementary School. Of this number, one student has been approved on the basis of having a sibling in the requested school. There have been eleven requests for transfer to Stone Mill Elementary School. Of this number, four students have been approved, two from the same family who are moving into the area, and two on the basis of documented hardship.

The superintendent noted an absence of hardship in this case and suggested that Hanna's good adjustment at her current day care could be interpreted to portend future good adjustment at a new facility.

In a unanimous decision issued May 21, 2001, the local board upheld the decision of the superintendent's designee to deny the transfer request based on the reasons contained in the superintendent's May 2, 2001 memorandum and the hearing officer's March 27, 2001 report.² The decision stated in part:

The Board acknowledges that Hanna has had to adjust to her current child care provider and that her parents would prefer that she remain in attendance there. However, there is no evidence that Hanna would not adjust in time, were she enrolled in the before and after school program on site at Fields Road Elementary School, her assigned school. Inasmuch as she is about to begin elementary school, Hanna, if enrolled at the center housed at Fields Road, could remain in a stable setting for the next six years. Accordingly, no hardship has been demonstrated to justify a transfer.

²One board member and the student board member did not participate in consideration of the appeal.

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 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 to high school; or (3) a documented hardship. The only applicable consideration for a transfer in this case is a documented hardship.

Appellants requested their daughter’s transfer primarily based on concerns related to child care arrangements. Under MCPS policy, a desire to have more favorable day care arrangements is not viewed as evidence of a documented hardship. This is primarily because child care issues are not an unusual occurrence, absent extreme circumstances. *See* Memorandum in Support of Local Board’s Motion for Summary Affirmance at 4. The State Board has consistently upheld the local determination that day care problems do not suffice to justify a transfer. *See Pamela F. Gogol v. Board of Education of Montgomery County*, MSBE Opinion No. 01-08 (February 27, 2001); *Brian Hall v. Board of Education of Montgomery County*, MSBE Opinion No. 00-49 (December 5, 2000); *Charles and Michelle Sullivan v. Board of Education of Montgomery County*, MSBE Opinion No. 00-22 (April 19, 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). Moreover, the record discloses that there is at least one alternative available to Appellants, that of enrolling Hanna in the Bar-T Kids Club which is located at Fields Road Elementary School.

In their documentation with their appeal to the State Board, Appellants have included a letter dated June 14, 2001, from a licensed psychologist, Grazyna T. Guttenberg, indicating her opinion “that a change in Hanna’s current placement will be detrimental to her emotional well being.” The local board notes that the document was not available when it made its decision and for that reason should not be considered by the State Board. Further, the board asserts that the letter appears to have been obtained specifically for the purpose of supporting the appeal to the State Board. We concur and note that Appellants have not offered a reason for failing to submit the letter to the local board with their appeal. Although the psychologist first met with Appellants on June 10, 2001 and Hanna on June 11, there is no explanation as to why this could not have been done on an earlier date.

We concur with the local board and find that Appellants’ failure to submit the letter for consideration by the local board precludes review by the State Board. Moreover, even if the

State Board were to consider the additional evidence, we would find that the transfer decision should be upheld. As stated above, on numerous occasions the State board has upheld the local decision that child care arrangements alone are insufficient to justify a transfer. In fact, the State Board has never reversed a transfer decision based on child care arrangements alone.

Just last year, the State Board considered an appeal, *Hall v. Montgomery County Board of Education*, Opinions of the Maryland State Board of Education, No. 00-49 (December 5, 2000), involving facts that are remarkably similar to the appeal now before the State Board. In *Hall* the parents asked that their incoming kindergarten student be transferred from his home school, Brown State Elementary School to DuFief Elementary School in order to keep the student, and his 3-year-old brother, at Academy Child Development Center. The parents seemed to prefer the Academy, although there was day care located in the home school area, with space available for the student and his younger brother along with transportation from the school to the day care provider. The State Board affirmed the denial of the request, noting that under “Montgomery County Public Schools (“MCPS”) policy, a desire to have a more favorable day care arrangement is not viewed as evidence of documented hardship. . . . Moreover, the record discloses that there is at least one alternative available to Appellant which would be enrolling both his children at the day care center that has availability and transportation to Brown Station Elementary.”

Here, despite the opinion of the psychologist, we do not find any extenuating circumstance, especially where there is an after school program at Fields Road Elementary School with the same staff-to-child ratio as the Academy’s after school program, and a school counselor who will be devoting time to help new students adjust to the environment for a successful transition. In addition, the psychologist’s opinion was rendered after only one visit with Hanna and it does not appear that the psychologist was presented with complete information, if any, about the Bar-T Kids Club at Fields Road Elementary.

CONCLUSION

For these reasons and based on our review of the record, we find that the local board’s decision was not arbitrary, unreasonable or illegal. Accordingly, we affirm the decision of the Board of Education of Montgomery County.

Raymond V. Bartlett
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September 26, 2001