

BRENDA LOWRY,

Appellant

v.

CARROLL COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 01-03

### OPINION

In this appeal, a student's mother challenges the local board's decision denying the transfer request for her daughter to attend Spring Garden Elementary School as an out of district student. The local board has submitted a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. Appellant has not submitted a reply to the local board's motion.

### FACTUAL BACKGROUND

Appellant and her family reside within the Westminster Elementary School attendance area. For the 1999-2000 school year, Appellant's son and daughter attended Spring Garden Elementary School as out of district students, with Brian in 3<sup>rd</sup> grade, Rachel in kindergarten. In June 2000, Spring Garden was designated a closed school for the 2000-2001 school year due to its excessive enrollment and lack of adequate space. 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. The decision to have out of district students satisfy more stringent requirements to transfer to closed schools was made after the local board had received considerable public input from community members regarding the continued admission of out of district students to overcrowded schools based upon the location of a parent's chosen day care facility.

For the 2000-2001 school year, Appellant requested that her children be allowed to continue attending Spring Garden. Because Appellant's son was entering the fourth grade, his enrollment at Spring Garden was approved in accordance with local board policy which authorizes enrollment of an out of district student at a closed school if that student was previously an out of district student in the requested school in grades 1 through 11, and if that student meets one of the criteria for out of district attendance at an open school. On the other hand Appellant's daughter, who is now in the first grade, was denied enrollment at Spring Garden for the 2000-2001 school year because she failed to meet any of the criteria for out of district attendance at a closed school as provided by local board policy.

Appellant appealed the denial of her request to the superintendent. By letter dated July 14, 2000, Ms. Dorothy D. Mangle, Assistant Superintendent of Instruction, serving as the

superintendent's designee, advised Appellant that she was upholding the decision denying her daughter's out of district transfer request. Indicating that Appellant's daughter did not satisfy any of the conditions for approval of out of district attendance at a closed school, Ms. Mangle also explained:

We do recognize that all parents requesting out-of-district attendance are doing so for reasons that benefit their family situations. The present guidelines have reduced out-of-district attendance at Spring Garden Elementary. That was the intention of the Board of Education in identifying closed schools. Parents who resided in overcrowded schools' attendance areas complained to the Board of Education that children who did not reside in that area should not be allowed to contribute to school overcrowding.

Additionally, the letter reminded Appellant that at the time her daughter was approved to attend kindergarten at Spring Garden for the 1999-2000 school year, Appellant was advised that out of district requests would be processed annually and was put on notice that future requests could be denied.

Appellant appealed the denial of her transfer request to the local board. In a decision issued September 13, 2000,<sup>1</sup> 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 a point that it becomes necessary to declare the school 'closed', it 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 implementing Board Policy JEA continue to accommodate out of district Kindergarten students and older children who have been 'grandfathered' while not allowing entering First Grade students and other new applicants does not render them arbitrary, unreasonable, or illegal.

Local Board Decision at 3-4.

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<sup>1</sup>Although the local board's written decision was not issued until September 13, 2000, the local board indicates in its motion that Ms. Donna Voitelle, Executive Assistant to the Superintendent, orally communicated the local board's decision to Appellant on August 10, 2000.

## 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).

Appellant maintains that the local board should have approved the out of district transfer request for her daughter to attend Spring Garden because (1) she is a renewal applicant for Spring Garden where she attended Kindergarten during the 1999-2000 school year; (2) her brother attends Spring Garden; and (3) she satisfies criteria #2 of the out of district policy since she goes to school from and returns after school to a residence or day care provider other than her own home.<sup>2</sup>

Local 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 the 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.

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<sup>2</sup>Appellant’s daughter attends Emory Child Care Center which is not located in her assigned school attendance area.

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.

Based on the above criteria, we believe that Appellant's daughter was not eligible to attend Spring Garden for the 2000-20001 school year solely because she attended Spring Garden as an out of district kindergarten student the previous school year. Under local policy a request for a student entering the first grade is considered a new out of district application. Appellant herself admits to understanding that such requests must be submitted for approval on an annual basis. See Appellant's 9/16/00 memorandum. The application must satisfy the criteria enumerated in local board regulation in order to receive approval. Additionally, the mere fact that Appellant's son attends Spring Garden is insufficient for granting the out of district request as sibling preference is not one of the bases for granting approval of an out of district transfer.

With regard to Appellant's claim that her daughter satisfies enrollment criteria #2 for the transfer of pupils outside of their attendance area, Appellant mistakenly references a provision pertinent to open schools. That provision allows approval of a student transfer to a school outside of the student's attendance area if the student is in a situation where "the student must go to school from or return after school to a home other than the student's own because both parents are employed and there would be no responsible adult in the child's home to either send the child to or receive the child from school."<sup>3</sup> See JEA Regulation I.B.2.

Spring Garden is a closed school, therefore the guidelines for closed schools as set forth in JEA Regulation III.A are applicable in this instance. While the guidelines allow children who were previously approved for out of district attendance in grades 1 through 11 to continue at that school provided they continue to meet other out of district criteria, entering first grade students are not "grandfathered" into the school under this provision. Appellant's daughter thus fails to satisfy any of the enumerated criteria for approval of an out of district transfer request to attend a closed school.

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<sup>3</sup>With regard to day care arrangements, we note that after school care is provided by private vendors in all Carroll County elementary schools with the exception of William Winchester which has aftercare provided for its students at nearby St. John School. Thus, once a child has completed kindergarten, day care options are available at the student's home attendance area school. Additionally, the State Board has previously held that day care problems alone do not suffice to justify a student 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 (1997); *Breads v. Montgomery County Board of Education*, 7 Op. MSBE (1997); *Marbach v. Montgomery County Board of Education*, 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 Georges 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 Appellant has met her burden of proving that the local board acted arbitrarily, unreasonably or illegally in this matter.

## CONCLUSION

We therefore affirm the decision of the Board of Education of Carroll County denying Appellant's out of district transfer request.

Philip S. Benzil  
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January 31, 2001