

ADRIAN SENDEROWICZ,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 01-37

OPINION

This is an appeal of the denial of Appellants' requests to transfer their daughters from Beall Elementary School either to Farmland or to Luxmanor Elementary School in Montgomery County. The local board has submitted a Motion for Summary Affirmance maintaining that Appellants' transfer requests failed to meet any of the criteria for approving a student transfer and that the local board's decision is not arbitrary, unreasonable or illegal. Although requested to do so, Appellants did not file a reply.

FACTUAL BACKGROUND

For the 2001-2002 school year Natalie and Gabriella are entering first grade students at Beall Elementary School. On February 1, 2001, Appellants requested that Natalie and Gabriella be transferred either to Luxmanor Elementary or to Farmland Elementary for the 2001-2002 school year based on child care arrangements. Since three years of age, Natalie and Gabriella have been attending the Executive Child Development Center ("ECDC"), a program for employees of the National Institutes of Health.¹ Appellants would like the girls to remain at ECDC for before and after school care, however Appellants are unable to transport the girls back and forth from Beall to ECDC during the day. On March 2, 2001, Appellants' transfer requests were denied by the field office supervisor who noted that the requests failed to support a hardship.

Appellants challenged the field office supervisor's decision explaining that reliable child care is imperative for them because of their demanding job schedules which entail frequent travel.² Appellants stated that they had not found an alternative center that provides reliable or reasonable before and after school care. Appellants also indicated that they contacted the four day care

¹ECDC provides before and after school child care from 7:30 am to 6 pm, as well as child care on snow days and school holidays.

²Appellants work for the federal government. The father is Chief of the Molecular Therapeutics Unit, Oral Pharyngeal Cancer Branch of the National Institutes of Health. The mother is a Medical Officer at the Center for Drug Evaluation and Research for the Food and Drug Administration.

programs that serve Beall Elementary School, but that the programs were problematic for various reasons. With regard to one center, Appellants explained that Gabriela is prone to ear and respiratory infections and should not be exposed to the cold while waiting for the bus because it could increase her chances of getting an infection. Appellants also explained that the long bus rides between school and the child care center might trigger Natalie's motion sickness. Appellants further noted concern for Natalie's emotional and intellectual development given a change in child care placement based on behavioral adjustment problems in the past.

The superintendent assigned a hearing officer, Elaine Lessenco, to investigate the transfer requests. The hearing officer's report indicated that there were two day care centers that served Beall that could meet the parents' needs and that would fit with the parents' schedules. The hearing officer therefore found that there was a viable alternative in this case that would allow Gabriela and Natalie to attend their neighborhood school. Finding no unique hardship, the hearing officer recommended that the transfer request be denied. The superintendent adopted the hearing officer's recommendation that the girls not be allowed to transfer.

On appeal to the local board, Appellants highlighted their concerns with child care arrangements:

It is very difficult to obtain a reliable place where we can leave our kids, go to work and feel completely confident that they will be happy and will receive the best care. We know ECDC. Gabriela and Natalie have been attending ECDC for the last three years. This brings up another point: we both travel a lot to national and international scientific meetings. We rely a lot on the tight relationship that the girls have developed to the ECDC personnel. We believe that that relationship has helped them cope with our frequent travels.

5/17/01 letter from Appellants to local board at 1.

In response to the appeal, the superintendent submitted a memorandum dated June 5, 2001, stating in part as follows:

The hearing officer assigned to the case, Mrs. Elaine Lessenco, had spoken to both parents and referred them to two day-care centers serving [Beall] that meet the parents' work schedules. The parents reported their dissatisfaction with one of the centers, the Children's Center for Discovery, because of the length of the ride to school. . . . Staff members at this center reported that the children would be transported from this center by van and would be sheltered inside the center or inside the school building until they were to be transported for their 35-40 minute ride. In their letter to the Board of

Education, [Appellants] express concern that their daughters would be transported with older children with no aide on the van to provide supervision. Furthermore, their letter to the Board of Education refers to the Children's Resource Center, but the day-care center that they visited and that serves [Beall], is the Children's Center for Discovery, one that they claim did not return their telephone calls.

The second day-care center that matches the parents' work schedules and serves [Beall], is the Wintergreen Child Development Center. This center has transportation to Beall Elementary School provided by Montgomery County Public Schools' buses and is a short distance from the school. There is an aide on the bus. In contrast to the parents' contentions that they were never able to contact anyone at the center or to be scheduled for a tour of the facility, the hearing officer was able to contact a staff member at [Wintergreen] promptly on several occasions. When the recent letter to the Board of Education was received, the hearing officer again contacted [Wintergreen] and was told that they conduct tours on a daily basis at the request of parents.

Superintendent's memorandum at 2. The superintendent further indicated that Appellants had not presented a documented hardship that would qualify for the transfer.³

In a decision issued June 25, 2001, the local board was unable by a majority of its full membership to either affirm or reverse the decision of the superintendent's designee. Three board members voted to deny the transfers for the reasons stated by the hearing officer and the superintendent, emphasizing that there were at least two child care centers available to accommodate the Appellants' needs. Three board members voted to grant the transfers to Luxmanor based on a documented hardship.⁴ Thus the decision of the superintendent denying the transfers remains in effect.

ANALYSIS

³The superintendent also disclosed that utilization at Beall is projected at 102 percent, Farmland at 121 percent, and Luxmanor at 95.7 percent. Although Luxmanor is within an acceptable utilization range, it is one of MCPS's smallest schools with capacity of only 281 students; additional students would have a large impact on the school. Out of the nineteen requests for transfer out of Beall, eleven were denied and eight were granted: two for siblings, two for continuation in the feeder pattern, one for an immersion program, and three for documented hardship. Superintendent's memorandum at 2.

⁴One board member and the student board member did not participate in the appeal.

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. Appellants requested their daughters’ transfers based on concerns related to child care arrangements. Therefore hardship is the only applicable criteria to support transfer in this case.

Just last year, the State Board considered an appeal, *Hall v. Montgomery County Board of Education*, MSBE Op. No. 00-49 (December 5, 2000), involving facts that are remarkably similar to the appeal now before the State Board. There the parents asked that their incoming kindergarten student be transferred from his home school, Brown Station Elementary School, to DuFief Elementary School in order to keep the student and his 3-year-old brother at the Academy Child Development Center. The parents seemed to prefer the Academy, although there was a day care center 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 conclusion reached by the State Board in *Hall* is equally applicable to this case:

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). 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, the record discloses that there are two day care centers that serve Beall and could meet the parents' needs. Therefore, based on our review of the record, we do not find that the local superintendent's decision was arbitrary, unreasonable or illegal.

CONCLUSION

For these reasons, we affirm the decision of the Superintendent of Schools for Montgomery County.

Raymond V. Bartlett
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October 31, 2001