

DIANE STANLEY,

Appellant

v.

ANNE ARUNDEL COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 01-06

OPINION

In this appeal, a mother of a student at Severna Park High School in Anne Arundel County contests the denial of her request for an exception to the requirement that students who try out for All-County Band must be current members in good standing of a performing ensemble at the school. Appellant cites her desire to have her son Mark try out for the band in furtherance of his interest in music, despite the fact that he is not a current member of a performing ensemble as required by the published rules regarding the All-County Band. The local board has filed a Motion for Summary Affirmance, maintaining that Appellant's desire to try out for the band is insufficient to override the school system's requirement that those accepted to the All-County Band are members of a performing ensemble at school since the band is co-curricular and classroom time will be used to practice musical selections that the All-County Band will perform. Appellant submitted a reply reiterating that her son has been denied an equal opportunity to be part of the All-County Band.

BACKGROUND

In 1997, Mrs. Stanley requested and was granted approval to have her children, David, Michelle, and Mark transfer to Severna Park High School. Mark and Michelle's enrollment were contingent upon their enrolling in a Latin III class in the fall semester of the 1998-99 school year. *See* letter of 11/21/97 from Mr. Nicolini to Mr. & Mrs. Stanley.¹

In a letter dated August 20, 2000, Appellant requested a change in Mark's course schedule so that he could participate in the Early Admission to an Accredited College program. Because he was required to take Latin III as a condition of his transfer status, the requested change would not permit Mark to take both Latin III and band. Appellant acknowledged in that letter that her request would not accommodate enrollment in a band class, but noted that Mark felt it was in his best interest to drop band. In early September, Mr. Bruce Horner, Coordinator of Music, informed Mark that because he was not in a school performing ensemble, according to the published rules, he would not be eligible to try out for the All-County Band.

¹Apparently Mark did not enroll in the Latin class in the fall of 1998 because his enrollment in Latin III was still an issue in the fall of 2000-2001 school year.

Appellant appealed Mr. Horner's decision to Ms. Dixie L. Stack, Director of Curriculum, by telephone on September 11, 2000. By letter dated September 13, 2000, Ms. Stack informed Appellant that after reviewing her earlier letters and consulting with staff, she found that Appellant had been properly informed of the conflicts in her son's schedule, and of the option of taking Latin as an independent study to resolve the conflict, but that Appellant had elected not to modify his schedule to remove the conflicts.

Appellant next appealed Mrs. Stack's decision to Mrs. Nancy Mann, the Assistant Superintendent for Instruction, requesting an exception to the published rule that students must be members of a school performing ensemble to be eligible to try out for All-County Band. By letter dated September 15, 2000, Mrs. Mann denied the appeal. She stated that there is no basis for an exception to the rule since the All-County Band is an extension of the performing ensemble classes. She also stated that there have been no cases of exceptions to the rule.

Appellant then appealed Mrs. Mann's decision to Dr. Carol Parham, Superintendent of Anne Arundel County Public Schools. Mr. Kenneth Lawson, the Superintendent's designee, reviewed the matter and by letter dated September 28, 2000, denied the appeal. In support of the denial he stated:

The All-County Band is co-curricular in nature. It is intended to be an extension of band class activities. Enrollment and participation in a band class has always been the basic requirement for participation in All-County Band, because such participation is integral to the audition, practice and performance associated with All-County Band. Further, those activities are coordinated and led by band teachers with their students both during class time and after class in co-curricular activities. The continued high quality of the All-County Band, as a meaningful activity for its student participants, is dependent on this teacher/class relationship. Opening up All-County Band to other students, i.e., those not in band class, would substantially diminish the ability of the teachers to maintain that relationship and administer this activity.

Letter of September 28, 2000, p. 1 paragraph 3. Mr. Lawson also offered an alternative for Mark. He noted that Mark's schedule could still be changed so that he could enroll in band class without jeopardizing his transfer that was based upon his taking Latin. Letter of September 28, 2000, p. 2, paragraph 3. However, Appellant did not accept the alternative offered. Instead she appealed Lawson's decision to the local board of education by letter dated October 16, 2000.

Because the date to sign-up for All-County Band was October 27, 2000, the local board expedited its decision. In a unanimous vote on October 25, 2000, the local board upheld Mr. Lawson's decision, finding that Mr. Lawson's decision provided "a reasonable and rational basis" for the requirement that students be members of a performing ensemble in order to be eligible to

try out for All-County Band. It also found that the consistent application of the rule over the years provided no reason to make an exception in this case. Local Board decision at pp. 2-3. Appellant then appealed that decision to the State Board.

ANALYSIS

The standard of review that the State Board applies in reviewing a local board 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). While Appellant has enunciated a very strong desire for Mark to be granted a waiver of the eligibility requirement to try out for All-County Band, the State Board has held that there is no entitlement to a particular course of study. *See, e.g., Warran v. Montgomery County Board of Education*, MSBE Opinion 00-25 (May 24, 2000), (upholding a denial of transfer request to pursue fine arts and humanities program); *Peter Dennis v. Board of Education of Montgomery County*, MSBE Opinion No. 98-2 (January 25, 1998) (upholding denial of transfer request to participate in particular programs); *Sklar v. Board of Education of Montgomery County*, 5 Op. MSBE 443 (1989) (upholding denial of request to attend school offering program in Latin, note taking/study skills course, and piano); *Schiller v. Board of Education of Montgomery County*, 3 Op. MSBE 365 (1984) (upholding denial of transfer request to attend school with JROTC program). Similarly, there is no right to participate in extracurricular activities. *See, Pickett v. Montgomery County Board of Education*, MSBE Opinion No. 98-45 (August 26, 1998) and *Schnieder v. Board of Education of Montgomery County*, MSBE Opinion No. 97-47 (October 29, 1997), (no right to participate in extracurricular activities due to imposition of discipline). Moreover, Mark was afforded the opportunity to amend his schedule in September to accommodate a band class and declined to do so.

With regard to Appellant's claim that Mark have an "equal opportunity to be part of the All-County Band," the record demonstrates that the eligibility criteria for trying out for the band has been consistently and equally applied by the local school system for many years. Mark was provided the same opportunity to try out as every other student, but declined to change his schedule to make himself eligible. *See* letter dated September 28, 2000 from Mr. Lawson regarding an alternative solution to Mark's scheduling problems. Accordingly, we do not find that the local board acted arbitrarily, unreasonably or illegally in upholding the eligibility requirement for the All-County Band and in not waiving the requirement for Mark.

CONCLUSION

For these reasons we affirm the decision of the Board of Education of Anne Arundel County.

Philip S. Benzil
President

Marilyn D. Maultsby
Vice President

Raymond V. Bartlett

JoAnn T. Bell

Reginald L. Dunn

George W. Fisher, Sr.

Walter S. Levin, Esquire

Judith A. McHale

Edward L. Root

Walter Sondheim, Jr.

John L. Wisthoff

February 5, 2001