

ELAINE AND DANIEL LEE,

Appellants

v.

MONTGOMERY COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 02-59

### OPINION

This is an appeal of the denial of Appellants' request to allow their daughter to transfer from Martin Luther King, Jr. Middle School to Robert Frost Middle School in Montgomery County where the Appellants believe their daughter will get a more challenging education. The local board has submitted a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. Appellants did not submit a reply to the local board's Motion.

### FACTUAL BACKGROUND

Appellants and their daughter Lauren reside in Germantown in the attendance area of Martin Luther King, Jr. Middle School ("King"). Lauren attended King during the sixth grade after moving to Montgomery County from Martinsburg, West Virginia, where she participated in the gifted and talented program at Rosemont Elementary School. On March 27, 2002, Appellants requested that Lauren be transferred to Robert Frost Middle School for the 2002-03 school year in order to place Lauren in "a social and educational environment that will continue to promote her desire to learn and to achieve her highest goals." In their request they noted their dissatisfaction with the curriculum, staff, and learning environment at King. Appellants' transfer request was denied by the field office supervisor who noted that the request did not meet guidelines for a unique hardship.

Appellants challenged the field office supervisor's decision, focusing primarily on an alleged lack of academic challenge for Lauren at King. Appellants explained that Lauren had excelled in the gifted and talented program in elementary school and had successfully participated in her school's and county's science and social studies fairs, but that she had not received such opportunities at her current school despite requests for information on such activities.

The superintendent's designee, Deputy Superintendent James A. Williams, assigned a hearing officer, Alex Dunn, to further investigate the transfer request. Mr. Dunn spoke with the principal of King who reported that Lauren was earning all A's in her classes except for math in which she was earning a B. Mr. Dunn also spoke with the Appellants who indicated that Lauren was not being academically challenged in her classes. Lauren's mother noted that the family has had poor communication with the school and that she had unsuccessfully tried to schedule a

school meeting to discuss Lauren's situation.<sup>1</sup> Mr. Dunn suggested a meeting with Lauren's teachers to discuss Appellants' concerns. Lauren's mother contacted the guidance counselor at King and scheduled a meeting for June 4, 2002. In light of these facts, Mr. Dunn recommended that the transfer request be denied. The superintendent's designee adopted the hearing officer's recommendation.

On June 4, Mrs. Lee had a meeting with the principal of King, Lauren's school counselor, and Lauren's teachers to discuss her concerns. During that meeting, Mrs. Lee distributed lengthy questionnaires to the attendees. The group addressed some of the questions during the meeting and responded in writing to Mrs. Lee regarding other questions the team deemed appropriate. In the response, the group indicated that Lauren had achieved and exceeded all of the Maryland Learning Outcomes/Objectives in all curricular areas during the current year and was expected to meet and exceed them the following year. The school staff had some suggestions for Lauren which included enrolling in a summer school course entitled "Reading and Writing to Learn," attending a history camp for children in grades 5-7 offered through the Montgomery County Historical Society, and getting involved in the World History Project under development at San Diego State University.

Dissatisfied with the outcome of the June 4, 2002 meeting, Appellants appealed the denial of their transfer request to the local board reiterating their dissatisfaction with the curriculum which they believe fails to challenge their daughter. In response to the appeal, the superintendent submitted a memorandum indicating that the staff of Martin Luther King, Jr. Middle School is capable of providing a challenging learning environment for Lauren and can bring in other school resources for additional challenge and stimulation. The superintendent also noted that of the nine requests to transfer out of King, seven were approved,<sup>2</sup> one was denied, and one was still pending. Of the twelve requests to transfer to Frost, six were approved,<sup>3</sup> four were denied, and two were withdrawn.

In a unanimous decision, the local board upheld the decision of the deputy superintendent denying Appellants' transfer request, stating in part:

Mr. and Mrs. Lee have had differences with the staff of Martin Luther King, Jr. Middle School as to the manner in which Lauren is being instructed. However, there is no basis to conclude that Lauren will be challenged to a greater degree at Robert Frost or

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<sup>1</sup>The school has no record of her inquiry.

<sup>2</sup>One was on the basis of documented hardship, three to continue in a feeder pattern, one on the basis of having an older sibling attending the requested school, one for family move, and one to attend a special program.

<sup>3</sup>Three were on the basis of completing the sequence, two on the basis of documented hardship, and one on the basis of having a sibling enrolled at the school.

that her parents will be satisfied were she enrolled there. The more prudent course of action is for Mr. and Mrs. Lee to continue to work with the principal and faculty at King, and, if dissatisfied, to seek the intervention of the community superintendent over the school. Absent a hardship, the requested transfer is not justified and, accordingly, the decision of the deputy superintendent is affirmed.

## 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). 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).

Pursuant to Montgomery County Public Schools Regulation JEE-RA - Transfer of Students, students are to attend the school within the established attendance area in which they reside or are assigned in accordance with an Individualized Education Plan. Only documented unique hardship situations will be considered for a change in school assignment, unless the transfer request is based on one of the following: (1) an older sibling attending the requested school at the same time; (2) the student is ready to move to the next education level, such as elementary to middle school or middle school to high school, except for a boundary change; or (3) students have met the criteria for and been admitted to a countywide program. In addition, when a family moves within Montgomery County, preference to remain in the original school will be considered to complete the current school year. Since none of these bases for an exemption exists here, the only applicable consideration for a transfer for Lauren is a documented hardship.

The Court of Appeals has ruled that there is no right to attend a particular school. *See Bernstein v. Board of Education of Prince Georges County*, 245 Md. 464, 472 (1967); *cf. Dennis v. Board of Education of Montgomery County*, 7 Op. MSBE 953 (1998) (desire to participate in particular courses does not constitute unique hardship sufficient to override utilization concerns); *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). In light of these precedents, we find Appellants' desire to place Lauren in an educational environment that they feel can better serve their daughter's needs is not a recognized hardship sufficient to grant a transfer request. Therefore, based on our review of the record, we do not believe that the decision of the superintendent's designee was arbitrary, unreasonable, or illegal.

### CONCLUSION

For these reasons, we affirm the decision of the Board of Education of Montgomery County denying Appellants' transfer request.

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December 4, 2002