

GREGORY T. AND JANICE P. HARD,

Appellants

v.

CARROLL COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 02-57

OPINION

This is an appeal of the denial of Appellants' request to allow their son to continue to attend Linton Springs Elementary School for the fourth grade rather than attend Winfield Elementary to which he was recently redistricted. The local board has submitted a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. Appellant has submitted a reply opposing the local board's Motion.

FACTUAL BACKGROUND

Appellants' son Ethan attended Linton Springs Elementary School from kindergarten through the third grade. As a result of a recent redistricting in Carroll County, Ethan's home school was changed from Linton Springs to Winfield Elementary School beginning with the 2002-03 school year. As part of the redistricting, the local board "grandfathered" redistricted students who were fourth graders during the 2001-02 school year and for their final year of elementary school permitted them to remain at the schools they had attended for the fourth grade. These schools were either Eldersburg Elementary or Linton Springs Elementary.¹ This "grandfathering," however, did not include Ethan or any other students who were not fourth graders in 2001-02.

¹In their appeal, Appellants have provided excerpts of the local board's March 13, 2002 meeting at which the grandfathering of all students who had been redistricted from the Linton Springs attendance area to the Winfield attendance area was discussed as part of the redistricting consideration. The excerpts indicate that there was discussion among the local board members concerning the fact that one of the County Board members saw an apparent inconsistency between the redistricting plan and the provision in the administrative regulations implementing the local board's out of district attendance policy to the effect that some students who had previously been approved for admission as out of district students in prior years might be allowed to continue as out of district students, while students who were subject to redistricting were not grandfathered. The local board took no action on this matter, but the superintendent agreed to look at the procedures. Ultimately, the local board approved the redistricting without a grandfather provision for all students redistricted to Winfield.

On March 23, 2002, Appellants submitted an out of district request form asking that Ethan be permitted to remain at Linton Springs for the fourth grade stating “childcare, already at Linton, wife is employed at Century, disruption of family life, third elementary school for family”² as the basis of the request. Mrs. Hard works as a permanent substitute teacher at Century High School where Ethan’s older sister attends school. If Ethan were transferred to Linton Springs, he would be able to travel with his mother and sister to Century and then walk to Linton Springs which is on the same campus as Century. *See* 3/23/02 letter from Appellants.

Even after the redistricting the local board identified Linton Springs Elementary School as a closed school due to overcrowding. A closed school is one that has student enrollment at or above 90% of the school’s functional capacity.³ Once a school is declared closed as a result of population growth, local board policy places strict limitations on the admission to the closed school of students who do not reside within the school’s attendance area. *See* policy JEA.III. Appellants’ request was denied because Linton Springs is a “closed school” and the application failed to meet the qualifying exceptions for a transfer to a closed school.

Appellants appealed to the Director of Pupil Services, acting as the superintendent’s designee, asserting that they preferred Ethan to stay at Linton Springs to maintain continuity and stability in his education. They also indicated that if Ethan were required to attend Winfield, they would have to enroll him in a new daycare facility which would cause a financial and logistical hardship for the family. In addition, Appellants maintained that Mrs. Hard’s position as a permanent substitute at Century High School should be taken into consideration for granting their request.

The Director of Pupil Services denied their request, stating:

The reasons you state in your request for Ethan to attend Linton Springs Elementary School as an out-of-district student do not rise to the level of “a significant, documented hardship.” In fact, many of the issues you state are indeed common to many families including redistricting, provisions of daycare/supervision not otherwise covered by the out-of-district regulation, and a desire for the student to remain with the same peer group at the same school.

The Board of Education permitted 4th graders at Eldersburg and Linton Springs Elementary Schools to remain at their respective schools so that they may finish their final year at the

²Ethan has two older siblings, one who attended Eldersburg Elementary, and one who attended both Eldersburg and Linton Springs.

³Linton Springs Elementary even after redistricting is at 100% capacity (739 students).

elementary level in their current school. However, your son is currently in the third grade and therefore does not qualify for “grandfathering.”

Ms. Little also noted that although the regulation allows contracted staff members to have their children attend the school where the staff member works, the same is not true for the children of regular employees. *See* 4/22/02 letter from Cynthia Little.

Appellant further appealed the denial of their transfer request to the local board. The superintendent’s designee responded by letter to the local board. With regard to the Appellants’ argument regarding Mrs. Hard’s employment, the letter stated:

The regulation regarding guidelines for out-of-district attendance by children of school employees is not unreasonable. The regulations clearly state a student may be approved for out-of-district placement if the “Student’s parent/guardian is a contracted staff member at the requested school. A contracted staff member is defined as any employee in a F.T.E. position (.1 to 1.0).” While Mr. & Mrs. Hard argue that Mrs. Hard is not being given fair consideration because she is a permanent substitute not a contracted employee, they are actually requesting that she be given a consideration not afforded other staff. The regulation stated the parent must be employed at the requested out-of-district school. Mrs. Hard is employed at Century High School, not at Linton Springs Elementary School. Even though these two schools are on the same “campus” and in the same feeder system, Mrs. Hard is not employed at the requested school as required in the regulation. Mr. & Mrs. Hard’s request would have been denied even if she was an F.T.E. employee at Century High because the regulation requires that she be an F.T.E. employee at the requested school.

The letter further stated that Appellants’ transfer request did not meet the guideline for an exception to the regulation requiring a “rare or unusual circumstance,” nor did it qualify as a “documented hardship.”

In a unanimous decision, the local board upheld the decision of the superintendent’s designee denying the transfer request.

ANALYSIS

Preliminary Matters

As a preliminary matter, Appellants have raised issues involving the grandfathering of students which pertain to the redistricting decision. To the extent that Appellants challenge matters that were part of the local board’s redistricting decision, such issues are not appropriate

matters for consideration in this appeal as they were not timely appealed to the State Board within 30 days of the date of the redistricting decision. COMAR 13A.01.01.03B(3). Because Appellants failed to raise these issues in a timely manner after the redistricting decision was rendered, they have waived their right to raise them now before the State Board.

Another preliminary matter relates to Appellants' claims regarding the fairness of the out of district administrative regulation.⁴ Appellants maintain that the regulation gives consideration to children who have been out-of-district students at Linton Springs in the past so that they may continue at Linton Springs during the rest of their elementary years while newly displaced students who previously attended Linton Springs as a home school are given no consideration at all. We concur with the local board that the appeal process is not the appropriate vehicle to modify or adopt a new policy governing out of district transfer requests. We therefore decline to address this issue in this appeal. *See Regan v. Mont. Cty. Bd. of Educ. (II)*, MSBE Opinion No. 02-29 (attempt to alter current policy is inappropriate subject of §4-205 appeal); *Astrove v. Mont. Cty. Bd. of Educ.*, MSBE Opinion No. 02-14 (attempt to change existing policy is quasi-legislative matter not subject to §4-205 appeal process).

Merits of 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 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).

In response to the tremendous increase in student enrollment in Carroll County Public Schools, Carroll County Board of Education Policy JEA - "Students Attending Schools Out-of-Attendance Areas" was revised on December 12, 2001 in an effort to tighten the out-of-district

⁴The 2002-03 administrative regulation provides as follows:

Students approved for out-of-district enrollment during the 2001-2002 school year may be approved for continued out-of-district enrollment, through the current school level (Elementary, Middle, High), if, on an annual basis, they continue to meet the out-of-district regulations in place during the 2001-2002 school year with the exception of first grade students who must meet the requirements of the current regulation. I.A.

policy and reduce the number of out-of-district placements in the county. The administrative regulations implementing the policy were also revised for the 2002-2003 school year. Carroll County 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 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:

- A. 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.)
- B. Student is a member of an in-county family with specific proof of plans to move into the requested school district within 90 days (must provide contract at time of application).
- C. Student is a senior who wishes to complete the high school program where the student attended and successfully completed the eleventh grade
- D. Student's parent/guardian is a contracted staff member at the requested school.

The regulations also contain an exception for "rare and unusual circumstances when a documented hardship is deemed to exist by Pupil Services Staff." The regulations state at IV.H:

Problems that are common to large numbers of families do not constitute a hardship, absent additional compelling factors. Exceptions will not be made for redistricting, family convenience, participation in extra curricular activities, provisions of daycare/supervision not otherwise covered by this regulation, separation/divorce, or the student's desire to remain with the same peer group at the same school.

Based on Policy JEA and its regulations, the only exception that could be applicable in this case is the one for "rare and unusual circumstances when a documented hardship is deemed to exist."

Under local board policy and regulation, there is no provision allowing a transfer to a closed school based on child care reasons. Nor are daycare concerns a valid consideration for what constitutes a hardship under the policy and regulation. On numerous occasions the State Board has found that day care problems alone do not suffice to justify a student transfer. *See*

Jamei and Esmaili v. Board of Education of Montgomery County, MSBE Opinion No. 01-31 (September 26, 2001); *Hall v. Board of Education of Montgomery County*, MSBE Opinion No. 00-49 (December 5, 2000); *Sullivan v. Board of Education of Montgomery County*, MSBE Opinion No. 00-22 (April 19, 2000); *Gutierrez and 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); *Marbach v. Board of Education of Montgomery County*, 6 Op. MSBE 351 (1992).

Here, we do not believe that there is a genuine daycare problem. The local board has explained that Mrs. Hard's work situation is one where the need for daycare is minimal. As a permanent substitute, Mrs. Hard's duty day ends at 2:20 p.m. and the student day at Winfield ends at 3:45 p.m. The record does not reveal any reason why Mrs. Hard is unable to finish her duty day at Century and be home before Ethan gets off the school bus. Although Mrs. Hard's duty day at Century begins around 7:00 a.m. and Winfield's student day does not begin until 9:15 a.m., Appellants could enroll Ethan in the before school daycare program located at Winfield, which is five miles from Century High School.

Additionally, the policy and regulation contain no provision allowing a transfer to a closed school based on a desire to remain with a peer group. This basis is also specifically excluded from factors that can be considered as a hardship. Moreover, the State Board has consistently affirmed decisions in which the local board deemed the desire to remain with a particular peer group insufficient to support a student transfer. *See, e.g., Skardis v. Montgomery County Board of Education*, 7 Op. MSBE 1055 (1998) (desire to attend high school with middle school peer group not sufficient to approve transfer); *Diehl v. Montgomery County Board of Education*, 7 Op. MSBE 589 (1997) (desire to join peer group not sufficient to warrant student transfer).

As the Court of Appeals has long held, there is no right to attend a particular school. *Bernstein v. Board of Education of Prince George's 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).

CONCLUSION

Based upon our review of the record and for the reasons noted above, we do not believe that the local board's decision was arbitrary, unreasonable or illegal. Accordingly, we affirm the decision of the Board of Education of Carroll County denying Appellants' transfer request.

Marilyn D. Maultsby

President

Reginald L. Dunn
Vice President

JoAnn T. Bell

Philip S. Benzil

Dunbar Brooks

Clarence A. Hawkins

Walter S. Levin, Esquire

Karabelle Pizzigati

Edward L. Root

Walter Sondheim, Jr.

John L. Wisthoff

December 4, 2002