

JENNIFER L. WATSON &
BRIGID E. MONAGHAN,

Appellants

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 02-61

OPINION

This is an appeal of the decision of the superintendent's designee denying Appellants' request for the transfer of their son to another school. The local board has submitted a Motion to Dismiss, or, in the Alternative, Motion for Summary Affirmance maintaining that the decision was consistent with existing policies and practices and was neither arbitrary, unreasonable, nor illegal. Appellants did not submit a reply.

FACTUAL BACKGROUND

Appellants, who live in Silver Spring, are legal parents of Eli. After moving here from California last year, Eli enrolled in pre-school at the Takoma Park Child Development Center. Eli is in kindergarten for the 2002-2003 school year. His neighborhood school is Cresthaven Elementary School ("Cresthaven").

On March 18, 2002, Appellants submitted a "Request for Change of School Assignment" form, asking that Eli be permitted to transfer to Takoma Park Elementary School to attend kindergarten. If the transfer were granted, he could continue in the Center's before and after school program. The request was denied because Eli's circumstances did not fit the hardship exception that is the only basis for accepting new transfers. (*See Request for Change of School Assignment*).

Appellants appealed the denial to the Deputy Superintendent (Letter of Appeal, April 12, 2002). A hearing officer, Elaine B. Lessenco, spoke to the principal of Cresthaven who reported that there was available space for kindergartners and that there was before-and-after school care on site. Further, the director of the before-and-after school care assured Ms. Lessenco that space was available for kindergartners for fall 2002. In contrast, Takoma Park informed Ms. Lessenco that the school was expecting "very full kindergarten classes, based on the numbers listed for kindergarten orientation." (Motion to Dismiss, August 26, 2002). Ms. Lessenco filed a report with the Deputy Superintendent of Schools, Dr. Williams, in which she recommended against approval of the transfer request due to absence of hardship. (Memorandum of Recommendation, April 25, 2002). Dr. Williams adopted that recommendation. (Letter of Response, April 29, 2002).

In Appellants' letter of appeal to the local board, Appellants agreed with Ms. Lessenco's report but expressed concerns about issues of stability and continuity for Eli and alleged, for the first time, that Takoma Park had "a better record of embracing lesbian and gay families." (Letter of Appeal, May 28, 2002). Ms. Lessenco then contacted the principal at Cresthaven who offered to put Appellants in touch with other gay or lesbian families who had been active in the Cresthaven school community. Based on this information, the Superintendent noted that "[t]here is no reason to believe that Cresthaven Elementary School could not meet Eli's needs, nor is there reason to believe that the family would not be welcomed into the school community." Therefore, he recommended that the appeal be denied. (Letter of Response, June 21, 2002).

On July 9, 2002, the local board issued a written opinion in which it was unable to secure the votes required to either affirm or reverse denial of the transfer. Accordingly, the decision of the Deputy Superintendent remained in effect. (Local Board's Opinion, July 9, 2002).¹ This appeal to the State Board followed.

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).

Montgomery County Public Schools Regulation JEE-RA - Transfer of Students sets forth the criteria for consideration of a student transfer. Under that regulation, only documented 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) the student has met the criteria for and been admitted to a countywide program. Because Appellants do not base their request upon any of the three exceptions, the only issue is whether Appellants have demonstrated a documented hardship.

¹Four members of the board indicated that the decision of the Deputy Superintendent should be reversed for the reason that a hardship had been demonstrated; three members of the board affirmed the decision of the Deputy Superintendent; and one member was absent.

The Court of Appeals has ruled that there is no right to attend a particular school. *See Bernstein v. Board of Education of Prince George's 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). Moreover, that State Board has held that a desire to continue at a preferred day care provider does not constitute a hardship. *See, Charles and Michelle Sullivan v. Board of Education of Montgomery County*, Op. No. 00-22 (April 19, 2000); *Alberto Gutierrez and Theresa Finn v. Board of Education of Montgomery County*, Op. No. 00-01 (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). Further, there is no evidence in this record that the family would not be welcome in the Cresthaven Elementary School community.

CONCLUSION

Based on our review of the record and for the reasons noted above, we do not find that Appellants have presented evidence of a documented hardship sufficient to justify a transfer. Accordingly, we affirm the denial of 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