

SHERRY WARREN,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 02-53

OPINION

This is an appeal of the decision of the Montgomery County Board of Education (“MCPS”) denying Appellant’s request for the transfer of her daughter from Strathmore to Stonegate Elementary School. The local board has submitted a Motion to Dismiss, or in the Alternative, Motion for Summary Affirmance maintaining that its finding of no documented hardship was consistent with existing policies and practices and was neither arbitrary, unreasonable, nor illegal. Appellant has submitted an opposition to the Motion.

FACTUAL BACKGROUND

Appellant is the parent of Dawnyaë who lives in Silver Spring. The geographic area in which the family resides is within the attendance area of Bel Pre (K-2) and Strathmore (3-5) Elementary Schools. MCPS refers to such schools as “paired schools”, as opposed to a regular K-5 elementary school. The 2001-2002 school year was Dawnyaë’s first within the MCPS system. Dawnyaë completed second grade at Bel Pre in June of 2002 and will attend Strathmore for the 2002-2003 school year. Dawnyaë has twin siblings who will attend kindergarten at Bel Pre this school year.

On January 28, 2002, Appellant submitted a “Request for Change of School Assignment” form asking that her daughter be permitted to transfer to Stonegate because of “capacity and enrollment numbers in the respective schools” and the fact that a K-5 structure is one with which 7-year-old Dawnyaë is “most familiar.” (Request for Change of School Assignment). On March 4, 2002, the request was denied because it did not meet MCPS hardship criteria.

On appeal Appellant claimed that there would be 170 students in the 3rd grade at Strathmore and only 70 at Stonegate and that the “environment raises many hardships for my daughter, social, academically, available resources, and overcrowding to mention a few.” (Letter of Appeal, March 19, 2002). Appellant also noted that “Stonegate is a neighboring school within two miles of our home that is in a direct route to our day-to-day travel and my daily commute to work.” (Letter of Appeal, March 19, 2002).

The matter was referred to the hearing officer, Elaine B. Lessenco, who recommended that the transfer be denied because she found “no evidence that Dawnyaë needs a smaller environment in order to benefit from her educational program.” (Memorandum of

Recommendation, April 19, 2002). Ms Lessenco had spoken with Dawnyae's Grade 2 teacher who reported that "Dawnyae has no learning difficulties and is a very social child . . ." and that she is on grade level, in the upper reading group, although somewhat weaker in math. Ms. Lessenco also reported that although there were more students at Strathmore, the Grade 3 classes at both Strathmore and Stonegate contained 23 or fewer students. She noted that the PTA at Stonegate, not the school, offers French and Spanish outside of school hours. In the absence of any hardship, the hearing officer recommended that denial of the transfer be upheld. (Memorandum of Recommendation, April 19, 2002). Dr. Williams adopted the recommendation by letter dated April 24, 2002.

On further appeal to the local board, Appellant listed a number of negatives to having Dawnyae attend a paired school, including the fact that it would "divide siblings in multiple primary schools." (Letter of Appeal, May 23, 2002). The Superintendent replied to the appeal by memorandum dated June 4, 2002, noting that the Appellant had not mentioned that refusal to grant the transfer would "split her family." Ms. Lessenco learned that Dawnyae had twin siblings who would be entering kindergarten in the Fall and that they are enrolled and had attended kindergarten orientation at Bel Pre. Finding that regardless of whether Dawnyae attends Strathmore or Stonegate, the siblings will be attending two different elementary schools, the Superintendent concluded that the transfer request was based simply on the parent's desire to choose a different school, rather than on the basis of any documented hardship.

On June 24, 2002, the local board issued a unanimous written opinion in which it denied the request for transfer for lack of documented hardship. Among other things, the board noted:

...a hardship has not been demonstrated that justifies a transfer. The needs of Dawnyae can be served at Strathmore, which is projected to have smaller class sizes in the third grade than at Stonegate. Moreover, there is nothing in the record to demonstrate that she has difficulty in functioning in a student body of the size at Bel Pre and Strathmore. Transfers cannot be approved on the basis of opportunities provided by an outside organization outside of the school day.

(Local Board's Opinion, June 24, 2002, pp. 1-2). 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 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 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; and (3) a documented hardship. Because Appellant does not allege that an older sibling attends

Stonegate nor does she allege that this transfer would be the continuation of a feeder pattern, the only issue is whether Appellant has a documented hardship.

Appellant requested her daughter's transfer based on her objections to: (1) her daughter attending a grade 3-5 school rather than a K-5 school; (2) a school at which the overall grade 3 will have 170 students; and (3) the unavailability of a foreign language program. Appellant also noted that Stonegate is closer to her home and on her way to work.¹

Although Appellant prefers that her daughter attend Stonegate for the reasons stated above, these reasons have not been deemed sufficient in other cases to support a student transfer. *See, e.g., Raul Chacon v. Board of Education of Montgomery County*, Op. No. 01-39 (December 5, 2001)(desire to attend a school where Latin is offered insufficient to justify transfer); *Eddie and Dorothy Keels v. Board of Education of Howard County*, Op. No. 01-12 (March 28, 2001)(desire to attend a technology magnet school not sufficient to approve transfer), *Alverton Holness v. Montgomery County Board of Education*, Op. No. 01-42 (December 5, 2001)(desire to have block scheduling and specific curriculum insufficient to approve transfer).

The Court of Appeals has held 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); *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). A transfer request must be supported by evidence that one of the criteria justifying a transfer has been met. Based upon our review of the record, we find that Appellant has not provided documentation of a hardship in this case.

¹Appellant raises for the first time before the State Board the issue of her daughter having to change schools twice during her elementary years. While it is unclear why this would be any different in the case of Stonegate versus Strathmore, Appellant failed to raise this issue before the local board. Therefore, Appellant has waived her right to raise the issue before the State Board. *See, e.g., Heather Upchurch v. Board of Education of Montgomery County*, Op. No. 99-7 (January 26, 1999); (failure to raise substantive issue before local board waives right to raise issue before State Board); *Melissa Allen v. Board of Education of Anne Arundel County*, 7 Op. MSBE 1253 (1998)(failure to raise procedural due process issue before local board was waiver of issue on appeal).

CONCLUSION

For all of the these reasons, we do not find that the local board acted arbitrarily, unreasonably, or illegally in this matter. Accordingly, we affirm the decision of the Board of Education of Montgomery County denying Appellant's transfer request.

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October 30, 2002