

EDDIE AND DOROTHY KEELS,

Appellants

v.

HOWARD COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 01-12

OPINION

This is an appeal of the denial of Appellants' request to transfer their son from Oakland Mills High School to Long Reach High School in Howard County. The local board has submitted a Motion to Dismiss based on untimeliness. Alternatively, the local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. Appellants have submitted an opposition to the local board's motion.

FACTUAL BACKGROUND

Daniele is currently a junior at Oakland Mills High School where he was assigned to attend school for the 2000-2001 school year.¹ During the ninth and tenth grades, Daniele attended Long Reach High School, a technology magnet high school in the county, pursuant to a special program under which students applying for and selected to the tech magnet school and their parents agree to certain conditions. In order for a student to maintain his assignment at a tech magnet school, the student must by the end of grade 10 have earned 13 credits, have a 2.0 grade point average in math courses, and have an overall grade point average of 2.0. A student who fails to meet these criteria by the end of grade 10 is required to leave the Technology Magnet Program. Because Daniele's grade point average fell below the requirement to continue in the program, he was returned to his assigned school of Oakland Mills beginning with the 2000-2001 school year.²

Appellants requested that Daniele be reassigned to Long Reach High School for the 2000-2001 school year based on the fact that Daniele is comfortable in the learning environment there. Long Reach uses a four period day schedule rather than the seven period day used at Oakland Mills. Appellants also expressed their belief that Daniele would benefit from the continuity of

¹Daniele resides with his parents in the Oakland Mills High School attendance zone.

²Daniele's overall grade point average at the end of the tenth grade was 1.59. Daniele's failure to satisfy the technology magnet program requirements is not at issue in this appeal. In fact, Appellants acknowledge Daniele's failure to meet the program criteria in their appeal materials.

attending one school, Long Reach, where he had spent the previous two years. Appellants also indicated that Daniele had worked hard to raise his grade point average in school and had profited academically from summer school and tutoring. Appellants' transfer request was denied by school system staff based on the local board's one year moratorium on out-of-district assignments,³ the over capacity projected at Long Reach, and the absence of extenuating circumstances.

Appellants challenged the staff decision denying their transfer request. The matter was reviewed by Maurice Kalin acting as the superintendent's designee. Mr. Kalin denied Appellants' transfer request based on the moratorium on all open enrollment requests for the 2000-2001 school year. Mr. Kalin noted that the moratorium was placed on open enrollment to stabilize the movement of students within the county.

Appellants appealed Mr. Kalin's denial to the local board, reiterating that the teaching environment at Long Reach would be more suitable for Daniele's learning style. Additionally, Appellants indicated that Long Reach provided a more desirable peer group which would not negatively impact Daniele's academic and social development, and that Daniele had suffered emotional and physical stress as a result of his attending Oakland Mills.

In a 4-1 decision issued October 30, 2000, the local board upheld Mr. Kalin's decision to deny the transfer request. After considering all of the materials provided, the local board concluded that "no convincing information was submitted to provide extraordinary circumstances for Daniele" justifying a transfer under an exception to the moratorium on open enrollment.

ANALYSIS

As a preliminary matter, the local board argues that this appeal should be dismissed because it was untimely filed. State law and regulation require appeals of local board decisions to be filed with the State Board within thirty days of the local board decision. *See* Md. Code Ann. Educ. § 4-205 (c) and COMAR 13A.01.01.03B (3). The 30 days run from the later of the date of the order or the opinion issued explaining the decision. COMAR 13A.01.01.03B(3). An appeal is deemed transmitted within the limitations period if it has been delivered to the State Board or deposited in the United States mail, as registered or certified, before the expiration of the time period. *Id.*

Time limitations are generally mandatory and will not be overlooked except in

³In April of 2000, the local board reviewed enrollment and redistricting issues confronting the school system and adopted a one year moratorium on open enrollment. This decision reflected the local board's judgment on how best to respond to pressing system-wide issues regarding building utilization, efficiency, and program equity. *See* Oct. 30, 2000 Board Decision, p. 2.

extraordinary circumstances such as fraud or lack of notice. *See Scott v. Board of Education of Prince George's County*, 3 Op. MSBE 139 (1983); *See also* COMAR 13A.01.01.03G (2). The State Board has strictly applied this rule of law, and has dismissed appeals that have been filed a mere one day late based on untimeliness. *See Christine Schwalm v. Board of Education of Montgomery County*, 7 Op. MSBE 1326 (1998); *Marie Friedman v. Board of Education of Montgomery County*, 7 Op. MSBE 1260 (1998); *Eleanor Duckett v. Board of Education of Montgomery County*, 7 Op. MSBE 620 (1997).

Here, the local board decision was issued on October 30, 2000. The appeal should therefore have been filed with the State Board by November 29, 2000. However, the appeal was sent to the State Board office via certified mail postmarked November 30, 2000, one day beyond the limitation deadline. Appellants offer no reason for the failure to appeal in a timely manner. There does not appear to be any extraordinary circumstance that would merit an exception to the mandatory thirty day deadline. For these reasons, we dismiss the appeal as untimely.

Alternatively, if we were to review the appeal on its merits, the standard of review that the State Board would apply 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).

Here, Appellant's transfer request would create an exception to the moratorium on open enrollment imposed by the local board in April, 2000.⁴ Pursuant to the pupil assignment policy, exceptions to a moratorium on open enrollment are only considered for "open" schools for reasons such as physical, emotional, or educational conditions affecting the individual pupil. *See* Policy 3211R at II.D.2 and II.G. Long Reach is a closed school because its projected enrollment exceeds its capacity by approximately 150 students.⁵ Therefore, the pupil assignment policy does not permit an exception under these circumstances. Furthermore, the local board found no extraordinary circumstance that would warrant an exception in this case.

With respect to Appellants' desire to have their son attend Long Reach because they believe that the class schedule at Long Reach is better suited to Daniele's educational needs, the

⁴Appellants argue that the moratorium on open enrollment was created without a public hearing. The local board made its decision to create the moratorium at its April 27, 2000 meeting. Any opposition to the moratorium decision should therefore have been raised within 30 days of that decision.

⁵In their January 22, 2001 submission, Appellants requested an additional 15 days in which to gather information concerning enrollment figures at the schools in question. We believe that Appellants have had more than sufficient time throughout the different levels of review to gather the appropriate documentation. Moreover, the additional 15 days which were requested have passed and Appellants have not submitted additional information.

Court of Appeals has held 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); *see also 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 this regard the local board noted in its decision that transferring Daniele mid-year would create additional academic disruption for him, and that due to the underutilization at Oakland Mills, it was likely that Daniele would receive more academic intervention and support there than at Long Reach.

Finally, although Appellants would like their son to attend a school that has a particular peer group, this factor has not been deemed sufficient in other cases 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).⁶

For these reasons we would not find that the local board's decision was arbitrary, unreasonable or illegal.

CONCLUSION

Because the appeal was not filed within the 30 day appeal period, we dismiss it as untimely. Alternatively, for the reasons noted above we would affirm the decision of the Board of Education of Howard County.

Philip S. Benzil
President

Marilyn D. Maultsby
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⁶While Appellants also claim that their son is suffering emotionally and physically from his assignment at Oakland Mills, there is insufficient evidence in the record to support their contention.

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March 28, 2001