

MARIE MCNAMARA,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 02-16

OPINION

This is an appeal of the denial of Appellant's request to transfer her son from Burnt Mills Elementary School to Cannon Road Elementary School in Montgomery County. 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

On June 14, 2001, Appellant requested that Sean be transferred to Cannon Road Elementary School for the 2001-2002 school year. Appellant requested the transfer based on concerns about Burnt Mills, including the impact of the dual language program on class size; overcrowding; test scores; the management and leadership style of the principal; staff turnover; and the school's image in the community. At the time of the request, Sean was in the third grade at Burnt Mills Elementary School.¹

On July 20, 2001, Appellant's transfer request was denied by the field office supervisor who noted that the request did not meet guidelines. Appellant challenged the field office supervisor's decision.

The superintendent's designee assigned a hearing officer, Elaine Lessenco, to further investigate the transfer request. Ms. Lessenco spoke with Appellant who again expressed a variety of concerns. Among other things, she complained about overcrowding, staff turnover, and a meeting held with African-American staff members to discuss African-American student achievement, which had caused racial divisiveness at the school. Ms. Lessenco spoke to Dr. Adrienne Jackson, the principal of Burnt Mills Elementary, regarding Appellant's concerns. Ms. Lessenco reported the following:

¹Appellant's transfer request was submitted beyond the deadline for submitting such requests. Appellant later explained that she submitted the request late because she had hoped that the situation at Burnt Mills would improve with time. When things did not improve, she decided to submit the transfer request.

Dr. Jackson acknowledged that the Grade 3 classes had been large last year. The number of students enrolled in the Spanish language classes for Grade 3 was smaller than expected, (sic) causing an increase in the class size for English speaking classes. However, Dr. Jackson reported that she has received an additional allocation of staff for next year, allowing Grade 4 classes to stay within accepted limits. Grade 4 classes for next year have only 21 and 22 students on the current roster. Dr. Jackson reported that seven staff members have left the school this year, but only one of the 20 newly hired last year, who left for a school closer to her residence. Furthermore, Dr. Jackson reported that she has a 1.5 allocation for music. She has hired a full-time music teacher and is interviewing for the half-time position. A music room will be available in a new portable classroom. Dr. Jackson clarified the purpose of the meeting regarding African-American student achievement. Dr. Jackson reported that the African-American population is large at Burnt Mills Elementary School, and is not achieving as well as desired. She noted that she had requested the services of the Human Relations staff and had been working hard to improve test scores. The issue had been raised in staff meetings, with no discussion. Therefore one of the African-American staff members decided to hold a meeting at his home to discuss the issue. When complaints were expressed, Dr. Jackson suggested that the staff member report his findings to the next School Improvement Plan meeting.

Satisfied with the responses from Dr. Jackson, the hearing officer recommended that the transfer request be denied based on lack of hardship. The superintendent's designee adopted the hearing officer's report.

Thereafter, Appellant appealed the denial to the local board. Appellant questioned whether her case received a fair review because the letter from the superintendent's designee denying the transfer was dated August 9, 2001, the day before the date of the hearing officer's report. Appellant also highlighted what she claims are "academic and administrative shortcomings" at Burnt Mills. She expressed concerns about the reading program, math enrichment, field trips, and the lack of after school programs. She also reiterated her dissatisfaction with the principal, the dual language program, and overcrowding.²

²Appellant in her letter of appeal to the State Board notes that at a November 15, 2001 parent/teacher conference, Sean's teacher reported that his reading level was measured at the 8th grade level. The teacher also indicated that one other 4th grader reads at the 6th grade level.

In response to the appeal, the superintendent submitted a memorandum dated September 26, 2001, addressing each of Appellant's concerns. With regard to the date of the letter from the superintendent's designee, the superintendent indicated that it was a clerical error made at a time of high volume in the transfer office, and that Appellant's issues were thoroughly reviewed by the hearing officer and provided to the superintendent's designee.

With regard to the other issues raised by Appellant, the superintendent provided the following responses:

- Burnt Mills Elementary is using both the Junior Great Books program and the William and Mary curriculum. The classroom teachers provide accelerated instruction in language arts and reading.
- Classroom teachers recommend students for math enrichment, but the enrichment program does not begin until October.
- During the year, each academic team plans a field trip to be aligned with the curriculum.
- Burnt Mills plans to have a full program of after school activities for remediation and enrichment, including book club, jogging club, dance, Spanish, drama, art, web site development, music, and chess. Enrollment for these activities is in October.
- The African Rhythm Ensemble was discontinued by the school system's ethics panel based on information it had learned about the program.
- Staff members from the Diversity and Training Unit spent two full days interviewing staff at Burnt Mills Elementary School at the end of the 2000-2001 school year. Staff development specialists met with Burnt Mills staff and presented a workshop on communication skills. There will be a follow up during 2001-2002.
- Dr. Jackson attended all of the dual language program meetings except for one which was attended by her assistant principal. The report summarizing evaluation of the program was done as part of a dissertation and is not available for public dissemination. The effectiveness of the program will continue to be considered by the school performance team.
- Dr. Jackson is concerned about test scores. She communicated those scores publically and announced directions the school would take to improve them. She has sent several written communications to parents throughout the year addressing the need for student improvement.

- Dr. Jackson indicated that staff members had left the school for various personal reasons.
- Portable classrooms are expected by mid-October. One portable is designated for the music program.

The superintendent reported that Burnt Mills staff has developed plans to improve student performance. He indicated that Appellant had not presented a compelling hardship that would justify the transfer.

The local board was unable to either affirm or to reverse the decision of the superintendent by a majority vote of its membership. Three board members voted to affirm based on the reasons contained in the superintendent's memorandum of September 26, 2001 and the hearing officer's report of August 10, 2001. These members concluded that "[n]otwithstanding [Appellant's] displeasure over the principal's administration of the school, she has not demonstrated that Sean cannot receive an appropriate education at Burnt Mills." Local Board Decision at 2. Three board members voted to reverse based on the failure of the school to follow through on specific requests and assurances that would meet Sean's academic needs. Two Board members did not participate in the appeal.

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 ("MCPS") 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; or (3) a documented hardship. The only applicable consideration for a transfer in this case is a documented hardship.

As indicated in the letter of appeal dated December 13, 2001, the appeal to the State Board is focused on the inadequacy of the language arts program. Appellant indicated that she was satisfied with the math program that was supplemented with an enrichment class and a Math Olympiad Group in late October. In her reply to the local board's motion for summary affirmance, Appellant refuted certain assertions made by Dr. Jackson during the investigation of

this case. Specifically, Appellant noted that her son is one of 27 children in his fourth grade class. She claimed that the William and Mary curriculum or a similarly accelerated program was not being offered to her son or to other gifted fourth grade students because there was not a sufficient number of students performing above grade level to justify its implementation. She claimed that the students read only one book from Junior Great Books all year and interclass reading groups were abolished. Thus she maintained that her son was not receiving the intensity of instruction in reading and language arts that was afforded to children of comparable ability at other schools within [the Burnt Mills] cluster.”

After considering the record in the appeal including the motion filed by the local board and Appellant’s reply, the State Board requested the following information from the Montgomery County Board of Education: (1) verification of Sean’s class size in 4th grade at Burnt Mills Elementary School; (2) whether the William and Mary curriculum or a similarly accelerated program was being offered to Sean or to other 4th grade gifted students; (3) the number of selections read from the Junior Great Books including the number scheduled for the remainder of the school year; and (4) any other initiatives that have been developed to provide Sean an opportunity to participate in gifted and talented reading and language arts programs.

The local board’s response to each of the questions asked by the State Board is summarized below.

- (1) Class size: Sean is in a Program of Assessment, Diagnosis and Instruction (PADI) class which is comprised of highly capable students. It is an interdisciplinary program in social studies and science designed to promote academic achievement and thinking skills of a group of identified students selected on the basis of their performance on a diagnostic battery. A class of PADI students demonstrates strong abilities and potential. Teachers selected to teach PADI participate in long-term training and professional development. Sean’s PADI section has 28 students at the present time. In contrast, Cannon Road Elementary School to which Sean’s mother wants to transfer Sean, does not have a self-contained PADI class, except in grade 2.
- (2) Use of William and Mary curriculum or similarly accelerated program: A modified William and Mary program approach is used in the PADI class together with the Junior Great Books format for literature discussion groups, as well as Junior Great Books stories.
- (3) Number of selections read from Junior Great Books and schedules for the remainder of the year: Sean’s group has used one Junior Great Book story (*Thank You Ma’am* by Langston Hughes from the Junior Great Books Anthologies). Related activities were conducted over a week long series. Current plans are to use a minimum of three additional stories and possibly four by the end of the year, depending on the pace of the group. In contrast, Cannon Road Elementary does not have a Junior Great Books program, but does have a William and Mary program.

- (4) Any other initiative to provide Sean participation in gifted and talented language arts program: The response to this question submitted by the Burnt Mills School staff reads in its entirety as follows:

Sean is a member of the highest reading group in his fourth grade class. He is the most advanced reader (9th grade level). The children in this group read within a range of 6th to 9th grade materials. The books that have been selected for his group range from 6th to 9th grade levels in order to address the range of the group. His spelling assignment is differentiated, via which he is required to independently use his spelling words in paragraphs while applying the writing process. Other students are creating semantic webs and using their words at the sentence level. Sean is also challenged in an accelerated writing group, through which he receives weekly small group instruction. He is provided with extension activities, research opportunities, and produces work that is considered for entry in local school as well as state writing contests. His most recent submission was an essay response to the State of Maryland's "If I was a Mayor" [sic] writing contest.

Sean is in our 4th grade PADI class. His teacher participated in the Junior Great Books training, and modifies the instruction by selecting books and materials that are appropriate for his level. He participates in literature discussion groups using the Junior Great Books format, but not necessarily the Junior Great Books stories. The upcoming unit for his group will target reading to be informed, and the focus will be addressed through the use of biographies and a modified William and Mary program approach.

In a supplemental response, Appellant does not contradict the supplemental information provided by the local board. However, she maintains that because the educational programs for her son are inadequate, her son should be admitted to Cannon Road Elementary School's gifted and talented reading and language arts program.

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). Thus,

Appellant's desire to place her son in an educational environment that she believes can better serve her son's needs has not been recognized as a hardship sufficient to grant a transfer request.

Based upon our review of the entire record, we do not find that the decision of the superintendent's designee was arbitrary, unreasonable or illegal. We note in this regard that Sean is in both math enrichment and the PADI interdisciplinary program in social studies and science. Moreover, as of January, 2002, Sean's reading ability had advanced to the 9th grade level.

CONCLUSION

For these reasons, we affirm the denial of the transfer request.

Marilyn D. Maultsby
President

Reginald L. Dunn
Vice President

JoAnn T. Bell

Philip S. Benzil

Clarence A. Hawkins

Walter S. Levin, Esquire

Karabelle Pizzigati

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John L. Wisthoff

April 24, 2002

Dunbar Brooks, a newly appointed member of the State Board of Education, did not participate in the consideration of this case.