

IN THE MATTER OF

*
*
*
*
*
*BEFORE THE
BOARD OF EDUCATION
OF
*
CARROLL COUNTY

* * * * *

DECISION OF THE BOARD OF EDUCATION OF CARROLL COUNTY

This is an appeal before the Board of Education of Carroll County (the "Board") pursuant to Section 4-205(c) of the Education Article to the Annotated Code of Maryland regarding a request for an out-of-district transfer. Mr. _____, on behalf of his daughter _____ has appealed the April 18, 2011, decision of Superintendent's Designee, Ms. Sherri-Le W. Bream, in this matter. In her decision, Ms. Bream upheld an earlier decision by Pupil Personnel Worker Mark L. Bugbee, denying _____ request that _____ be allowed to attend _____ High School ("_____") for the 2011-2012 school year rather than attend _____ High School ("_____"), _____ home attendance area school.

The Board has reviewed all of the written material submitted by _____ and _____ as well as documentation submitted by Ms. Bream in response to the appeal. Pursuant to its review, the Board has determined that this appeal may be decided under its Rules of Procedure without an evidentiary hearing or oral argument.¹ For the reasons set forth below, the Board has

¹ The Maryland State Board of Education (the "State Board") has held that a student transfer matter does not necessitate a full evidentiary hearing or oral argument. *See, e.g., Reed v. Carroll County Board of Education*, 7 Op. MSBE 1242, 1246 (1998); *Marshall v. Howard County Board of Education*, 70 Op. MSBE 596, 598 (1997). Additionally, in his Appeal Information Form, _____ indicated that an evidentiary hearing and oral argument before the Board were not necessary.

determined that the transfer decision was not arbitrary, unreasonable or illegal.² Accordingly, the Board shall affirm the decision upholding the denial of the requested out-of-district transfer.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

submitted a *Carroll County Public Schools Out-of-District Request* on February 24, 2011, seeking approval for _____ to attend _____ for the 2011-2012 school year, her ninth grade year. In support of his request, _____ points out that and her siblings have moved schools several times due to redistricting, and in the upcoming year, the majority of students with whom _____ attended middle school will attend _____; whereas only twenty students from _____ Middle School, including _____ are scheduled to attend _____ High School. _____ believes that the rounds of redistricting unfairly and adversely impacted his family by separating his children from the peers with whom they have established friendships. As additional justification for the requested transfer, _____ explains that _____ has already participated in the marching band by invitation for the past two years and that _____ would like to continue doing so. _____ has concerns about the _____ marching band because the _____ band director has not contacted _____ leading _____ to feel that _____ will be isolated at _____; request for _____ transfer to _____ is also supported by a letter from Maryland State Delegate Justin Ready.

² A decision may be arbitrary or unreasonable if: a) it is contrary to sound educational policy; or b) a reasoning mind could not have reasonably reached the conclusion the Superintendent or his Designee reached. A decision may be illegal if it is one or more of the following: a) unconstitutional; b) exceeds the statutory authority or jurisdiction of the Superintendent; c) misconstrues the law; d) results from an unlawful procedure; e) is an abuse of discretionary powers; or f) is affected by any other error of law. See COMAR 13A.01.05.05. See also *Breads v. Board of Education of Montgomery County*, 7 Op. MSBE 507 (1997) (evaluating a student transfer appeal and noting 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).

Upon reviewing application and Mr. Bugbee's denial, Ms. Bream met with on April 12, 2011. Ms. Bream carefully listened to explain situation, and later that day discussed concerns with Superintendent Stephen Guthrie.

Ultimately, Ms. Bream affirmed the denial of request by letter dated April 18, 2011, reasoning that Mr. Bugbee's decision was consistent with Board Policy JEA and the Superintendent's regulations on "Students Attending Schools Outside of Attendance Areas." In her letter, Ms. Bream explained that transfer request did not fall within the stated reasons for approval of a transfer to an "open" school nor did it rise to the level of a "significant, documented hardship."³

Out-of-district placements by Carroll County Public Schools are governed by Board Policy JEA and the Administrative Regulations which implement Policy JEA. The purpose of Policy JEA is "[t]o establish a uniform countywide policy that identifies some specific and limited circumstances for which a student may be considered for placement outside their designated attendance area."

The Administrative Regulations implementing Policy JEA are bifurcated based on whether a request for an out-of-district placement is made pursuant to Public School Choice for students attending Title I schools which have been identified as "in-improvement" or whether the

³ Section IV(G) of the Administrative Regulations implementing Board Policy JEA provides as follows:

An exception to the out-of-district regulation may be granted by the Supervisor of Pupil Personnel and Student Support Services in rare and unusual circumstances when a significant, documented hardship is deemed to exist by Student Services staff. Problems that are common to large families (*sic*) do not constitute a hardship, absent additional compelling factors. Exceptions will not be made for redistricting, family convenience, participation in extracurricular 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.

request has been made for reasons unrelated to Public School Choice.⁴ Administrative Regulation JEA, (part 1 of 2) I. request that be placed at is not based on Public School Choice under Title I, as the school in designated attendance area, has not been identified as a school "in-improvement" pursuant to Title I.

Having determined that request for out-of-district placement for was not made pursuant to the Public School Choice Program, it must be determined whether request met the criteria set forth in Administrative Regulation JEA for out-of-district placement requests unrelated to Public School Choice.

is an "open" school because its student enrollment is less than ninety percent of its functional capacity. Consistent with Section 4-109 of the Education Article of the Annotated Code of Maryland, the Board of Education of Carroll County established Policy JEA which provides,

" . . .students shall attend the school located within the attendance area in which they actually reside. The Board of Education recognizes that in some specific and limited situations, students may be considered for placement outside of their designated attendance area. The Superintendent through the Student Services Department, is authorized to make such placement."

The Administrative Regulations for Policy JEA applicable to open schools provide limited reasons for which a student may be allowed to attend an open school, specifically, certain childcare situations for students attending kindergarten through eighth grade, moving during the current school year, senior year of high school status, and rules applicable to school based staff members. None of these exceptions apply to this case. Additionally, the Administrative

⁴ Title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. § 6301 et seq.), as amended, is Federal legislation aimed at improving the academic achievement of the disadvantaged.

Regulations allow the staff to consider “rare and unusual circumstances when a documented hardship is deemed to exist.”

_____ is rightfully proud of _____'s early participation in the _____ marching band. However, the desire to continue to be a part of a particular school's extracurricular group is not a valid basis for an out-of-district transfer under the applicable administrative regulations. The Carroll County Public School System is unwilling and unable to grant out-of-district transfers on the basis that a student would prefer to be in one school's particular extracurricular program over another's, especially when both schools offer the program of interest.

Additionally, the fact that the _____ family has been the subject of previous redistricting decisions during their tenure in Carroll County Public Schools is not sufficient justification for the requested transfer under the Administrative Regulations for Policy JEA. Redistricting decisions reflect the Board's desire to efficiently and effectively allocate the resources, facilities, and staff of the Carroll County Public School System in a manner that maximizes the educational experience of the children of Carroll County as a whole. Although redistricting decisions may not always prove to be individually satisfying to every student affected by them, and often affect entire families, dissatisfaction with the results of redistricting do not serve as a justification for granting an out-of-district transfer under the Administrative Regulations for Policy JEA. As discussed above, the record indicates that neither _____'s inability to continue participating in the _____ marching band, nor _____'s history of redistricting, constitute a qualifying hardship under the Administrative Regulations for Policy JEA.

The Maryland Court of Appeals has held that, “[a]bsent a claim of deprivation of equal educational opportunity or unconstitutional discrimination because of race or religion, there is no right or privilege to attend a particular school.” *Bernstein v. Board of Education of Prince*

George's County, 245 Md. 464, 472 (1967). Likewise, the State Board has repeatedly held that students are not entitled to attend a particular school. See, e.g., *Antila v. Montgomery County Board of Education*, MSBE Op. No. 06-01 (Jan. 25, 2006); *Goldberg v. Montgomery County Bd. Of Educ.*, MSBE Op. No. 05-35 (Oct. 26, 2005); *Botzer v. Montgomery County Board of Education*, MSBE Op. No. 04-39 (Oct. 27, 2004); *Liu v. Montgomery County Board of Education*, MSBE Op. No. 04-40 (Oct. 27, 2004); *Chacon v. Montgomery County Bd. of Educ.*, MSBE Op. No. 01-39 (Dec. 5, 2001).

As we have determined on numerous occasions, student transfer decisions require the balancing of system-wide considerations as compared to the concerns of the student and his or her family. The State Board has previously determined that, “[r]ace, socio-economic level, building utilization, enrollment levels, and the educational program needs of the individual student are 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.” See *Reed v. Carroll County Bd. of Educ.*, 7 Op. MSBE 1242 (1998) (denying the student’s continued out-of-district transfer due to overcrowding).

Balancing these considerations in the matter before us, we have determined the fact that, although _____ is “open” due to enrollment numbers less than 90 percent of capacity, _____ desire to participate in the _____ marching band and to attend school with her friends attending _____ is not a valid justification for the transfer. As described by _____, _____ individual circumstances appear to pose particular hardships for _____. However, these are not unique and significant hardships as defined by the JEA Administrative Regulations. In fact, the hardships _____ alleges—redistricting, family hardship, and participation in extra-curricular activities—are specifically listed as factors that do

not constitute documented hardships under Section IV(G) of the Administrative Regulations implementing Board Policy JEA. As such, we have determined that there is no reason to conclude that the circumstances outlined by _____ amount to a documented hardship.

Based upon our review of the record, we find that the reasons advanced by _____ do not constitute a hardship sufficient to overturn the transfer decision. In addition, this Board finds that _____ has not demonstrated that the decision regarding the denial of the requested out-of-district transfer of _____ was arbitrary, unreasonable or illegal. To the contrary, we find that the decision of Mr. Bugbee that was affirmed by Ms. Bream as the Superintendent's Designee, sets forth a rational basis for denying the requested transfer, which is consistent with Board policy, the Superintendent's administrative regulations, and prior decisions by this Board.

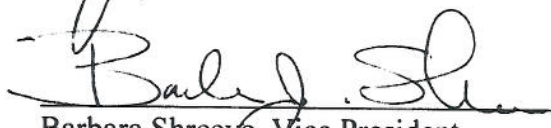
The Board recognizes that the appropriate utilization of schools is of extreme importance in making out-of-district transfer decisions. Under the facts of this case, _____ is an "open" school. The Board has taken into account and has weighed the reasons advanced by _____ against the concerns of the school system regarding utilization of the _____ facility. The decision of this Board is that the circumstances presented by _____ do not reflect a unique, personal hardship sufficient to justify a reversal of the transfer decision when balanced against the adverse impact on _____. In view of the fact that _____ has failed to establish a unique hardship sufficient to warrant _____ attendance at _____ and has failed to demonstrate that the Superintendent's decision was arbitrary, unreasonable or illegal, the Board will uphold the decision of the Superintendent's designee in denying the requested transfer of _____ from _____ to _____ for the 2011-2012 school year.

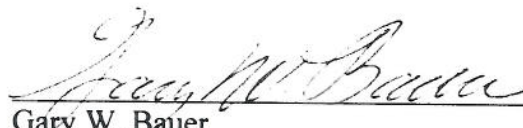
DECISION

For the reasons discussed above, this Board affirms the decision upholding the denial of the out-of-district transfer request. Should he choose to do so, _____ may appeal this decision to the Maryland State Board of Education, 200 West Baltimore Street, Baltimore, Maryland 21201, in writing, within thirty (30) days of the date of this decision.

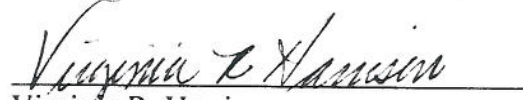
8-24-11
Date


Jennifer A. Seidel, President


Barbara Shreeve, Vice President


Gary W. Bauer


Cynthia L. Foley


Virginia R. Harrison