

IN THE MATTER OF

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*BEFORE THE
BOARD OF EDUCATION
OF
CARROLL COUNTY

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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. _____ and _____ ("Mr. and Mrs.

_____), on behalf of their son _____ ("_____"), have appealed the April 13, 2011, decision of Superintendent's Designee, Mr. Dana Falls, in this matter. In his decision, Mr. Falls upheld an earlier decision by Pupil Personnel Worker Mark L. Bugbee, denying Mr. and Mrs.

_____ request that _____ be allowed to attend _____ High School ("_____") for the 2011-2012 school year rather than attend _____ High School ("_____"). _____ home school.

The Board has reviewed all of the written material submitted by Mr. and Mrs. _____ and _____ as well as documentation submitted by Mr. Falls 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, Mr. and Mrs. _____ did not indicate that an evidentiary hearing and oral argument before the Board were necessary.

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Mr. and Mrs. submitted a *Carroll County Public Schools Out-of-District Request* on February 14, 2011, seeking approval for to attend for the 2011-2012 school year, his ninth grade year. In support of their request, Mr. and Mrs. point out that (1) was moved out of Elementary School one year before the majority of his peers to attend Middle School; (2) that his brother, goes to under an out-of-district approval; and (3) that in the upcoming year, the majority of students with whom attended middle school with will attend whereas only a relatively small percentage of students from Middle School, including , are scheduled to attend High School. As additional justification for the requested transfer, Mr. and Mrs. explain that was diagnosed with a learning disability in the third grade, and state he has trouble adjusting to change.

Upon reviewing Mr. and Mrs. application and Mr. Bugbee's denial, Mr. Falls met with Mr. and Mrs. April 11, 2011. Mr. Falls carefully listened to Mr. and Mrs. explain situation, and the following day discussed concerns with Superintendent Stephen Guthrie. Ultimately, Mr. Falls affirmed the denial of Mr. and Mrs. request by letter dated April 13, 2011, reasoning that Mr. Bugbee's decision was

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).

consistent with Board Policy JEA and the Superintendent's regulations on "Students Attending Schools Outside of Attendance Areas." In his letter, Mr. Falls explained that Mr. and Mrs.

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 request has been made for reasons unrelated to Public School Choice.⁴ Administrative Regulation JEA, (part 1 of 2) I. Mr. and Mrs. . 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.

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.

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.

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

[redacted] 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 Regulations allow the staff to consider "rare and unusual circumstances when a documented hardship is deemed to exist."

Unfortunately, the efficient administration of the school system occasionally necessitates districting changes which impact a student's ability to continue to attend school with same peer group. However, if continued attendance with an identified peer group were the metric for granting an out-of-district transfer request, the Board's attempts to manage the school system

would rapidly become untenable and virtually every redistricting decision would be functionally nullified by out-of-district transfer requests.

The fact that [redacted] has previously been separated from a majority of his peers during his tenure in Carroll County Public Schools, when during the construction of [redacted] Elementary School [redacted] had to move to [redacted] Middle School a year early, is similarly not sufficient justification for the requested transfer under the Administrative Regulations for Policy JEA. The district lines 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 district lines may not always prove to be individually satisfying to every student affected by them, and often affect entire families, dissatisfaction with the results of district borders does not serve as a justification for granting an out-of-district transfer under the Administrative Regulations for Policy JEA. As discussed above, the record does not indicate that [redacted] history of moving schools constitutes 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, [redacted] is “open” due to enrollment numbers less than 90 percent of capacity, [redacted] desire to attend school with his friends attending [redacted] is not a valid justification for the transfer. As described by Mr. and Mrs. [redacted] individual circumstances appear, at first glance, to pose particular hardships for him. However, these are not unique and significant hardships as define by the JEA Administrative Regulations. In fact, the hardships that Mr. and Mrs. [redacted] alleges—the desire to stay with his peer group, and family hardship—are specifically listed as factors that do not constitute documented hardships under Section IV(G) of the Administrative Regulations implementing Board Policy JEA. Further, the State Board of Education has held that desire to stay with one’s peer group does not constitute a unique hardship. *Melanie C. v. Carroll County Bd. of Educ.*, MSBE Op. No. 10-04 (2010). As such, we have determined that there is no reason to conclude that the reasons outlined by Mr. and Mrs. [redacted] amount to a documented hardship.

Based upon our review of the record, we find that the reasons advanced by Mr. and Mrs. do not constitute a hardship sufficient to overturn the transfer decision. In addition, this Board finds that Mr. and Mrs. have 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 Mr. Falls as the Superintendent's Designee, sets forth a rational basis for denying the requested transfer, which is consistent with Board policy, administrative regulations, and prior decisions by this Board.

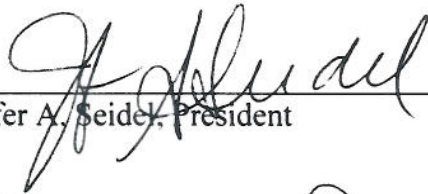
The Board recognizes that the appropriate utilization of schools is of extreme importance in making out-of-district transfer decisions. Under the facts of this case, is an "open" school. The Board has taken into account and has weighed the reasons advanced by Mr. and Mrs. against the concerns of the school system regarding utilization of the facility. The decision of this Board is that the circumstances presented by Mr. and Mrs. 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 Mr. and Mrs. have 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.

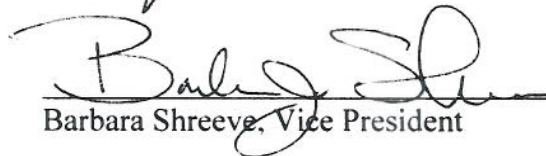
DECISION

For the reasons discussed above, this Board affirms the decision upholding the denial of the out-of-district transfer request. Should they choose to do so, Mr. and Mrs. may

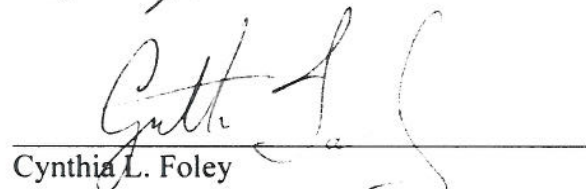
appeal this decision to the Maryland State Board of Education, 200 West Baltimore Street,
Baltimore, Maryland 21201, in writing, within thirty (30) days of the date of this decision.

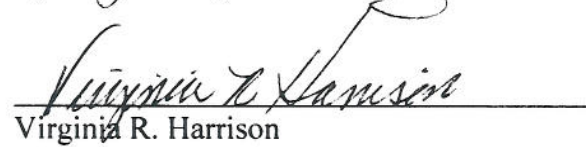
8-24-11
Date


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