

SANDIE I.,

Appellant

v.

MONTGOMERY COUNTY  
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 14-12

## OPINION

### INTRODUCTION

Appellant has appealed the denial of her request to transfer her daughter from Springbrook High School (“Springbrook”) to James Hubert Blake High School (“Blake”). The Montgomery County Board of Education (Local Board) has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal. Appellant has responded to the local board’s Motion and the Local Board has replied.

### FACTUAL BACKGROUND

Appellant and her daughter, C.H., live within the Northeast Consortium in Montgomery County. The consortium is comprised of three public high schools: Blake, Springbrook, and Paint Branch High School (“Paint Branch”). (Motion, Ex. 5). Students are assigned to a “base” high school but are given the opportunity in eighth grade to rank their first, second, and third choice of schools as part of a school assignment process. Students are guaranteed assignment to their base school if it is their first or second choice. The school system assigns students to schools based on school capacity and projected enrollment. The school system also considers student gender and socioeconomic status as indicated by whether students participate in the Free and Reduced Price Meals program (“FARMS”). This policy is in place to ensure comparable demographics at the three high schools. (Motion, Ex. 4).

On October 25, 2012, C.H. selected Blake as her first choice, Springbrook as her second, and Paint Branch as her third. (Motion, Ex. 5). By letter dated January 18, 2013, C.H. was assigned to Springbrook, which was her base school and second choice. (Motion, Ex. 7). Appellant asked that her daughter’s choice be reconsidered as part of the second round of the school selection process, but she remained assigned to Springbrook. On April 2, 2013, Appellant appealed the assignment to the Division of Consortia Choice and Application Program Services (“DCCAPS”). Appellant argued that C.H. would suffer an academic hardship by attending Springbrook. She raised concerns about the quality of Springbrook’s math courses and stated that the school’s International Baccalaureate program was not compatible with C.H.’s interests. Appellant further stated that C.H. had negative experiences at Springbrook while taking a math course there. C.H. felt that the school had low expectations for students and she received unwanted attention and harassment from male students. In addition, Appellant stated that the number of security guards made C.H. feel unsafe. Appellant claimed that the school choice

system was unfair because it penalized C.H. based on her socioeconomic status, specifically that her family made too much money to qualify for the FARMs program.<sup>1</sup> (Motion, Ex. 10).

On April 22, 2013, Jeannie Franklin, Director of DCCAPS, denied the appeal. In a letter to Appellant, Franklin stated that school enrollment numbers were the reason for the denial. She stated that C.H. would be able to take the type of math courses she needed at Springbrook. Ms. Franklin noted that the selection process was race-neutral and informed Appellant that her daughter could seek a transfer to Blake for tenth grade. (Motion, Ex. 11).

Appellant appealed the denial to Larry Bowers, the superintendent's designee. Appellant reiterated her concerns that Springbrook would not be a good academic fit for C.H. She further claimed that 68 students eligible for FARMs from C.H.'s middle school were assigned to Blake as their first or second choice. Out of those 68 students, 48 received Blake as a first choice and 20 received Blake as their second choice. She argued that considering FARMs status was unfair and requested that one of the students who listed Blake as a second choice be sent to another school so that her daughter could attend her first-choice school. (Motion, Ex. 12).

Mr. Bowers referred the case to a hearing officer, who issued a report on June 3, 2013. The report recommended denying the appeal, noting that the school selection process applied to all students and that not everyone could attend their first-choice school. In addition, the report stated that a desire to access a particular course of study at another school was not a unique hardship that would constitute an exception to the school assignment process. Mr. Bowers concurred with the findings in the report and denied the appeal. (Motion, Ex. 13).

On June 14, 2013, Appellant appealed to the local board. She argued that the school assignment process was heavily biased in favor of students in the FARMs program. Appellant also reiterated her concern that Springbrook was not a good academic fit for her daughter and claimed C.H. had been sexually harassed at the school. (Motion, Ex. 14). In an opinion issued July 29, 2013, the local board affirmed the superintendent's decision. The local board concluded that the school choice process was administered fairly and that the appeals process was not the appropriate forum to discuss making a change in the school selection process. The local board observed that C.H. did not receive her first-choice school because the school was at capacity. The local board noted that students are not guaranteed their first choice of schools. Addressing Appellant's concerns about safety and harassment, the local board noted that Appellant made "general criticisms" of Springbrook without providing sufficient specific evidence that C.H. could not have a successful experience at the school. The local board added that C.H.'s desire to access specific programs at Blake did not constitute a unique hardship that would otherwise justify a transfer. The local board observed that school officials at Springbrook were ready to work with Appellant and her daughter to ensure a successful transition. (Motion, Ex. 17).

Appellant filed this appeal to the State Board on August 9, 2013.

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<sup>1</sup> Appellant also argued that C.H.'s race and "high scores" were part of the reason for her not being allowed to attend her first-choice school. (Motion, Ex. 10). Appellant dropped these arguments from her later filings and only raised the issue of socioeconomic status.

## STANDARD OF REVIEW

When reviewing a student transfer decision, the decision of the local board is presumed to be *prima facie* correct. COMAR 13A.01.05.05A. 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. *Id.*; see *Alexandra and Christopher K. v. Charles County Bd. of Educ.*, Op. No. 13-06 (2013). Appellant has the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.05D

## LEGAL ANALYSIS

Appellant raises two principal arguments as to why her daughter C.H. should be able to attend her first-choice school. The first is that the school system's school selection process is unfair in that it places too much emphasis on whether a student qualifies for the FARMs program. The second argument is that C.H. should be considered for a transfer because the academic and school environment at Springbrook is not a good fit for her.<sup>2</sup>

### *Socioeconomic discrimination*

Appellant argues that C.H. is being treated differently based on her socioeconomic status. In other words, because C.H. lives in a household in which her family makes too much money to qualify for the FARMs program, Appellant argues C.H. is disadvantaged in the school choice selection process. Appellant bases her conclusion, in part, on statistics about the number of FARMs students from her daughter's middle school who received Blake as their first or second choice of school. Appellant does not state where she obtained these statistics.

The local board notes that 90 percent of eighth-grade students who participated in the school selection process received their first-choice school.<sup>3</sup> C.H. was among the 133 students who did not receive their first choice. The local board states that if all students had received their first choice without regard to FARMs status, the percentage of FARMs students would have been approximately 45 percent at Blake, 59 percent at Paint Branch, and 67 percent at Springbrook. Instead, the local board states that factoring in FARMs status resulted in a FARMs student percentage of 55 percent at Blake and 56 percent at Paint Branch and Springbrook. Similar adjustments were made based on gender. If all students received their first-choice

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<sup>2</sup> Appellant raises several other points that were not presented to the local board. She argues that Blake was not at capacity at the time she filed her appeal because students were still transferring out of the school, that another student of the same gender and economic status as C.H. was admitted to Blake while C.H. was not, and that C.H. has been diagnosed with attention deficit hyperactivity disorder (ADHD) and would benefit by being in an environment with fewer special education students. Because these arguments were not presented to the local board, we shall not consider them as part of this appeal.

<sup>3</sup> These numbers come from a March 14, 2013 memorandum from Joshua Starr, Superintendent of Schools.

school, the female student population would have been 61 percent at Blake, 48 percent at Paint Branch, and 37 percent at Springbrook. Instead, the female student population is 58 percent at Blake, 47 percent at Paint Branch, and 44 percent at Springbrook. The local board states that if all students received their first choice, the incoming class would have been 435 at Blake, 523 at Paint Branch, and 355 at Springbrook. Instead, there are 425 students assigned to Blake, 485 assigned to Paint Branch, and 421 students assigned to Springbrook. (Motion, Ex. 6).

Although Appellant focuses on the use of socioeconomic status in the selection process, it is unclear from the record that C.H.'s socioeconomic status was the deciding factor in her school placement. The school system's figures back up its claim that it also considers a student's gender and the capacity at each school, among other factors. Appellant has provided no evidence that C.H.'s socioeconomic status was the sole reason she was denied her first-choice school.

Even if C.H.'s status as a non-FARMS-eligible student was the deciding factor in her school assignment, there is nothing inherently illegal about this practice. The 14th Amendment to the United States Constitution prohibits states from denying "equal protection of the laws" to "any person within its jurisdiction." Classifications between students based on race and ethnicity are reviewed with strict scrutiny, but classifications based on wealth are subject to rational basis review. *See San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973). Under this standard, there is no violation of the Equal Protection Clause if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose. *See Armour v. City of Indianapolis*, 132 S. Ct. 2073, 2080 (2012). The school system has stated that its purpose in considering socioeconomic status is to ensure diverse student bodies at the three high schools in the consortium, a purpose Appellant agrees is important. The fact that some students with means do not get their choice of schools as a result does not run afoul of the Constitution. *See Rodriguez*, 411 U.S. 1 at 24 ("[A]t least where wealth is involved, the Equal Protection Clause does not require absolute equality or precisely equal advantages"). We conclude that seeking a balance of students from different socioeconomic backgrounds is a legitimate purpose that could justify disparate treatment between students.

#### *Unique hardship*

The school system and local board not only reviewed C.H.'s school placement, but school officials also considered whether C.H. might qualify for a transfer. Montgomery County Public Schools allows for transfers from one school to another when there is a "documented unique hardship." MCPS Board Policy JEE-RA. The policy states that "[p]roblems that are common to large numbers of families do not constitute a unique hardship." *Id.*; *see also* Board Regulation JEE-RA.

It is well settled that there is no right to attend a particular school. *Charles I. and Deborah H. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 13-05 (2013); *Bernstein v. Bd. of Educ. of Prince George's County*, 245 Md. 464, 472 (1967). Appellant argues that the programs at Blake are closer aligned to her daughter's interests, and that the program at Springbrook is not as rigorous. We have previously stated that a student's inability to receive a particular course of study is not a unique hardship because it is a problem common to many

families. See *Tomas Y. and Sulma C. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 13-07 (2013).

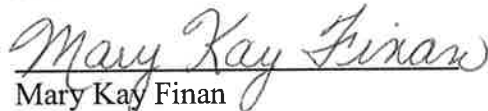
Appellant also cited concerns about C.H.'s safety at Springbrook before the local board. (Motion, Exs. 10, 14). In particular, Appellant stated that C.H. was afraid because of the number of security guards at Springbrook and that male students made unwanted catcalls and "sexual harassing noises and comments" to her. The safety of students is always of paramount concern in the school environment. A large number of security guards at a school, by itself, though, does not demonstrate that a particular student is at risk. As for the allegations of harassment, Appellant states that her daughter handled these incidents on her own rather than report them to school officials. Appellant does not provide further details about these incidents and, because they were unreported, the school system never had an opportunity to address them. We agree with the local board's conclusion that these generalized concerns about Springbrook did not demonstrate a unique hardship. We recognize, however, the seriousness of sexual harassment and we urge Appellant and her daughter to report any future incidents to school authorities so that they can be dealt with directly.

CONCLUSION

For all these reasons, we affirm the decision of the local board because it is not arbitrary, unreasonable, or illegal.

 <sup>MEP</sup>

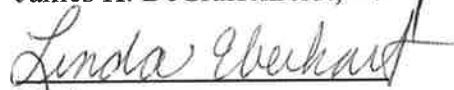
Charlene M. Dukes  
President



Mary Kay Finan  
Vice President



James H. DeGraffenreidt, Jr.



Linda Eberhart

Absent

S. James Gates, Jr.

Absent

Larry Giammo

Absent  
Luisa Montero-Diaz

Absent  
Sayed M. Naved

*Madhu Sidhu*  
Madhu Sidhu

*Donna Hill Staton*  
Donna Hill Staton

*Guffie M. Smith, Jr.*  
Guffie M. Smith, Jr.

March 25, 2014