

MARY ANN K.,

Appellant

v.

MONTGOMERY COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 10-52

OPINION

INTRODUCTION

This is an appeal challenging the decision of the Montgomery County Board of Education (“local board”) denying the Appellant’s request to transfer her son to a school other than his home school for the 2010-2011 school year. The local board has filed a Motion for Summary Affirmance to which the Appellant replied. The local board has responded to the Appellant’s reply.

FACTUAL BACKGROUND

The Appellant lives in the attendance area of Francis Key Scott Middle School. On February 2, 2010, the Appellant submitted a “Request for Change of School Assignment” seeking to transfer her son, M.K., from Francis Scott Key Middle School (Key) to Briggs Chaney Middle School (“Briggs Chaney”) based on hardship. As reasons for the request, the Appellant cited general safety and security issues at Key,¹ proximity to Briggs Chaney, and the fact that M.K. will have friends at Briggs Chaney. (Motion, Att. 3). On February 26, 2010, the Student Services Appeals Unit Supervisor denied the request for failure to meet the transfer guidelines. (*Id.*).

Appellant appealed the denial reiterating her concerns. (Motion, Att. 4). Larry A. Bowers, the Superintendent’s Designee, referred the matter to a hearing officer for review. Hearing Officer, Laurence E. Jeweler, recommended that the transfer be denied because of lack of hardship. (Motion, Att. 5A). He suggested that the Appellant speak directly to the principal at

¹ For example, Appellant highlighted the fact that during the 2008-2009 school year, Key had more students with out of school suspensions and had more incidents of suspensions for fighting and disrespect/insubordination than Briggs Chaney. (Letter of Appeal).

Key to discuss her concerns about the school. (*Id.*). Mr. Bowers concurred with Mr. Jeweler and denied the Appellant's transfer request. (Motion, Att. 5).

Appellant appealed to the local board. She stated, in part, that she wanted M.K. to "realize his full potential in a safe school where students exhibit positive behaviors and social skills" and she does "not believe F.S. Key can provide this." (Motion, Att. 6).

The Superintendent responded to the appeal noting that M.K. has done very well at Drew Elementary and that the school counselor's report noted no instances of M.K. being bullied at school or having feelings of anxiety. (Motion, Att. 7). The counselor described M.K. as "reliable, confident, and [one who] gets along well with his peers as well as adults." (*Id.*).

The Appellant explained that M.K. was absent no more than one time each school year through the 2nd grade, but that he was absent a total of 28 times in grades 3 through 5. She attributed this increase in absence to an increase in the disruptive behavior of classmates as they have become older, leading M.K. to complain of illness as a means to avoid school. Appellant stated, "While he may not be in class with these students, his perception is that they will be at Key and he will have to continue dealing with the disruptive behaviors." She maintains that her son is very anxious about attending Key. (Motion, Att. 8).

In a decision dated May 24, 2010, the local board unanimously upheld the decision of the Superintendent's Designee based on the lack of a unique hardship. (Motion, Att. 9). The local board noted that the record contained no evidence that M.K. would be bullied or subjected to safety issues at Key. (*Id.*).

STANDARD OF REVIEW

The standard of review in a student transfer decision is that the State Board will not substitute its judgment for that of the local board unless the Appellant shows that the decision is arbitrary, unreasonable or illegal. COMAR 13A.01.05.05.

ANALYSIS

The Appellant raises three issues to support the transfer request: (1) general safety concerns about Key, (2) proximity of home to Briggs Chaney, and (3) M.K.'s friends will be attending Briggs Chaney. The local board's transfer policy provides that transfer requests will be granted if a student either meets a qualifying exemption or demonstrates a documented, unique

hardship. Regulation JEE-RA.IV.A. Documented hardships do not include problems that are common to large numbers of families, absent additional compelling factors. (Motion, Att. 2).

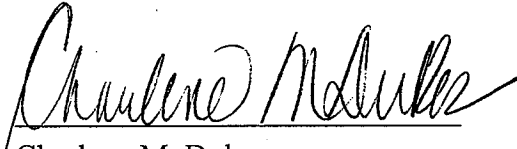
In an analogous case, *Tom & Judy M. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 09-37 (2009), the appellants sought a transfer out of the home school for essentially the same reasons presented here – (1) their daughter felt she would not be safe at the assigned school; (2) the requested school was closer to the family’s home; and (3) most of the daughter’s friends would be attending the requested school. MSBE Op. No. 09-37. The State Board concluded based on a long line of cases on each issue that proximity to one’s home, attending school with a peer group, and safety concerns at the assigned school did not constitute a hardship.

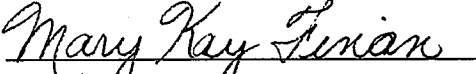
The Court of Appeals has ruled that there is no right to attend a particular school. *Bernstein v. Board of Educ. of Prince George’s County*, 245 Md. 464, 472 (1967). This Board has echoed that holding on numerous occasions. See *Goldberg v. Montgomery County Bd. of Educ.*, MSBE Op. No. 05-35 (2005); *Chacon v. Montgomery County Bd. of Educ.*, MSBE Op. No. 01-39 (2001); *Williams v. Board of Educ. of Montgomery County*, 5 Op. MSBE 507 (1990).

CONCLUSION

For these reasons, we affirm the local board’s decision denying the transfer request.


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December 14, 2010