

MR. AND MRS. [X]

Appellant

v.

MONTGOMERY COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 12-29

OPINION [redacted version]

INTRODUCTION

Appellants have appealed the decision of the Montgomery County Board of Education (local board) denying the request to have their daughter, [student X], transferred from kindergarten in her assigned school, Rosemary Hills Elementary School (Rosemary Hills), to kindergarten at Bethesda Elementary School (Bethesda). The local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal. The Appellants have responded to that motion and the local board has replied.

FACTUAL BACKGROUND

On or about March 29, 2011, Appellants submitted a request to transfer student X from Rosemary Hills to Bethesda. (Motion, Attach.1). The Appellants eldest child [(Student Y)] began the 3rd grade at Bethesda for the 2011-2012 school year. Appellants listed "hardship" as the basis of their transfer request to Bethesda. (Motion, Attach. 1). Appellants explained that [they have an issue] that will require [student Y] to be dismissed early from school. Appellants reasoned that this [issue] will make it difficult for them to simultaneously care for [student Y] and pick up [student X] after school from Rosemary Hills. (Motion, Attach 1A). On occasions when [student Y] requires an early dismissal from school, the Appellants' work schedules will be interrupted or they will have to make other arrangements. (*Id.*). Appellants explained that having two children attend different elementary schools creates a logistical and geographical challenge.

On April 27, 2011, the Student Services Appeals Unit denied the transfer request because it did not meet the guidelines for transfer under Board Policy JEE, *Student Transfers*. (Motion, Attach. 9). The Appeals Unit explained that problems that are common to large numbers of families do not constitute a unique hardship. (Appeal, Exh. F).

On May 5, 2011, the Appellants appealed the decision to the Superintendent's Designee. In that appeal, Appellants provided further documentation of [their issue] to demonstrate that

their situation should be considered a unique hardship under the Board Policy JEE, *Student Transfers*. (Motion, Attach. 2-3).

The Superintendent's Designee transferred the matter to the hearing officer for review. (Motion, Attach. 3). The hearing officer recommended denial of the transfer. The hearing officer based the denial on the Change of School Assignment Booklet ("COSA Booklet"). (Motion, Attach. 4A). The COSA booklet explains that a transfer from Rosemary Hills to Bethesda would only be approved for unique hardship or if an older sibling were in Grades 1 or 2. The Hearing Officer recommended denial due to lack of documented unique hardship and because the older sibling was in Grade 3. (*Id.*). By a letter dated June 14, 2011, the Superintendent's Designee adopted the hearing officer's recommendation and denied the transfer for lack of a unique hardship or an older sibling in Grades 1 or 2. (Motion, Attach. 5).

Appellants appealed to the local board. (Motion, Attach. 6). On November 9, 2011, the local board affirmed the decision of the Superintendent's Designee to deny the transfer request. (Motion, Attach. 9).

As to hardship, the local board recognized that having children attend separate schools could pose challenges for families, especially when parents are employed and need to balance work schedules and school schedules. However, the local board noted that many families in Montgomery County face this situation. (Local Board Opinion). As for the sibling exemption, the local board found this exemption was not arbitrary and capricious when applied to the Rosemary Hills and Bethesda pairing. Under the sibling exemption, a student who attends Grades K-2 at Rosemary Hills can transfer to Bethesda only if their older sibling attends Bethesda in Grades 1 or 2. (*Id.*). The local board reasoned that granting transfers for Rosemary Hills K-2 students with older siblings in Grades 3-5 at Bethesda would defeat the purpose of pairing the schools. The application of the sibling exemption to the pairing reflects the normal matriculation pattern for elementary-age students (i.e. a student moving from Grade 2 to Grade 3). (*Id.*).

This appeal to the State Board followed.

STANDARD OF REVIEW

Because this appeal involves a decision of the local board involving a local policy, the local board's decision is considered *prima facie* correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05A.

LEGAL ANALYSIS

The Appellants raise three issues in this transfer appeal. The issues are: unique hardship, sibling exemption to paired schools, and the constitutionality of the paired schools.

I. Unique hardship

The Appellants contend that [student X] should be allowed to transfer because having two children attend different elementary schools creates a unique hardship for them, especially when [there are recurring issues]. According to Board Policy JEE-RA, *Student Transfers*, the rule is that transfers should be honored whenever there is a documented unique hardship circumstance. Problems that are common to large numbers of families do not constitute a unique hardship. (Appeal, Exh. F).

Rosemary Hills and Bethesda are approximately four miles apart. Appellants work in Washington DC. (Motion, Attach. 3). Appellants explain their unique hardship involves having to pick up [student Y] from Bethesda for early dismissal due to [certain issues] and not being able to timely pick up [student X] for afternoon dismissal at Rosemary Hills. (Appeal).

The Appellants further explain that the following factors contribute to their geographical challenges: traffic in East Bethesda stemming from the Walter Reed-Bethesda Naval Hospital Campus, national and/or international travel for projects related to their jobs, the time tending to [student Y], and the time gap difference in bus schedules between Rosemary Hills and Bethesda. (Motion, Attach. 6).

The Appellants also argue that having their two children attend separate schools creates an economic hardship because it will require additional assistance from outside caregivers and missed work time in order to pick up [student Y] early from Bethesda and pick up [student X] for afternoon dismissal from Rosemary Hills. (*Id.*). The Appellants assert that having the children attend two separate schools puts the family on unequal footing with other families in Montgomery County. They state that their children would not be able to attend after-school extracurricular programs due to both the overlapping pick up times and the timing of PTA programs held at each school. (Appellant's April 13, 2012 E-mail). Appellants maintain that all of this creates a unique hardship. (Local Board Opinion).

With all that in mind, we agree with the local board that Appellants have not established a unique hardship that would justify the transfer. The possibility of early dismissals for the eldest child and the possibility of missed family participation in after-school activities and programs does not differ significantly from the issues many working parents face when children attend separate schools. While we are not unsympathetic to the Appellants' plight, problems faced by many Montgomery County families are not unique hardships.

II. Sibling exemption to paired schools

The Appellants also argue that the transfer policy's sibling exemption applies and requires the local board to allow [student X]'s transfer to Bethesda to attend the same school as her older sibling. Under Board Policy JEE-RA, the sibling exemption exempts a student from the transfer process when "an older sibling attends the requested school in the regular program. If the older sibling attends a magnet or special program an exemption may be granted on a case-by-case-basis, with consideration given to space needs or limitations at the requested school." (Appellants Appeal, Exh. F).

However, in a memorandum dated July 29, 2008, the Superintendent clarified the application of the transfer rules to the Rosemary Hills/Bethesda pairing. In this memorandum, the Superintendent stated that transfers would not be approved for students assigned to the pairing with older siblings in Grades 3-5 at Bethesda. (Local Board Opinion). Subsequently the COSA Booklet was amended to clarify the application of the transfer rules. The COSA booklet states that Rosemary Hills (Grades K-2) is a paired school with Bethesda (Grades 3-5). Requests to transfer from Rosemary Hills to Bethesda for Grades K-2 will only be approved for unique hardship or if an older sibling is in Grades 1 or 2 at Bethesda. (Local Board Opinion).

That is the "sibling exemption" rule that applies here. It recognizes that students assigned to the Rosemary Hills/Bethesda pairing will attend Rosemary Hills (Grades K-2) while an older sibling attends Bethesda (Grades 3-5) as part of the normal matriculation pattern. The Rosemary Hills K-2 student will not be transferred to Bethesda even if an older sibling attends Grades 3-5 there. Only if the older sibling is in Grades 1-2 in Bethesda will a transfer be approved. Although we recognize that this is the existing rule, we are perplexed under what circumstances an older sibling would be attending 1st or 2nd grade at Bethesda. As we understand the pairing, the older sibling would, in almost every case, attend 1st and 2nd grades at Rosemary Hills. We assume, therefore, that the sibling exemption would seldom if ever apply to the Rosemary Hills/Bethesda pairing. The local board's decision is consistent with the rule. Accordingly, the local board's denial of a transfer in this case is not arbitrary or unreasonable.

III. Unconstitutional Pairing

The Appellants argue that the pairing of Bethesda and Rosemary Hills is unconstitutional because the pairing was created for the purpose of racial balancing. (Appeal). This is incorrect. Demographic impact was considered as one of several factors for the Rosemary Hill/Bethesda pairing. (Motion, pp. 11-12). There is nothing illegal and nothing in the federal law cited that makes it illegal to consider the impact of different assignment patterns on the demographic make-up of the schools involved. (*Id.*). In fact, in *Parents Involved in Community Schools v. Seattle School District 1*, 551 U.S. 701 (2007), Justice Kennedy described race-conscious approaches that do not rely on individual racial classifications as "likely to pass constitutional muster," including "drawing attendance zones with general recognition of the demographics of neighborhoods." (*Id.*)

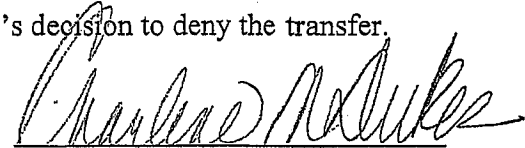
IV. Miscellaneous

The Appellants contend that the pairing of Rosemary Hills and Bethesda is not a true pairing because the schools have overlapping grades compared to other paired schools that do not. (Motion, Attach. 8). While the pairing may not share all the characteristics of other paired schools, the matriculation pattern from Rosemary Hills to Bethesda meets the matriculation pattern of the two paired schools. Rosemary Hills is a K-2 school. It is expected that second grade students from Rosemary Hills will matriculate to the third grade at the respective upper grade elementary school to which they are assigned based on their residential area. [Student X]

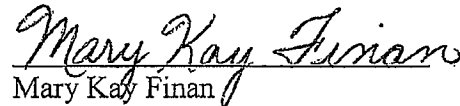
resides within an area assigned to Rosemary Hills for Grades K-2 and Bethesda for Grades 3-5.
(Local Board Opinion).

CONCLUSION

For these reasons, we affirm the local board's decision to deny the transfer.



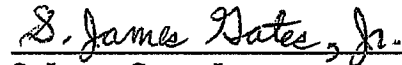
Charlene M. Dukes
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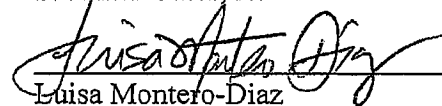
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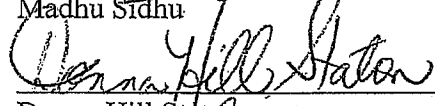
Luisa Montero-Diaz

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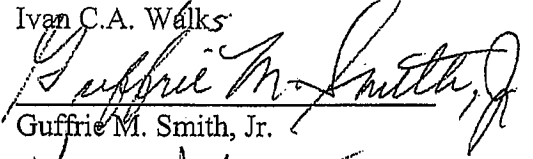
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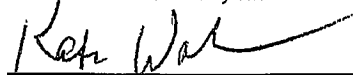


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August 28, 2012