

J. CHRISTOPHER S.,

Appellant

v.

FREDERICK COUNTY BOARD  
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 11-04

## OPINION

### INTRODUCTION

The Appellant has filed an appeal challenging the decision of the Frederick County Board of Education (local board) denying his request that his son remain at the Governor Thomas Johnson High School for the 2010-2011 school year. The local board has submitted an Answer and Motion for Summary Affirmance. The Appellant did not respond to the local board's Motion.

### FACTUAL BACKGROUND

The Appellant's son was previously enrolled at the Governor Thomas Johnson High School (GTJHS). On August 26, 2009, the local board established attendance zones and boundaries for the newly constructed Oakdale High School (OHS) and neighboring schools. As part of that plan, Appellant's son was reassigned to attend OHS for the 2010-2011 school year as a sophomore.

On January 19, 2010, Appellant submitted an Out of District (Attendance) Area Application in Accordance with Policy 400-15 of the Frederick County Public Schools (FCPS), seeking to have their son attend GTJHS, rather than OHS for the reason that "his older brother is a student at GTJHS . . . ." (Local Board Motion).

On January 19, 2010, Mark T. Mitchell, Pupil Personnel Worker, Department of Student Services, denied the application by stating:

Your request has been denied due to the fact that your reason for transfer does not meet the established guidelines. Only the younger

siblings of students grades 5 and 8 as of August 2010 may remain with their siblings for one year at that school rather than be redistricted as long as the parent provides transportation to and from school. Students who have been redistricted by the Board of Education are required to attend their newly assigned school.

(Local Board Motion, Ex. A).

Appellant further appealed to Carolyn Kimberlin, Director of Student Services, and then to Ann Bonitatibus, Area Superintendent, both with FCPS. Both denied Appellant's request. On March 4, 2010, Appellant appealed to Dr. Linda D. Burgee, Superintendent of Schools for FCPS. On March 15, 2010, Dr. Burgee upheld the previous denial from both Ms. Kimberlin and Ms. Bonitatibus. Appellant further appealed to the local board.

On May 19, 2010, the local board rendered its decision denying the transfer. (Local Board Opinion and Order).

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.01.05.03E(1).

#### LEGAL ANALYSIS

The County Board Regulation that governs this transfer request states that a request for transfer may be granted if a student is:

... a ninth, tenth, eleventh, or twelfth grade student who wishes to complete schooling where the student has attended and completed the eight, ninth, tenth, or eleventh grades respectively. **(This option does not apply to students subject to board-approved redistricting.)**

Section II.A.5. (Emphasis added). Because the student's school assignment was a result of a board-approved redistricting, the Regulation does not permit a transfer in this case. The State

Board has previously upheld the denial of transfer requests from redistricted students assigned to populate newly constructed schools. See *Wandres v. Montgomery County Bd. of Educ.*, MSBE Op. No. 06-39 (2006); *Jerry S. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 06-28 (2006).

The Appellant argues that his son should be able to attend the same high school as his older brother. There is no local board rule or policy that allows a student transfer based solely on older sibling enrollment.

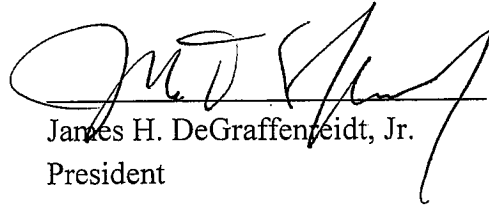
We point out that there have been a number of State Board cases, in which the State Board has affirmed local board decisions denying transfers based, in whole or in part, on sibling enrollment. In *Lisa Shearard v. Prince George's County Bd. of Educ.*, MSBE Op. No. 04-43 (2004), the State Board upheld the denial of a transfer where the Appellant had two sons, who would have attended two different elementary schools as a result of a boundary change. The Appellant argued that she was unable to have two children in two different elementary schools because she could not pick them up and drop them off at the same time. (*Id.* at 2). The State Board noted that "student transfer decisions require balancing county-wide considerations with those of the student and family." (*Id.*) The transfer denial was upheld by the State Board.


In *Pamela M. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 08-04 (2008), the appellants sought a transfer based on "hardship" as well as on the fact that the student's younger sibling attended the desired school. The local board denied the transfer, because their policy did not allow sibling transfers to older siblings to a school where a younger sibling attended and because the parents did not present a unique hardship. The State Board affirmed the local board's decision that "there is not sufficient evidence here of the types of hardship that would warrant a transfer. Having multiple children in different schools is a common problem. Problems that are common to large numbers of families do not constitute unique hardship." (*Id.* at 3). See also, *Latonya H. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 10-15 (2010); *Erik and Susan E. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 09-23 (2009); *Lisa L. v. Prince George's County Bd. of Educ.*, MSBE Op. No. 08-17 (2008).

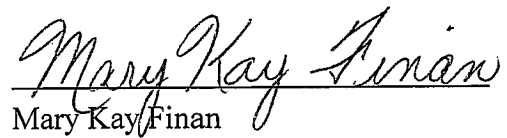
What is clear from a review of the State Board Opinions cited above is that having multiple children in different schools is not uncommon and there is no requirement for a local board to allow transfers based solely on sibling enrollment. It was, therefore, not unreasonable for the local board here to deny the Appellant's appeal to transfer his son simply because he had an older brother at another high school.


CONCLUSION

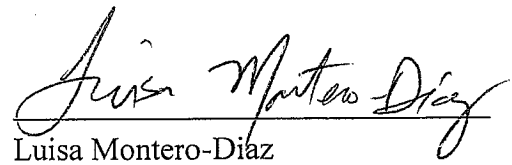
For all of the reasons set forth above, the decision of the local board is affirmed.

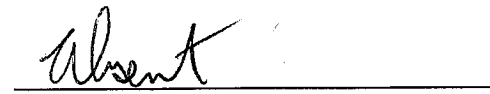
  
James H. DeGraffenheidt, Jr.  
President

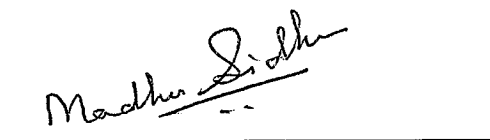
  
Charlene M. Dukes  
Vice President

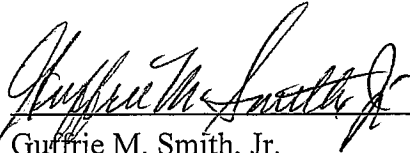
  
Mary Kay Finan


  
S. James Gates, Jr.


  
Luisa Montero-Diaz

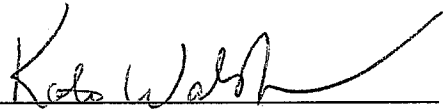
  
Sayed M. Naved

  
Madhu Sidhu

  
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Donna Hill Staton

  
Ivan C.A. Walks

  
Kate Walsh

January 25, 2011