

STANISLAV AND IRINA P.,

Appellant

v.

MONTGOMERY COUNTY BOARD  
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 14-31

## OPINION

### INTRODUCTION

Appellants appeal the decision of the Montgomery County Board of Education (local board) denying their son's admission to the Center Program for the Highly Gifted ("Center Program") at Cold Spring Elementary School ("Cold Spring"). The local board submitted a Motion for Summary Affirmance maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellants responded to the motion and the local board replied.

### FACTUAL BACKGROUND

Appellants' son, D.P., is assigned to Fallsmead Elementary School, which he attended in the second grade. During the second grade, D.P. participated in an advanced math course that was at a third grade level. As a result of a new curriculum, D.P. was not able to complete an advanced mathematics class for his third grade year. Appellants strongly objected to the absence of an advanced learning program for D.P., because it meant that he would be repeating math and their son would not be challenged in his favorite class.

D.P. attended the third grade at Fallsmead for the first four weeks of the semester, but Appellants began homeschooling him because they felt his learning needs could not be met at his home school.<sup>1</sup>

While D.P. was homeschooled in the third grade, Appellants submitted an application for him to attend the Center Program at Cold Spring for the 2013–2014 school year—D.P.'s fourth grade year.

Montgomery County Public Schools ("MCPS") maintains several centers for highly gifted elementary school students in grades 4 and 5. The Center Program is designed to provide

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<sup>1</sup> As further justification for their decision, Appellants state their son disliked school because he was being bullied by other students. The level II appeals committee contacted Principal Silverstein at Fallsmead regarding the bullying claims. Silverstein reported that D.P. had never presented any claims of bullying to the school administration. (Motion, Ex. 9) The local board responded in its opinion that it is confident Fallsmead would have responded to any bullying complaints had the school been notified. While D.P.'s claims of bullying are not necessarily germane to deciding whether the local board's policy in selection students to the Center Program was reasonable, the State Board encourages the parties to address any future claims of bullying expeditiously.

accelerated education to students who learn more quickly and understand advanced concepts. Students may apply to the Center Program that serves their high school cluster. For the 2013 – 2014 school year, there were about 340 applicants to the Center Program at Cold Spring competing for the 50 enrollment spots.

To apply for the Center Program, each student must take three standardized *CogAT* tests. The students receive a raw score for each test. The raw scores are then adjusted according to the Standard Age Score (SAS) scale which normalizes the standard score to account for the cognitive development of students in different age groups. The SAS scores allow educators to “compare the rate and level of cognitive development of an individual to other students in the same age group.” *CogAT Form 6: A Short Guide for Teachers*, Nov. 2002, <http://www.riverpub.com/products/cogAt/pdf/cogATshort.pdf>. For example, if student A and student B are in the same age group but, after adjusting the raw score, student A has an SAS score of 125 on the verbal test and student B has an SAS score of 100, then educators can conclude that student A has a faster learning rate and higher level of verbal development skills. *Id.* “The SAS scale provides fine discriminations among high- and low-scoring students.” *Id.*

There are three tests that the Center Program uses to evaluate applicants: verbal, quantitative, and nonverbal. Among other criteria, the selection committee compares students’ SAS scores. D.P.’s SAS test scores were lower than the median of accepted students on two out of the three tests:

	Verbal	Quantitative	Nonverbal
D.P.	124	144	127
Median	131	138	134

When selecting applicants, the selection committee also considered assessments, report cards, school recommendations, letters from the parents, and additional letters of advocacy. The Appellants submitted two teacher recommendations and a letter from D.P.’s mother to the selection committee. (Motion, Ex. 2). A couple of months later, Appellants provided additional materials in support of D.P.’s application, which included standardized test results from TerraNova and two additional teacher recommendations from professionals who worked with D.P. on after school assignments and activities such as language and arts, piano and music theory, after school writing and math club. (Motion, Ex. 3).

After reviewing all the criteria, the selection committee accepted 55 students for the fourth grade and placed D.P. on a waitlist for the Center Program at Cold Spring.

On April 11, 2013, Appellants appealed D.P.’s placement on the waitlist. They argued that D.P. was a qualified applicant who should be admitted. In addition, Appellants argued that the selection process was discriminatory to homeschooled children because they could not submit report cards and teacher recommendations. Moreover, they maintained that Cold Spring would provide D.P. an opportunity to find friends with similar interests to enable him to acclimate to a more comfortable social setting in school. (Motion, Ex. 4). Although Appellants recognized that Fallsmead offers fourth grade students a compacted grade 4/5 math curriculum,

they argued that this advanced curriculum would not meet D.P.'s learning needs since they had been teaching D.P. fifth grade math while homeschooling him in his third grade year. *Id.*

On April 24, 2013, Appellants submitted additional information in support of their appeal regarding D.P.'s test scores. The information was provided to them by the MCPS Department of Public Information and Web Services in response to a Maryland Public Information Act request. Appellants added D.P.'s raw score on each portion of the test and compared it to the total raw score of students accepted into Cold Spring, noting that 42% of those accepted had total raw scores that were lower than their son's. They also compared D.P.'s total Standard Age Scores ("SAS") to the total SAS of student accepted into Cold Spring, noting that 33% of those accepted had total SAS scores that were lower than their son's. They asserted that D.P.'s denial to the program despite good scores supported their argument of an inherently discriminatory selection process that neglects homeschooled children, because these children cannot provide grades and recommendations of school teachers. (Motion, Ex. 6).

On May 3, 2013, the Director of the Division of Consortia Choice and Application Program Services, Jeanie Franklin, denied Appellants' appeal. Franklin explained that the students accepted to the Center Program at Cold Spring were "exceptionally strong." In addition, Franklin reported that an appeals committee reviewed D.P.'s application and they found that his profile was commensurate with other students on the waitlist. (Motion, Ex. 7).

Appellants then submitted a Level II appeal presenting all of their previous arguments. They also argued that D.P.'s test scores should have been adjusted given that English is his second language ("ESOL"). In addition, Appellants argue that D.P. needs to attend Cold Spring because Appellants cannot provide him with an adequate homeschool education due to their limited English skills and knowledge of United States History. Moreover, Appellants maintained that D.P. cannot attend Fallsmead because it lacks an advanced mathematics course to meet D.P.'s learning needs and they cannot afford to supplement his mathematical educational learning through after school programs. They attached an updated teacher recommendation, a teacher recommendation from D.P.'s book club organizer, a writing sample from D.P., and statistical charts comparing D.P.'s scores with students accepted to Cold Spring. (Motion, Ex. 8).

On June 24, 2013, the Superintendent designee, Kimberly Statham, denied Appellants' Level II appeal and upheld D.P.'s placement on the waitlist after reviewing the report from Erick Lang, the Associate Superintendent. (Motion, Ex. 9). Mr. Lang reported that the Level II appeals committee supported the recommendation to continue D.P.'s placement on the waitlist.

The Level II appeals committee found that D.P. was below the median for those accepted into the Cold Spring program in two of the three assessments and that his overall score profile was more similar to those placed in the wait pool. Dr. Lang's report contained a chart to illustrate that point. (Motion, Ex. 9, p. 2). Five other waitlist students were compared to D.P.

Verbal scores of the five  
123-149

D.P.'s verbal score  
124

Quantitative scores of the five  
121-133

D.P.'s verbal quantitative score  
144

Nonverbal scores of the five  
117-142

D.P.'s nonverbal score  
127

The Level II appeals committee was satisfied that multiple criteria had been used to evaluate D.P.'s application and that his profile was commensurate with that of others in the wait pool.

Appellants then appealed to the local board.<sup>2</sup> On September 10, 2013, the local board affirmed D.P.'s denial of admission and continued D.P.'s placement on the waitlist. (Motion, Ex. 13) The local board discussed the competitiveness of the program and the limited number of seats. The local board concluded that the committees' evaluation of D.P.'s application was reasonable because he was assessed on all of the same criteria as the other applicants. Further, to change the evaluation of test scores where the SAS method was used would not be fair to all the other applicants because it would "change the admission criteria and process retroactively." In sum, the local board upheld the decision to place D.P. on the waitlist.

#### STANDARD OF REVIEW

This appeal concerns a local board's decision of its local policy and thus, it is considered *prima facie* correct. COMAR 13A.01.05.05A. The State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. *Id.* A decision may be arbitrary or unreasonable if it is contrary to sound educational policy or a reasoning mind could not have reasonably reached the conclusion of the local board. COMAR 13A.01.05.05B.

#### ANALYSIS

This case is about the local board's decision to deny D.P admission to the Center Program at Cold Spring. Although the inability of Fallsmead to meet D.P.'s educational needs is interwoven through Appellants' arguments, that issue is not relevant to the admission issue.

Appellants argue that the decision of the local board is unreasonable and contrary to sound educational policy. They maintain that D.P. should have been admitted to the Center Program at Cold Spring because he is a qualified applicant. Appellants contend that the local board's policy for selecting students to the Center Program is arbitrary and unreasonable because (1) the committee considers the SAS scores; (2) D.P.'s verbal score was not adjusted for being bilingual; (3) the committee did not consider D.P.'s strong teacher recommendations; (4) the committee evaluated all the accepted students on several other factors that were not considered for D.P.; and (5) there is space available at Cold Spring for D.P. to attend.

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<sup>2</sup> In their Appeal to the local board, Appellants attached D.P.'s results from the Johns Hopkins School and College Ability Test, which shows D.P. is in the 95th percentile for quantitative math compared to other students in grade 5. This type of test, however, is not considered by the selection committee for the Center Program. Also, D.P. took this test in June 2013, after he had been placed in the wait pool. The selection committee and the appeals committee only review the materials that are provided at the time the applicant applied.

*(1) The selection committee's consideration of test scores.*

To support their argument that the testing system is arbitrary and unreasonable, Appellants raise the following points: (a) D.P.'s raw score was higher than 42% of students accepted to Cold Spring; (b) D.P.'s SAS score was higher than 33% of students accepted to Cold Spring; (c) D.P. was assigned significantly less points for his SAS score because he was born in December; and (d) D.P. was one point away from being considered in a level 3 group.

Appellants' argument that D.P.'s raw and SAS scores were higher than many of the students accepted to Cold Spring does not, in itself, demonstrate that the local board's selection policy was arbitrary and unreasonable. MCPS does not use the students' raw scores when comparing applications. Rather, it compares students' SAS scores to account for the cognitive development among students of different ages.

Although an explanation from the local board of why using the SAS scores is an educationally sound policy would have been helpful, our review indicates that it is a commonly used method to compare test scores.

Using the SAS method, Appellants have arguably shown that D.P. was a qualified applicant for Cold Spring by showing that D.P.'s SAS scores were 33% higher than those accepted to Cold Spring. The selection committee, with over 300 applicants for 55 seats, however, must waitlist even qualified students. The selection committee considers other criteria, in addition to test scores, to select students.

Appellants also argue that D.P. was assigned significantly fewer points because he was born in December. Birthdate is a factor for every student in the selection process. It is neither an advantage or disadvantage, in our view.

As to Appellants' final argument about the unreasonableness of the testing policy, they contend that D.P. was one point away from being considered in a level 3 group. Appellants argue that placement in the level 3 group would seem to secure D.P.'s acceptance into the program, although that proposition is not entirely clear based on the record. They apparently draw the inference that a student has a higher chance of being accepted to Cold Spring if he/she is in a level 3 group as opposed to a level 9 group. Out of the 55 students accepted to Cold Spring, 16 students were in a level 1 group, 20 students were in a level 2 group, 8 students were in a level 3 group, 5 students were in a level 4 group, 2 students were in a level 5 group, 1 student was in a level 8 group, and 3 students were in a level 9 group. D.P. was placed in a level 9 group. Appellants attached a Selection Procedures Form that describes how students are placed in each level. (Appellants' Attachment #5).<sup>3</sup> To be placed in a level 3 group, the student

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<sup>3</sup> Appellants appear to have obtained this form by requesting it through the Maryland Public Information Act. The form is for the 2012-2013 school year. It is unclear if the form for the 2013-2014 school year is identical. The local board has not provided any response in regard to this form. There appear to be other considerations the selection committee may account for when grouping the students but it is not entirely clear because there is no specific explanation on the form nor in the local board's motion.

must score in the 90<sup>th</sup> percentile for one test and score in the 75<sup>th</sup> percentile for two tests. Students placed in a level 9 group must have one test score in the 90<sup>th</sup> percentile and one test score in the 75<sup>th</sup> percentile. The percentiles for the 2013 applicants to Cold Spring are as follows:

	SAS Verbal	SAS Quantitative	SAS Nonverbal
Average	117	120	118
Minimum	64	81	78
25 <sup>th</sup>	111	111	109
50 <sup>th</sup>	118	118	117
75 <sup>th</sup>	125	129	127
90 <sup>th</sup>	132	137	133
Maximum	150	150	150
D.P.'s scores	124	144	127

Because D.P. was one point away from scoring in the 75<sup>th</sup> percentile for the SAS Verbal test, Appellants argue he was one point away from being in the level 3 group. While that might be true, we have recognized the need for bright line rules. Although this bright line rule may appear to render a harsh result, this outcome does not make the rule illegal or applying it unreasonable. *Dawn and Michael H. v. Anne Arundel County Bd. Of Educ.*, MSBE Op. No. 12-11 (2012).

Appellants, however, argue that the only reason D.P. was one point away from the 75<sup>th</sup> percentile on the verbal test was because this test discriminated against ESOL students, which leads to Appellants' second argument.

*(2) The adjustment of test scores for ESOL students.*

Appellants maintain that MCPS should have adjusted D.P.'s test scores because he is bilingual. Appellants contend that since the scores are adjusted for age development, the scores should also be adjusted to account for language development. In opposition, the local board argues "[t]here is no evidence that [D.P.] ever needed or received ESOL services while he attended MCPS." Further, the local board contends that it would be unreasonable to add points to D.P. verbal score "based only on the fact that he is bilingual."

MCPS permits ESOL students, who have an English Language Learner ("ELL") plan, to receive testing accommodations provided that their ELL plan permits an accommodation. On D.P.'s application, Appellants indicated that he did not have an ELL plan. The application also asks "[w]hat languages are spoken at home?" Appellants only wrote "English." (Motion, Ex. 2). On the application Appellants state in two separate areas that D.P. is bilingual. First, question 3 on the application, under special interests, notes that D.P. is "fully bilingual." D.P.'s mother also wrote in her letter, which was attached to the application, that "[D.P.] is completely bilingual (reads, writes and speaks equally fluently in Russian)." *Id.*

Limiting accommodations to those ESOL students who have an ELL plan that calls for accommodations is, in our view, a reasonable policy which can be applied to all ESOL students in a fair and transparent way.

*(3) The selection committees' consideration of other criteria recommendations.*

Appellants argue that the selection committee did not consider D.P.'s "multiple strong teacher recommendations" because the score ranking on the evaluation component was not as high as they believe it should have been. Associate Superintendent, Erick Lang reported, however, that "[t]eacher advocacy letters and a teacher information checklist were submitted in [D.P.]'s original application and were used and considered in the selection and the appeal process just as teacher checklists and advocacy letters are considered with public school applicants." (Motion, Ex. 9). The committee reviewed the letters and gave D.P. a numerical score ranking his teacher evaluations. The committee did not consider additional recommendations submitted after the ranking that were not part of the original application, just as it did not consider later recommendations for other applicants.

In Lang's report, he stated that "the committee found the same evaluation criteria [was] used consistently to evaluate all applicants in the initial selection process and the Level I appeals process." *Id.*

The numerical score for teacher recommendations is abbreviated as "CLIST." (*See* Appellants' Attachment #3 & #4). The CLIST percentiles for the 2013 applicants to Cold Spring are: the 25<sup>th</sup> percentile had scores 27-55, the 50<sup>th</sup> percentile had scores 56-71, the 75<sup>th</sup> percentile had scores 72-86, and the 90<sup>th</sup> percentile had scores from 87-92. (Appellants' Attachment #4). D.P.'s CLIST score was 83.

Absent from the record, from the local board's decision and from the local board's Motion is an explanation of the criteria used when calculating a specific numerical score for the student's CLIST score. In addition, there is no explanation of how the selection committee evaluates CLIST scores in comparison to any other factors, including test scores. Lang explains that "[n]o single criterion is used to select or not select a student for the [Center Program], and the selection criteria are not weighted" because the "[c]ommittees review all aspects of each applicant's file when making selection decisions." (Motion, Ex. 9).

*(4) The selection committees' consideration of several other criteria for admission.*

Appellants argue that the selection process for the Center Program was arbitrary and unreasonable because it considered several other criteria for all students, but not for D.P. The local board did not explain how the selection committee evaluated an application, such as D.P.'s, that did not have all the criteria used to select students for admission. Rather, the local board merely stated in response to this argument that "it is appropriate to consider school information when it is available, and indeed, that it would be unreasonable to exclude such information." (Motion, Ex. 13).

MCPS describes the selection process to the Center Program by stating the following:

Multiple criteria are used in the selection process to identify students whose unique learning profiles indicate a need for the Center Program. The Selection Committee, composed of school based and central services based staff, looks for students who have intellectual curiosity, analytical thinking, and creativity and unusual strengths or talent. The committee carefully reviews all of the data collected on each applicant.

Students are selected based on evidence of motivation, above-level achievements, teacher recommendations and parent responses on the application, test scores, and grades. Parents are notified of the committee's decision by the end of April.

*The Center Program for the Highly Gifted: for Grades 4 and 5*, MCPS, available at <http://www.montgomeryschoolsmd.org/uploadedFiles/curriculum/specialprograms/elementary/ElementaryHighlyGiftedCentersBrochure.pdf>; see also Motion, Ex. 1. Appellants submitted a chart, which they appear to have prepared, that shows the scores for the selected students to Cold Spring for the 2013-2014 school year and the chart lists the following columns: raw scores for each of the three tests, the SAS scores for each of the three tests, CLIST score, Academic Need, and group level. (Appeal at 4.) D.P. did not have a score for Academic Need. The committee apparently considers other criteria as well - - the RITSCORE, MAPR %Le Rank, and top 10%. (Appeal, Ex.'s 5 & 6). The local board does not address the use of those criteria.

Though the local board maintains a policy that it does not weigh any one criterion to admit or deny an applicant, the local board does not explain how other factors are considered to select applicants to admit to the Center Program at Cold Spring.

*(5) The lack of vacancies for the Center Program at Cold Spring.*

To support the placement of D.P.'s waitlist status and the competitiveness of the program, Lang explained that "[a]t the time of review, there were no vacancies in the program." (Motion, Ex. 9). Appellants, however, contend that there are two classes for the Center Program at Cold Spring for the 55 accepted students, which means 27 students in one class and 28 students in another class. According to the MCPS K-12 Budget Staffing Guidelines—FY 2013, there must be a classroom of 29 students or less for grade 4. (Appellants' Attachment #7). Appellants, thus, argue that there is space available for D.P. to attend Cold Spring.

*Is the decision of the local board arbitrary, unreasonable or illegal?*

Gifted and talented programs, such as the Center Program at Cold Spring, must establish criteria to distinguish applicants. We understand that the selection process necessarily includes both objective and subjective elements. MCPS has established a selection process whereby



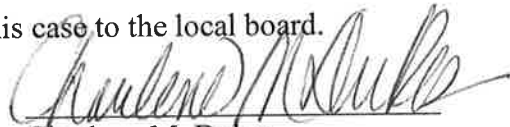
multiple criteria are considered for each applicant. The local board contends that the criteria are not weighted.

We recognize that it is the Appellants' burden to show that the local board's decision was arbitrary, unreasonable, or illegal. In our review of the local board decision, we have found no explanation of how the multiple criteria used to select applicants are evaluated or scored to allow this Board to conclude that the local board's decision is not arbitrary or unreasonable. We cannot just assume that there is a reasonable, logical explanation for how each factor is evaluated and how the students are compared based on all the factors collectively, particularly when no one criterion is weighted as more important than another. The local board's decision must contain that explanation.

Although the local board's decision is considered *prima facie* correct, this standard does not permit affirmance absent a local board decision that sets forth its rationale based on the record. The local board has not provided sufficient reasoning and rationale to support its decision in order for the State Board to test the reasonableness of the decision in light of the challenges raised by the Appellants. Therefore, we remand this case for further explanation or proceedings, if necessary, in light of the decision herein.

#### CONCLUSION

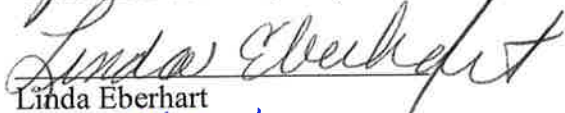
For the reasons stated above, we remand this case to the local board.

  
Charlene M. Dukes  
President

Absent

Mary Kay Finan  
Vice President

  
James H. DeGraffenreidt, Jr.

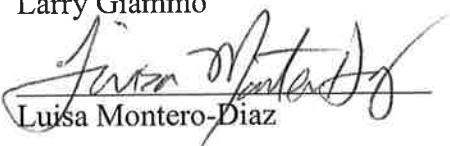
  
Linda Eberhart

Absent

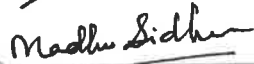
S. James Gates, Jr.

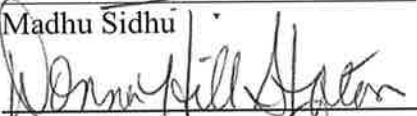
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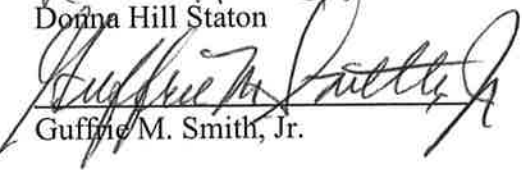
Larry Giammo

  
Luisa Montero-Diaz

  
Sayed M. Naved

  
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Donna Hill Staton

  
Guffie M. Smith, Jr.

May 20, 2014