

KALIYM HILL & YVETTE BUTLER,

Appellants

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 03-04

OPINION

This is an appeal of the decision issued by the Montgomery County Board of Education denying Appellants' request that their daughter be admitted into the Humanities and Communication Magnet Program at Eastern Middle School. The local board has submitted a Motion to Dismiss, maintaining that the appeal to the State Board was untimely filed. Appellants submitted a reply in opposition to the local board's Motion to Dismiss.

FACTUAL BACKGROUND

Appellants are the parents of Ilham-Nesreen who live in Silver Spring, Maryland. Ilham-Nesreen currently attends her zoned school, Silver Spring International Middle School. Appellants' application for their daughter to attend the Humanities and Communication Magnet Program at Eastern Middle School ("Magnet Program") was denied. Appellants' appeal was denied by the Level 1 Appeals Committee.

Appellants filed a second appeal. (Letter of Appeal, April 25, 2002). On May 16, 2002, the Deputy Superintendent responded by memorandum, supporting the recommendation of the Level 2 Appeals Committee to place Ilham-Nesreen into the waiting pool for the Magnet Program. (Responding Memorandum, May 16, 2002).

Appellants appealed the second denial to the Montgomery County Board of Education, requesting that their daughter be removed from the waiting pool and placed directly into the Magnet Program. (Letter of Appeal, June 17, 2002). They argued that their daughter was improperly tracked in a low/middle performing math group for the third and fourth grades. At their request, she was placed in the high performing math group in the fifth grade and did well (High "B"). They blame her earlier tracking as the reason she did not achieve high scores on the standardized tests used in part for entrance into the Magnet Program. They argue that her low standardized test scores should not be the basis for rejecting her application.

The Superintendent replied by memorandum dated July 2, 2002, requesting that the Board uphold the decision of the Deputy Superintendent. (Letter of Response, July 2, 2002). He noted that Ilham-Nesreen's credentials were carefully reviewed both in the initial selection process and in two further appeals and included reviews of standardized test scores, reviews of report cards,

teacher recommendations, and information supplied by the parents. Dr. Weast noted that not only Ilham-Nesreen's Raven score (a gifted and talented score), but her reading and writing scores as well were below the mean of those accepted into the program. In addition, her grade point average was below the mean of those accepted.¹ Finally, out of the three teacher recommendations, one rated her with enthusiasm, one without reservations and one with reservations.

Appellants responded to the Superintendent's memorandum, stating that "their daughter is an appropriate candidate for the Magnet Program based on her continuous high-achievements in her school performance and being a multitalented and highly motivated student." (Letter of Response, July 15, 2002).

On August 26, 2002, the local board unanimously affirmed the decision of the Deputy Superintendent. (Local Board's Decision and Order, August 26, 2002). This appeal to the State Board followed.

ANALYSIS

As a preliminary matter, the local board argues that this appeal should be dismissed because it was untimely filed. State law and regulation require appeals of local board decisions to be filed with the State Board within thirty days of the local board decision. *See* Md. Code Ann. Educ. § 4-205 (c) and COMAR 13A.01.01.03B (3). The 30 days run from the later of the date of the order or the opinion explaining the decision. COMAR 13A.01.01.03B(3). An appeal is deemed transmitted within the limitations period if it has been delivered to the State Board or deposited in the United States mail, as registered or certified, before the expiration of the time period. *Id.* Here, the local board decision was issued on August 26, 2002. The appeal should therefore have been filed with the State Board by September 25, 2002. However, the appeal was delivered by facsimile to the State Board office on September 26, 2002.²

Appellant offers no reason for the failure to appeal in a timely manner. Time limitations are generally mandatory and will not be overlooked except in extraordinary circumstances such as fraud or lack of notice. *See Scott v. Board of Education of Prince George's County*, 3 Op. MSBE 139 (1983); *see also* COMAR 13A.01.01.03G (2). The State Board has strictly applied this rule of law and has dismissed appeals that have been filed one day late, based on untimeliness. *See Philip Twu v. Montgomery County Board of Education*, MSBE Opinion No.

¹Ilham-Nesreen's GPA was 3.70 while the mean GPA of those accepted was 3.85. Similarly, her Raven score was 11/36 while the mean score of those accepted was 22/36; her writing score was 50.5/95 while the mean score of those accepted was 74.5/95; and her reading score was 10/30 while the mean score of those accepted was 20/30.

²The State Board's facsimile machine received the appeal at 12:38 p.m. on September 26, 2002.

01-11 (February 27, 2001); *Christine Schwalm v. Board of Education of Montgomery County*, 7 Op. MSBE 1326 (1998); *Marie Friedman v. Board of Education of Montgomery County*, 7 Op. MSBE 1260 (1998); *Eleanor Duckett v. Board of Education of Montgomery County*, 7 Op. MSBE 620 (1997). Because we find no extraordinary circumstance that would merit an exception to the mandatory thirty day deadline in this matter, we shall dismiss the appeal as untimely.

Alternatively, the State Board has long held that “[a]bsent a claim of deprivation of equal educational opportunity or unconstitutional discrimination because of race or religion, there is no right or privilege to attend a particular school.” *Bernstein v. Board of Education of Prince George’s County*, 245 Md. 464, 472 (1966). Most recently, in *John & Valerie Lane v. Montgomery County Board of Education*, Opinion No. 02-02 (January 9, 2002), the State Board upheld the local board’s decision denying Hilary admission into the International Baccalaureate Program at Richard Montgomery High School based on Hilary’s admission test scores and grade point average, with her AGS verbal and math scores lower than the average AGS verbal and math scores for accepted students. *See also Philip Twu v. Montgomery County Board of Education*, MSBE Opinion No. 01-11 (February 27, 2001)(upholding local board’s denial of a student’s admission to the IB Program at Richard Montgomery or Montgomery Blair Magnet program because the student’s verbal test score was higher but math test score lower than the average of entering students); *Czerska v. Board of Education of Montgomery County*, 7 Op. MSBE 642 (1997)(upholding local board’s denial of a student’s admission to the Montgomery Blair Magnet Program because the student’s test scores were below the average scores of students accepted into the program); and *Skjerven v. Montgomery County Board of Education*, 7 Op. MSBE 1249 (1998)(upholding local board’s denial of student’s admission into the Highly Gifted Center Program at Lucy Barnsley Elementary School based on test scores insufficient for acceptance into the program).

Here, despite Ilham-Nesreen’s fine academic, extra-curricular, and personal achievements, her test scores and GPA were well below the mean of those accepted into the Humanities and Communication Program at Eastern Middle School and at least one teacher had reservations about her participation. The local board did place Appellant into the waiting pool for admission. Ilham-Nesreen’s zone school, Silver Spring International Middle School, offers a full range of gifted and talented programs for the most capable students and the parents concede that Silver Spring International can provide a challenging environment for their daughter. (Letter of July 25, 2002, p. 2). Thus, it is not overall access to gifted and academically challenging programs that is at issue. Rather, it is Ilham-Nesreen’s particular interest in the Humanities and Communications Magnet Program that is the basis for her appeal.

As discussed in the cases cited above, there is no right to a particular program in a particular school. In reviewing Ilham-Nesreen’s credentials, Montgomery County Public School System fairly and consistently applied the criteria for admission to the magnet program. As the local board noted: “The Board finds no basis to set aside the judgment of those who properly compared her application to the students who were admitted, taking into account teacher

references, grades, and scores on the admission tests.”

In their appeal materials before the local board, Appellants also made various general references to inequities that result from tracking children and that tracking may result in lack of opportunities for minority students. Appellants raise these concerns in their appeal before the State Board as well. However, although Dr. Weast’s July 2, 2002 Memorandum to the Board stated that the Appellants were contending that their daughter was not placed in the program because of racial inequities in the MCPS, in their response Appellants unequivocally stated that “We have never stated that our daughter was not placed in the program because of racial inequities in Montgomery County Public School.” *See* Letter of July 15, 2002, p. 1, paragraph 2. The local board did, nevertheless, address these concerns:

The Board also is mindful of the arguments advanced (and the articles presented) as to under-representation of minorities in gifted and talented programs and tracking, as well as over-reliance upon standardized text scores. Nonetheless, faced with a large applicant pool, the administrators have compared Ilham-Nesreen’s qualifications properly alongside other applicants to the Magnet Program....it would be unfair to the many who were accepted and to the many who also remain in the waiting pool to set aside the professional judgment of educators in the absence of arbitrary or capricious conduct on their part.

Local board decision, p. 1-2.

Based on our review of the record, we find that Appellants have presented no evidence that racial inequities played any part in the decision not to accept their daughter in the Magnet Program. We find instead that the local board has demonstrated that Ilham-Nesreen’s overall GPA, test scores, report cards, and teacher recommendations were not as strong as the successful candidates. For all of these reasons, we find that the local board did not act arbitrarily, unreasonably, or illegally in this matter.

CONCLUSION

For the reasons noted above, we dismiss the appeal as untimely; and alternatively, we affirm the decision of the Board of Education of Montgomery County on its merits.

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January 29, 2003