

ERIKA TAUBER,
Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,
Appellee

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION
Opinion No. 05-04

OPINION

This is an appeal of the denial of a request for Appellant's son to be admitted into the Mathematics/Science/Computer Science Magnet Program at Takoma Park Middle School ("Takoma Park Magnet") in Montgomery County for the 2004-2005 school year. Appellant claims that her son should have been admitted into Takoma Park Magnet because it is possible that his test scores were not as competitive as those who were accepted into the program due to Attention Deficit Disorder which was diagnosed after he had taken the examinations.

The local board has filed a motion for summary affirmance maintaining that Appellant's claims are mere speculation and that its decision is not arbitrary, unreasonable, or illegal because a reasonable basis exists for the denial of admission and placement in the waiting pool. Appellant has submitted an opposition to the local board's motion in which she reiterates her concerns that the local board did not take her son's disorder into consideration.

FACTUAL BACKGROUND

On January 5, 2004, Appellant's son, (A.T.), applied for admission to Takoma Park Magnet for the 2004-2005 school year.¹ He also applied for admission to the Humanities and Communication Magnet Program at Eastern Middle School ("Eastern Magnet"). The selection committees for middle school magnet programs consider the following multiple criteria during the selection process: application for admission; scores on the CTBS; assessment scores at the time of testing in mathematics, reading comprehension, and the Advanced Raven, a nonverbal test of problem solving and critical thinking; teacher recommendations; and grade point average. The screening and selection committees for these programs did not recommend A.T. for admission.

Appellant appealed the selection committees' decisions. In her letters of appeal, Appellant acknowledged that A.T.'s test scores were below the median for students accepted into the programs, but indicated her belief that her son had Attention Deficit Disorder which had gone undetected due to a lack of hyperactivity making the condition harder to diagnose. She explained

¹The program is funded for only 100 students per grade level. Approximately 549 students applied for these 100 places.

that A.T.'s undetected condition accounted for the lack of "consistent correlation between [A.T.'s] true capability and his performance in school (in general) and standardized tests (in particular)."² See 3/24/04 appeal letter to Rottiers from Appellant.

The appeals committees for the Eastern Magnet and the Takoma Magnet reviewed A.T.'s application, recommendations, test scores, and other factors submitted as part of the application process. The Eastern Magnet appeals committee recommended that A.T. be placed in the waiting pool for the magnet program; the Takoma Magnet appeals committee upheld the original decision of the screening and selection committee not to accept A.T. into the magnet program.

Appellant appealed both decisions to the Deputy Superintendent of Schools by letter dated April 16, 2004, explaining that her son was scheduled that day to begin undergoing testing to determine if he suffered from Attention Deficit Disorder. The matter was referred to the Associate Superintendent for Curriculum and Instruction who assembled a second appeals committee. While the appeal was pending at the Deputy Superintendent level, A.T. was accepted into the Eastern Magnet. With regard to the Takoma Magnet, the appeals committee reviewed all of A.T.'s data and compared it to the profile of students selected for the program and waiting pool. The committee recommended placement in the waiting pool "because of [A.T.'s] strong teacher recommendations, his passion for science and math, and his study of algebra and geometry at home which suggested a strong interest and motivation for learning." See 5/21/04 Memorandum from Fulton to Thornton. The Deputy Superintendent of Schools upheld the decision to place A.T. in the Takoma Magnet waiting pool.

Thereafter, Appellant appealed the Deputy Superintendent's decision to place A.T. in the Takoma Magnet waiting pool to the local board. By this time, testing had been completed and A.T. had been diagnosed with Attention Deficit Hyperactivity Disorder/Inattentive-type ("ADHD"). In her appeal, Appellant emphasized her belief that A.T. is capable of succeeding in the Takoma Magnet program and that with the ADHD diagnosis, he can now make adjustments that will better assist him in handling his situation. By unanimous decision, the local board affirmed the Deputy Superintendent's decision placing A.T. in the waiting pool for Takoma Magnet.

ANALYSIS

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). In *Czerska v. Board of Education of Montgomery County*, 7 Op. MSBE 642 (1997), the State Board upheld the local board's denial of a student's admission to the Montgomery Blair Magnet Program because the student's test scores were below the

²At the time of the March 24 appeal letter, A.T. was scheduled to be evaluated for Attention Deficit Disorder the following month.

average scores of students accepted into the program. *See also 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, although A.T. has certain academic strengths, his test scores were well below average for the Takoma Magnet program. In his memorandum to the local board, the local superintendent indicated that A.T. has a strong academic record, but that his test profile on all measures did not match those of students invited to join Takoma Magnet:

An analysis of [A.T.'s] scores on the day of testing shows him to be consistently below the mean of students assigned to the program. [A.T.] scored 15 on the Raven, with a mean score of 25 for students invited to the program. His SCAT score was 21 with a mean score of 39 for invitees. His reading score was 13, with a mean score of 21 for invitees. [A.T.]'s teacher reports are very good. His current mathematics teacher ranked him in the top percent [sic] of students she has taught, the second category listed. She checked that she would recommend him enthusiastically, and noted that "He is a great student." His current science teacher ranked him in the top 10 percent of students she has taught, the third category listed. She also checked that she would recommend him enthusiastically, and stated, "[A.T.] is the kind of boy you would like to have as your own son."

Superintendent's Memorandum at 2.

Appellant maintains that A.T. tested lower than the mean score for students invited to join the program because of his ADHD, and that had she known of his ADHD earlier she would have requested some type of testing accommodation. Unfortunately, there is no way of knowing if or how A.T.'s test scores would have been affected by an earlier diagnosis of ADHD. Perhaps his test scores, his grades, and even his teacher recommendations would have been better had he had an earlier diagnosis, but perhaps not. It is pure conjecture to assume that his test scores would have been higher. The screening committee, the appeals committees, and all of the professional educators who reviewed A.T.'s application had to use the only information that was available to them at the time and compare what they had to the other 548 applicants. We find that it was reasonable for these committees and the local board to base their decisions on the objective evaluation criteria using the information available to them.

Additionally, the fact that A.T. was accepted into the Eastern Magnet from a waiting pool has no bearing on whether or not the local board's decision in this case was arbitrary, unreasonable, or illegal. Eastern Magnet and Takoma Park Magnet are two different magnet programs with different education programs, different application pools, and different wait lists.

CONCLUSION

For the reasons stated above, we do not find that the local board acted arbitrarily, unreasonably, or illegally in this matter. We therefore affirm the denial of the student transfer request.

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January 26, 2005