

ROBERT W. and MARY JANE B.

Appellant

v.

MONTGOMERY COUNTY BOARD
OF EDUCATION

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 07-28

OPINION

INTRODUCTION

The parents of fourth grader, A.W., appealed the decision of the Board of Education of Montgomery County ("local board") denying their son admission to the Center Program for the Highly Gifted at Pine Crest Elementary School. The local board has filed a Motion for Summary Affirmance.

FACTUAL BACKGROUND

Montgomery County Public Schools operates seven centers for the highly gifted students. The center programs provide instruction in grades 4 and 5, drawing students countywide to regional centers. Many more students apply to and are eligible for placement than space permits. For this school year, 290 students applied and were screened for 50 spaces at Pine Crest Elementary School ("Pine Crest"). (Motion, Exhibit 1).

The screening and selection process for the 2006-2007 school year had already been completed when A.W. and his parents moved to Maryland in August, 2006. The family had apparently contacted the school system prior to the move because the family was notified by letter dated June 13, 2006 that A.W. could take the required tests on August 15, 2006. That same letter advised the family that, because "the Center selections have been made and the Centers are presently full, your child is being tested for the possibility of being placed in the Wait Pool for the Center which serves his/her school area." (Motion, Exhibit 2). Because all students selected for the Wait Pool are considered qualified for the Center Program, students are pulled from the Wait Pool by lottery to fill any vacancies in the program. The Wait Pool remains active through the summer prior to Grade 5. (Motion, Exhibit 5).

A.W. took the required tests. On September 6, 2006 the Director of the Division of Consortia Choice and Application Program Services, Mr. Larry Hansch, notified the family that A.W. had been accepted into the Wait Pool of 25 students. (Motion, Exhibit 3). The decision was appealed to Deputy Superintendent of Schools, Frieda K. Lacey. Her designee, Ms. Judy Leleck, Associate Superintendent, convened a committee of gifted and talented education specialists to review A.W.'s test results. They determined that A.W.'s test scores and other assessment

information and characteristics were “commensurate both with students accepted into the program as well as with other students in the wait pool.” Since the program remained at capacity, the appeals committee recommended to the Deputy Superintendent that A.W. continue in the Wait Pool. (Motion, Exhibit 5).

Appellants appealed that decision to the local board. The local board affirmed that decision agreeing with the Superintendent that “it would be unfair to place [A.W.] in the program ahead of the other twenty-four students who are in the wait pool when his test scores and the characteristics described by his parents were also commensurate with other students in the wait pool.” (Motion, Exhibit 1).

In their appeal to the State Board, the Appellants claim that the local board’s decision was arbitrary and capricious because A.W.’s test scores were 33% higher than the Wait Pool student’s scores and because the local board should have made an exception in this case because A.W. is an exceptional child. (See Appeal).

STANDARD REVIEW

Admission to one of the seven Highly Gifted Centers in Montgomery County is a matter of local policy and the State Board’s adopted standard of review provides that, in such cases, the State Board will not substitute its judgment for that of the local board of education. (COMAR 13A.01.05.05).

LEGAL ANALYSIS

The Appellants ask this Board to order the local board to circumvent its own rules and policies in order to admit A.W. into the Center Program for the Highly Gifted ahead of the twenty-four other students in the Wait Pool. They assert that adherence to these rules is arbitrary and capricious. We agree with the local board that “it is not arbitrary to apply the same rules to [A.W.] as to others; it is fair.” (Motion at 5).

We also agree that it would not be fair to bend the rules for A.W. because he is so exceptional. Although A.W.’s test scores are higher than the mean tests scores of students in the wait pool, the mean is an average, however. Therefore, there are students in the wait pool whose scores exceed the mean, just as A.W.’s scores did.

	A.W.’s Scores	Mean of Scores of Students Accepted	Mean of Scores of Students in Wait Pool
Raven	44	45.3	43.4
Verbal SCAT	36	30.4	26.6
Math SCAT	33	29.2	25

The local board asks:

If exceeding the mean is used as the basis for admitting A.W. even though the program is full, shouldn't it be used to admit other students in the wait pool who exceed the mean? Or, should the school system change its rules in midstream and rank students in the wait pool by their test scores rather than admit by lottery? Even if it could do so, without being accused of arbitrarily changing the rules, would that guarantee A.W.'s admission?

(Motion at 5).

We agree with the local board that it is not arbitrary or unreasonable for the local board to refuse to recreate its published processes in order to increase A.W.'s chances of being placed in the Center Program.

CONCLUSION

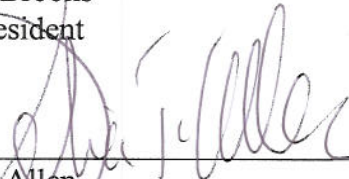
For all the reasons stated, we affirm the decision of the local board.



Edward L. Root
President



Dunbar Brooks
Vice President



Lelia T. Allen



J. Henry Butta



Beverly A. Cooper

Calvin D. Disney ^{1/17/05}

Calvin D. Disney

Charlene M. Dukes

Charlene M. Dukes

Richard L. Goodall

Richard L. Goodall

Karabelle Pizzigati

Karabelle Pizzigati

Maria C. Torres-Queral

Maria C. Torres-Queral

David F. Tufaro

David F. Tufaro

May 30, 2007