

CINDY HOOGERWERF,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 06-05

OPINION

This is an appeal of the denial of Appellant's request that her son be admitted into the Center Program for the Highly Gifted located at the Dr. Charles Drew Elementary School. Appellant contends that her son should be admitted into the program because he is not sufficiently challenged at his home elementary school. The local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal because the student's scores did not meet the criteria for entry into the program. Appellant has submitted an opposition to the local board's motion.

FACTUAL BACKGROUND

Montgomery County Public Schools ("MCPS") operates seven centers for highly gifted students. The Center programs provide instruction in grades 4 and 5, drawing students countywide to regional centers. In December 2004, Appellant submitted an application for her son, B.H.,¹ to be admitted into the Center Program for the Highly Gifted at Dr. Charles Drew Elementary School ("Program") in Montgomery County. In the Parent Advocacy Statement attached to the application, Appellant stated that the differentiated programs in the 1st through 3rd grade classes at Brooke Grove Elementary have not provided sufficiently challenging work for her child and that he would benefit from an "intensive and accelerated program." *See* Application and Parent Advocacy Statement. B.H. was one of 220 students who applied and were screened for a single entering class of 4th grade students at Dr. Charles R. Drew Elementary School for the 2005-2006 school year.

The Program selection panel of educators screened the applicants by reviewing the student information packet which contained information from the parents, teachers and school recommendations, report cards, and assessments. The assessments include a performance task, and test scores on the Raven Test of Standard Progressive Matrices and the intermediate level SCAT ("School and College Ability Test"). The selection panel did not recommend B.H. for admission into the Program. B.H. had a strong teacher checklist score and did well on the performance assessment, but did not achieve the mean score of students accepted into the program on the SCAT or the Raven.

¹Appellants' son will be referred to as B.H. throughout this opinion.

Appellant appealed the decision to Virginia Tucker, Director of the Division of Enriched and Innovative Instruction. Appellant reiterated her concerns that her son has been and continues to be ill served at Brooke Grove Elementary because of the lack of academic challenge there. *See* 5/6/05 letter from Hoogerwerf to Tucker. Ms. Tucker reviewed the matter and denied the appeal indicating that she concurred with the recommendations of both the original screening committee and the Level 1 Appeals Committee denying B.H. entry into the Program. *See* 6/28/05 letter from Tucker to Hoogerwerf.

On further appeal to the Level II appeals committee, Appellant argued that her son “scored 25 on the Performance Test, which is two points above those accepted”, that he “has a very strong teacher checklist score of 215, which is well above the mean of 182”, and that on “the math portion of the SCAT test, [B.H.] scored a 28 and a 41 on the Raven test – very close to other students in the lottery for openings in the Center Program.” Appellant indicated her belief that these factors make her son a strong candidate for the Program. *See* 7/14/05 letter from Hoogerwerf to Lacey.

The Level II Appeals Committee reviewed the data in B.H.’s file including assessments, report cards, teacher and school recommendations, as well as additional information provided by Appellant. Because B.H.’s performance task and math SCAT score were competitive with wait pool student profiles and because B.H.’s teacher checklist was above the mean of selected students, the Level II committee recommended that B.H. be placed in the waiting pool for the Program. *See* 7/22/05 memorandum from Leleck to Lacey. Freida K. Lacey, Deputy Superintendent of Schools, acting as the superintendent’s designee, concurred with the recommendation and placed B.H. in the waiting pool.² *See* 7/26/05 letter from Lacey to Hoogerwerf.

Although Appellant was pleased that B.H. had been placed in the waiting pool, she appealed to the local board in hopes of getting B.H. admitted into the Program prior to the start of the school year. *See* 8/11/05 letter from Hoogerwerf to O’Neil. In a unanimous decision, the local board affirmed the decision denying B.H. entry into the Program and placing B.H. in the waiting pool for future Program openings.³

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.

²Admission into the Program from the waiting pool is done by lottery if there is an opening in the Program.

³The student board member did not participate in the appeal.

COMAR 13A.01.05.03E(1).

ANALYSIS

Appellant argues that she is unable to ascertain if the local board's decision is arbitrary or capricious because she has not been given written documentation of B.H.'s official test scores or consistent written information regarding the mean scores of other students who were admitted into the program. Appellant also requests that MCPS provide an explanation regarding the differences in mean scores for students accepted into the Program.

The record in this case does not demonstrate that Appellant raised the issue regarding lack of written documentation of B.H.'s test scores or the mean scores for students admitted into the Program at any time during the local level appeals process. Because the State Board has consistently declined to address issues that have not been reviewed initially by the local board, we believe that the State Board need not entertain Appellant's arguments and requests regarding the written scoring documentation. *See Craven v. Board of Education of Montgomery County*, 7 Op. MSBE 870 (1997) (failure to challenge suspension before local board constituted waiver); *Hart v. Board of Education of St. Mary's County*, 7 Op. MSBE 740 (1997) (failure to raise issue of age discrimination below constituted waiver on appeal).

Nevertheless, since the filing of this appeal, Martin M. Creel, Director of the Division of Accelerated and Enriched Instruction, provided Appellant written information regarding her son's assessment scores and the mean scores of other students accepted into the Program. *See* 12/15/05 letter from Creel to Hoogerwerf. The letter states as follows:

On the Raven, [B.H.] scored 41, compared to a mean of 46.69 for students accepted into the program. On the Verbal portion of the SCAT, [B.H.] scored 20, compared to a mean on 29.22 for students accepted into the program. On the Math portion of the SCAT, [B.H.] scored 28, compared to a mean of 31.32 for students accepted into the program. On Performance Tasks, [B.H.] scored 25, compared to a mean of 26.75 for students accepted into the program. The only area where [B.H.] scored above the mean with a score of 215 was on Teacher Recommendations, where the mean for students accepted into the program was 182.31.

Thus it is evident that B.H. scored below the mean in all but one of the evaluation assessment areas.

Appellant clearly believes that her son should be admitted into the Program given his abilities. The local board disagrees. In its opinion, the local board stated, in part:

Although the Board can appreciate the argument being made by Ms. Hoogerwerf that [B.H.] is an intelligent child with strengths in many areas, and that she believes he has not been adequately challenged at his home elementary school, the denial of admission into the Gifted Center was not arbitrary. Faced with a large applicant pool, the administrators have compared [B.H.'s] qualifications properly alongside other applicants to the Gifted Center. There were multiple criteria that were taken into consideration in making this decision. Sufficient evidence has not been introduced that would militate against the admission committee's comparative review of [B.H.'s] application.

We concur. As a means of selecting students for the programs, MCPS uses multiple criteria to evaluate students in order to reach a broad cross section of those who are qualified. The selection committee, as well as the appeals committees, the Director of Enriched and Innovative Instruction, the Superintendent's designee and the local board all reviewed B.H.'s file and determined that he should not be granted admission to the Program. Given that B.H.'s Raven, SCAT, and Performance Task scores were below the mean scores of students accepted into the program, the local board's decision was not arbitrary, unreasonable, or illegal.

Furthermore, although Appellant maintains that the onus is on MCPS to provide gifted and talented instruction for her son, the State Board has consistently held that there is no entitlement to attend a particular school or program of study. *See e.g., Czerska v. Board of Education of Montgomery County*, 7 Op. MSBE 642 (1997) (upholding denial of admission to Montgomery Blair Magnet program based on test scores below average of those accepted into program); *Skjerven v. Montgomery County Board of Education*, 7 Op. MSBE 1249 (1998) (upholding local board's denial of student's admission into the Center for the Highly Gifted Program at Lucy Barnsley Elementary School based on test scores insufficient for acceptance). While gifted and talented programs are encouraged, each school system must establish some criteria by which students qualify for the limited number of spaces. MCPS has done so in this case and determined that B.H. does not qualify based on his entire profile.

CONCLUSION

For all of these reasons, we affirm the local board's decision denying B.H. entrance into the Center for the Highly Gifted at the Dr. Charles Drew Elementary School.

Edward L. Root
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March 1, 2006