

PHILIP TWU,  
Appellant

v.

MONTGOMERY COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE  
MARYLAND  
STATE BOARD  
OF EDUCATION

Opinion No. 01-11

### OPINION

This is an appeal of the denial of a request for Philip's admission into either the Science, Mathematics, Computer Science Magnet Program at Montgomery Blair High School or the International Baccalaureate Program at Richard Montgomery High School for the 2000-2001 school year. The local board has filed a Motion to Dismiss based on untimeliness. Alternatively, the local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. Appellant has not submitted an opposition to the local board's motion.

### FACTUAL BACKGROUND

#### Montgomery Blair Science, Mathematics, Computer Science Magnet Program

On November 22, 1999, Philip's parents applied for Philip's admission to the Science, Mathematics, and Computer Science Magnet Program at Montgomery Blair High School for the 2000-2001 school year.<sup>1</sup> The screening and selection committee for the program based its admission decision in part on the results of standardized tests which included the Watson-Glaser Test of Critical Reading and the American Guidance Service ("AGS") Math and Verbal Test, and on grade point average. The averages of the test scores for students accepted to the program were as follows: AGS Math, 92 percentile; AGS Verbal, 87 percentile; and Watson-Glaser, 81 percentile. The average GPA for accepted students was 3.9. Philip scored as follows on the standardized tests: AGS Math, 94 percentile; AGS Verbal, 44 percentile; and Watson-Glaser, 50 percentile. In addition, Philip had a GPA of 3.6. The request for admission into the program was denied by the screening and selection committee and that denial was upheld by the appeals committee.

On further appeal, Ms. Judie Muntner, Associate Superintendent of Instruction and Program Development, recommended that the decision be upheld. In a memorandum to Mr. Larry Bowers, the Chief Operating Officer and superintendent's designee, Ms. Muntner stated that "Philip was not originally selected because two of his three test scores, and Grade Point Average (GPA) were below the median of the accepted students." Mr. Bowers upheld the

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<sup>1</sup>The program is funded for only 100 students per grade level.

decision.

The matter was appealed to the local board. In response to the appeal, the superintendent stated the following in a memorandum to the local board:

Multiple criteria were used to screen and select students for the program. Philip was not originally selected because two of his test scores were below the mean of accepted students and his grade point average (GPA) of 3.6 was also below the mean of accepted students. Ms. Ho<sup>2</sup> now has suggested that Philip's American Guidance Service (AGS) Math result of 94<sup>th</sup> percentile far exceeds the average percentile of students who were recommended for the program. She also believes that because the program seems to stress the areas of math, science, and computer science, greater weight should be given to grades in those academic areas when selecting students. Mr. And Mrs. Twu, Philip, and Ms. Ho are requesting that the committee review the GPA of the students who were admitted. They would also like the committee to consider that Philip has been in advanced academic programs, including Takoma Park Middle School Magnet Program, and he would like to remain in that type of program.

For this appeal, a staff member from the Division of Enriched and Innovative Instruction contacted Ms. Ho in order to gather any additional information. Philip is fluent in Mandarin Chinese and is currently learning Spanish. Ms. Ho was informed that, although Philip's AGS Math score was above the mean of those students selected into the program, his score was only 2 percentile points above the mean.

Ms. Ho believes that Philip's AGS Verbal score was uncharacteristic of his achievement because he has received straight A's in high level English and English related classes throughout his academic career. He also has earned high grades in computer science classes. A review of Philip's third quarter report card does not substantiate this claim.<sup>3</sup>

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<sup>2</sup>Ms. Jane Ho is the attorney for Philip and his parents.

<sup>3</sup>Philip and his parents responded that although Philip earned a B in English during the past year, he consistently earned A's in English prior to the 8<sup>th</sup> grade. Additionally, they noted that Philip earned an A in computer science in his most recent report card, and that he has consistently been enrolled in honors level courses. See letter of July 20, 2000 to Patricia B. O'Neil.

The superintendent further noted his support for the recommendation of the appeals committee not to accept Philip into the magnet program.

#### Richard Montgomery International Baccalaureate Program

On November 22, 1999, Philip's parents also applied for Philip's admission to the International Baccalaureate ("IB") Program at Richard Montgomery High School for the 2000-2001 school year.<sup>4</sup> The screening and selection committee for the program based its admission decision in part on the results of standardized tests which included the Watson-Glaser Test of Critical Reading and the AGS Math and Verbal Test, and on grade point average. The averages of the test scores for students accepted to the program were as follows: AGS Math, 86.1 percentile; AGS Verbal, 90.2 percentile; and Watson-Glaser, 81.6 percentile. The average GPA for accepted students was 3.9. As previously noted, Philip's scores were AGS Math, 94 percentile; AGS Verbal, 44 percentile; Watson-Glaser, 50 percentile; and GPA 3.6. The request for admission was denied by the screening and selection committee and that denial was upheld by the appeals committee.

On further appeal, Ms. Muntner recommended that the decision be upheld, noting that two of Philip's test scores and his GPA were below the median of accepted students. Mr. Bowers upheld the decision.

The matter was appealed to the local board. In response to the appeal, by memorandum to the local board dated July 13, 2000, the superintendent reiterated much of what he had stated in his memorandum regarding the denial of Philip's admission into the Montgomery Blair Science, Mathematics, and Computer Science Magnet Program.

#### Local Board Decision

The local board considered the appeals regarding the Montgomery Blair Science, Mathematics, and Computer Science Magnet Program and the Richard Montgomery IB Program together. In an opinion issued August 28, 2000, the local board upheld the decision of the Chief Operating Officer,<sup>5</sup> stating in part:

Upon review of the materials submitted, the Board is satisfied that a reasonable basis exists for the denials of admission into the International Baccalaureate Program and Magnet Program and that the decisions were neither arbitrary nor capricious. The professional judgment of the administrators and the superintendent

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<sup>4</sup>The IB Program is funded for only 100 students per grade level.

<sup>5</sup>Two board members did not participate in the decision.

should be respected in the absence of a showing that the decisions were arbitrary or capricious.

## 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 issued 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.* The local board decision was issued on August 29, 2000. The appeal should therefore have been filed with the State Board by September 28, 2000.

Here, the appeal was delivered by facsimile to the State Board office on September 29, 2000; one day beyond the limitation deadline. 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 a mere one day late based on untimeliness. *See 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 there does not appear to be any extraordinary circumstance that would merit an exception to the mandatory thirty day deadline, we dismiss the appeal as untimely.

Alternatively, with respect to the merits, 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 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 Philip had a strong score on the AGS Math, his other test scores were well below average for both programs. His GPA was below average

for both programs as well.

CONCLUSION

Accordingly, based on these objective evaluation criteria and for the reasons noted above, we do not find that the local board acted arbitrarily, unreasonably or illegally in this matter. We

therefore affirm the decision of the Board of Education of Montgomery County.

Philip S. Benzil  
President

Marilyn D. Maulsby  
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Raymond V. Bartlett

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February 27, 2001