

JULIANA SEE,  
Appellant

v.

BALTIMORE COUNTY  
BOARD OF EDUCATION,  
Appellee

BEFORE THE  
MARYLAND  
STATE BOARD  
OF EDUCATION  
Opinion No. 02-07

### OPINION

This is an appeal of the denial of Appellant's request for her son's enrollment as a nonresident student at the Carver Center for Arts and Technology in Baltimore County. The local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. Appellant has submitted an opposition to the local board's motion.

### FACTUAL BACKGROUND

Appellant is a resident of Carroll County. On December 17, 2000, Appellant applied for Daniel's enrollment as a nonresident student to the Carver Center for Arts and Technology in Baltimore County for the 2001-2002 school year.<sup>1</sup> Appellant explained that her son is dyslexic and has a kinetic learning style. Having attended the Jemicy School, a private school in Baltimore County, Daniel developed a love for the performing arts and dance. Appellant maintains that the education at Carver, specifically its dance program, is appropriate to Daniel's style as a kinetic learner.<sup>2</sup> She believes that Daniel would succeed and thrive if given the chance to audition for Carver. Appellant has also indicated that Daniel intends to make dance his career, therefore it is important that he attend a performing arts school. Tr. at 4.

Appellant's application for nonresident enrollment was initially denied by Rick Sarfino, a pupil personnel worker, who found that none of the nine factors for nonresident enrollment was applicable. Appellant appealed through several levels of administrative review; however all attempts were unsuccessful. On further appeal, Risa Schuster, acting as the superintendent's designee, met with the Appellant and reviewed the case. Finding no reason to hold otherwise,

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<sup>1</sup>Under Baltimore County School System Policy 5150, as a nonresident student, Daniel must obtain the permission of the superintendent of schools for Baltimore County to enroll in the Baltimore County Public Schools ("BCPS") before auditioning for acceptance at Carver. Carver Center for Arts and Technology is a Baltimore County magnet school that has its own procedures for acceptance in addition to the general policies and procedures for Baltimore County Public Schools.

<sup>2</sup>Daniel's psychologist, Roger Saunders, also recommended Carver because of Daniel's learning style.

Ms. Schuster upheld the decision to deny Daniel's enrollment in BCPS as a nonresident student.

Appellant appealed the matter to the local board. The case was assigned to Hearing Examiner, Carolyn H. Thaler, who conducted a full evidentiary hearing. In her proposed decision, Hearing Examiner Thaler noted that although Appellant had presented a sincere and compelling reason for Daniel to be admitted to Carver, she had not shown that the superintendent acted arbitrarily, illegally or unreasonably in denying the nonresident student application. The local board heard oral argument from the parties on August 14, 2001. In a decision issued September 25, 2001, the local board adopted the recommendation of Hearing Examiner Thaler and found that the superintendent's decision was not arbitrary, unreasonable or illegal.

### ANALYSIS

Appellant requests that her son be permitted to attend Carver as a nonresident student based on his desire to participate in Carver's educational program. In *Bernstein v. Board of Education of Prince George's County*, 245 Md. 464, 226 A.2d 243 (1967), the Maryland Court of Appeals held:

“Absent a claim of deprivation of equal educational opportunity or constitutional discrimination because of race or religion, there is no right or privilege to attend a particular school.”

The State Board has consistently ruled in accordance with the principles enunciated in *Bernstein* that there is no entitlement to attend a particular program of study at a particular school. See *Haibel v. Board of Education of Montgomery County*, 7 Op. MSBE 1163 (1998) (affirming denial of request for student placement in magnet program); *Czerska v. Board of Education of Montgomery County*, 7 Op. MSBE 642 (1997) (upholding denial of request for admission into magnet program); *Slater v. Board of Education of Montgomery County*, 6 Op. MSBE 365 (1992) (upholding denial of transfer to school alleged to better serve student's abilities and welfare); *Williams v. Board of Education of Montgomery County*, 5 Op. MSBE 507 (1990) (affirming denial of transfer to program offering advanced German).

Because Daniel and his parents reside in Carroll County, if Daniel wants to attend a public school in Baltimore County, he must enroll in BCPS as a nonresident student. With regard to nonresident students, local board Policy 5150 states as follows:

A nonresident student is a child who is domiciled with his or her parent(s)/guardians(s) outside Baltimore County. A nonresident student shall not be enrolled in any Baltimore County Public School without written authority from the Superintendent and/or pupil personnel worker.

In accordance with Section 7-101(b)(2) of the Education Article, the Superintendent may allow a child to attend Baltimore County Public Schools even if the child is not domiciled in Baltimore

County with the child's parent(s)/guardian(s) and in compliance with Superintendent's Rule 5150.

Superintendent's Rule 5150 sets forth the following nine exceptions for allowing a nonresident child to attend the Baltimore County Public Schools: (1) children in out-of-county living arrangements; (2) foreign students sponsored by approved school exchange programs or on student visas in accordance with federal immigration laws; (3) children whose parent(s)/guardian(s) provide documented proof of intended Baltimore County residency prior to November 1; (4) students whose families move from Baltimore County during the school year; (5) students who have completed grade 11 in a Baltimore County high school; (6) children who are patients in a Baltimore County hospital, sanitarium, or convalescent home; (7) children of Baltimore County Public Schools' employees; (8) children of adjoining Maryland school systems who are in an unusually isolated geographic location adjoining Baltimore County; and (9) children whose nonresident parent(s)/guardian(s) can establish that the children's residency in Baltimore County is the result of a serious family hardship. The Appellant agrees that none of these enumerated exceptions is applicable to this case. Furthermore, the policy provides no room for discretion in this instance, even if slots in the program were available.<sup>3</sup>

Policy 5150 was revised on May 2, 2000. Prior to the May 2, 2000 revision, the policy had an exception that allowed a nonresident student to be enrolled in BCPS when a desired course or program was not offered in the child's home school system. When the policy was revised, nonresident students already at Carver for a desired program were allowed to remain until they graduated. However, subsequent to May 2, 2000, all new requests for admission for a desired course or program have been denied. Tr. at 25-26.

Appellant argues that the decision to deny enrollment to her son is arbitrary given that there are students attending BCPS pursuant to the course/program offering exception that existed prior to the revision. We do not believe that the local board decision is arbitrary on this basis. The circumstances of enrollment for those students admitted as nonresident students to BCPS prior to the policy change in May 2, 2000, are completely different from the circumstances here. At the time of Daniel's application, the course/program offering exception did not exist and had not existed for several months. He applied after the policy change. Once the policy change was implemented, BCPS applied it consistently to all nonresident students seeking enrollment in BCPS. Moreover, as pointed out by the local board in its decision, "the logical extension of the Appellants' argument would be that the new Rule would never go into effect. . . ." Local Board Decision at 6-7.

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<sup>3</sup>As of July, 2001 there were openings in the ninth grade at Carver. However, when openings exist, available class seats are filled in other areas of the arts program. Auditions for the school's vacancies were held in August in order to fill those slots. See letter of 7/16/01 from Howie to Hearing Examiner Thaler

Additionally, Appellant claims that a question by a local board member during oral argument suggests that Daniel's status as a special education student factored into the local board's decision denying him enrollment. We believe Appellant is referring to the question by the vice president of the local board who asked whether BCPS would be responsible for development and implementation of an Individualized Education Plan were Daniel to be admitted to BCPS. See transcript of hearing before local board at 27. However, at no time even during oral argument before the local board was an issue of discrimination based on disability ever asserted by the Appellant. Thus, by failing to raise the issue below, Appellant has waived her right to raise this issue now. See *Williams v. New Baltimore City Board*, MSBE Op. 01-23. The mere fact that the question was raised by a local board member during oral argument does not demonstrate that Daniel's status as a special education student influenced the superintendent's decision.

Based upon our review of the record in this case, we do not find that the local board acted arbitrarily, unreasonably or illegally in this matter.

CONCLUSION

For these reasons, we affirm the decision of the Board of Education of Baltimore County.

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Marilyn D. Maultsby  
President

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JoAnn T. Bell

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Philip S. Benzil

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Reginald L. Dunn

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Clarence A. Hawkins

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Walter S. Levin, Esquire

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Karabelle Pizzigati

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Edward L. Root

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Walter Sondheim, Jr.

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John L. Wisthoff

February 26, 2002