

JOEL & SARAHJEANNE S.,

Appellants

v.

BALTIMORE COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 11-10

OPINION

INTRODUCTION

Appellants, the parents of P.S., appeal the decision of the Baltimore County Board of Education (local board) denying P.S. admission to Cromwell Valley Elementary (Cromwell Valley), a magnet school. The local board filed a Motion for Summary Affirmance to which the Appellants filed an Opposition. The local board filed a Response to the Appellants' Opposition.

FACTUAL BACKGROUND

In 2009-2010, when P.S. was ready to enter kindergarten, her parents applied for admission to Cromwell Valley, a boundaryless magnet school. Because there were more applications than space available, the school system conducted a lottery. P.S. did not gain admission to kindergarten through the lottery. She was wait-listed at number 35.

For first grade, Appellants again applied for admission to Cromwell Valley. Again, the number of first grade applicants exceeded the number of seats available. Indeed, it appears that, because the previous year's kindergartners moved into the first grade seats, and because of other priority admissions, there were no available seats for other applicants. Specifically, there were fifty-one applicants and fifty-one were placed on the wait list. P.S.'s number was 39. (Motion at 2). Her parents appealed her placement on the wait list.

After a full evidentiary hearing, a Hearing Examiner upheld the wait list decision. In his decision, the Hearing Examiner explained that under Superintendent's Rule 6400 priority for admission to the magnet school is given to students living in the former Cromwell Valley school area, *i.e.*, students who could walk to the school; students previously enrolled in the magnet school; siblings; homeless students; and students reached on the wait list. (Hearing Examiner's Decision at 7). He noted that all the seats in first grade were taken by students with priority over P.S. (*Id.* at 9). He found that Rule 6400 was applied correctly and fairly. *Id.*

Following oral argument before the local board, the board adopted the Hearing Examiner's decision. This appeal followed.

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. COMAR 13A.01.05.05A.

LEGAL ANALYSIS

The Appellants raise two main issues. First, they argue that, because of preferential admissions, their daughter was not given an "equitable opportunity" to attend the magnet school. Second, they assert that Rule 6400, as it relates to the dates to which the wait list must be maintained, was not followed.

Equitable Opportunity

The Appellants assert that Rule 6400 2(a) promises an equal opportunity to all Baltimore County residents to enroll in magnet school programs. That Rule states:

To promote equal educational opportunities for all students, it is the goal of the school system to provide all interested students with a fair opportunity for access to magnet schools and programs. To carry out this goal, the Superintendent directs central office staff to assist each magnet program in developing equitable recruitment strategies and to recruit a pool of applicants which reflects the diversity of the school system as a whole.

(Rule 6400 2(a)).

The Appellants complain that, because of preferential/priority placements, their daughter did not have such an equal opportunity. They state:

. . . [W]ithin the Baltimore County Public Schools, some areas have elementary magnet schools and some do not. Some specific neighborhood residents have priority placement and some neighborhoods do not. Some elementary magnet schools only have up to 10 placements and some have more. We live in an area that does not have its own elementary Magnet School and our area has not been given priority placement at any of the other Magnet Schools. Thus, our daughter never had an equitable opportunity to attend a Magnet School within Baltimore County Public Schools. Cromwell Valley Elementary School was and still is advertised as a boundaryless school with an equal opportunity to all Baltimore

County residents. However, this has been observed to not be the case. Due to a larger list of priority placements, there is not an equal opportunity to attend this school.

(Appellants' Response at 3-4).

The Appellants want their daughter to attend the school that they believe is best for her. They believe Cromwell Valley is that school. As this Board has so often stated, however, there is no right to attend a particular magnet school program in a school system. *See, e.g., D.H. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 07-14 (2007); *Czerska v. Board of Educ. of Montgomery County*, 7 Op. MSBE 642 (1997).

While it does not appear fair on the face of it that all the seats in the first grade at Cromwell Valley went to priority placements, it does not follow that the Appellant's daughter was deprived of access to the educational program available in Baltimore County. As the local board points out, it is well established that absent a claim of deprivation of equal educational opportunity or unconstitutional discrimination, 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 (1967). There is no evidence in the record of deprivation of equal educational opportunity or unconstitutional discrimination.

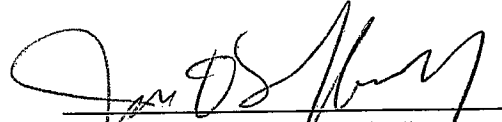
Dates of Wait list

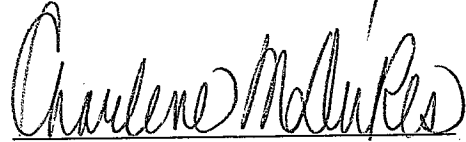
The Appellants assert that the local school system did not maintain the wait list properly. Under Rule 6400 5(a) the wait list is "to be maintained until the first day of the second semester." In 2009-2010, that would have been February 1st. The Appellants contend, and the testimony in the record confirmed, that for the 2009-2010 school year, the wait list was maintained only until the last day of the first semester (January 28). The Appellants also contend that year after year it was practice and policy in Baltimore County to end the wait list on the last day of the first semester.

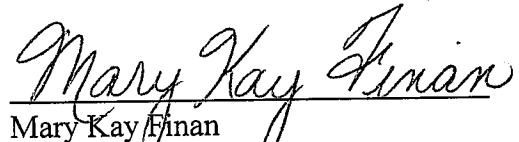
It is true that the local school system did not follow its own rule "to the letter." It disbanded the wait list three days early. When a local school system fails to follow its own rules, the Appellants must show that they were prejudiced by that action. *Pollack v. Patuxent Institution Bd. of Rev.*, 274 Md. 463, 504 (2003). There is nothing in the record that demonstrates any actual prejudice to the Appellants and their daughter. P.S. was number 39 on the waist list. Only if 39 students transferred out of first grade within those three days would P.S. have had the opportunity to enroll in Cromwell Valley. No such thing occurred. Failure to follow the letter of the rule did not prejudice P.S.

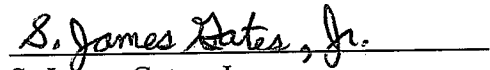
CONCLUSION

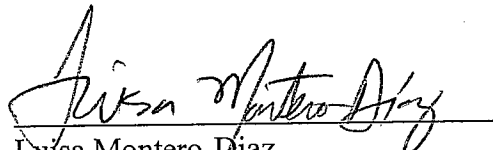
For all these reasons, we affirm the decision of the local board.



James H. DeGraffenreidt, Jr.
President

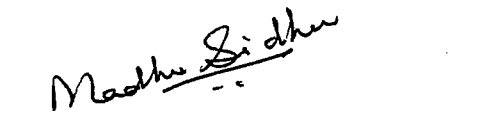

Charlene M. Dukes
Vice President

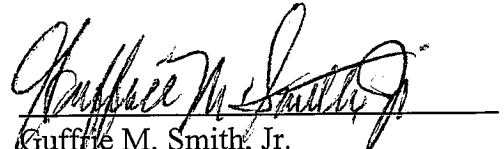

Mary Kay Finan


S. James Gates, Jr.

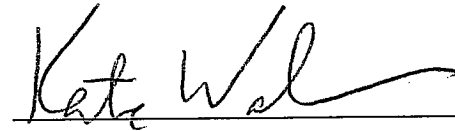

Luisa Montero-Diaz


Sayed M. Naved


Madhu Sidhu

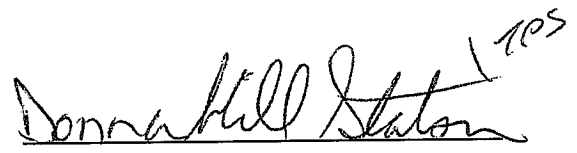

Guffie M. Smith, Jr.

ABSENT
Ivan C.A. Walks


Kate Walsh

DISSENT

I dissent in this matter.


Donna Hill Staton

February 22, 2011