

ELIZABETH W.,

Appellant

v.

BALTIMORE COUNTY BOARD OF
EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 11-40

OPINION

INTRODUCTION

The Appellant challenges the decision of the Baltimore County Board of Education (local board) denying her request to have her daughter retested on the performance assessment to gain admission to the magnet program at Eastern Technical High School (Eastern). The local board has submitted a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. The Appellant opposed the Motion and the local board responded.

FACTUAL BACKGROUND

Appellant's daughter, E.W., applied to the Allied Health Magnet Program at Eastern Technical High School for the 2010-2011 school year.¹

Superintendent's Rule 6400 governs the magnet application and admissions process. For a student to gain admission into a secondary school magnet program in Baltimore County, the student must meet certain criteria. There are six admission criteria for the Allied Health program at Eastern:

- Algebra I or higher in grade 8
- 2.5 grade point average or better in Language Arts/English, Social Studies, Mathematics, and Science
- Satisfactory attendance (94% or higher)
- Performance on Math Assessment
- Performance on Language Arts/English Assessment
- Performance on Career Interest Essay

¹ Appellant's son attends Eastern. Appeal, Attach. 1.

Points are awarded for each criterion based on a scoring tool. In order to qualify for admission into the program, the student must earn a total score of 80 out of 100 points on the admission criteria. (Record, Ex. 1, pp. 2 -- 5 and Ex. 5, T.13--15).

A student's qualifying score on the admission criteria does not guarantee admission to the program. When the number of qualified applicants exceeds the number of available seats, the names of those applicants are placed into a lottery. (Record, Ex. 5, T.46).

Performance assessments for Eastern were administered on the evening of January 14, 2010. They take approximately two hours. During performance assessments, at the start of the testing sessions, test proctors read the following statement to the students: "If you do not feel well enough to take the test at this time, please inform your proctor now." The proctors then direct ill students to ask their parents to speak with the magnet coordinator for Eastern to reschedule the assessment.² (Record Ex. 1, p.5). For retesting to take place, the Magnet Office requires the student to provide medical documentation of the illness.

EW took the performance assessments on January 14, 2010. Although EW claims to have developed a migraine during testing, she took the tests and did not inform any proctor or administrator at the test site, during or after the assessment, that she experienced migraine pain. (Record, Ex. 5, T.36-38). EW earned a total of 78 points from the six possible assessment areas. (Record, Ex. 5, Supt. Exs. 5 & 6). Because EW did not earn the minimum 80 points, she did not qualify for and was not offered admission into the magnet program at Eastern.³ (*Id.*).

On March 13, 2010, two months after the testing and after Appellant learned that EW would not be admitted to Eastern, the Appellant notified Dr. Sonja Karwacki, Executive Director of Special Programs, that EW had suffered a migraine during the assessment that likely affected her score. Appellant requested that her daughter be re-tested. (Record, Ex. 5, Supt. Ex. 2. T.18). Dr. Karwacki denied the request stating:

There is no record of any attempt to postpone or reschedule [EW's] assessment due to illness prior to or on the day of the assessment and there is no indication that you contacted either Eastern or the office of magnet programs after the assessment to express concerns of how your daughter's migraine may have negatively impacted her assessment.

(*Id.*).

² The school system should review the script read by proctors to make clear the students' responsibilities in event of illness during the assessment.

³ EW did qualify for the magnet program at Sparrows Point High School, Educational Center for Environmental Studies, earning 95 on the admission criteria for that program, but she declined admission.

Appellant appealed Dr. Karwacki's decision. On June 22, 2010, Dr. Carol Batoff, Superintendent's Designee, met with Appellant to discuss the appeal. (Record, Ex. 2). Appellant addressed EW's migraine condition, sharing that EW "gets migraines all the time." Appellant stated that EW informed her of the migraine when she walked out of the testing but that EW did not understand the procedure concerning illness during the testing and therefore did not tell the proctor or any school system personnel. Appellant provided medical documentation of E.W.'s history with migraines but she did not provide medical documentation of the migraine on the day of the assessment because no medical treatment was sought. (Record, Ex. 1, p.1).

Based on this information, Dr. Batoff denied the appeal. She found no basis to overturn Dr. Karwacki's decision because there was no notification of the illness until several weeks after the assessment and no existing medical documentation that EW's experience of a migraine impacted her on the day of assessment. Dr. Batoff stated that reassessment would be inconsistent with policy and procedures. (Record, Ex. 1).

Appellant appealed Dr. Batoff's decision to the local board. In her appeal, Appellant stated that she did not seek medical attention for EW's migraine on the day of the assessment because EW follows a treatment plan established by her doctor when a migraine occurs. She also believed that she had sufficient evidence of the medical condition based on the documentation from EW's doctor that she suffered from a history of migraines. (Record, Ex. 3).

A full evidentiary hearing was conducted before a hearing examiner for the local board. (Record, Ex. 5). The Hearing Examiner issued Findings of Fact, Conclusions of Law and Recommendations to uphold Dr. Batoff's decision to deny re-testing and to deny admission into Eastern. (Record, Ex. 7).

The local board heard oral argument in the case. (Record, Ex. 11). The Local Board adopted the Hearing Examiner's recommendations to deny reassessment and to deny admission to the program. (Record, Ex. 11). The instant 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.01.05.03E(1).

ANALYSIS

The local board has an established procedure governing the magnet process. That process allows students to be retested in the event of illness on the date of the assessment. (Record, Ex. 5, T.28, 36). The Magnet Office requires that medical documentation be provided concerning proof of illness on the day of testing. (Record Ex. 5, T. 37).

Typically, the school system would first learn of the illness by the student advising the proctor at the time of testing or the parent notifying school personnel of the illness the day of the testing or soon thereafter. (Record Ex. 5, T.36, 38). Neither Appellant nor EW notified school personnel of EW's illness on the day of the assessment or anytime shortly after. Appellant did not contact school personnel until two months after the testing and after her daughter was denied admission to Eastern. The reasonable and prudent course of action would have been for the Appellant to inform school personnel in a timely fashion that EW suffered a migraine during the assessments.


In her appeal, Appellant claims to know another parent whose child was "hurt in gym" and "had a problem on testing day." Appellant states that the school system permitted the student to retest despite the fact that neither the parent nor the student notified anyone of the issue until they appealed the denial of admission to the magnet program. (Appeal, Attach.; Reply to Motion). Although not addressed by the local board, Appellant has stated that the parent took the student to the hospital on the day of the testing and provided medical documentation. (Record, Ex. 5, T.15; Appeal, Attach.).

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 Educ. of Prince George's County*, 245 Md. 464, 472 (1967). The State Board has held on many occasions that there is no entitlement for a student to attend a particular program of study. *D.H. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 07-14; *Haibel v. Board of Educ. of Montgomery County*, MSBE Op. No. 98-29 (1998); *Czerska v. Board of Educ. of Montgomery County*, 7 Op. MSBE 642 (1997)(denials of admission into magnet programs). EW failed to qualify and was denied admission into the magnet program at Eastern. The local board's decision on that issue was neither arbitrary, unreasonable nor illegal. Moreover, there is no evidence of deprivation of equal educational opportunity or unconstitutional discrimination.

CONCLUSION

For the reasons stated above, we affirm the local board's decision.


James H. DeGraffenreidt, Jr.
President


Charlene M. Dukes
Vice President

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Mary Kay Finan

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August 30, 2011