PAMELA AND ROBERT M.,

Appellant

v.

BALTIMORE COUNTY BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 11-46

# OPINION

## INTRODUCTION

The parents of C.M and S.M. (Appellants) have appealed the Baltimore County Board of Education's (local board) decision to deny C.M.'s admission to the Kindergarten program at Cromwell Valley Magnet School. The local board has filed a Motion to Dismiss or for Summary Judgment to which Appellants have responded. The local board has filed a reply.

## FACTUAL BACKGROUND

C.M. and S.M. are five year old twins who applied to Cromwell Valley Elementary Regional Magnet School for the 2010-2011 school year. Two hundred twenty-five Kindergarten students applied for seventy-one available seats. (T. 62, lines 7-9). Because the program at Cromwell was oversubscribed, an admission lottery was conducted. Neither C.M nor S.M. received admission through the lottery. Both were placed on the waiting list. C.M. was waitlisted at number 87. (T. 62, line 16). S.M. was waitlisted at number 6. (T. 62, line 19). S.M.'s waitlist number was reached; C.M.'s waitlist number was not. S.M. was offered admission to the magnet school. The twins' parents asked that C.M. also be admitted under the sibling priority placement policy.

The sibling priority placement policy permits a kindergarten applicant who has a sibling who is "*currently* attending and will continue to attend the magnet program the subsequent school year [to be offered] kindergarten placement in the magnet program *prior to any lottery process*." (Motion, Superintendent's Rule 6400, Ex. 11). (emphasis added). The Magnet Office employs the priority placement only at the time of the lottery because seats have not yet been filled. (T.71, lines 13-15). It does not apply the sibling priority process to children admitted through the waitlist. (T.71, line 3). The Magnet Office denied admission to C.M.

The parents appealed the Magnet Office's decision. Dr. Carol Batoff, Superintendent's Designee, heard the appeal and issued a decision on July 26, 2010 ruling that the policy had been followed and there was no indication that the decision should be overturned. (Motion, Ex. 1).

The Appellants noted an appeal to the local board. On September 17, 2010, a full evidentiary hearing was conducted before one of the Board's hearing examiners, Carolyn Thaler, Esquire. Ms. Thaler issued her Findings of Fact, Conclusions of Law and Recommendations upholding the Superintendent's Designee's decision. (Motion, Ex. 5). In accordance with local board policy, the Appellant requested oral argument before the Board. Ms. Thaler's recommendations were argued before the local board on March 23, 2011. (Motion, Ex. 7). A majority of the Board was unable to adopt or reject the Superintendent's decision. Accordingly, by Order dated April 5, 2011, the Board advised the Appellant's that "the Superintendent's decision remains in effect." (Motion, Ex. 9).

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.01.05.03E(1).

## ANALYSIS

The Appellants ask this Board to rule that the local board's sibling admission policy is arbitrary, unreasonable, and illegal and to direct the local board to admit C.M. to Cromwell Valley.[1] They assert first that the decision is arbitrary and unreasonable because the policy is contrary to sound education policy and because no reasoning mind could have decided not to admit C.M. to Cromwell Valley. The basis for this argument is that it is not educationally appropriate to separate twins.

The evidence in the record suggests that the decision whether to separate twins in different schools or classrooms should be made on a case-by case basis considering the needs of the individual children in consultation with the parents. (Appeal, Ex's. 11 and 12). There is no general rule that separating twins is contrary to sound education policy. But, we will assume that the Appellants are correct that it would not be educationally appropriate to separate these particular twins.

The sibling priority admission policy as applied in this case resulted in one twin being offered admission to Cromwell but not the other. For the following reasons, we do not find the application of that policy violates sound educational policy or to be otherwise arbitrary or

[1] The local board initially argued that the appeal was not timely filed, but it rightly abandoned that argument.

unreasonable.

First, the policy does not mandate that the twins attend separate schools. That decision remains within the parents' control. Indeed, in this case the Appellants made the decision that it was in their children's best interest to stay together and to attend another elementary school.

Second, although the Appellants would have preferred that both children attend Cromwell, we have often stated that there is no legal right to attend a particular school or program. *See Haibel v. Board of Educ. of Montgomery County*, 7 Op. MSBE 1163 (1998) (denial of entry to magnet program,); *Czerska v. Montgomery County Bd. of Educ.*, 7 Op. MSBE 642 (1997) (denial of entry to magnet program); *Sklar v. Board of Educ. of Montgomery County*, 5 Op. MSBE 443 (1989) (denial of request to attend school offering four years of Latin, note taking /study skills course, and piano); *Slater v. Board of Educ. of Montgomery County*, 6 Op. MSBE 365 (1992) (denial of transfer to school alleged to better serve student's abilities and welfare).

Appellants also argue that the local board's decision is illegal because the sibling priority placement policy treats "multiples" (twins and triplets) different from the way it treats other siblings. As explained previously, Superintendent's Rule 6400(e) states:

> Kindergarten Sibling Priority Placement: A parent/guardian applying to an elementary magnet program on behalf of a kindergarten applicant who has a sibling who is *currently* attending the magnet program and when such sibling will continue to attend that magnet program the subsequent school year will be offered kindergarten placement in the magnet program *prior to any lottery process.*

(emphasis added)

The twins, of course, did not have a sibling *currently* attending the magnet school. Thus, the policy on its face would not be applicable to them, just as it would not be applicable to any other student applicant, single or multiple, who did not have a sibling *currently* attending Cromwell.

School system staff did testify that they would have applied the policy to the twins if one had obtained entry through the lottery. Apparently, the twin admitted through the lottery process would be considered the sibling "currently attending" the magnet school, making the other twin eligible for admission. Because S.M. was admitted through the waiting list, not through the lottery, his admission did not trigger admission for C.M. under the policy. That same rule, however, would apply to any student admitted through the wait list. It is our view, therefore, that the policy is not applied differently to multiples versus single children.

CONCLUSION

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

James H. DeGraffenreidt, Jr.
President

absent
Charlene M. Dukes
Vice President

Mary Kay Finan
Mary Kay Finan

S. James Gates, Jr.
S. James Gates, Jr.

Luisa Montero-Diaz
Luisa Montero-Diaz

For absent
Sayed M. Naved

Madhu Sidhu
Madhu Sidhu

Guffrie M. Smith, Jr.
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Donna Hill Staton

Ivan C.A. Walks

Kate Walsh

October 25, 2011