

PAMELA S.,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 11-11

REVISED OPINION

INTRODUCTION

The Appellant appealed the decision of the Montgomery County Board of Education (local board) denying her daughter's application to the Center Program for the Highly Gifted (Center Program) located at Dr. Charles R. Drew Elementary School (Drew). The local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, capricious, or unreasonable. Appellant submitted an opposition to the local board's motion, and the local board responded.

FACTUAL BACKGROUND

The Appellant applied for admission of her daughter, Z.B., to the Center Program at Drew, one of seven centers for highly gifted students in Montgomery County Public Schools (MCPS) that provide instruction in grades 4 and 5. For the 2010-2011 school year, 258 students applied for the 52 fourth grade slots in the Center Program at Drew. (Motion, Attach. 7). Students are selected based on multiple criteria, including, grades, performance on assessments, and recommendations. (Motion, Attach. 5A). The selection committee did not choose Z.B. for the program.

By letter dated April 16, 2010, Appellant appealed the denial. (Motion, Attach. 2). She argued that Z.B.'s scores fell within the range of scores achieved by students selected for the program, that Z.B.'s "perfect or near perfect" elementary school record supports admission to the program, and that Z.B.'s academic needs could not be met at her current elementary school. (*Id.*). The Level I Appeals Committee upheld the decision not to admit Z.B. to the program. (Motion, Attach. 3).

Appellant appealed the decision of the Level I Appeals Committee, maintaining that Z.B. had demonstrated eligibility for the program and "would be harmed by continued attendance at

her home school.” (Motion, Attach. 4). The Level II Appeals Committee reviewed all the data in Z.B.’s file and found no basis to reverse the decision. The Committee noted that two of Z.B.’s test scores were below the mean for students accepted into the program and that one was above the mean. Z.B. received a verbal score of 109 with a mean of 122; a nonverbal score of 114 with a mean of 119; and a quantitative score of 128 with a mean of 122. Based on the Appellant’s concerns about instruction at Z.B.’s home school, the Committee verified that the home school offers opportunities for accelerated and enriched instruction, including accelerated mathematics through Math 7,¹ the Junior Great Books Program, and the William and Mary Language Arts Program for High Ability Learners. The Committee encouraged the Appellant to contact the principal of the home school to discuss programming options. (Motion, Attach. 5A). Erick J. Lang, the Associate Superintendent for Curriculum and Instructional Programs, concurred with the recommendation of the Level II Appeals Committee not to select Z.B. for the Center Program. (*Id.*). The Deputy Superintendent of Schools, Dr. Freida K. Lacey, upheld the decision. (Motion, Attach. 5).

Appellant appealed to the local board reiterating her previous arguments. (Motion, Attach. 6). She maintained that she has taken advantage of every accelerated instructional opportunity available to her daughter at the home school but she is still not being challenged academically.

The Superintendent responded to the appeal by memorandum to the local board. (Motion, Attach. 7). He explained that there was tremendous competition for the limited number of slots in the program, 258 applications for 52 slots, and that Z.B.’s profile was simply not as strong as those who were accepted. (Motion, Attach. 7).

On further appeal, the local board affirmed the decision to deny Z.B.’s acceptance into the Center Program. The board stated:

Given the large number of students applying to this Program, even excellent students may not be selected for admission. The record indicates that [Z.B.] has many strengths, but does not present a reason to reverse the decision of the deputy superintendent. The professional judgment of the administrators, review committees, and deputy superintendent should be respected in the absence of a showing that a decision was arbitrary or capricious. The record in this matter does not support a conclusion that the decision was arbitrary or capricious.

This appeal to the State Board ensued.

¹ MCPS provides Math 7 for the home school’s accelerated math students a nearby Middle School. (Local Bds. Response, 12/22/10).

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.

ANALYSIS

The Appellant maintains that Z.B. is qualified for the Center Program, therefore she should have been placed in the program or on the wait list. The local board has explained that the fact that Z.B. was denied admission to the program does not mean that she was not qualified, but rather that there were other more qualified applicants in the pool of 258 to fill the 52 program slots and the 34 wait list slots. (Local Bd. Response, 12/22/10). The profiles of students accepted into the program were "exceptionally strong" and Z.B.'s profile was simply not as competitive as students who were selected for admission. (Motion, Attachs. 3, 7, 8). Not every qualified student can be admitted to a special program when there are finite resources that limit the number of spaces that a school system can offer.

This case is similar to *Hoogerwerf v. Montgomery County Bd. of Educ.*, MSBE Op. No. 06-05 (2006), in which the State Board upheld the local board's decision denying a student admission to the Center Program at Drew. This Board said:

As a means of selecting students for the programs, MCPS uses multiple criteria to evaluate students in order to reach a broad cross section of those who are qualified. The selection committee, as well as the appeals committees, the Director of Enriched and Innovative Instruction, the Superintendent's designee and the local board all reviewed B.H.'s file and determined that he should not be granted admission to the Program. Given that B.H.'s [test] scores were below the mean scores of students accepted into the program, the local board's decision was not arbitrary, unreasonable or illegal.

Id. at 4. See also *Philip Twu v. Montgomery County Bd. of Educ.*, MSBE Op. No. 01-11 (2001); *Skjerven v. Montgomery County Bd. of Educ.*, 7 Op. MSBE 1249 (1998); *Czerska v. Board of Educ. of Montgomery County*, 7 Op. MSBE 642 (1997) (cases denying admission into special programs because students did not score as well as the other students admitted).

Z.B., like B.H. in *Hoogerwerf*, had some test scores that were below the mean of students accepted into the program. The Selection Committee, the Level I and Level II Appeals Committees, the Associate Superintendent for Curriculum and Instructional Programs, the Deputy Superintendent of Schools and the local board all reviewed Z.B.'s file and determined that she should not be granted admission.

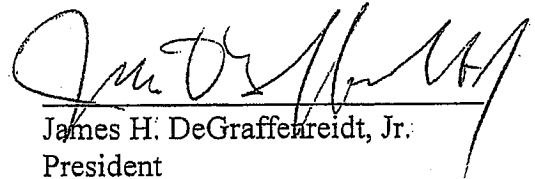
The Appellant attempts to distinguish *Hoogerwerf* by the fact that the student there was

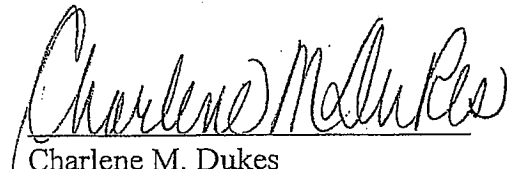
placed in the wait pool for the program. The point is, however, that it was reasonable for the local board to uphold the denial of admission into the program based on the student's test scores. The same holds true for some of the other cases cited by the Appellant. (See Opposition to Motion, pp. 5-6). Moreover, the local board has explained here that the wait pool has a limited number of spaces and that the school system awarded those slots to other more qualified students.

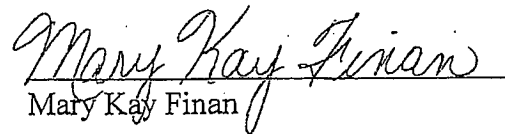
The Appellant also argues that Z.B. should be placed in the Center Program because she believes that her academic needs are not being met at the home school, despite taking advantage of the accelerated programs there. The State Board has consistently held that there is no entitlement to attend a particular school or program of study. See *Haibel v. Board of Educ. of Montgomery County*, MSBE Op. No. 98-28 (1998); *Czerska v. Board of Educ. of Montgomery County*, MSBE Op. No. 97-18 (1997). As suggested by the Level II Appeals Committee, the Appellant should meet with the principal of the home school to discuss programming options for Z.B.

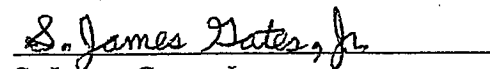
CONCLUSION

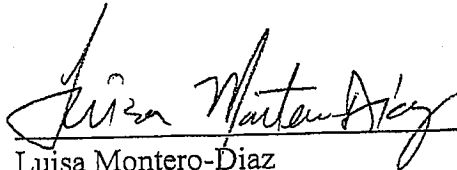
For the reasons stated above, we affirm the local board's decision.



James H. DeGraffenreidt, Jr.
President

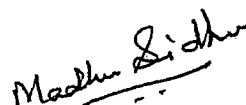

Charlene M. Dukes
Vice President

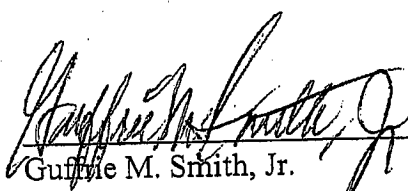

Mary Kay Finan

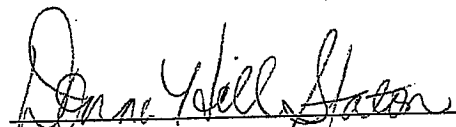

S. James Gates, Jr.

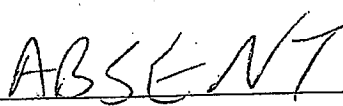

Luisa Montero-Diaz

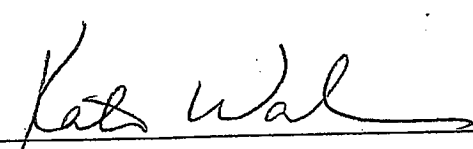

Sayed M. Naved


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February 22, 2011