

RODNEY AND ROSI P.,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 18-03

OPINION

INTRODUCTION

Rodney and Rosi P. (Appellants) appeal the decision of the Montgomery County Board of Education (local board) denying their daughter admission to a highly gifted center. The local board filed a Motion for Summary Affirmance, maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellants responded and the local board replied.

FACTUAL BACKGROUND

Montgomery County Public Schools (MCPS) operates eight highly gifted center programs, each one serving a different region in the county. The centers are “designed for highly gifted and motivated learners whose need for advanced instruction may not be easily met in their local school.” Admission is “highly competitive” because there are a limited number of available seats. Only 10 percent of applicants were selected for the 2017-18 school year. Students attend the center programs for two years, beginning in fourth grade. (Motion, Ex. 1).

On November 3, 2016, Appellants’ daughter C applied for admission into the Center Program for the Highly Gifted at Lucy V. Barnsley Elementary School (Barnsley gifted center). At the time, C was a third grade student at Ritchie Park Elementary School (Ritchie Park). In the application, Appellants described their daughter as bilingual with “an extraordinary spoken vocabulary (range and accuracy)” and “a phenomenal memory for places, events, and routines.” (Motion, Ex. 2). As part of the admissions process, C took a cognitive abilities assessment. The test measured verbal, nonverbal, and quantitative reasoning. The resulting score “compares the rate and level of cognitive development” of a student against students of the same age. C’s Standard Age Score (SAS) was 124, while the median score of students in the applicant pool was 116. (Motion, Ex. 6).

In addition to the assessment test, MCPS requested a recommendation from C’s school. Thirty students from Ritchie Park applied to attend the Barnsley gifted center. Out of those 30, C’s principal concluded that C was not among the top five applicants, though the principal placed C in the top 10 percent of students at the school. The principal described C as having a “strong number sense” and would “take initiative and follow through with things.” Ultimately, the principal determined that C “could benefit from the Center Program but [her] academic needs

can be met at the local school.” The highest level of recommendation, which C did not receive, states that a student’s “academic needs can best be met at the Center Program.” The admission application also contained C’s second grade report card, which listed all of her final grades as “P,” or proficient.¹ (Motion, Ex. 3).

On March 24, 2017, MCPS informed Appellants by letter that C was not selected for the Barnsley gifted center program. Although MCPS increased the number of seats in gifted centers for the 2017-18 school year, the letter explained that it received 6,200 applications for only 576 seats. The selection committee reviewed a variety of factors in considering admission, including parent recommendations, school recommendations, academic progress based on report cards, student performance on the Measure of Adequate Progress in Reading (MAP-R), and student performance on the gifted center’s assessment. The committee also reviewed “the presence of an intellectual peer group of other highly able students” at the student’s home school. MCPS concluded that C’s needs could be met at Ritchie Park and that it would work with Ritchie Park to support students “accessing accelerated and enriched instruction.” (Motion, Ex. 4).

On April 11, 2017, Appellants appealed the decision. They questioned whether C’s assessment score properly reflected her skills and whether it took into account the fact that she entered kindergarten early and was younger than other students. Appellants praised her curious nature, academic success, artistic talent, and incredible memory. The appeal included a letter from two of C’s third grade teachers who stated it was a “big surprise” that C was not admitted into the gifted center program. They explained that C’s ability to problem solve “in both conventional and unconventional ways is astounding,” and that C is an “avid reader” with “the ability to make complex connections based on her knowledge of the world.” (Motion, Ex. 8).

On May 12, 2017, the director of the Division of Consortia Choice and Application Program Services denied the appeal. She explained that the applicants for the center program were “exceptionally strong” and that the median assessment score of selected students was 133, higher than C’s score of 124. The director stated that all data was reexamined and that no single piece of data excluded C. The selection committee determined that the information provided in the appeal did not change its overall recommendation. (Motion, Ex. 7).

On May 26, 2017, Appellants appealed. They argued that C was exactly the type of student MCPS should want in the gifted center program, performing above her grade and age level in multiple subjects. Appellants again questioned how C’s assessment score was calculated and criticized MCPS’s gifted program selection process. They argued that, although MCPS stated that no one factor eliminated C from the program, the only data they received was her assessment score. (Motion, Ex. 9).

MCPS convened a new committee to review the appeal and C’s application. The committee concluded that the same criteria were used consistently to evaluate all applicants in the admissions process. Although the committee commended C for her solid academic performance, they observed that her assessment score was several points below the median score of admitted students (124 compared to 133). After reviewing her complete file and the appeal,

¹ At the time, MCPS report cards for grades 1-3 used ES (Exceptional) as the highest score, followed by P, I (in progress), N (not yet making progress), and M (missing data).

the committee found that there was no new information to challenge the original committee's admission decision. The committee acknowledged that there were many high performing students and only so many seats available in the program. Specifically, there were 626 students who applied to the Barnsley gifted center and only 81 open seats. But the committee remarked that Ritchie Park has "coursework and a peer group to challenge" C, including language arts and math enrichment. (Motion, Ex. 5). On June 23, 2017, the superintendent's designee adopted the committee's recommendation and denied Appellants' appeal. (Motion, Ex. 10).

Appellants appealed to the local board, raising numerous arguments. They pointed out that C's assessment score was only "slightly below" the median of admitted students and argued that MCPS must have miscalculated C's score based on her age. Appellants argued that all of the factors considered by MCPS should have led to C's admission because she was more qualified than other students who were selected. They also maintained that she was more deserving than other students to participate in the gifted center program because of her hard work and excellent school performance. Appellants observed that C has had excellent grades, including earning "ES" grades in third grade. They challenged the criteria used by MCPS, arguing that it does not adequately evaluate students such as C. Finally, Appellants expressed concern that C would not be challenged sufficiently at Ritchie Park.

On September 25, 2017, the local board issued its decision denying the appeal. The local board acknowledged that C was an "outstanding student," but explained that with only 81 seats available and 626 students applying, even outstanding students were not guaranteed admission. The board observed that MCPS reviewed C's application and compared it to students who were admitted to the center program as part of the appeal. Although the assessment scores were not the sole means to judge applicants, the local board found that C's scores were below the median score for students admitted to the Barnsley gifted center. In the superintendent's response to the appeal, he stated that C's score was accurately calculated based on her age, contrary to a claim made by Appellants. Based on information from the principal at Ritchie Park, the board found that there was an academic cohort group for C and that differentiated instruction would be provided to that group in reading and mathematics. (Motion, Ex. 14).

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; *see George and Sharon K. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 12-09 (2012).

LEGAL ANALYSIS

Appellants argue that MCPS wrongly denied C admission to the Barnsley gifted center. They maintain that her test scores were below the median "but within the range of scores among students who were accepted." They also argue that her grades "are stronger than some students

who were admitted to the Barnsley program.” Appellants include C’s report cards, dating back to kindergarten, along with her most recent PARCC scores in Mathematics, where she earned a Level 5, and English Language Arts, where she received a Level 4. This, along with her other unique qualities, should have led to her admission. Appellants argue that no reasoning mind could have reached the conclusion to deny C admission to the gifted center.

We begin with the observation that MCPS based its admissions decision on a gestalt-type of analysis of many factors. Pulling them apart for analysis may not be appropriate because MCPS judged each applicant as a whole in comparison to all other applicants. In our view, the whole of the analysis is greater than the sum of its parts. Because Appellants challenge each part of the comparative analysis, however, we shall address these individual factors in turn.

One factor in the decision was C’s gifted admissions assessment. C scored 124 on the gifted assessment, nine points below the median of students selected for the center program. Although Appellants are correct that half of all admitted students had scores below this median, there is no evidence in the record that those scores were at or below C’s score. C certainly scored better than the applicant pool as a whole (median score 116), but her score was below the median of accepted applicants. We have previously affirmed decisions of local boards to deny entry into a gifted center where a student scores below the median of admitted students. *See Pamela S. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 11-11 (2011); *Hoogerwerf v. Montgomery County Bd. of Educ.*, MSBE Op. No. 06-05 (2006).

Moreover, C’s school principal did not place her among the top five students applying from the school. Although the principal concluded she was among the top 10 percent of students at the school, she did not recommend her for the gifted center, concluding that she could benefit from the gifted center but that her needs could still be met at the school. Appellants attack this recommendation as “deficient,” in part because the recommendation is brief and lists only two strengths or unique abilities for C. The principal was required to use her judgment and provide an honest assessment, which we conclude, absent facts to the contrary, that she did.

Appellants also challenge the recommendation by pointing out that two of C’s third grade teachers recommended her for the program. MCPS’s appeals procedure specifically states that it does not consider individual teacher recommendations. (Motion, Ex. 9). It would not be fair to other students if the local board considered factors in this case that it did not consider for other students. In addition, the teachers merely provided a recommendation for C; they were not required to determine whether C was a better candidate over other potential third graders who applied, which was the task put before the principal. As such, the usefulness of the recommendations is limited.

Appellants also argue that C had a strong academic record, with a long history of “P” grades. On appeal, they provided the remainder of her third grade report card, which showed that C earned several “ES” grades (the highest) during the second, third, and fourth marking periods. These grades were not, however, available at the time Appellants submitted their application. We will, however, accept them into the record. Appellants maintain that C’s grades and scores are better than others admitted to the Barnsley gifted center, but they offer us no evidence to support this claim. Given that it would require obtaining the grades of dozens of

students admitted to the program, it is unlikely that Appellants would be able to prove this allegation. Even assuming that C's grades were "better" than those of other admitted students, and we do not conclude they were, this was but one factor among many that went into the acceptance decision. The grades were weighed and analyzed as a whole to decide which of the 626 applicants would be admitted to the limited available seats. We cannot conclude that C's presumptively "better" grades would trump these other factors.

Finally, Appellants argue that the decision was illegal because it was based on the assumption that Ritchie Park would provide accelerated and enriched instruction for C and that there would be a peer group of similar students at C's school. Appellants argue that the Ritchie Park principal admitted to them that the Junior Great Books program was not provided "to the extent nor in the manner required by MCPS." They also maintain that C has too small of a peer group at the school, consisting of four or five other students. Finally, Appellants argue that Ritchie Park did not provide differentiated instruction or accelerated classes in mathematics, but instead engaged in "experimental programming designed to isolate highly able learners and prevent them from achieving more than other students."

In an affidavit, the Ritchie Park principal explained that the school provides the Junior Great Books program, the William and Mary Language Arts program, mathematics enrichment and mathematics acceleration. The language arts programs are integrated into the general curriculum and designed so that differentiated instruction is possible. The principal stated that C also participates in compacted math, which covers all math concepts taught between fourth and sixth grades. Prior to the 2017-18 school year, teachers taught compacted math at Ritchie Park within the regular classroom setting among small groups. MCPS encouraged the principal to make it a "pull out" class, which she did in September 2017. The principal stated that C is part of a peer group with other highly able students who either did not gain admission to the Barnsley gifted center or chose not to apply. The principal denied that Ritchie Park isolates high-level learners in an effort to prevent them from doing better than other students. (Motion, Ex. A).

One of many factors that the admissions committee considered was whether there was a peer group and services available at C's home school. The record shows services and a peer group are available at Ritchie Park. Appellants were unhappy with how those services were delivered, but concede in their appeal that after they raised their concerns, MCPS quickly intervened and addressed them. In our view, the local board had correct information about the services and peer group available to C at her home school.

We have held on multiple occasions that a local board may award limited slots in highly competitive programs to students who are more qualified. *See Pamela S.*, MSBE Op. No. 11-11; *Hoogerwerf*, MSBE Op. No. 06-06. In our view, Appellants have not met their burden to show that the local board's decision to deny C admission to the gifted center was arbitrary, unreasonable, or illegal. The local board acknowledges that, out of the 90 percent of students who were denied admission, many are likely highly qualified and could have been successful in the gifted center programs. The fact that C was not admitted does not mean that she is not an excellent and gifted student with much potential. The local board, in fact, encouraged Appellants to work with Ritchie Park to ensure she receives appropriate services and provided them with information on how to contact MCPS for further support if they deem it necessary.

CONCLUSION

For all of these reasons, we affirm the decision of the local board because it is not arbitrary, unreasonable, or illegal.

Signatures on File:

Andrew R. Smarick
President

Chester E. Finn, Jr.
Vice-President

Michele Jenkins Guyton

Justin Hartings

Stephanie R. Iszard

Rose Maria Li

Michael Phillips

David Steiner

January 30, 2018