

P.B. and M.C.,

Appellants

v.

MONTGOMERY COUNTY  
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 22-01

## OPINION

### INTRODUCTION

This is an appeal of the Montgomery County Board of Education’s (“local board”) split decision that resulted in Appellants’ daughter being denied inclusion in the lottery pool for admission to the Center for Enriched Studies (“CES”) at ██████████ Elementary School (“████████”) for the 2021-2022 school year. The local board responded to the appeal maintaining that the decision was not arbitrary, unreasonable or illegal. Appellants filed a reply and the local board responded.

### FACTUAL BACKGROUND

Montgomery County Public Schools (“MCPS”) offers various enriched and accelerated programming for rising Grade 4 students in both the local elementary schools and in regional/local criteria-based CESs. MCPS conducts a universal review process for all Grade 3 students to determine their enrichment and acceleration instructional needs in Grades 4. Students must meet specific criteria in order to be included in the lottery pool for admission to any CES. The Appellants received written notice that their daughter, █████, was not selected for inclusion in the lottery pool for admission to the CES at █████. She was denied inclusion in the lottery because she failed to meet the locally normed score on her fall 2020-2021 Measures of Academic Progress-Reading (MAP-R) assessment.

While █████ was in Grade 3 during September 2020, Appellants received two weekly updates regarding the upcoming virtual MAP assessments and were encouraged to contact their child’s teacher about the date and time of the MAP testing. (Local Bd. Ex. 4). During the fall of 2020, █████ took the MAP-R test virtually and received 73% nationally scored and 53% locally normed scored. (Local Bd. Ex. 8).

On December 4, 2020, MCPS sent notification to parents, including Appellants, of the various MCPS opportunities for rising Grade 4 students who demonstrate the potential to be successful in enriched and accelerated programming in both the local elementary schools and the regional/local CES criteria-based programs. (Local Bd. Ex. 1).<sup>1</sup> The notification informed all parents of the universal review process for all Grade 3 students, requiring no application, to

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<sup>1</sup> MCPS also screens all Grade 5 students for enriched and accelerated middle school programming.

determine their instructional needs in Grade 4. *Id.* The notification explained the universal review process in detail and set forth the multiple criteria used to determine eligibility to be placed in the lottery system for the CES program which “include pre-COVID and 2020 data such as report card grades, reading level, external assessments Measures of Academic Progress-Reading (MAP-R) and student services.”<sup>2</sup> *Id.*

The notification letter invited all parents to presentations on January 13, 2021, at specific times for English and Spanish presentations. MCPS also provided an Overview and Frequently Asked Questions about the CES admission process on its website that explained the process and changes from previous years that was updated in April of 2021.<sup>3</sup> (Local Bd. Ex. 2). The website included more detail and explained that students who were centrally identified to be placed in the CES lottery pool must have met “the 75% on the Fall MAP-R (locally normed) along with two other measures from Grade 2: an A in reading, writing, or social studies from Marking Period 3 or an indication of ‘M’ or above in reading grade level.” *Id.* The website also explained that MCPS uses locally normed scores to examine test takers in relation to one another within MCPS as part of the identification process. *Id.*

By letter dated April 2021 and received by the Appellants on April 15, 2021, the Appellants were notified that ■■■’s instructional needs could be met with the MCPS curriculum and that ■■■. was not placed in the lottery. (Local Bd. Ex. 3). ■■■. was not placed in the lottery pool because she did not attain the required locally normed 75% on the Fall 2020 MAP-R. ■■■’s score was in the 73<sup>rd</sup> percentile nationally and was in the 53<sup>rd</sup> percentile when locally normed. (Local Bd. Ex. 8).

The procedures for CES enrollment allow parents and guardians of students not placed in the lottery pool to appeal due to one of the following: (1) a unique hardship impacted the student’s academic profile or (2) errors or missing information in the student academic profile. (Local Bd. Ex. 2). The procedures further explain an appeal committee is not able to review student work samples, teacher recommendations, awards, external enrichment program or other testing information. *Id.* The appeals procedures further provide that the appeals process does not place students into regional programs. *Id.*

Pursuant to this process, on or about April 23, 2021, Appellants filed a Level 1 appeal challenging the decision denying ■■■’s inclusion in the lottery pool. (Local Bd. Ex. 4). They argued: they were not informed of the significance of the MAP testing prior to the ■■■’s taking the MAP-R test in the fall; they never received the results of the MAP testing until ■■■. was denied admission to the lottery pool; ■■■. faced hardships with virtual learning as she had to switch teachers in February 2021, and she consistently had problems accessing the virtual learning due to connectivity issues with her MCPS supplied Chromebook laptop, and these problems may have contributed to her score on the fall MAP-R test; and the fall MAP-R did not accurately represent ■■■’s consistent four years of above average reading level and was not consistent with her previous and subsequent testing data. Appellants included letters from

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<sup>2</sup> The student services considered include services in ESOL-English for Speakers of Other Languages, FARMS – Free and Reduced Meals System, IEP – Individualized education Plan or a 504 plan. *Id.*

<sup>3</sup> Due to COVID limitations with in-person instruction and test security, the Cognitive Abilities Assessment (“CogAT”) and essay were not administered in 2020 and were not considered for admission to the criteria-based CES programs for the 2021-2022 school year.

themselves as well as █████ report cards for Grades 1, 2 and 3, and letters from the Kumon Math and Reading Center and the Argentina School in which █████ participates. *Id.* █████ also filed her own appeal on April 27, 2021, addressing how the decision negatively impacted her. (Local Bd. Ex. 5).

By letter dated May 14, 2021, Jeannie Franklin, Director of Consortia Choice and Application Program Services, informed Appellants that an appeal committee reviewed their appeal and █████'s student data, including the Fall MAP-R, Grade 2 report cards grades (reading, writing and social studies), reading level and student services. (Local Bd. Ex. 6). She advised that the original decision was upheld because █████'s instructional needs could be met with the MCPS curriculum. She encouraged the Appellants to contact █████ staff to learn more about the enrichment programming available to █████ there.

On May 24, 2021, Appellants filed a Level 2 appeal stating in part that █████ Fall 2020 MAP-R was in the 75<sup>th</sup> percentile and she should have been included in the lottery pool. (Local Bd. Ex. 7). The Appellants submitted another letter and additional testing data showing █████ growth on the MAP testing for reading and mathematics. The record shows that MCPS staff verified the locally normed score during each appeal level and concluded that █████ did not attain the requisite score required to enter the lottery pool for the CES program. *Id.*

The Level 2 appeal committee reviewed Appellants' appeal. (Local Bd. Ex. 8). The appeal committee noted that █████s locally normed MAP-R score of 53% failed to meet the requisite locally normed score of 75% for inclusion in the lottery pool. *Id.* The appeal committee noted that it had multiple conversations with the Appellants and the Appellants were given access to the criteria used in the central review for inclusion in the lottery pool for the CES. The committee also noted that it was satisfied that █████s records had been reviewed according to the review guidelines applied to all students. The appeal committee recommended upholding the decision denying admission to the CES lottery pool.

By letter dated June 18, 2021, Dr. Janet S. Wilson, Chief of Teaching, Learning, and School, acting as the Superintendent's Designee, advised Appellants that she was upholding the decision of the Level 2 appeal committee. (Local Bd. Ex. 8). Dr. Wilson further advised the Appellants that █████ may identify █████ to receive enriched services using additional performance data. (Local Bd. Ex. 8).

On June 21, 2021, Appellants filed a Level 3 appeal of Dr. Wilson's decision to the local board. (Local Bd. Ex. 9). They stated their belief that █████ received the requisite 75% score on the Fall MAP-R. The Appellants included a letter in support of their appeal and they provided the end of year Spring 2021 MAP Growth Family Report that illustrated academic progress in reading. *Id.*

On July 20, 2021, Dr. Monifa McKnight, Interim Superintendent, responded to the appeal by memorandum recommending that the local board uphold the decision. She explained that selection for admission to the CES programs was highly competitive and MCPS reviewed 12,000 Grade 3 students and of those, 486 students were centrally identified for enriched services and of those 486, only 81 students were actually placed in the program. (Local Bd. Ex. 10). The Interim Superintendent further explained that two different appeal committees reviewed all of the data and the parents' concerns and concurred the original decision not to place █████ in the lottery

pool was correct. The Interim Superintendent explained that it is expected that all students improve their MAP-R scores as the school year progresses and that only MAP-R fall data was used along with Grade 2 report card data and reading level in the placement process. She also explained that ██████'s school of assignment has coursework and an appropriate peer group to challenge ██████

In response to the Interim Superintendent's proposed recommendation, the Appellants argued to the local board that the decision to exclude ██████ from the lottery pool was based on an inaccuracy of data as they continued to assert ██████ scored a 75% not a 53% on the fall MAP-R. (Local Bd. Ex. 11).

On July 27, 2021, the local board considered this matter and was unable to attain the five votes necessary to affirm or reverse the decision of the Superintendent's Designee. (Local Bd. Ex. 12). The result of the local board's inability to attain the necessary votes was that the decision of the Superintendent's Designee denying admission to the CES lottery remained in effect. The four board members who voted to reverse the decision believed that, given the totality of the circumstances, the student should have been placed in the wait pool for the program. (Local Bd. Ex. 12, Decision and Order at 2). ██████ is now a 4<sup>th</sup> Grade student currently enrolled at ██████ and participates in the gifted and talented program there. (Appeal at 6.)

This appeal followed.

#### STANDARD OF REVIEW

Local board decisions involving a local policy or a controversy and dispute regarding the rules and regulations of the local board are considered *prima facie* correct. The State Board will not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.06A. The Appellant has the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.06D. Because the local board did not attain the necessary votes to either affirm or reverse the Superintendent's Designee's denial of inclusion in the lottery pool, we apply this standard to our review of the decision. *J.D. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 20-32 (2020).

#### LEGAL ANALYSIS

The State Board has long recognized that local school systems use of "multiple criteria to evaluate students in order to reach a broad cross section of those who are qualified" to enroll in enriched programs is not arbitrary and unreasonable. *See Li Z. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 19-41 (2019). Furthermore, the State Board has held that "there is nothing arbitrary, unreasonable, or illegal about the local board following its established criteria and denying a student entry into the [specialized program] on that basis." *See Amanda B. v. Baltimore County Bd. of Educ.*, MSBE Op. No. 14-24 (2014). Appellants have failed to demonstrate that the school system did not follow its procedures in evaluating the application for admission or in the appeal. Rather, the Appellants disagree with the criteria and process MCPS established to determine eligibility from the CES lottery pool.

An appeal of the decision to exclude ██████ from the CES lottery must be based on either (1) a unique hardship impacted their student's academic profile or (2) errors or missing

information in the student academic profile. (Local Bd. Ex. 2). The record does not support a finding that the Appellants met this standard.

The Appellants assert that [REDACTED] had issues with adjusting to virtual learning environment presented by the pandemic and she often struggled with her MCPS Chromebook when taking tests. They speculate that this may have impacted [REDACTED] performance on the fall MAP-R testing. Two different appeal committees reviewed the Appellants' concerns regarding [REDACTED]'s fall MAP-R testing and did not find any grounds to overturn the initial decision finding she failed to meet the eligibility criteria. The Appellants' speculations do not rise to the level of evidence establishing that [REDACTED] faced any unique hardship that impacted her any differently than other students. Unfortunately, the pandemic adversely affected many MCPS students and many struggled with the adjustment to virtual learning and testing. *See J.L. and Y.L. v. Montgomery Count Bd. of Educ.*, MSBE Op. No. 21-52 (2021). We find the evidence before us does not support a claim of unique hardship or unique circumstances.

The Appellants also argue that the local board erred because the school system used a locally normed score of 53% on the fall MAP-R test and insist [REDACTED]'s locally normed score was 75%. The Appellant's assertions are not supported by the record. The record demonstrates that school staff verified the locally normed score during each appeal level and concluded that [REDACTED] did not attain the requisite score required to enter the lottery pool for the CES program. Her locally normed score of 53% fell far short of the required locally normed score of 75%.

The record before us demonstrates that [REDACTED] is an outstanding student of high ability; however, as noted by the Interim Superintendent, MCPS reviewed 12,000 Grade 3 students and of those, 486 students were centrally identified for enriched services. Of those 486, only 81 students were actually placed in the program. In such a situation, even outstanding students are not guaranteed admission to the CES.

Not all students can partake in specialized programs and there is no right to attend any particular school or program. *See Catherine H. v. Prince George's County Bd. of Educ.*, MSBE Op. No. 17-25 (2017) and cases cited therein. School systems have finite resources and devise procedures for fair opportunity for admission. MCPS has worked hard to use equitable approaches for these application processes to increase access for all students at the elementary level. Nonetheless, inability to participate in a specialized program does not mean that a student has no opportunity for rigorous academic programming. The record reflects that there are other opportunities for [REDACTED] at [REDACTED] and [REDACTED] has coursework and an appropriate peer group to challenge [REDACTED]. The Appellants recognize [REDACTED] is a participant in the gifted and talented programs offered at [REDACTED].

Finally, the Appellants criticize the policies and procedures MCPS has in place for the selection of specialized programs and request that many aspects of the policies and procedures be changed by the State Board. Such a request is beyond the scope of this appeal. It is well settled that the State Board appeals process is not the appropriate mechanism for seeking local board policy change. *See Jared H. v. Montgomery County Bd. of Educ.*, MSBE Op. No 16-37 (2016); *see also Kenneth F. v. Baltimore County Bd. of Educ.*, MSBE Op. No. 10-23 (2010)(the quasi-judicial appeals process is not the appropriate avenue for systemic change).

## CONCLUSION

For the reasons stated above, we find that the Appellants have failed to show by a preponderance of the evidence that the decision of the Superintendent's Designee was arbitrary, unreasonable, or illegal. Accordingly, we affirm the decision denying inclusion in the lottery pool for admission to the CES program.

Signatures on File:

\_\_\_\_\_  
Clarence C. Crawford  
President

\_\_\_\_\_  
Charles R. Dashiell, Jr.  
Vice-President

\_\_\_\_\_  
Gail H. Bates

\_\_\_\_\_  
Chuen-Chin Bianca Chang

\_\_\_\_\_  
Susan J. Getty

\_\_\_\_\_  
Jean C. Halle

\_\_\_\_\_  
Rachel McCusker

\_\_\_\_\_  
Joan Mele-McCarthy

\_\_\_\_\_  
Lori Morrow

\_\_\_\_\_  
Holly C. Wilcox

Absent:  
Vermelle Greene  
Warner I. Sumpter

Abstain:  
Shawn D. Bartley

January 25, 2022