SHILPI MAHESHWARI,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
MONTGOMERY COUNTY BOARD OF EDUCATION,	OF EDUCATION
Appellee	Opinion No. 99-19

OPINION

This is an appeal of the denial of a request for placement of Shilpi Maheshwari in a magnet high school program at Montgomery Blair High School in Montgomery County. Appellant argues that the local board "overlooked the phenomenal and extraordinary academic and extracurricular records of [his] daughter;" that Shilpi was not compared with the other students in any area other than the test; and that the program has not exceeded its capacity. The local board has filed a Motion for Summary Affirmance maintaining that the placement decision was not arbitrary, unreasonable or illegal. Appellant has submitted a reply in opposition to the motion.

BACKGROUND

Shilpi is currently a ninth grade student at Thomas Wooton High School in Montgomery County. In early 1998, Appellant requested that Shilpi be transferred to Montgomery Blair High School so that she could attend the school's Magnet Program for the 1998-99 school year.

Admission into the Montgomery Blair Magnet Program is decided by a screening and selection committee that looks at a variety of factors including standardized test scores, school grades, teacher recommendations, and student interest, motivation and work habits. The program is funded for 100 students in each entering class. Over 650 students applied for the 100 places for the 1998-99 school year. *See* Letter from Steinkraus dated March 16, 1998.

On March 16, 1998, Appellant was advised that the screening and selection committee did not recommend Shilpi for admission into the program. Shilpi asked the committee to reconsider her application. She acknowledged her low test scores but indicated that on the date of the test she "was not in perfect health and had a great deal of anxiety." She also claimed that there were problems with the proctor and that she "may also have made an error in bubbling in the answer sheet." Her father also requested that the committee reconsider Shilpi's application. He highlighted Shilpi's record and reiterated many of the same concerns as his daughter concerning the test. On April 24, 1998, Appellant was advised that Shilpi was

placed in the waiting pool for admission into the magnet program. On May 21, 1998, Appellant was further advised that 110 students had been accepted into the magnet program with 32 students on the waiting list.

Appellant wrote to the Division of Enriched and Innovative Instruction and requested that his daughter be reconsidered for admission into the program. By letter dated August 5, 1998, Appellant was advised that a Level II appeals committee had reviewed all the information concerning Shilpi's case and supported the decision to keep Shilpi in the waiting pool. Thereafter, Appellant appealed to the superintendent who upheld the committee's decision.

Appellant appealed the superintendent's denial to the local board. In a memorandum dated September 30, 1998, the superintendent responded to the appeal:

> Shilpi was placed in the waiting pool by the Level I appeal committee based on the strength of her teacher recommendations and her grade point average from the Takoma Park Middle School magnet staff. Her scores on the American Guidance Services (AGS) assessment and the Watson Glaser Test of Critical Thinking were below the median of the accepted group. On the verbal portion of the AGS she was in the 27th percentile. The median for the accepted group was the 82nd percentile. On the mathematics portion of the AGS, she was in the 82nd percentile and the median was 91st. On the Watson Glaser, she was in the 40th percentile and the median was the 95th percentile.

The superintendent also indicated that the program is over capacity at 108 students.

The local board unanimously upheld the superintendent's decision based on the reasons contained in the superintendent's memorandum dated September 30, 1998. This appeal followed.

Subsequent to the filing of this appeal, Shilpi was retested on the standardized tests that are considered as part of the selection criteria. Based on these new test scores, Appellant claims that Shilpi should be admitted into the Magnet Program. Additionally, Appellant claims that the program is not at capacity and that two students were unfairly taken off the waiting list and accepted into the program rather than Shilpi. The local board has submitted a response indicating that Shilpi was retested to determine whether it was appropriate to place her on the waiting list, and that the retest confirmed that the decision was justified. Shilpi's new test scores placed her among five students with comparable profiles who are also on the waiting list.

ANALYSIS

As a preliminary matter, Appellant requests a hearing before the State Board. The determination of school attendance areas is vested in county boards under Md. Educ. Code Ann., § 4-109 (c). Further, the Maryland Court of Appeals has held that "[a]bsent a claim of deprivation of equal educational opportunity or unconstitutional discrimination because of race or religion, there is no right or privilege to attend a particular school." *See Bernstein v. Board of Education of Prince George's County*, 245 Md. 464, 472 (1966). The board's decision upholding the denial of Shilpi's admission into the Magnet Program was based on the evaluation criteria for the program. There is no evidence whatsoever that the denial was based on race or religion. Therefore, Appellant is not entitled to an oral evidentiary hearing on this matter.

With regard to Shilpi's new test scores, this evidence was not before the local board at the time it made its decision. The local school system makes the determination regarding a student's qualifications. *See, e.g.,* Md. Code Ann. Educ. § 4-108. Thereafter, the State Board determines, pursuant to COMAR 13A.01.01.03E(1)(a), whether the local board's decision involving a local policy or controversy was arbitrary, unreasonable or illegal. The State Board is not otherwise entitled to substitute its judgment for that of the local board. Supplemental information provided to the State Board indicates that the retesting was done to determine if Shilpi's placement on the waiting list was appropriate. This is a reasonable basis for the retesting. If Appellant has objections, Appellant must raise those first with the local superintendent and the local board.

The State Board has consistently held that there is no entitlement to attend a particular program of study at a particular school. *See Haibel v. Board of Education of Montgomery County*, MSBE Op. 98-28 (May 28, 1998) (affirming denial of request for student placement in magnet program); *Czerska v. Board of Education of Montgomery County*, MSBE Op. 97-18 (April 30, 1997) (upholding denial of request for admission into magnet program); *Slater v. Board of Education of Montgomery County*, 6 Op. MSBE 365 (1992) (upholding denial of transfer to school alleged to better serve student's abilities and welfare); *Williams v. Board of Education of Montgomery County*, 5 Op. MSBE 507 (1990) (affirming denial of transfer to program offering advanced German).

In this case, the committee evaluated all of the applicants using the specified criteria and found that given the limited capacity of the program of 100 students, Shilpi did not qualify for admission, but did qualify for placement in the waiting pool for the program. With regard to the two students who were taken out of the waiting pool and accepted into the program, it appears that the committee made that determination based on appropriate factors, including standardized test scores. The local board reviewed the factors that were considered in making these decisions and upheld the determination that Shilpi remain in the waiting pool for the program.

CONCLUSION

For all of these reasons, we find that the local board did not act arbitrarily, unreasonably, or illegally in this matter. We therefore affirm the decision of the Board of Education of Montgomery County.

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March 30, 1999