

AMANDA B.,

Appellant

v.

BOARD OF EDUCATION
BALTIMORE COUNTY,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 14-24

OPINION

INTRODUCTION

Appellant appealed the decision of the Board of Education of Baltimore County (local board) denying her son entry into a magnet program for the 2013-14 school year. The local board filed a Motion for Summary Affirmance maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellant responded and the Local Board replied.¹

FACTUAL BACKGROUND

Appellant's son, S.N., applied to the Advanced French Program at Sudbrook Magnet Middle School ("Sudbrook"), part of Baltimore County Public Schools ("BCPS"). He sought admission for the 2013-14 school year, which would have been his sixth grade year.² (Motion, Ex. 1). Sudbrook offers a variety of specialized programs in science, visual and performing arts, and world languages. In addition to Advanced French, students may also take Beginning French, Japanese, and Spanish. The Advanced French program offers immersion classes designed for students with an extensive background in French. Although Sudbrook offers multiple specialized programs, students may only apply to a single program at each school. There is no set limit on how many students may participate in the Advanced French Program and Sudbrook generally takes all of the students who qualify for admission. (Motion, Ex. 8 at T.7).

BCPS evaluates magnet program applicants in four categories based on a 100-point scale: report card grades (20 points), report card performance factors³ (20 points), a writing sample (10 points), and an audition/performance assessment or test (50 points). See *Magnet Middle Program Scoring Guidelines*, available at

¹ As part of this appeal, Appellant seeks to present new evidence regarding another applicant who was denied admission to the program and statistics that she maintains will support her case. Appellant does not explain how this new evidence is material or why she failed to offer it before the local board. Accordingly, we will not consider it. COMAR 13A.01.05.04C.

² Prior to applying for the magnet program, S.N. attended grades two to four at Baltimore International Academy, which included a French-immersion program. He was homeschooled for grade five.

³ Performance factors consider whether a student was rated as "needs improvement" in reading, writing and language use, mathematics, social studies, and science.

https://www.bcps.org/offices/omp/middle/scoring_guidelines.html. Students must receive 70 out of 100 points in order to be eligible for admission into a magnet program and no students who scored below 70 points were admitted into magnet programs for 2013-14. (Motion, Exs. 1, 8 at T.6). If more students seek to enter a program than there are available seats, there is a lottery. (Motion, Ex. 1).

S.N. received a total score of 67 out of 100 points, broken down as follows:

Report card grades:	20 out of 20 points
Report card performance factors:	20 out of 20 points
Essay:	4 out of 10 points
Magnet Assessment:	23 out of 50 points

S.N. was required to write the essay on the day of the magnet assessment and was allowed to pick from two potential writing topics. He was scored based on a rubric that considered whether he addressed the writing prompt; presented information in a clear and relevant manner; maintained a logical organization plan with an introduction and conclusion; used proper form; and minimized spelling and grammatical errors. His score reflected an essay that was not fully developed, lacked clarity, failed to use a clear organizational plan, and included a minimal amount of information and specific details. (Motion, Ex. 1).

The magnet assessment required S.N. to complete a “Language Aptitude Task” that assessed his ability to listen, speak, read, and write in French. The assessment introduces students to new vocabulary words and seeks to evaluate how well they can recall, pronounce, identify, and use these new words. (Motion, Ex. 1). The assessment is 15 minutes long and the assessor follows a script that is conducted in the same manner with all students. (Motion, Ex. 8 at T.17). The assessment was divided into six sections, one of which was not scored:

Section I (teaching phase – vocabulary):	5 out of 10 points
Section II (assessment phase – vocabulary):	3 out of 3 points
Section III (teaching phase- prepositions):	Not scored
Section IV (assessment phase – prepositions):	3.5 out of 8 points
Section V (assessment phase – incorporation of new material into prior knowledge orally):	6.5 out of 21 points
Section VI (assessment phase-writing):	5 out of 8 points
Total:	23 out of 50 points

(Motion, Ex. 1).

Kimberly Shinozaki, chair of the world languages department at Sudbrook, conducted S.N.’s assessment. On the first section, she stated that S.N. lost points because of errors in use of word gender, pronunciation, and recall; on the fourth section, he lost points based on missing prepositions and incorrect pronunciation; on the fifth section, he lost points for inaccuracy in relating details, inconsistent tense use and conjugation of verbs, and omitting or misusing prepositions; on the sixth section, he lost points for errors in spelling and preposition use. (Motion, Ex. 8, at T.19).

As a result of not scoring at least 70 points on his assessment, S.N. was denied admission. Appellant appealed to the superintendent's designee, Dr. Carol R. Batoff. Dr. Batoff met with Appellant and her son and reviewed S.N.'s file and the school system's policies on magnet admissions. Dr. Batoff confirmed that S.N.'s scores were calculated correctly, but did not discuss the specifics of why he was scored the way he was in particular categories. (Motion, Ex. 1)

Appellant appealed to the local board. She argued that the magnet assessment was highly subjective and fundamentally unfair and pointed to specific elements of the test where she felt her son unfairly lost points. She argued that, given her son's ability in French and his positive scores on other assessments, that the school system's assessment must be flawed. She maintained that her son performed well and met all of the assessment guidelines. Appellant argued that there was a conflict of interest in having Sudbrook develop an assessment for admission to its program and then score that assessment. She also claimed the appeals process was unfair because the individuals handling her appeal did not speak French and could not accurately review the assessment. (Motion, Exs. 2, 3).

The local board referred the appeal to a hearing examiner, who conducted a hearing on September 13, 2013. The hearing examiner considered testimony from Bryan Stoll, supervisor of the county's Office of Magnet Programs; Dr. Batoff, the superintendent's designee; Ms. Shinozaki, who conducted S.N.'s assessment; Christiane Rothbaum, a French instructor and native speaker of the language who taught S.N.; and Appellant. According to testimony at the hearing, approximately 11 students applied to the Advanced French program. Six of the students qualified for admission. (Motion, Ex. 8 at T.6, 10). During the hearing, Ms. Rothbaum explained that she reviewed the assessment with Appellant and then had S.N. repeat the exercises; as a result, she concluded the assessment had been "harshly graded" and said she would have scored S.N. higher. (Motion, Ex. 8 at T.25).

The hearing examiner issued his recommendation on September 18, 2013. He concluded that there were no deficiencies in the assessment process and that the school system correctly applied its existing policies. He found that Ms. Shinozaki was well-qualified to assess S.N. Although he acknowledged that S.N. was a good student, he concluded that S.N. did not have a strong enough knowledge of French to qualify for the advanced program. He stated that just because a different individual might have given S.N. a higher score did not mean that Ms. Shinozaki acted arbitrarily or unreasonably. He noted that allowing S.N. into the program would require the school system to make an exception to its policies, and that there was no basis for doing so. He recommended affirming the Superintendent's decision. (Motion, Ex. 9).

At Appellant's request, the local board heard oral argument on the appeal on November 5, 2013. (Motion, Ex. 12). On the same day, the local board issued an opinion and order stating that, upon its independent review of the record and the oral argument, that it was adopting the hearing examiner's findings of fact, conclusions of law, and recommendations. (Motion, Ex. 13).

This appeal to the State Board followed.

STANDARD OF REVIEW

This appeal concerns a controversy or dispute regarding the rules and policies of a local board. Accordingly, the local board's decision must "be considered *prima facie* correct" and upheld unless the Appellant proves that the local board's decision was arbitrary, unreasonable, or illegal. See COMAR 13A.01.05.05; *Robert and Robin C. v. Wicomico County Bd. of Educ.*, MSBE Op. No. 13-02 (2013).

LEGAL ANALYSIS

Appellant seeks to have S.N. attend the Advanced French program at Sudbrook or at least require the school system to let him take the assessment again. She raises nine principal issues, which we have divided into four general categories of complaint.

Failure to follow assessment procedures

Appellant argues that the school system failed to explain how it applied its scoring rubric to the grading of S.N.'s written essay. S.N. scored four out of 10 points, writing an essay that, among other things, "addressed the prompt, but with little development and a minimal amount of information and specific details." The hearing examiner's decision, adopted by the local board, notes that the essay was reviewed by an English teacher at Sudbrook, who was familiar with the scoring rubric and confirmed that the score was appropriate. We see a parallel between Appellant's challenge of the essay scoring and previous cases we have considered asking us to alter a student's grade. See *Caryn J. v. Baltimore County Bd. of Educ.*, MSBE Op. No. 10-24 (2010) (noting that the State Board does not review the merits of student grading decisions unless there are "specific allegations" about a lack of due process or a failure to follow procedures). Appellant generally disagrees with the score her son achieved, but has presented no evidence to counter the local board's claim that the rubric was applied equally and scored fairly.

Appellant also contends that the essay scoring rubric, provided to applicants, was too complicated for a fifth grader to understand. We note, however, that the scoring rubric was not the sole source of instructions. Prior to the assessment day, students received an explanation of what was required (a student "addresses topic, includes specific information, details and examples") and a sheet of "suggestions for writing a good essay." (Motion, Ex. 8, Sup. Ex. 3). We believe that these guidelines provided students with reasonable advance notice of what was expected.

Additionally, Appellant maintains that the school system did not follow its own procedures because it scored S.N. on factors other than his acquisition of new French vocabulary words during his magnet assessment. Contrary to Appellant's assertion, Sudbrook's description of the magnet assessment does not state that it only evaluates a student's use of the new vocabulary words. Instead, the assessment description states that students are asked to "recall, pronounce, identify, and utilize new vocabulary in four tasks that involve listening, speaking, reading, and writing skills." (Appeal, Ex. 22). While the focus may have been on how students perform with new vocabulary words, the assessment does not state that *only* the use of those words would be considered.

Unfair assessment procedure

Appellant argues that it was unreasonable to deduct more than one point from S.N.'s total score based on his multiple errors in pronouncing a particular word. She notes that had he not missed those points, he would have been eligible for the Advanced French program. The hearing examiner found that S.N. lost points on his magnet assessment based on mistakes he made in his use of prepositions, verbs, and general pronunciation. We understand Appellant's disappointment given that S.N. was only three points away from the cutoff. But even though "bright line rules sometimes appear to render a harsh result, it does not make their use illegal." *Robert and Robin C. v. Wicomico County Bd. of Educ.*, MSBE Op. No. 13-02 (2013).

Violations of due process

Appellant raises several issues that can generally be characterized as a failure to provide her with due process. She first faults the hearing examiner for not giving equal weight to her witnesses and argues that her evidence should have been given more weight in the final analysis.

Hearing Examiners are not required to give equal weight to all of the evidence and their failure to agree with an appellant's view of the evidence does not mean there was a lack of due process. "It is the Hearing Examiner's duty to weigh all of the evidence and issue a decision based upon the evidence the Hearing Examiner finds to be credible and relevant." *Diana Williams v. Baltimore County Bd. of Educ.*, MSBE Op. No. 13-20 (2013). A Hearing Examiner is "not obligated to rely upon information provided by the Appellant if the [Hearing Examiner] did not find it to be relevant or credible." *Id.* The Hearing Examiner summarized the exhibits presented by the parties and briefly outlined the parties' arguments. It is our view that the Hearing Examiner properly exercised his authority by giving greater or lesser weight to various pieces of evidence that he found relevant or credible.

Additionally, Appellant argues that her appeal was made more difficult because she was not allowed to speak with the assessor Ms. Shinozaki prior to the hearing and she could not introduce the assessment itself into evidence. Moreover, Appellant maintains that the school system acted improperly by limiting her to an in-person viewing of the assessment, not allowing her to be alone with the assessment materials, and implying that the assessment would be available at the hearing, thus encouraging her not to take detailed notes.

Appellant has cited to no rule, and we are unaware of one, that required Ms. Shinozaki to be made available (for a deposition or otherwise) prior to the hearing. *See* BCPS Internal Board Policy 8341 (outlining hearing examiner procedures). It was also not a violation of due process to prohibit the assessment from being entered into evidence or placing reasonable restrictions on its viewing. As this Board has previously stated, "[t]he school system cannot provide parents detailed information on the test it administers and risk invalidating the tool that it uses." *Shariah M. v. Prince George's County Board of Education*, MSBE Op. No. 13-17 (2013). The school system twice provided Appellant access to the materials and allowed her to take notes. During the hearing, Appellant appeared familiar with the contents of the assessment, and the assessor Ms. Shinozaki described the assessment's contents and answered questions from Appellant. This compromise maintained the security of the assessment while still allowing Appellant to mount

her appeal.

Conflict of interest and unfair advantage to Wellwood students

Appellant argues there was a conflict of interest because the school did not bring in an outside person to review the assessment and its accuracy during the appeals process. Review within the agency that made an adverse decision is a normal first step in the administrative review process. This is meant to allow an agency to “develop a factual record, to apply its expertise to the problem, to exercise its discretion, and to correct its own mistakes” in order to promote “accuracy, efficiency, agency autonomy, and judicial economy.” *Christopher W. v. Portsmouth School Committee*, 877 F.2d 1089, 1093-94 (1st Cir. 1989). It was not unreasonable or illegal to have Sudbrook staff review the assessment as part of the appeals process because they were the ones most familiar with the test and how it was conducted. As the appeal progressed, Appellant received the benefit of an outside party’s review when the local board referred the matter to a Hearing Examiner.

Appellant also argues it was improper for BCPS to allow Ms. Shinozaki, the person who developed the assessment, administer the test and review it for accuracy. In our view, there is nothing arbitrary, unreasonable, or illegal about Ms. Shinozaki’s role in that process. Schools with selective, rigorous magnet programs must have a way of determining which students are qualified to participate in their programs. As the test’s creator and chair of the world languages program at Sudbrook, Ms. Shinozaki would have been aware of what skills the assessment was meant to gauge and how well applicants performed. Likewise, it was not unreasonable for her to review her own work at the initial stage of the appeal because the assessment was conducted orally and her notes were the primary means for reviewing the scoring. Had she spotted an error, she could have corrected it and eliminated the need for further appeals.

Additionally, Appellant argues that the assessment process is biased towards students from Wellwood International Elementary School (“Wellwood”), a BCPS school that offers a French-language immersion program from kindergarten through fifth grade. Five of the six students admitted to the Advanced French program attended Wellwood. Appellant argues the magnet assessment is unfair because the Advanced French program was originally developed with Wellwood students in mind. She notes that the assessment is aligned with the Baltimore County curriculum and claims that this disadvantaged her son, who attended Baltimore City schools.

We observe that the assessment guidelines state that the Advanced French program is designed for students “with extensive French background (i.e. elementary immersion program or its equivalent).” (Motion, Ex. 8, Sup. Ex. 3). BCPS acknowledges that the Advanced French program was designed with students from Wellwood in mind. We see a difference, however, between students having an advantage and students having an *unfair* advantage. All students who wish to enter the Advanced French program must pass the assessment. It is not surprising that students who have been in a consistent French immersion program throughout elementary school, such as the students at Wellwood, would likely perform well on a French assessment. It is also not surprising that BCPS would have its programs aligned with its own curriculum. The advanced program, however, is not closed to students who did not attend Wellwood. In fact, one of the students admitted for the 2013-14 school year was not a Wellwood student and S.N.

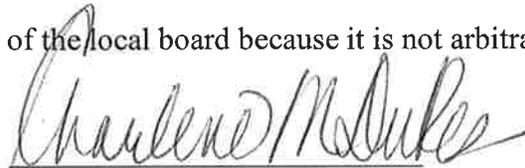
missed qualifying by only three points. We see no unfair advantage in favor of Wellwood students in the assessment process.

Summary

Appellant is clearly unhappy with the magnet assessment procedure and the score that her son received. But she has failed to meet her burden to demonstrate that BCPS acted in an arbitrary, unreasonable, or illegal fashion by denying her son entry to the program. S.N. scored less than the 70 points he needed to be eligible for the program. There is no indication that the local board did not follow its policies in reaching that decision. As we have previously stated, “[t]here is nothing arbitrary, unreasonable, or illegal about the local board following its established criteria and denying a student entry into the Magnet Program on that basis.” *Robert and Robin C. v. Wicomico County Bd. of Educ.*, MSBE Op. No. 13-02 (2013).

CONCLUSION

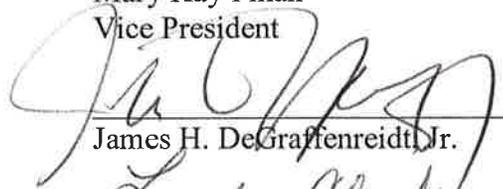
For all these reasons, we affirm the decision of the local board because it is not arbitrary, unreasonable, or illegal.



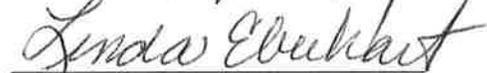
Charlene M. Dukes
President

Absent

Mary Kay Finan
Vice President



James H. DeGraffenreidt, Jr.



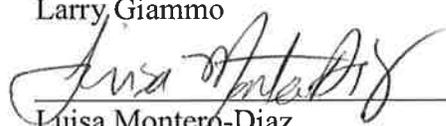
Linda Eberhart

Absent

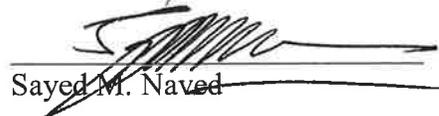
S. James Gates, Jr.

Absent

Larry Giammo



Luisa Montero-Diaz



Sayed M. Naved

Madhu Sidhu

Madhu Sidhu

Donna Hill Staton

Donna Hill Staton

Guffie M. Smith, Jr.

Guffie M. Smith, Jr.

May 20, 2014