

GEOFFREY W. AND DELESE L.,

Appellant

v.

BALTIMORE CITY BOARD OF  
SCHOOL COMMISSIONERS,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 14-40

## OPINION

### INTRODUCTION

Appellants appeal the denial of their request for their daughter's early admission to first grade at Federal Hill Preparatory School. The Baltimore City Board of School Commissioners ("local board") submitted a Motion for Summary Affirmance, maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellants responded to the motion and the local board replied.

### FACTUAL BACKGROUND

Appellant's daughter, G, was born April 17, 2008, making her eligible to attend kindergarten in the 2013-2014 school year and first grade in the 2014-2015 school year. Appellants enrolled G in the pre-kindergarten program at Federal Hill Preparatory School during the fall of 2012. At some point during November 2012, G was unofficially moved to a kindergarten class on recommendation of her pre-kindergarten teacher. G remained in the kindergarten class and completed kindergarten at the close of the 2012-2013 school year. Appellants subsequently submitted an application to the Baltimore City Public Schools ("BCPS") for early admission to first grade.

The local board maintains a procedure for early admission to kindergarten and first grade. Under the policy, children are eligible to apply for early admission to first grade if they will turn six between September 2<sup>nd</sup> and October 15<sup>th</sup> of the school year in which the child applies for entrance. The policy further notes that young children should feel "comfortable, competent, and confident" in their classroom setting. Early admission to kindergarten and first grade is only offered to students who demonstrate "exceptional ability in social, emotional, cognitive, and physical development." (Ex. 1).

On May 8, 2013, the BCPS's Office of Early Learning Programs ("ELP") advised Appellants that G was not qualified for early admission to the first grade because G's birthday was six months after the October 15 deadline and therefore G did not satisfy the age requirement under Baltimore City policy. (Motion, Ex. 1) BCPS agreed, however, to develop a differentiation plan for G, where she would be allowed to access the First Grade classroom and curriculum as

much as needed to address G's academic needs.<sup>1</sup> Appellants believed this was insufficient. (Ex. 1).

On July 12, 2013, Appellants appealed to BCPS the ELP decision denying G early admission to the first grade program. On August 1, 2013, after reviewing Appellant's appeal of the ELP's decision, Sonja Brookins Santelises, Chief Academic Officer and designee of the Interim Chief Executive Officer ("ICEO"), upheld the determination by the ELP that G was not eligible to be tested for early admission into the first grade. (Motion, Ex. 1)

On or about September 2, 2013, Appellants appealed to the local board. (Motion, Ex. 1) The board referred the matter to a hearing examiner, who determined the case without an evidentiary hearing, pursuant to local board policy BLA Section III.B.8. (Motion, Ex. 2).

On February 5, 2014, the Hearing Examiner returned a recommendation affirming the decision of the ICEO, that G was ineligible to be tested for early admission into the first grade. The Hearing Examiner stated that the Appellants had provided no legal support for their contention that the cut-off date for early admission to the first grade was illegal. The Hearing Examiner noted that Appellants' desired outcome would force a change in the local board's early admission policies. Citing the State Board precedent, the Hearing Officer noted that individuals may not use the administrative appeal process to force a change in local board policy unless the local board policy is illegal. (Motion, Ex. 4).

On March 11, 2014, the local board affirmed the Hearing Officer's recommendation. The local board noted that its early admission policy establishing a window of eligibility restriction was valid based on its similarity to policies of other Maryland school systems which have been upheld by the State Board. The local board also noted that G was ineligible to apply for early admission based on the established age restriction. Appellants subsequently filed this appeal.

### STANDARD OF REVIEW

In reviewing a local board's decision of its local policy, the decision of the local board is presumed to be *prima facie* correct. COMAR 13A.01.05.05A. The State Board will not substitute its judgment for that of the local board unless the decision is shown to be arbitrary, unreasonable or illegal. *Id.* The Appellants have the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.05D.

### LEGAL ANALYSIS

This case is an appeal of the local board's decision to deny G early entry to first grade. The local board argues that this case is moot because the 2013-2014 school year is over and G can no longer obtain early admission to first grade. A case is moot when there is no longer an existing controversy between parties, thus no longer any effective remedy that the courts or agency can provide. *In Re Michael B.*, 345 Md. 232, 234 (1997); *see also Kenneth F. v. Baltimore County Bd. of Educ.*, MSBE Op. No. 10-23 (2010); *Bonita Mallard v. Carroll County*

---

<sup>1</sup> There is no minimum age requirement for the second grade. Therefore G would likely be eligible to attend second grade in the 2014-2015 school year if she was determined to be skill ready. (Ex. 1).

*Bd. of Educ.*, MSBE Opinion No. 00-07 (2000). We concur with the local board that there is no effective remedy that this Board can provide here. The school year has ended and the opportunity for G to be admitted early to the first grade has passed.

We note, however, that a factor that contributed to the case being moot is the length of time that passed between when the Appellants filed the appeal with the local board, and the date the local board rendered its final decision in the matter. The Appellants submitted their appeal to the local board on September 12, 2013, the beginning of the school year for which they were seeking early entry. For some reason that is not addressed by either party and cannot be gleaned from the record, the local board did not render a final decision until March 11, 2014. By this time, the school year was headed toward its conclusion.

We also note that the circumstances leading to Appellant's early first grade entry request stem from the school system's decision to place G in kindergarten during the 2012-2013 school year. Although the local board now claims this was an error, the fact remains that the school system moved G from pre-kindergarten to kindergarten in 2012, essentially granting her early admission to kindergarten. It is only logical that Appellants would have expected the school system to continue G in the first grade after successfully completing the kindergarten program at her school of enrollment. None of this changes the fact, however, that the 2013-2014 school year is over, thus there is no effective remedy to be granted here.

Nevertheless, Appellants have raised the issue of the legality of the local board's early entry policy for first grade. They maintain that the window of eligibility restricting the early entry process to only those children who are of a certain age violates State regulation and is therefore illegal. Because this is an issue capable of repetition yet evading review, which is one of the factors considered in deciding whether a case is moot, we will address this argument herein. See *Lincoln Public Charter School, Inc. v. Prince George's County Public Sch.*, MSBE Op. No. 06-30 (2006).

The local board's policy restricting early admission is founded on two State regulations. The first establishes that a child must turn six by September 1 in order to enroll in first grade. COMAR 13A.08.01.02(C)(2). The second establishes that local boards shall create an opportunity for early admission to first grade for five year olds. COMAR 13A.08.01.02(C)(3). The Local Board adopted such a policy at JEC-RA II(2)(B)(1). (Ex. 1). For children turning six after September 1, the policy states that if the child turns six between September 2 and October 15 of the school year in which he or she seeks to enroll, he or she is eligible to apply for early admission to first grade. (Ex. 1). The policy then proceeds to an application process and a testing session for qualification for early admission. *Id.*

The issue of early admission to first grade is a matter of first impression before this Board. However, we have previously ruled on a similar issue concerning early kindergarten entry in *Kenneth F. v. Baltimore County Bd. of Educ.*, MSBE Op. No. 10-23 (2010). In *Kenneth F.*, the appellants also argued that the local board's bright line rule, which restricted the age of assessment for early admission to kindergarten, was so unreasonable that it was illegal. The appellants in *Kenneth F.* requested that Baltimore County Public Schools ("BCPS") assess their son, MT, for early admission to kindergarten. BCPS denied the request because MT would not

turn five years old until December 10, three months beyond the window of eligibility established by the local board's policy. This Board concluded that the local board's policy did not violate COMAR. *Id.*

In reaching that conclusion, we noted that the local board adopted its policy creating an age-limiting window of eligibility based on informed guidance from the Maryland State Department of Education ("MSDE"). The guidance from MSDE concluded that early admission was intended for children who closely missed the cut-off date for admission, but demonstrated capabilities that warrant early admission. The guidance stated that, therefore, "a local system may promulgate regulations with a reasonable time period beyond the September 1 admission date within which a child's birth date must occur in order to be considered for early admission to prekindergarten or kindergarten." The guidance also emphasized that COMAR regulations "merely require local school systems develop early admission policies. The content of such policies must be determined by the local boards...including establishing a time period beyond the actual admission date." *Id.*

In *Kenneth F.*, this board stressed that deference should be given to an administrative agency's interpretation of its regulations. We stated that, "[b]ecause an administrative agency's interpretation of its own regulation is given considerable weight and deference by reviewing courts (*Board of Physician's Quality Assurance v. Banks*, 354 Md. 59, 69 (1999)), it is our view that advice from the MSDE staff on the intent of its own regulation provides a reasonable basis for the policy adopted by the local board." *Id.*

The reasons set forth in *Kenneth F.* are equally applicable in this case. The guidance from MSDE, that the regulations merely require local boards to develop early admission policies but leave the content of those policies to the discretion of the local boards, is directly applicable to the contested policy in the present case. Because COMAR only requires that the local board develop a policy, which MSDE has interpreted as lawfully allowing for an age restriction for early entry eligibility, the local board's policy does not violate COMAR. Further, deference to the State Board's interpretation of COMAR continues to be a reasonable basis for supporting the policy adopted by the local board. Consistent with the State Board's opinion in *Kenneth F.*, the local board's policy is not arbitrary, unreasonable, or illegal.

Although we uphold the local board's decision here, we are becoming increasingly concerned about local board policies on early entry to prekindergarten, kindergarten and first grade that include age limiting windows of eligibility. The result in this case is that a student repeated kindergarten without having been assessed by the school system to determine if the student demonstrated "exceptional ability in social, emotional, cognitive and physical development" for early entry to first grade. Because such provisions are based on guidance from MSDE, this board intends to revisit the issue at some point in the future.

CONCLUSION

For the reasons stated above, we do not find the local board's early first grade admission policy to be illegal. Although the issue of G's early entry to first grade is moot, we understand that the school system provided G with enrichment during the 2013-2014 year and allowed her to attend first grade part time. We urge the local board to consider whether G should be admitted to the second grade for the 2014-2015 school year.

*Absent*

\_\_\_\_\_  
Charlene M. Dukes  
President

*Mary Kay Finan*  
\_\_\_\_\_  
Mary Kay Finan  
Vice President

*James H. DeGraffenreidt, Jr.*  
\_\_\_\_\_  
James H. DeGraffenreidt, Jr.

*Linda Eberhart*  
\_\_\_\_\_  
Linda Eberhart

*S. James Gates, Jr.*  
\_\_\_\_\_  
S. James Gates, Jr.

\_\_\_\_\_  
Larry Giammo

*Luisa Montero-Diaz*  
\_\_\_\_\_  
Luisa Montero-Diaz

*Sayed M. Naved*  
\_\_\_\_\_  
Sayed M. Naved

*Madhu Sidhu*  
\_\_\_\_\_  
Madhu Sidhu

*Donna Hill Staton*  
\_\_\_\_\_  
Donna Hill Staton

*Guffre M. Smith, Jr.*  
\_\_\_\_\_  
Guffre M. Smith, Jr.

July 22, 2014