

TIM AND SHERRI B.,
Appellant
v.
ANNE ARUNDEL COUNTY
BOARD OF EDUCATION,
Appellee.

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION
Opinion No. 13-48

OPINION

INTRODUCTION

The State Board received an appeal challenging the decision of the Anne Arundel County Board of Education (local board) denying Appellants' request that their daughter be allowed early entrance into kindergarten. The local board filed a Motion for Summary Affirmance maintaining that its decision should be upheld. Appellants did not respond to the motion although requested to do so by April 29, 2013.

FACTUAL BACKGROUND

Appellants' daughter, RB, was born on September 30, 2007, making her eligible to attend public school kindergarten in the 2013-14 school year. Because Appellants wanted RB to attend kindergarten during the 2012-13 school year, they submitted an application for early admission. (Appeal).

The early admission policy applies to four year old children who turn five from September 2nd through October 15. It requires the early entry applicant to score in the 8th stanine or better on a nationally normed achievement test and to score 125 or better on a nationally normed cognitive ability test. IFA-RA(C)(3)(b)(2). Anne Arundel County Public Schools (AACPS) utilizes a nationally normed achievement test known as the SESAT-1 and a nationally normed cognitive ability test known as the DAS-II. Normally, the SESAT-1 is administered to the applicant first and the DAS-II is administered if the applicant scores in the 8th stanine or better on the SESAT-1.

AACPS administered the SESAT-1 and RB scored in the 1st stanine. Because she did not meet the minimum requirement for the SESAT, AACPS did not administer the DAS-II. By letter dated June 12, 2012, the Principal of Solley Elementary School advised the Appellants that their application for early kindergarten entry was denied. (Wagner Letter).

Appellants appealed the early entry decision through the various levels of local review, including the Office of School Performance, Assistant Superintendent of Curriculum and Instruction, and the Deputy Superintendent. At each level, the decision-maker denied the early entry application based on RB's test results. (Bibeault Letter, 6/28/12; Kane Letter, 7/16/12; Liverman Letter, 8/16/12).

Appellants appealed to the local board. The local board referred the matter to a hearing examiner for review. The hearing examiner conducted a hearing on November 9, 2012. She issued a recommendation on December 14, 2012 advising the local board to deny the appeal. The local board adopted the hearing examiner's report and denied the Appellants' application for early entry to kindergarten for their daughter. (Local Board Order, 2/7/13).

This appeal ensued.

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 of that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.03E(1).

This case also involves a challenge to a local policy – the system-wide policy governing eligibility for early admission to kindergarten. When an administrative agency is acting in a manner which may be considered quasi-legislative in nature, the scope of review of that particular action is limited to assessing whether the agency was acting within its legal boundaries. *Department of Natural Resources v. Linchester Sand and Gravel Corp.*, 274 Md. 211, 223 (1975); *accord Adventist Health Care, Inc. v. Maryland Health Care Comm'n.*, 392 Md. 103, 117 n.12 (2006).

ANALYSIS

Although the 2012-13 school year is over, the case is not moot because the issue raised by Appellants regarding the early entry policy's eligibility requirement is a matter of important public concern and is likely capable of repetition yet evading review.

There is no legal right to attend kindergarten before age five. *See* Md. Code Ann., Educ. §7-101 (guaranteeing free public education to “[a]ll individuals who are 5 years or older and under 21.”). In order to enroll in kindergarten, a child must be age five by September 1st of the year of kindergarten entry. COMAR 13A.08.01.02B. Each local board of education is required, however, to adopt regulations permitting a four year old, upon request by the parent or guardian, to be admitted to kindergarten if the local superintendent of schools or designee determines that the child demonstrates capabilities warranting early admission. *Id.*

Accordingly, AACPS has developed a regulation to accommodate requests for early kindergarten entry for four year old children who turn five from September 2nd through October 15th of the school year for which they are requesting early entrance. The regulation allows early admission to kindergarten if the applicant scores in the 8th stanine or better on a nationally normed achievement test and attains a score of 125 or better on a nationally normed cognitive ability test. IFA-RA(C)(3)(b)(2).

Appellants disagree with the early entry policy's use of objective testing criteria as an eligibility requirement. Per State regulation, it is up to the local superintendent to determine if a

child demonstrates capabilities warranting early admission. COMAR 13A.08.01.02B. As to how that determination is made, we have previously stated that “it is within the discretion of the local board to determine the method by which it will assess students requesting early kindergarten entry.” *David and Adrienne G. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 09-19 (2009).

We dealt with a similar argument in *Dawn and Michael H. v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 12-11 (2012). In that case we acknowledged that the early entry policy was based on a bright line test in which the testing criteria determined eligibility if the student was not 5 years old on September 1. In upholding the early entry policy we stated that even though “a bright line test may appear ‘artificial at its edges’ or render a harsh result, that does not make the use of a bright line test illegal.” The same analysis applies here. The local board is free to use the SESAT-1 and DAS-II, and to set the cut off scores as it likes.¹

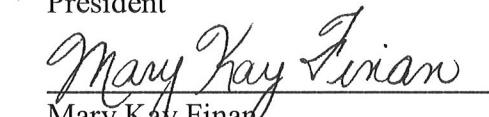
Although Appellants believe that their daughter demonstrates capabilities that warrant early admission to kindergarten, she did not attain a qualifying score on the SESAT-1. This Board has affirmed numerous cases in which a local board has denied early kindergarten entry based on the child’s failure to attain the required assessment scores. See *Tonya L. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 08-19 (2008); *Perseveranda B. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 08-01 (2008); *Kelly C. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 07-22 (2007); *Chintagumpala v. Montgomery County Bd. of Educ.*, MSBE Op. No 06-04 (2006).

CONCLUSION

For all of these reasons, we affirm the decision of the local board.



Charlene M. Dukes
President



Mary Kay Finan
Vice President



James H. DeGraffenreidt, Jr.

¹ To the extent that Appellants are challenging local board policy IFA-RA(C)(3)(b)(1) which requires a student to be five years old by September 1 to be eligible for kindergarten entry, that policy is based on State regulation. COMAR 13A.08.01.02B mandates that children entering kindergarten attain age five by September 1st of the year of kindergarten entry. The local board’s policy is consistent with that law.

Linda Eberhart

Linda Eberhart

Absent

S. James Gates, Jr.

Absent JM

Luisa Montero-Diaz

~~Sayed M. Naved~~

Sayed M. Naved

Madhu Sidhu

Madhu Sidhu

Donna Hill Staton

Donna Hill Staton

Guffrie Smith Jr. M.P.

Guffrie M. Smith, Jr.

September 24, 2013