

KELLY C.

Appellant

v.

MONTGOMERY COUNTY BOARD
OF EDUCATION

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 07-22

OPINION

INTRODUCTION

This is an appeal of a denial of an age waiver request for early entry into kindergarten filed by the parent of a child who is not eligible to begin kindergarten until the 2007-2008 school year. Appellant contends that her daughter is sufficiently able and skilled to enroll early in kindergarten for the 2006-2007 school year. The local board has filed a Motion for Summary Affirmance. Appellant has not filed an opposition to the motion.

FACTUAL BACKGROUND

State regulation requires that children must be 5 years old or older on September 1, 2006 to start public school kindergarten for the 2006-2007 school year. COMAR 13A.08.01.02(B). State regulation also requires each local board of education to adopt regulations permitting a 4 year old, upon request by the parent or guardian, to be admitted to kindergarten if the local superintendent of schools or the superintendent's designee determines that the child demonstrates capabilities warranting early admission. (*Id.*). Accordingly, Montgomery County Public Schools ("MCPS") has developed a policy to accommodate requests for early kindergarten entry for children whose birth dates occur within a six-week period beyond the prescribed September 1 admission date, provided those children demonstrate kindergarten readiness based on a screening and assessment by the MCPS Division of Early Childhood Programs and Services. (MCPS Regulation JEB-RB).

Appellant's daughter, E.C.,¹ was born on September 20, 2001, and turned 5 on September 20, 2006, making her eligible to attend public school kindergarten in the 2007-2008 school year. Because Appellant wanted E.C. to attend kindergarten at Woodfield Elementary School ("Woodfield") for the 2006-2007 school year, on April 28, 2006, Appellant submitted an application for E.C. to gain early entry. (Letter of Appeal to State Board, p. 1).

On April 28, 2006, E.C. was screened and assessed at Woodfield. Gayle Starr, Acting Principal of Woodfield, advised Appellant that E.C. did not meet the established criteria warranting early admission to kindergarten. (Letter from Starr, 5/3/06). Ms. Starr advised Appellant that she

¹ Appellant's daughter is referred to as E.C. throughout this memorandum.

could appeal the decision by submitting “a written letter of appeal” to the Superintendent’s designee, Mr. Larry A Bowers, the Chief Operating Officer (“COO”) for MCPS. (*Id.*).

Appellant did not file a formal letter of appeal. After several phone calls with Appellant, Ms. Elaine Lessenco, a hearing officer for Mr. Bowers, accepted the phone calls as an appeal. (Hearing Officer Report). During their conversations, Appellant expressed concerns about the manner in which the assessments were administered. Appellant contended that E.C. was “broad-sided” and was not adequately prepared for the eight-center kindergarten orientation and an hour-long assessment to all be completed on the same day. (*Id.*).

Ms. Lessenco investigated the appeal. She reviewed all of the available information, including the assessments administered by the elementary school. She noted that E.C. did not meet any of the criteria in the six required areas. She reported the following scores:

	<u>E.C.’s Score</u>	<u>Acceptable Score</u>
Record of Oral Language	8	10
Letter Identification	14	45
Concepts of Print	7	10
Mathematics Assessments	11	14
Visual Motor Skills	2	3
Independent Task with Multi-Step Directions	4	6

(*Id.*). She also noted the following comments from the Kindergarten Orientation Observation Form: “Mom was at the table. She paraphrased directions and cued [E.C.]”; “Recognized most numbers”; “Mom helped with all of the activities”; and “[E.C.] did not work independently.” (*Id.*). Ms. Lessenco also confirmed with Ms. Starr that Appellant was present during the orientation and assessment, unlike other cases reviewed. (*Id.*).

After reviewing the information and conferring with Ms. Janine Bacquie, Director of the Division of Early Childhood Programs and Services, and with Ms. Pamela Prue, former elementary school principal, Ms. Lessenco concluded that E.C. should not be approved for early entrance to kindergarten based on E.C.’s “failure to demonstrate above-average performance and development, as required for early entrance to kindergarten.” (*Id.*). Mr. Bowers concurred with the hearing officer’s recommendation and denied Appellant’s request for early entry. (Letter to Appellant, 8/8/06).

Appellant appealed the denial of her request to the local board. In her appeal, Appellant stated that Ms. Lessenco’s memorandum to Mr. Bowers was “misleading, outright inaccurate, grossly incomplete, misrepresentative, and personally offensive.” (Attachment to Complaint form the Public). Appellant also submitted a report from Dr. Marcia R. Wolf, a clinical psychologist, who assessed E.C. and determined that she was ready to enter kindergarten. (*See* Letter to West with

attachment, 9/14/06).

The Superintendent responded to the appeal by memorandum to the local board. He noted that although Dr. Wolf recommended E.C. for early placement in kindergarten based on her assessment, Dr. Wolf failed to provide test protocols or data to substantiate her findings. He found Dr. Wolf's letter "insufficient to determine that [E.C.] has above-age-level skills that would warrant early entrance to kindergarten." (Memorandum from Weast). Based on E.C.'s failed to meet the criteria for any of the six areas of assessment, the Superintendent recommended that the Chief Operating Officer's decision be upheld. (*Id.*).

The local board affirmed the decision of the Chief Operating Officer denying E.C. early entry to kindergarten for the 2006-2007 school year. It stated the following in its opinion:

[T]he State Board of Education has set September 1st as a date by when students are age-eligible for kindergarten. In doing so, the State has concluded that students with a later birthday are presumed not to be socially, educationally, or emotionally ready for the literacy-based instructional program offered in public kindergarten now provided on a full-day basis throughout our school system. Recognizing that there will be some students who will be exceptions to the rule, the Board of Education of Montgomery County's current policy for early entrance to kindergarten, consistent with State regulation, allows for screening and assessment of certain children born within six weeks of the mandated date of entry of September 1. [E.C.] was assessed in accordance with that procedure and using the same criteria applied to all other similarly-situated children. The results of the assessment indicate that she does not meet the criteria for early entrance to kindergarten. In addition, the Board considered the information submitted by Dr. Wolf and her recommendation. As noted, Dr. Wolf did not provided test protocols or data to support her recommendation. The information submitted by Dr. Wolf does not support a finding that the decision to deny early admission is arbitrary or capricious. The record does not contain evidence to warrant overturning the decisions made below.

(Local Board Decision, p.1-2).

This appeal followed.

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 for that of the local board unless the decision is arbitrary, unreasonable, or illegal.

ANALYSIS

Procedural Issues

Appellant asserts that MCPS violated E.C.'s appeal rights by failing to follow its own procedures and time constraints as outlined in its policies and regulations. (Letter of Appeal to State Board, p. 2). Principal Starr's written decision denying E.C. early entrance into kindergarten was dated May 3, 2006. Appellant then had 15 days to file a written appeal pursuant to MCPS Regulation KLA-RA. The written appeal was not received by the school system until September 7, 2006, more than four months after the principal's decision. Nevertheless, the school system processed Appellant's appeal, providing her with all levels of review in a timely fashion. Any delay was caused by the Appellant, not MCPS. Moreover, any additional delay during her appeal at the local board level was due to Appellant submitting additional material more than a week after she had filed her appeal with the local board. Appellant has presented no evidence that MCPS failed to follow its own procedures thereby causing delay.

Merits

Appellant maintains that her daughter should have been admitted for early entry to kindergarten. She claims that that the school system is using her daughter's appeal "as a political procrastination stunt in an effort to make [E.C.] the punch line for new procedure. . . demonstrated by repeated attempts on the part of MCPS to discredit, [Appellant], [E.C.], and Dr. Wolf."

The MCPS screening procedures assess "academic, social, emotional and physical maturity, motor development, and learning skills" using "standardized instrument(s), observational and MCPS primary assessments completed by staff, and information from parents." JEB-RB(B)(5)(b). Here, E.C. did not meet any of the early entry criteria for the six areas of assessment. In addition, E.C. did not work independently and waited for help and cues from the Appellant. Although Appellant believes that her daughter demonstrates skills and behaviors for school readiness, we find that it was reasonable for the school system to conclude that her performance during the screening process demonstrated that she was not ready for kindergarten. *C.f. Chintagumpala v. Montgomery County Board of Education*, MSBE Opinion No. 06-04 (March 1, 2006). Appellant provides no evidence that E.C. was singled out by MCPS.

Objections to Statements in Hearing Officer Report

Appellant objects to Ms. Lessenco's failure to mention that kindergarten orientation took place in combination with the assessment process. We find it doubtful that there was a need for Ms. Lessenco to mention a process with which she and the administrative staff were familiar. Furthermore, Appellant has provided no evidence that this fact impacted the denial.


Appellant also objects to Ms. Lessenco's statement that Appellant was present for E.C.'s assessment "in contrast with all other cases reviewed." Appellant does not dispute that she was present for the assessment, rather she disputes Ms. Lessenco's comparison to other cases because of her familiarity with another parent who also sat through the assessment process. The local board maintains that the assessments are normally conducted without the presence of parents. Regardless, what seems material here is not that Appellant was present and other parents are usually not, but the manner in which E.C. handled her mother's presence during the assessment as set forth in the Orientation Observation Form.

Appellant also argues that Ms. Lessenco provided incomplete information to the local board because she failed to mention that E.C. had two siblings enrolled in Woodfield and that Appellant has a current health crisis that is impacting her family. These arguments lack merit. The fact that E.C. has two siblings at Woodfield has no bearing on this appeal as E.C. simply did not meet the assessment criteria. Furthermore, the local board was aware of the Appellant's health condition at the time it rendered its decision because this information was contained in the Appellant's appeal letter.

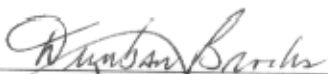
Appellant also argues that Ms. Lessenco misrepresented information to the local board by stating that Appellant did not submit a timely appeal, even though the staff at Woodfield could confirm Appellant's "expressed intention to appeal [E.C.'s] denial for early entrance into kindergarten." This argument is irrelevant. Appellant's appeal was processed at all levels of review within the school system.

CONCLUSION

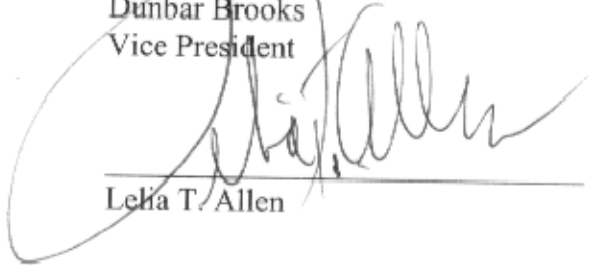
In light of the record in this case, we find that the decision of the local board was not arbitrary, unreasonable or illegal. Accordingly, we affirm the local board's denial of Appellant's request for E.C. to be admitted early to kindergarten.



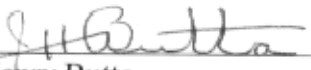
Edward L. Root
President




Dunbar Brooks
Vice President



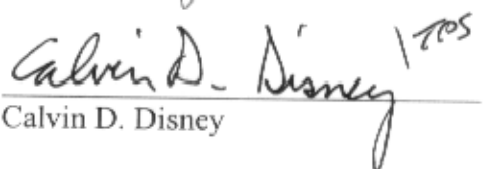
Leha T. Allen




J. Henry Butta



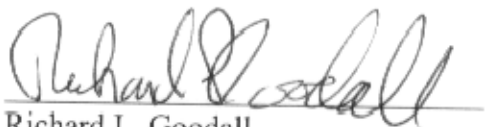
Beverly A. Cooper



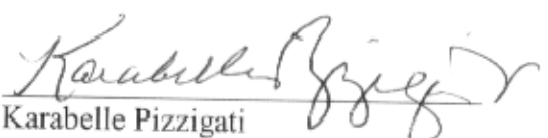
Calvin D. Disney




Charlene M. Dukes



Richard L. Goodall



Karabelle Pizzigati



Maria C. Torres-Queral



David F. Tufaro

May 30, 2007