

CATHERINE D.,

Appellant

v.

MONTGOMERY COUNTY BOARD
OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

Opinion No. 08-55

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 2009-2010 school year. The Montgomery County Board of Education (local board) has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal because the child did not meet the criteria for kindergarten readiness. The Appellant has filed a response to the Motion.

FACTUAL BACKGROUND

Appellant's daughter, K.D., was born on September 26, 2003, and turned 5 on September 26, 2008, making her eligible to attend public school kindergarten in the 2009-2010 school year. Because Appellant wanted K.D. to attend public kindergarten at Fairland Elementary School (Fairland) for the 2008-2009 school year, Appellant submitted an application for K.D. to gain early entry.

On April 29, 2008, the school system screened and assessed K.D. at Fairland. The school principal advised Appellant that K.D. did not meet the established criteria warranting early admission to kindergarten.

Appellant appealed the denial of early admission. The matter was referred to hearing officer, Elaine Lessenco, who investigated the appeal. She reviewed all of the available information, including the assessments administered by the elementary school. She noted that K.D. met the following four out of six areas of assessment: Record of Oral Language, Letter Identification, Visual Motor Skills, and Independent Task with Multi-Step Directions. K.D. failed to meet the criteria in two of the areas, Concepts About Print and the Mathematics Assessment. For Concepts About Print, K.D. scored eight points out of an acceptable score of ten or more points. For the Mathematics Assessment, she scored eleven points out of an acceptable score of fourteen or more points. (Hearing Officer Report).

After reviewing the information and conferring with Ms. Janine Bacquie, Director of the Division of Early Childhood Programs and Services, Ms. Lessenco concluded that K.D. should not be approved for early entrance to kindergarten because she failed to meet the standard of acceptance in all six areas of assessment, as required for early entrance to kindergarten. Ms. Lessenco recommended, therefore, that Appellant's request be denied. (*Id.*). Larry A. Bowers, Chief Operating Officer and the superintendent's designee, concurred with the Ms. Lessenco's recommendation and denied Appellant's request for early entry. (Bowers Letter, 6/13/08).

Appellant appealed the denial of her request to the local board. In her appeal, Appellant included letters from the directors of the preschools K.D. had attended, preschool progress reports and samples of K.D.'s work. (Letter of Appeal, 6/18/08). The letters from the preschool directors described K.D. as being on target with the developmental goals for her age group and expressed the view that she was ready for kindergarten. (Singh and Sullivan Letters).

In a memorandum to the local board, the superintendent recommended denial of Appellant's early kindergarten entry request. He stated that although K.D. had developed a good number of skills, the information provided by Appellant did not demonstrate the above age level skills required for early entrance to kindergarten. He noted the two areas K.D. failed to meet on the school system's assessment. (Superintendent's Memorandum).

The local board affirmed the decision of the Chief Operating Officer denying K.D. early entry to kindergarten for the 2008-2009 school year. 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. COMAR 13A.01.05.03E(1).

ANALYSIS

Denial of Early Kindergarten Entry Request

There is no legal right to attend kindergarten before the age of five. *See* Md. Code Ann., Educ. § 7-101 (guaranteeing a free public education to "[a]ll individuals who are 5 years old or older and under 21."). In order to enroll in kindergarten, a child must be 5 by September 1 of the year of kindergarten entry. COMAR 13A.08.01.02B. Each local board of education is required, however, 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.* Thus, whether or not a child is granted early entry is within the discretion of the school system.

Accordingly, Montgomery County Public Schools ("MCPS") has developed a regulation 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. The MCPS screening procedures assess "academic, social, emotional and physical maturity, motor development, learning skills, and capabilities warranting early admission" using "standardized instrument(s), observational and MCPS primary assessments completed by staff, and information from parents." MCPS Regulation JEB-RB(B)(5)(b).

Appellant and K.D.'s preschool teachers believe that K.D. demonstrates skills and behaviors for school readiness. Although K.D. scored well on the two missed portions of the assessment, she nevertheless failed to attain acceptable scores in those two areas to satisfy the school system's early entry criteria. We find that it was reasonable for the school system to conclude that K.D.'s performance during the assessment and screening process demonstrated that she was not ready for early entrance into kindergarten. 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).

Appellant has asked that K.D. be permitted to take the assessment again because her skill level has increased since the time the school system assessed her in April. MCPS does not retest students seeking early admission. MCPS tests all children seeking early admission within the same general time frame. The scores are compared to the standards set in each area of assessment. It would be unfair for a child to retake the assessment after gaining additional months of maturity and skills, and after becoming more familiar with the test.

Miscellaneous Issues

In her appeal, Appellant maintains that rather than responding to the issues raised in the appeal, Ms. Lessenco's report and the superintendent's recommendation merely repeated the information that she had submitted. Ms. Lessenco's report repeated information that Appellant had submitted as part of the summary of the investigation in order to report as fully and as accurately as possible. The report also provided the basis for Ms. Lessenco's recommendation not to grant early entry to K.D. The same is true of the superintendent's recommendation.

Appellant takes issue with the fact that Ms. Lessenco and the local board failed to address her request that they consider input from Terri Schwartz, the kindergarten team leader at Fairland. Neither Ms. Lessenco nor the local board specifically addressed the issue so there is no way to know if input from Ms. Schwartz was considered or what it may have been. Nonetheless, it is the Appellant's burden to show that early entry should have been granted. If there was specific information Appellant wished Ms. Lessenco or the local board to consider, it was up to her to submit it. Moreover, any input from Ms. Schwartz could not negate K.D.'s failure to pass

two of the areas of assessment.

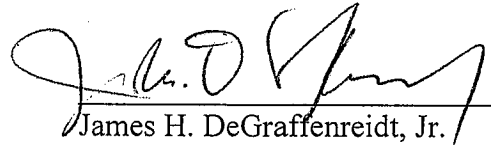
Along similar lines, Appellant also claims that she never received a clear basis for the denial of her request. We disagree. Mr. Bowers' adopted Ms. Lessenco's recommendation that the request be denied because K.D. failed to meet the standard of acceptance in all six areas of assessment as required for early entry to kindergarten. (Bowers' Letter). The superintendent provided the same reason in his recommendation to the local board. (Superintendent's Memorandum). The local board also relied on this reason for its denial. (Local Board Decision). Thus, at each level, the decision maker provided a clear explanation of the reasons for the denial.

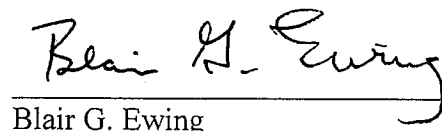
Appellant argues that the local board unduly delayed issuing its written decision until just before the start of school. The local board considered Appellant's case at its July 28, 2008 meeting and voted to uphold the decision not to grant early admission. Because the local board would not be meeting again until August 21, 2008, just five days before the start of the school year, and would not be able to draft and sign a written decision before that time, Appellant received notification of the local board's decision by phone on July 29, 2008. (Local Board's Motion, pp. 5-6). We do not perceive any undue delay. Rather, the local board extended a courtesy to Appellant so that she would know K.D.'s status as soon as possible.

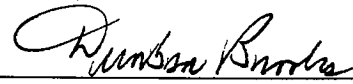
Appellant raises her concern that the superintendent's recommendation was predetermined without review of her appeal materials based on the fact that the cover letter transmitting the superintendent's response to the appeal was dated July 11, 2008, three days before the superintendent's July 14, 2008 memorandum. The cover letter does not make any mention of the substance of the superintendent's recommendation. It merely advised Appellant that the recommendation was included in the mailing. It is more likely that the cover letter was misdated or prepared in advance of receiving the superintendent's recommendation.

CONCLUSION

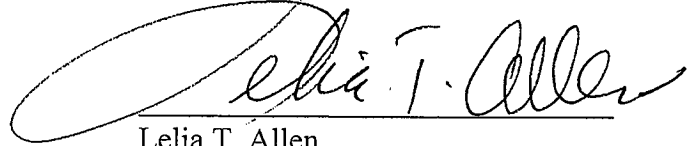
In light of the record in this case, we find that the decision of the local board was not arbitrary, unreasonable or illegal. Accordingly, we affirm the local board's denial of Appellant's request for K.D. to be admitted early to kindergarten.


James H. DeGraffenreidt, Jr.
President

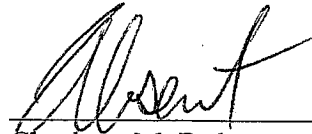

Blair G. Ewing
Vice President



Dunbar Brooks



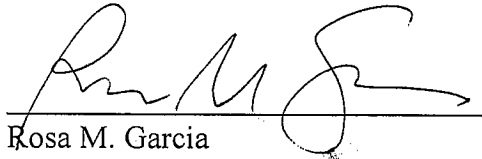
Lelia T. Allen



Charlene M. Dukes



Mary Kay Finan



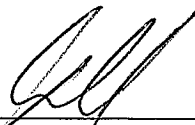
Rosa M. Garcia



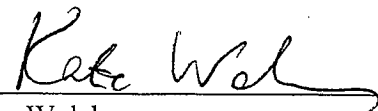
Richard L. Goodall



Karabelle Pizzigati



Ivan C.A. Walks



Kate Walsh

December 17, 2008