

DAVID & ADRIENNE G.,

Appellants

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 09-19

OPINION

INTRODUCTION

This is an appeal of a denial of an age waiver request for early entry into kindergarten filed by the parents 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 early kindergarten entry. The Appellants have filed a response to the Motion. The local board has filed a reply to Appellants' response.

FACTUAL BACKGROUND

Appellants' daughter, E.G., turned 5 on September 2, 2008, making her eligible to attend public school kindergarten in the 2009-2010 school year. Because Appellants wanted E.G. to attend public kindergarten at Wyngate Elementary School (Wyngate) for the 2008-2009 school year, Appellants submitted an application for E.G. to gain early entry.

On May 5, 2008, Montgomery County Public Schools (MCPS) screened and assessed E.G. at Wyngate. The school principal advised Appellants that E.G. did not meet the established criteria warranting early admission to kindergarten. (Leister Letter, 5/9/08).

Appellants appealed the denial of early admission. The Superintendent's Designee referred the matter to Hearing Officer, Elaine Lessenco, who investigated the appeal. Ms. Lessenco reviewed all of the available information. She noted that E.G. met only two of the six areas of the school system's assessment: Record of Oral Language and Independent Task with Multi-Step Directions. E.G. failed to meet the criteria in the other four areas. She received the following scores: 36 out of 45 points for Letter identification; 8 out of 10 points for Concepts About Print; 13 out of 14 points for the Mathematics Assessment; and 2 out of 3 points for Visual Motor Skills. Comments on the assessment and observation form indicated that E.G. was quiet, did not meet all benchmarks, did not interact with the other children, and did not respond to questions asked about the story despite being attentive while it was read. (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 E.G. should not be approved for early entrance to kindergarten because she failed to meet the standard of acceptance in the required six areas of assessment. Ms. Lessenco recommended, therefore, that Appellants' request be denied. (*Id.*). The Superintendent's Designee, concurred with the Ms. Lessenco's recommendation and denied Appellants' request for early entry. (Bowers Letter, 6/16/08).

Appellants appealed the denial of their request to the local board. In their appeal, Appellants included letters of recommendation from E.G.'s preschool teacher and a private clinical psychologist who had administered her own assessments. Appellants maintained that E.G.'s high rankings on the privately administered tests should be given more weight than E.G.'s score on the MCPS assessment. (Letter of Appeal to Local Board, 7/15/08).

In a memorandum to the local board, the superintendent responded to the appeal, stating as follows:

With their appeal to the Board of Education, [Appellants] enclosed letters from [E.G.'s] preschool teacher, Ms. Karen Hutchinson, and Dr. Anne B. Thompson, clinical psychologist. Ms. Hutchinson reported her belief that [E.G.] is developmentally and emotionally ready for kindergarten, and that she would be bored with another year of preschool. Dr. Thompson reported that she had administered the Brigance K & 1 Screen to [E.G.], who earned 90 of 100 points, placing her in the "High Kindergarten" recommended category, and elected subtests from the WPPSI-III, showing [E.G.] with advanced vocabulary skills, superior verbal abstract reasoning, and average to high average visual motor skills.

Ms. Laura Liebling, school psychologist, reviewed Dr. Thompson's report. She noted that only selected subtests of the WPPSI-III were administered, without standard scores or percentile ranks for the five composites. She further noted that [E.G.] was outside the age range for which the Brigance K & 1 Screen is standardized, and Dr. Thompson did not include standard scores, percentile ranks, or cut-off scores. Although Dr. Thompson's report indicates that [E.G.] had good language skills, attention, and cooperation, it does not overcome the results of the MCPS assessment, in which [E.G.] did not meet the established criteria for four of the six areas.

(Superintendent's Memorandum, 8/6/08). Given the rigorous nature of the kindergarten

curriculum and E.G.'s failure to meet the established criteria in all six areas of the MCPS assessment, the Superintendent recommended denial of Appellant's early entry request. (*Id.*).

The local board affirmed the decision of the Superintendent's Designee denying E.G. 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

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, 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).

Although Appellants believe that E.G. demonstrates skills and behaviors for school readiness, E.G. failed to attain acceptable scores in four areas of the school system's assessment. Comments on the assessment form indicated that E.G. was quiet, did not meet all benchmarks, did not interact with the other children, and did not respond to questions asked about the story despite being attentive while it was read. (Hearing Officer Report). While E.G. scored well on the *Brigance K & I Screen* and on portions of the *WPPSI-III*, these tests are not the measure of early kindergarten entry for MCPS. Rather, MCPS requires that candidates for early entry demonstrate above age level skills by attaining acceptable scores in all areas of the school system's assessment. We therefore find that it was reasonable for the school system to conclude

that E.G.'s performance during the assessment and screening process demonstrated that she was not ready for early entrance into kindergarten. See *Theresa C. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 08-54 (2008); *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).

Appellants maintain that the local board should have given determinative weight to the private testing done by Dr. Thompson, which they believe represents "industry best practice results." First, it is within the discretion of the school system to determine the method by which it will assess students requesting early kindergarten entry. There is no legal mandate for a school system to use one type of test over another. Second, the local board considered Dr. Thompson's report in evaluating E.G.'s application. The school psychologist reviewed the test results and noted shortcomings with Dr. Thompson's testing. The local board found that Dr. Thompson's results failed to overcome the results of the MCPS assessment. There is nothing arbitrary or unreasonable about that decision.

Appellants also argue that the local board failed to follow MCPS Regulation JEB-RB (III.B.3.b) which allows parents to submit optional items as part of the application, including formal student evaluations completed by outside professionals. Appellants fail to explain, however, the manner in which the local board violated the provision. Based on our review of the case, we do not find any violation. Appellants submitted evaluations from outside professionals in their appeal to the local board. The local board considered the materials even though they were not part of the initial application.

Appellants also argue that their case is different from other cases in which the State Board has affirmed the denial of early kindergarten entry because the other cases did not involve assessments by experts in kindergarten readiness who employed "industry best practice tools and measurement techniques." While many of the State Board's decisions in early entry cases do not involve private assessments of the child, there are some that do. For example, in *Tonya L. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 08-19 (2008), the parents had submitted a letter from a doctor at the Children's National Medical Center who had worked with the family for several months and had completed a document which reported the child's abilities in math, literacy, language, approaches to learning, science, and creative arts, the child's social and emotional status and physical health. In *Theresa C. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 08-54 (2008), the parents submitted the child's score on the nationally administered Kindergarten Readiness Test in which the child scored in the 91st percentile. In both cases, the State Board found that it was not arbitrary, unreasonable or illegal for the local board to deny early kindergarten entry based on the child's performance on the MCPS assessment.

Appellants also argue for changes in the MCPS early kindergarten entry process. Some of the changes they suggest are for nationally administered tests to be the benchmark for early admission, to have parents present while their child is assessed by MCPS, and to have the test available in advance. While Appellants have a right to urge the local board to change school

system policies and procedures, they may not use the appeal process to do so. *See Montgomery v. Howard County Bd. of Educ.*, MSBE Op. No. 04-35 (2004); *Astrove v. Montgomery County Bd. of Educ.*, MSBE Op. No. 02-14 (2002).

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 Appellants' request for E.G. to be admitted early to kindergarten.

James H. DeGraffenreidt, Jr.
James H. DeGraffenreidt, Jr.
President

Blair G. Ewing*
Vice President

Dunbar Brooks
Dunbar Brooks

Charlene M. Dukes
Charlene M. Dukes

Mary Kay Finan
Mary Kay Finan

Rosa M. Garcia*

Richard L. Goodall *gs*
Richard L. Goodall

Karabelle Pizzigati *gs*
Karabelle Pizzigati

Donna Hill Staton *gs*
Donna Hill Staton

Ivan C.A. Walks *gs*
Ivan C.A. Walks

Kate Walsh *gs*
Kate Walsh

June 23, 2009

* Both Blair G. Ewing and Rosa M. Garcia deliberated on the appeal but resigned from the State Board before this Opinion was issued.