

D. H.

Appellant

v.

MONTGOMERY COUNTY BOARD
OF EDUCATION

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 07-17

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 2007-2008 school year. Appellants contend that their son 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 maintaining that its decision is not arbitrary, unreasonable, or illegal because the child did not meet the criteria for kindergarten readiness. Appellants have filed a response to the local board's 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.08.01.02B. 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).

Appellants' son, T.H.,¹ was born on September 3, 2001 and turned 5 on September 3, 2006, making him eligible to attend public school kindergarten in the 2007-2008 school year. Sometime during the 2005-2006 school year, the mother contacted Woodfield Elementary School ("Woodfield"), the school T.H. would attend,² to inquire about the process for kindergarten

¹ Appellants' son is referred to as T.H. throughout this memorandum.

²T.H.'s older sister attended kindergarten at Woodfield last year.

admission. School staff advised her at that time that her son would be eligible to attend kindergarten in the 2007-2008 school year, but that she could apply for early kindergarten admission. (Affidavit of Dawn West). Appellants pursued that option.

By letter dated March 17, 2006, Gayle J. Starr, Acting Principal of Woodfield, advised Appellants that T.H. was to report to Woodfield on April 28, 2006 for "Kindergarten Orientation." T.H. reported to Woodfield on that date, at which time he was screened and assessed for early kindergarten admission. (Hearing Officer Report, p.1). Also at that time, the mother submitted T.H.'s "Application for Early Entrance," a "Parent Checklist," and a "Wellness Verification Form." (Application for Early Entrance).³ She noted in the application that D.T. had attended day care offering "educational enhancements" such as teaching colors, shapes, arts and crafts, potty training, and computers. She also highlighted skills that she believes demonstrate T.H.'s readiness for kindergarten. Further, she stated that T.H. has learned a lot from his older sister. (*Id.*). Ms. Starr advised Appellants that T.H. "did not meet the established criteria warranting early admission to kindergarten." (Letter from Starr, 5/5/06).

Appellants appealed the denial of early admission to Larry A. Bowers, Chief Operating Officer, acting as the superintendent's designee. (Letter to Larry Bowers, 5/15/06). The father stated that T.H. is shy around people he does not know and that no consideration was given to the fact that T.H. did not know the people testing him. He also stated that he and his wife were unaware of the contents of the test and that "[k]nowing the parameters of the screening would have afforded [them] the opportunity to better prepare [T.H.]." (Letter from D.H., 5/15/06).

Mr. Bowers assigned the matter to hearing officer, Elaine Lessenco, who investigated the appeal. Ms. Lessenco reviewed all of the available information, including the assessments administered by the elementary school. She noted that T.H. met the criterion for Record of Oral Language, but did not meet the criteria for the other five areas. She reported the following:

	<u>T.H.'s Score</u>	<u>Acceptable Score</u>
Letter Identification	6	45
Concepts about Print	1	10
Mathematics	3	14
Visual Motor Tasks	2	3
Independent Task w/Multi-Step Directions	0	3

(Hearing Officer Report). She also noted some of the following comments recorded on the Kindergarten Orientation Observation Form: "Did not want to complete tasks;" "Worked before

³The local board maintains that these documents were previously sent to Appellants in the same packet that included that standard kindergarten orientation letters. (Motion, p.3; Dawn West Affidavit). Appellants maintain that they did not receive this information until April 28, 2006. (Appellants' Affidavit).

directions were given;" "Watched mom for cues;" "Unable to sort by color, shape, or size;" "Kept saying the cutting activity was too hard" and "refused to complete the task;" "While reading the Concepts About Print book, Shoes, [T.H.] made grunting noises" said "I don't want to do it" and "got up from the table and walked away" and "kept refusing." Ms. Lessenco also stated that none of the applicants know the evaluators or receive information about the contents of the assessments ahead of time. (*Id.*). After reviewing the information and conferring with Ms. Janine Bacquie, Director of the Division of Early Childhood Programs and Services, Ms. Lessenco concluded that T.H. should not be approved for early entrance to Kindergarten. (*Id.*). Mr. Bowers concurred with the hearing officer's recommendation and denied Appellants' request for early entry.

Appellants appealed the denial of their request to the local board. In their appeal, Appellants reiterated their concerns about their son's shyness around strangers and his lack of familiarity with the evaluator. They again raised the issue about lack of advance notice of the test content so that they could give T.H. "clues as to how he should behave during the test." They questioned whether any applicant passed the test for early admission and whether the same assessment is given countywide. Appellants asked that T.H. be retested or that the local board grant a hearing to receive evidence of T.H.'s capabilities. (Letter from Cohen, 7/7/06).

The Superintendent responded to the appeal by memorandum to the local board. He supported the hearing officer's statement that all students were tested under the same conditions, with strangers conducting the evaluation. He also stated that providing the parents with information about the test or retesting the child would invalidate the test results. He further noted that although T.H.'s preschool teacher believes he is ready for kindergarten, a review of the assessment shows that he demonstrated "a number of social/emotional problems in addition to his low scores on five of the six areas of assessment." The superintendent concluded that there was insufficient evidence that T.H. demonstrated above-average performance and development, as required for early entrance to kindergarten given the rigorous nature of the current kindergarten curriculum. (Memorandum from Weast).

The local board affirmed the decision of the Chief Operating Officer denying T.H. 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. [T.H.] 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 he does not meet the criteria for early entrance to kindergarten. The record does not contain evidence to warrant overturning the decisions made below.

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

Appellants argue that their lack of notice of the testing on April 28 negatively affected T.H.'s performance because he is shy around strangers and because they were unable to prepare T.H. for the assessment. The local board asserts that the school provided notice of the testing when the mother inquired about early entry and that information about the testing was included in the packet containing the orientation letters. Appellants deny receiving any such notice. They state that they did not receive the early entrance materials prior to April 28 and were advised only that T.H. would be participating in a kindergarten orientation, making them think that he had already been admitted to school (Affidavit of Appellants). They argue that prior notice was especially important in T.H.'s case because of his shyness and because he had never been exposed to a testing environment.

The local board has adopted a regulation governing early entrance to kindergarten and first grade. (Regulation JEB-RB). It states that the Division of Early Childhood Programs and Services, in conjunction with principals, conducts a screening process for early entrance to kindergarten. It further states that the screening procedures "will be used to assess academic, social, emotional and physical maturity, motor development, and learning skills" and that the process includes "standardized instrument(s), observational and MCPS primary assessments completed by staff, and information from parents." JEB-RB(B)(5)(b). The Regulation also states that screening instruments may include reading/language arts assessment, a mathematics assessment, and an observational assessment of developmental domains. JEB-RB(B)(3). Thus, all parents seeking early admission are provided notice of the early entrance process through this regulation, including the fact that screening and assessment will occur and the general areas it addresses.

Even if we assume that Appellants failed to receive early entry forms in the mail with their "Kindergarten Orientation" letter, and therefore were unaware before April 28 that T.H. would be screened and assessed on that date, there is no due process right to such notice here. Furthermore, T.H.'s mother knew about the screening and assessment before T.H. was assessed on that day because she signed the wellness verification form stating that T.H. was able to participate in all assessment activities. (Wellness Verification Form). Once aware that the screening and assessment was going to take place, and given Appellants' concerns about T.H.'s shyness, the mother could have spoken with her son at that time in preparation of what was to happen. Another option would have been to request postponement of the screening and assessment until a later time. There is no evidence that the mother expressed any concern about the screening and assessment activities on April 28th.

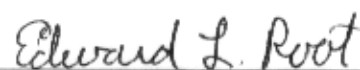
Appellants also challenge the content of the assessments, maintaining that the local board has failed "to establish that the screening process was appropriate for children of [T.H.'s] age." (Opposition to Motion, p.3). The burden in this case, however, is on the Appellants, not the local board. Appellants have presented no evidence that the content was inappropriate. Although Appellants assert that the local board's refusal to provide information that at least one applicant gained early admission to kindergarten in Montgomery County serves as an admission that nobody gained entry and that the process is unreasonable, lack of information is not an admission.

All entrants for early kindergarten admission were subject to the process as set forth in the Regulation, including the screening and assessment. (Hearing Officer Report). None of the students were familiar with the evaluators nor did they have advance notice of the test content as this would compromise the test results. (*Id.*). Thus, it appears that all students were on a level playing field.

Here, T.H. met the early entry criteria for only one out of six areas of assessment. In addition, he refused to complete various tasks, complaining of difficulty and making grunting noises as times. We find that it was reasonable for the school system to conclude that his performance properly assessed his academic, social, emotional and physical maturity, motor development, and learning skills. *Cf. Chintagumpala v. Montgomery County Board of Education*, MSBE Opinion No. 06-04 (March 1, 2006).

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 T.H. to be admitted early to kindergarten.



Edward L. Root
President

Dunbar Brooks

Dunbar Brooks
Vice President

Lelia T. Allen

J. H. Butta
Henry Butta

Beverly A. Cooper
Beverly A. Cooper

absent
Calvin D. Disney

Richard L. Goodall
Richard L. Goodall

Tonya Miles
Tonya Miles

Karabelle Pizzigati
Karabelle Pizzigati

absent
Maria C. Torres-Queral

David F. Tufaro
David F. Tufaro

April 24, 2007