

MARIA AND WINSTON I.,

Appellant

v.

MONTGOMERY COUNTY BOARD OF
EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 08-16

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 2008-2009 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.

FACTUAL BACKGROUND

State regulation requires that children must be 5 years old or older on September 1, 2007 to enter into public school kindergarten for the 2007-2008 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. (Motion, Exhibit 1, JEB-RB). For children whose birth dates fall beyond the six-week period, MCPS procedure allows parents "to submit compelling evidence of their child's 'exceptionality' through documentation of above average performance and development" that would warrant early entrance to public kindergarten. (Motion, Exhibit 4).

Appellants' son, A.I., was born on November 24, 2002, and turned 5 on November 24,

2007, making him eligible to attend public school kindergarten in the 2008-2009 school year. Because Appellants wanted A.I. to attend public kindergarten at Fox Chapel Elementary School (Fox Chapel) for the 2007-2008 school year, Appellants submitted an application for A.I. to gain early entry.

On the Parent Checklist portion of the application, they noted that their son frequently performs all of the listed abilities, except for recognizing, duplicating, and extending simple patterns, which they noted he sometimes performs. They also provided comments on A.I.'s readiness for kindergarten in the Parent Questionnaire section, stating that A.I. helps with household chores, that he enjoys being read to, that he has used crayons, pencils, and markers, that he enjoys coloring and painting, that he transitions well and that he interacts well with his peers. (Motion, Exhibit 2). Attached to the application was a letter from A.I.'s preschool teacher who stated that A.I. is an intelligent boy who is ready for full day kindergarten. He stated as follows:

He knows all the letters and sounds of the alphabet. He knows all of the colors and shapes. [A.I.] knows all of the members of his family and their responsibilities. He knows numbers and is very efficient at one-to-one correspondence up to the number ten. He can write his own name and is able to listen to a story and retell in his own words. He has basic problem solving skills and can manipulate objects to solve a puzzle or a problem.

[A.I.] is a good conversationalist and can answer most open-ended questions.

(Motion, Exhibit 2A).

On March 22, 2007, Appellants wrote to the Chief Operating Officer (COO), Larry Bowers, requesting that A.I. be tested for early admission. Mr. Bowers responded that A.I. was not eligible for testing under local procedures. He advised Appellant that because A.I.'s birth date falls beyond the six week period of assessment, Appellants were required to submit "compelling evidence from an objective source that demonstrates their child's exceptionality through documentation of above average performance and development." He stated that the burden was on Appellants to document A.I.'s "above average performance in language and literacy skills, numeration skills, and visual, fine and gross motor skills, as well as social/emotional skills and independence." (Motion, Exhibit 4).

On May 18, 2007, Appellants submitted additional documentation to Mr. Bowers. (Motion, Exhibit 5). This documentation consisted of the curriculum from the Kindercare Learning Center attended by A.I., accompanied by a letter from the Center Director explaining that the curriculum focuses on the "whole child" and includes "activities for language and

literacy, math and science, creative arts, and physical development.” (Motion, Exhibit 5A).

On July 2, 2007, KinderCare Learning Center faxed a “Preschool Development Assessment” for A.I. that had been administered on May 2, 2007. Of the 105 skills assessed, A.I. was rated as follows:

A.I. was rated as not having fully mastered any skill in Inventions and Imagination¹; Phonetic Awareness²; Literature Awareness³; Comprehension⁴; and Logic-Mathematical Knowledge.⁵ In

¹The skills in this category are: (1) shows flexibility in solving problems, uses multiple strategies; (2) applies knowledge in new ways; and (3) takes on pretend roles and situations; makes believe with objects. (Motion, Exhibit 6).

²The skills in this area are: (1) hears and discriminates letter and word sounds; (2) recognizes and uses rhyming words; and (3) associates sounds with letters. (*Id.*).

³The skills in this category are (1) shows interest in books and reading and (2) identifies a few familiar or favorite books. (*Id.*).

⁴The skills measured in this area are: (1) recalls information from prior experiences and (2) makes predictions about what will happen next in a story. (*Id.*).

⁵The skills assessed in this category are: (1) uses numbers to count; (2) identifies numerals; (3) performs simple addition or subtraction using manipulatives; (4) arranges objects in order or in a series based on a characteristic; (5) recognizes, copies, and creates patterns; and (6) estimates quantities with accuracy. (*Id.*).

the categories of Print and Book Awareness⁶, Story⁷, and Writing Process⁸, he received only one rating of fully mastered. (Motion, Exhibit 6).

The matter was referred to hearing officer, Elaine Lessenco, who investigated the appeal. She reviewed all of the available information with Ms. Janine Bacquie, Director of the Division of Childhood Programs and Services, and with Ms. Pamela Prue, a former elementary school principal. They compared the skills on which children within the six week window were tested with data and information presented by Appellants. Ms. Lessenco concluded that “the information that was submitted documented age-appropriate skills, not above-age-level skills in all areas, as required for early entrance to kindergarten.” Ms. Lessenco, therefore, recommended that A.I. be denied approval for early entrance into kindergarten. (Motion, Exhibit 7A). Mr. Bowers, acting as the Superintendent’s Designee, concurred with Ms. Lessenco’s recommendation and denied Appellants’ request for early entry. (Motion, Exhibit 7).

Appellants appealed the denial of their request to the local board. They disagreed with Mr. Bowers’ decision and felt that if A.I. had been given the tests that are given to children within the six week window, he would have demonstrated superior skill compared to others his age. (Motion, Exhibit 8).

In a memorandum to the local board, the Superintendent recommended that the local board uphold the decision of the COO. He stated the following:

Using a rubric designed to compare the skills of students with dates of birth beyond the six-week window with those skills assessed for students within that window, the review team found that the materials presented by [Appellants] did not document above-age level skills in all areas, as required for early entrance to kindergarten.

⁶A.I. was rated as fully mastering recognizing his own name in print. He was rated as emerging in making predictions about print based on context clues (such as pictures) and in recognizing some frequently used words in print. His skills in associating spoken words and print, using books conventionally, and recognizing print in the environment were rated as almost mastered. (*Id.*).

⁷A.I.’s ability to tell a story with a clear beginning, middle and end was rated as emerging. (*Id.*).

⁸A.I. was rated as having fully mastered writing his own name. All other skills were rated as emerging. They are as follows: (1)uses scribbles, Shapes, pictures, or dictation to represent ideas; (2) copies letters written by others; and (3) writes letters and numbers. (*Id.*).

On September 24, 2007, the local board affirmed the decision of the COO denying A.I. early entry to kindergarten for the 2007-2008 school year, stating as follows:

The information provided by [Appellants] was reviewed in accordance with that procedure and using the same criteria applied to all other similarly-situated children. The results of the review indicate that [A.I.] does not meet the criteria for early entrance to kindergarten. The skills [A.I.] is working on are typical preschool skills, not the above-age-level skills that would justify approval of early entrance to kindergarten. In fact, the Preschool Development Assessment submitted by the parents show (sic) that many of [A.I.'s] skills are not mastered but rather [A.I.'s] skills are emerging or not yet mastered. (sic) Upon review of the materials submitted, the Board is satisfied that a reasonable basis exists for the denial of early admission into kindergarten and that the decision was neither arbitrary nor capricious. The professional judgment of the administrators and chief operating officer should be respected in the absence of a showing that the decision was arbitrary or capricious. Further, the record does not contain compelling evidence to warrant overturning the decision of the chief operating officer.

(Motion, Exhibit 10).

This appeal to the State Board 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

New Evidence

As a preliminary matter, we note that Appellants have submitted with their appeal a new "Preschool Developmental Assessment" performed by KinderCare Learning Center on October 4, 2007, after the local board's decision was rendered, as well as some of A.I.'s recent work which was also not before the local board at the time of its decision. The State Board has long held that it will not consider information in an appeal that was not before the local board at the

time of its decision. *Faraz C. v. Montgomery County Board of Education*, MSBE Opinion No. 08-02 (Jan. 30, 2008). Because this information was not a part of the record before the local board when it rendered its opinion, the State Board will not consider it in this appeal.

Substance of Appeal

As stated above, in MCPS, for children whose birth dates are more than six weeks after the September 1 cut off date, the parents bear the burden of providing “compelling evidence” of their child’s “exceptionality” that would warrant early admission into kindergarten. The school system does not test these children as it does for those within the six week window, rather it is up to the parents to submit objective proof of above-average ability. A.I.’s birthday is more than six weeks beyond cut off for early admission, thus the onus lies with the Appellants to demonstrate A.I.’s readiness for kindergarten.

In their appeal to the State Board, Appellants argue that they were not provided with the specific criteria necessary to demonstrate above age-level ability. Appellants’ argument concerning the lack of specificity of the early entry criteria was previously addressed by this Board in *T.A. v. Montgomery County Board of Education*, Opinion No. 07-08 (February 27, 2007). In *T.A.*, the appellants’ daughter was also born on November 7, outside of the six week window in which MCPS tests students for possible early entrance to kindergarten. The parents argued that the local board had failed to specify what “compelling evidence of a child’s exceptionality” meant and, therefore, the evidence that they submitted should have been considered sufficient to have their daughter admitted early. The State Board found that the record adequately demonstrated that “exceptionality” had to be demonstrated through documentation of above average performance and development. This Board concluded that it is up to the parents to decide what should be presented as evidence of such performance and development, and the local school system must decide if such evidence is “compelling.”


Here, as in *T.A.*, it is for the parents to determine what evidence they should submit to demonstrate their daughter’s exceptionality. Based on the record, it is clear that Appellants’ understood that they were providing information to show objective evidence of their daughter’s “above-age” attributes. Appellants attempted to do just that as the information submitted in their original application and the additional information submitted to the COO is replete with the above-age level abilities they believe that their son possesses. The local board was not required to specifically state to the Appellants each individual ability necessary to achieve early entry to kindergarten.

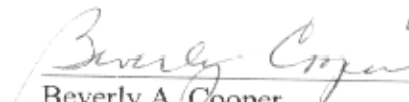
Appellants also maintain that, in its decision, the local board failed to clearly articulate the reasons why the information in the application failed to meet established criteria for early entry. The local board’s decision relies on the “professional judgment of the administrators and chief operating officer.” The COO concurred with the findings of the hearing officer and adopted her recommendation. (Motion, Exhibit 7).

The hearing officer, Ms. Elaine Lessenco, explained in her report that she reviewed the materials using a rubric that is designed to document skills comparable to those found on the assessment instrument used for students within the six week window. She noted that the skills documented in the materials submitted by the Appellants demonstrated age appropriate skills, not above age level skills in all areas. She specifically highlighted some skills on the Preschool Developmental Assessment that were still emerging and not yet fully or almost mastered. Examples of these skills are hearing and discriminating letter and word sounds; recognizing and using rhyming words; associating sounds with letters; making predictions about print based on context clues; using scribbles, shapes, pictures, or dictation to represent ideas; copying letters written by others; and writing letters and numbers. She also noted that A.I.'s skills in the area of Cognition and General Knowledge were still emerging. (Motion, Exhibit 7A). These facts provide a reasonable basis for the local board's determination that no compelling evidence of above-average performance and development was submitted.

CONCLUSION

We find that the local board's decision is not arbitrary, unreasonable or illegal. We therefore affirm the local board's denial of Appellant's application for early entry to kindergarten.

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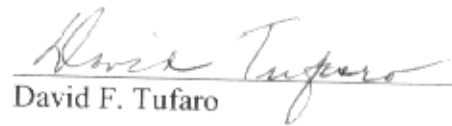

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