

MOHAN G.,

Appellant

v.

MONTGOMERY COUNTY BOARD OF
EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 08-15

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. Appellants have submitted 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, 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. (Hearing Officer Report).

Appellants' daughter, A.B., was born on November 7, 2002, and turned 5 on November 7, 2007, making her eligible to attend public school kindergarten in the 2008-2009 school year. Because Appellants wanted I.G. to attend public kindergarten at Dufief Elementary School (Dufief) for the 2007-2008 school year, Appellants submitted an application for I.G. to gain early entry.

Appellants stated that I.G. had recently completed a Maryland State Department of Education accredited pre-K program at the Academy Child Development Center located at Dufief, and that she previously attended the Children's Manor Montessori School in Ellicott City. They stated their belief that their daughter is kindergarten ready and outlined some of her skills as follows:

- Personal and Social Development: functions well in group activities; comfortable with exploring her environment; displays confidence in stage performances; gets along well with others; self-motivates to complete activities;
- Language and Phonics: can speak English fluently; interested in new words in Hindi, Spanish and Chinese; understands phonics; can form words based on the sounds of the letters; can read 3-4 letter words and common sight words;
- Math: can count to 100; can write numbers up to 10 (sometimes 20); understands addition and subtraction concepts; understands calendar concepts;
- Social Studies and Science: can locate certain things on map and globe; has been exposed to various subjects such as plants, animals, planets, seasons;
- Physical Fitness and Other Interests: attends swimming classes; enjoys biking, using scooter, playground games, card and board games, and arts and crafts.

In sum, Appellants stated that I.G. would be able to adjust and meet the challenges of kindergarten comfortably. (Motion, Exhibit 2)

On the Parent Checklist portion of the Application for Early Entrance, Appellants checked off every listed ability as being frequently performed by his daughter. Appellants fully answered the questions in the Parent Questionnaire section of the application. Among those answers, they stated that I.G. is an intelligent child with great analytical and thinking skills, that she is self-motivated and determined, that she is focused and diligent, that she is respectful of

others, and that she is comfortable in a school environment.

Appellants included in the application a letter of recommendation from the director of Academy Child Development Center and I.G.'s pre-k teacher who stated their belief that I.G. "would be capable of working academically on the same level as older peers." They explained that the pre-k curriculum that I.G. completed includes reading, writing, language arts, math, science, social studies and fine and gross motor skills. They stated that I.G. is a bright young student with proven academic abilities. (Letter of Recommendation, 5/17/07).

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. The review team used a rubric designed to document skills comparable to those found on the assessment instrument that is used for students whose birth dates occur within a six-week period beyond the prescribed September 1 kindergarten admission date. After reviewing the information, Ms. Lessenco concluded that there was insufficient objective documentation of performance above age level and development in all areas, as required for early entrance to kindergarten. (Motion, Exhibit 4). Ms. Lessenco, therefore, recommended that I.G. be denied approval for early entrance into kindergarten. Larry A. Bowers, Chief Operating Officer, acting as the Superintendent's Designee, concurred with Ms. Lessenco's recommendation and denied Appellants' request for early entry. (*Id.*).

Appellants appealed the denial of their request to the local board. They maintained that their daughter possesses above age-level abilities and is ready for kindergarten. (Motion, Exhibit 5). They requested that an authorized county official spend a full day to observe their daughter in her school setting.

The local board affirmed the decision of the Chief Operating Officer denying I.G. 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 [I.G.] does not meet the criteria for early entrance to kindergarten. The skills [I.G.] is working on are typical preschool skills, not the above-age-level skills that would justify approval of early entrance to kindergarten. 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 7). 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

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. I.G.'s birthday is more than six weeks beyond cut off for early admission, thus the onus lies with the Appellants to demonstrate I.G.'s readiness for kindergarten.

In their appeal to the State Board, Appellants make several arguments concerning the early entry application and evaluation process. They argue that they were unaware that the application was the only basis for the early entry decision; that the evaluation process lacked face-to-face interaction between the parties; that they were not provided with the specific criteria necessary to demonstrate above age-level ability; and that MCPS provided no explanation concerning the deficiencies in their daughter's application.

Appellants claim that the application process was unreasonable because MCPS failed to notify them that the information contained in their daughter's application for early entry would be the entire basis for the decision. They state that had they known this, they would have included additional information for consideration by the school system. We believe this argument lacks merit. Even if Appellants were initially unaware that their application packet comprised the totality of information that MCPS would be considering in its assessment of I.G.'s case, they were put on notice of this fact upon receiving the letter from the Chief Operating Officer denying I.G.'s application without requesting the submission of additional materials. Thereafter, Appellants had an additional opportunity to submit any documentation they deemed necessary to make their case before the local board.

Although Appellants believe that the local appeal process should have included face-to-face interaction between the school system and the applicant, the local procedures do not require this, nor does State law or the United States Constitution. *See Farhad P. v. Montgomery County*

board of Education, MSBE No. 08- 06. Given the hundreds of applications for early admission to kindergarten and numerous appeals, it is not unreasonable for the local board to forgo face-to-face meetings with individual Appellants and their children in favor of a paper review. The local school system reviewed this case in the same manner as other early kindergarten entry requests that fall outside of the six week period beyond the September 1 admission date.

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 which the State Board upheld the denial of an application for early entry to kindergarten on facts similar to those here. 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. (Motion, Exhibit 5). Appellants attempted to do just that as the information submitted in their original application and appeal to the local board is laden with the above-age level abilities they believe that their daughter possesses. Indeed, their letter of appeal to the State Board states that based on the evidence they submitted to MCPS, I.G. should have been considered an exceptional, above-age performer who is academically and socially mature. (State Board Appeal). The local board was not required to specifically state to the Appellants each individual ability necessary to achieve early entry to kindergarten.

Finally, the Appellants assert that MCPS provided no explanation concerning the deficiencies in their daughter's application. Therefore, they assert that the decision was arbitrary. This argument goes to the basis for the early admission denial, the reasons that support the denial and ultimately to whether this Board can make a determination that the decision to deny early admission was not an arbitrary one.

Although we do not believe that the local board was required to provide the Appellants with a listing of the specific above age level abilities that they needed to demonstrate in their early entry application, we do believe that the local board was required to provide more than a conclusory explanation for the denial in its rationale. See *Rodriguez v. Prince George's County*, 79 Md. App. 537, 550 (1989) ("It is not permissible for . . . any administrative body, simply to parrot general statutory requirements or rest on broad conclusory statements.")

In this case, the local board stated:

- the parent's information was reviewed using the criteria applied to other similarly - situated children;
- this child did not meet the criteria for early admission;
- her skills are typical pre-school skills not the above age-level skills that justify early admission;
- we are satisfied that a reasonable basis exists for denial of early admission;
- the professional judgment of the administrators and the COO should be respected;
- the record contains no compelling evidence to warrant overturning the decision of the COO.

(Motion, Ex. 7).

In our view, that decision contains a series of conclusory statements but no reasons to support the conclusions. Therefore, we reviewed the written decision of the COO to discern the reasons that support the conclusions of the local board.

The COO's decision states, "I have reviewed [the Hearing Officer's] report, [and] concur with her findings. . . ." (Local Board's, Ex. 4). There is no further explanation in the COO's decision as to the basis for denial. Therefore, we reviewed the Hearing Officer's decision. (Local Board's, Ex. 4 A). The Hearing Officer's decision includes four detailed paragraphs describing all the information the Appellants provided to demonstrate their daughter's above average performance and development. After describing that information, the Hearing Officer's concluded;

On July 26, 2007, I reviewed these materials with Ms. Janine Bacquie, director, Division of Early Childhood Programs and Services, and with Pamela Prue, former elementary school principal, using a rubric designed to document skills comparable to those found on the assessment instrument used for students within the six-week window of the date of eligibility for kindergarten. We agreed that there was insufficient objective documentation of above-age-level performance and development in all areas, as required for early entrance to kindergarten.

(Local Board's, Ex. 4 A, p. 2).

The Hearing Officer's decision contains the conclusion that there was "insufficient objective documentation of above-age-level performance and development," but it does not explain what was insufficient about the documentation submitted.

We are cognizant that, as the local board stated, the opinions of the professionals evaluating the evidence submitted should be respected, but to do so we must have some explanation of the basis of their opinion. For example, in another early admission case, *Maria and Winston Ireland v. Montgomery County Board of Education*, MSBE Opinion No. 08-16, the same Hearing Officer, specifically highlighted skills that the child had not yet fully mastered based on the documents the parents submitted. Thus, she explained the basis for the conclusion that early admission should be denied. That is all that is required to make the decision reviewable by this Board.


The local board maintains that in *T.A. v. Montgomery County Board of Education*, MSBE Opinion No. 07-08 (February 27, 2007), the State Board found the local board's explanation of its denial of an early kindergarten entry application to be sufficient on similar facts. In that case the Hearing Officer set forth a specific explanation for the conclusion that the child lacked exceptional school readiness skills, thus providing a basis for the local board's decision not to "disturb the findings of [its] staff."


In this case, however, there is no basis given for the opinion of the professionals that denial of early admission is appropriate. In that regard, the decision is unreviewable.


The role of the State board is to determine whether the local board's decision was arbitrary, unreasonable or illegal. A decision is arbitrary if "a reasoning mind could not have reasonably reached the conclusion the local board or superintendent reached." COMAR 13A.01.05.05(B)(2). In order to make this assessment, the State Board must understand how the conclusion was reached. The State Board cannot perform its quasi-judicial function without understanding the basis for the local board's decision.

CONCLUSION

We believe that the local board's decision is arbitrary based only on its failure to provide some basis for the denial of the application. Accordingly, we remand this case to the local board for an explanation of its reasons for denying I.G. early entry to kindergarten.



Dunbar Brooks
President

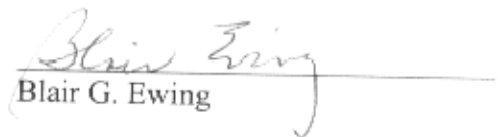

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DISSENT:

I dissent on the decision to remand this case to the local board for further explanation of its reasons for denying I.G. early entry to kindergarten.


David F. Tufaro

March 26, 2008