

BRIAN AND TRISHA MONTGOMERY,

BEFORE THE

Appellants

MARYLAND

v.

STATE BOARD

HOWARD COUNTY  
BOARD OF EDUCATION,

OF EDUCATION

Appellee

Opinion No. 04-35

### OPINION

This is an appeal of a request for an age waiver for early entry into kindergarten filed by the parents of a child who is not eligible to begin kindergarten until the 2005-2006 school year because she will not be five years old on or before October 31, 2004. Appellants contend that their daughter is sufficiently able and skilled to enroll in kindergarten for the 2004-2005 school year. The local board has filed a Motion to Dismiss maintaining that this appeal is not the proper mechanism to challenge the local board's decision not to adopt an age of entry waiver policy. Alternatively, the local board has filed a Motion for Summary Affirmance maintaining that the local board's decision is not arbitrary, unreasonable, or illegal. Appellants have submitted an opposition to the local board's motion.

### FACTUAL BACKGROUND

#### Case Facts

By letter dated March 8, 2004, Appellants requested that their daughter, Sarah, be permitted to enter kindergarten for the 2004-2005 school year despite the fact that she will not be five years old by the October 31, 2004 cut-off date for kindergarten entry. Appellants explained that Sarah's birthday is in November but that they believe it is in Sarah's best interest to begin in the fall rather than wait another year because she is ready for kindergarten now. On March 12, 2004, Dr. Michael J. Martirano, Director of School Administration, denied Appellants' request, stating as follows:

On March 13, 2003, the Howard County Board of Education adopted recommendations to honor the intent of the State's changes to the entrance age for kindergarten. Since Sarah will not be 5 years old or older on or prior to October 31, 2004, I am denying your request to have her admitted early to kindergarten for the 2004-2005 school year. . . .

Appellants further appealed to the local board elaborating on Sarah's abilities and skills. In response, local board Chairman, Courtney Watson, indicated that the local board lacked jurisdiction to consider the request that Sarah be permitted to enroll in kindergarten before she reached age five because the board had adopted a policy to enforce the established State minimum age for kindergarten enrollment without any exceptions or waivers. Chairman Watson explained that the local board reached this decision after much deliberation and consideration of the issues, ultimately concluding that this policy best served the Howard County Public School System. *See* 4/29/04 letter from Watson.

#### State Board Regulation

In June 2002, the State Board of Education adopted a new regulation affecting the age of entry for kindergarten, moving the birth date cutoff from December 31<sup>st</sup> to September 1<sup>st</sup>.<sup>1</sup> The date change is being implemented through a phase-in over several years. COMAR 13A.08.01.02B provides as follows:

---

<sup>1</sup>The Maryland State Teachers' Association, the Maryland School Psychologists' Association, the Maryland Parent-Teacher Association, and the Maryland Association for the Education of Young Children formally endorsed changing the entrance age requirements.

- (1) Beginning with the 2003–2004 school year through the 2005–2006 school year, a child admitted to the kindergarten program in the public schools shall be 5 years old or older on:
  - (a) November 30, 2003, if the child applies for entrance for the 2003–2004 school year;
  - (b) October 31, 2004, if the child applies for entrance for the 2004–2005 school year; and
  - (c) September 30, 2005, if the child applies for entrance for the 2005–2006 school year.
- (2) Beginning with the 2006–2007 school year and each school year thereafter, a child admitted to the kindergarten program in the public schools shall be 5 years old or older on September 1 of the school year in which the child applies for entrance.
- (3) **The local board of education may adopt a regulation permitting a 4-year-old child, 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.** The regulation shall include a provision for promotion of the 5-year-old child to first grade if the local superintendent or the superintendent’s designee determines that the child demonstrates capabilities warranting promotion to first grade. (Emphasis added).

#### Local Board Policy

On March 13, 2003, upon the recommendation of the superintendent and his staff, the local board decided not to adopt a waiver policy, but to permit waivers for one year only upon parental request for children born between December 1 and December 31 who would be four years old entering kindergarten for the 2003-2004 school year. This limited waiver was adopted in order to provide time to communicate changes in State law to parents and to accommodate parents who needed additional time to adequately prepare for educational alternatives. At the time this action was taken, local board members considered the rigor of the kindergarten curriculum; the social and emotional maturity level required for kindergarten; and the readiness, or lack thereof, of four-year-olds for the program. The local board did not adopt a waiver policy for any other school year. In fact, the superintendent and his staff recommended against future waivers and various local board members expressed their lack of support for waivers in future years.<sup>1</sup> *See* meeting minutes, 4/13/03.

On March 23, 2004, the issue of kindergarten age waivers was revisited by the local board at a public meeting. The local board deliberated the issue and ultimately adopted a policy to honor the State kindergarten age mandates with no waivers permitted. Prior to reaching its decision, local board members considered the following issues that would need to be addressed if entrance age waivers were permitted: the need to develop and implement an assessment instrument, including the associated costs such as additional staffing; the movement to a full-day kindergarten program with an advanced curriculum; the possibility of academic regression due to unsuccessful social development and relationships with peers; as well as the existing opportunities for student acceleration once students have entered kindergarten. *See* meeting minutes, 4/23/04.

#### ANALYSIS

---

<sup>1</sup>At the time of the Howard County Board’s decision, eight other jurisdictions had policies permitting kindergarten waivers for early admission.

Motion to Dismiss

The local board maintains that this appeal should be dismissed because it is a challenge to the local board's quasi-legislative decision not to adopt an age waiver policy for early entry into kindergarten. The State Board has previously held that individuals may not use the administrative appeal process set forth in Section 4-205(c) of the Education Article to challenge a policy-making decision of a local board of education. *See Regan v. Montgomery County Board of Education*, MSBE Opinion No. 02-48 (appeal of the presence of a Washington Redskins' marching band member as a guest reader at school is an attempt to establish or modify curriculum, policies, or procedures used by MCPS and is not appealable under Section 4-205(c)); *Regan v. Montgomery County Board of Education*, MSBE Opinion No. 02-29 (appeal challenging an instructional activity is not appropriate vehicle for modifying the existing curriculum or adopting a new policy governing the teaching of the curriculum); *Astrove v. Montgomery County Board of Education*, MSBE Opinion No 02-14 (appeal challenging the format of CTBS test result reporting is an attempt to force a policy change and is not appealable under Section 4-205(c)).

As the State Board explained in *Astrove*:

This is an unusual type of appeal in that Appellant is attempting to use a quasi-judicial process to force a change in policy which is a quasi-legislative decision. As stated by the local board in its decision:

“This does not mean that the Board is unmindful of local educational policy issues raised in connection with this appeal, but only that an individual appeal under § 4-205(c)(4) is not the proper method for establishing or altering local educational policy. In fact, at the Board's public meeting on November 13, 2001, Board members, staff, and consultants discussed the testing and reporting of scores of special education students as part of a lengthy discussion on the needs of special education students. The primary purpose of this appeal is to change the format used to report the results of CTBS; an appeal in an individual case is not an appropriate vehicle for modifying such a policy. Therefore, the appeal must be dismissed.”

Consistent with the reasoning applied in the opinions referenced above, we believe that there is no legal cause for appeal in this case because the local board's decision not to permit age waivers for early entry into kindergarten is a quasi-legislative action by the board which is not appealable through the §4-205(c) appeals process. COMAR 13A.08.01.02B(3) gives local boards discretion regarding whether or not to adopt a regulation permitting a four-year-old child to enter kindergarten. There is no mandate requiring a local board to establish an age waiver for kindergarten entry prior to the State determined age cut-off date.

A review of the record discloses that the local board gave due consideration to the issue of adopting an age waiver policy on March 13, 2003, and again on March 23, 2004, as part of its quasi-legislative responsibilities, and exercised its option not to permit any waivers after the 2003-2004 school year. While Appellants may be disappointed in the local board's decision, there is no legal basis to challenge the quasi-legislative decision of the local board in this manner.

CONCLUSION

For these reasons, we dismiss this appeal for failure to state a legal basis for appeal. *See* COMAR 13A.01.05.03C.

Edward L. Root  
President

Dunbar Brooks

Vice President

Lelia T. Allen

JoAnn T. Bell

J. Henry Butta

Beverly A. Cooper

Calvin D. Disney

Clarence A. Hawkins

Karabelle Pizzigati

Maria C. Torres-Queral

David F. Tufaro

August 25, 2004