

DAWN AND MICHAEL H.

Appellant

v.

ANNE ARUNDEL COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 12-11

OPINION

INTRODUCTION

This is an appeal of a denial of an age waiver request for early entry into kindergarten. The Anne Arundel 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 Appellant has filed a response to the local board's motion and the local board has filed a reply.

FACTUAL BACKGROUND

The Appellants son, A.H., was born on September 3, 2006, making him eligible to attend public school kindergarten in the 2012-2013 school year. On April 11, 2011, the Appellants submitted an application for early kindergarten admission because they wanted their son to attend public kindergarten in the 2011-2012 school year. (*See Superintendent's Statement of Position, Ex. 6*).

For the 2011-2012 school year, 130 students applied and were screened for early admission to kindergarten. Three children met the criteria. (*See Superintendent's Statement of Position, Ex. 1*). The school system screened and assessed A.H. at Cape St. Claire Elementary School. By a letter dated May 12, 2011, the school principal advised Appellant that A.H. did not meet the established criteria warranting early entrance to kindergarten. (*See Superintendent's Statement of Position, Exs. 4 and 8*).

Appellant appealed the denial of early admission to Dr. Donna Cianfrani, Director of School Performance. On June 9, 2011, the Appellants received a letter from Dr. Cianfrani indicating that she was in agreement with the decision of the administration of Cape St. Claire. (Motion, Ex. 8).

On June 17, 2011, the Appellants filed a Level III appeal to Andrea Kane, Assistant Superintendent of Curriculum and Instruction. (Motion, Ex. 8). In a letter dated June 22, 2011, Ms. Kane upheld the decision of Dr. Cianfrani based on the Anne Arundel County Public Schools (AACPS) regulation and A.H.'s SESAT I score for the Early Admission assessment. (See appeal to Maryland State Board of Education). On June 30, 2011, the Appellants filed a Level IV appeal to the Deputy Superintendent, Arlen Liverman. Mr. Liverman reviewed the request and decided to uphold the decision of Ms. Kane. Mr. Liverman noted that although A.H.'s date of birth is only three days from the September 1 requirement for entry into kindergarten A.H.'s results on the SESAT I did not meet the criteria for early admission. (Motion, Ex. 9).

Appellants filed a Level V appeal to the local board. In their appeal, the Appellants explained that A.H. demonstrates the academic, behavioral and social skills for school readiness. Appellants emphasized that A.H. earned a SESAT I score of five placing him in the average range. (See Early Admission to Kindergarten Level V Appeal). The Appellants viewed this score as reassuring because it indicated that A.H. was capable of handling the kindergarten curriculum. (See Early Admission to Kindergarten Level V Appeal). Appellants included several letters in support of their appeal. A.H.'s Licensed Daycare Provider noted that A.H. "listens to direction and responds accordingly, pays attention to detail, capable of communicating his thoughts clearly and is creative and imaginative." (See Superintendent's Statement of Position). A letter from A.H.'s tutor, a First Grade Teacher at Edgewater Elementary School, stated that A.H. "is socially and academically prepared to attend kindergarten... as he has reading strategies, is able to recognize patterns, is able to count sets of objects, loves to learn and is able to pick up concepts very quickly." (See Superintendent's Statement of Position).

On October 1, 2011, Appellants received the Superintendent's Statement of Position. The Superintendent requested that the local board uphold his determination that A.H. is not eligible for early admission to kindergarten for the 2011-2012 school year. On October 24, 2011, the local board affirmed the decision of the Superintendent's Designee denying A.H. early entry to kindergarten for the 2011-2012 school year. (See Anne Arundel County Board of Education decision).

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.01.05.03 (1).

LEGAL 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 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, AACPS has developed a regulation to accommodate requests for early kindergarten entry for children who turn five years old on or before October 15. (*See* Superintendent’s Statement of Position, Ex. 1). Early entry for those children depends on the child’s score in the eighth stanine on a nationally normed achievement test for kindergarten and a 125 or better on a nationally normed cognitive ability test. (*See* Superintendent’s Statement of Position, Ex. 3). AACPS utilizes the SESAT I as the nationally normed test and the DAS-II as the nationally normed cognitive ability test for early admission testing into kindergarten. (*See* Superintendent’s Statement of Position, Ex. 1). The normal process for children requesting early admission into kindergarten is that the SESAT I is administered first. Children must score a Complete Battery Stanine of 8 to be eligible for early admission to kindergarten in AACPS. (*Id.*). If the child does not score in the eighth stanine on the SESAT I test, then testing is discontinued unless the parent/guardian requests that the DAS-II also be administered. A.H. failed to meet the criteria as he received an average score of five on the SESAT I.

In their appeal to the local Board, the Appellants believe that A.H. possesses the academic, behavioral and social skills that would allow him to be successful in kindergarten. (*See* Appellant’s Responses, page 8). The school system determined, however, that A.H. did not qualify for early admission to kindergarten because he did not obtain an acceptable score on the SESAT I test as required by the school system procedure. This is the criteria for early admission. A.H. failed to meet this criteria. (*See* Anne Arundel County Board of Education decision, page 2-3).

While the Appellants do not disagree with the use of objective tests to determine early entrance into kindergarten, they believe that for their son, only 2 days shy of regular admission to kindergarten in the 2011-2012 school year, the objective test scores alone should not be the determining factor for admission. They assert that proof of kindergarten readiness should be enough.

The Appellants are, in essence, proposing a change in early admission policy for students who are close to the age for regular admission. As we have often said, however, unless a local board policy is illegal, individuals may not use the administrative appeal process to force a change in local board policy. *See Montgomery v. Howard County Bd. of Educ.*, MSBE Op. No. 04-35 (appeal of local board’s decision not to adopt age of entry waiver policy in attempt to force policy change which is not appealable to State Board); *Regan v. Montgomery County Bd. of Educ.*, MSBE Opinion No. 02-48 (appeal of the presence of a Washington Redskins’ marching band member as a guest reader at school seeks to establish or modify curriculum, policies, or procedures used by MCPS and is not appealable under Section 4-205 (c)); *Regan v. Montgomery County Bd. of Educ.*, 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 Bd. of Educ.*, 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 to the legality of the local board's early entry policy, it is based, in part, on the bright line test of age. A student is either 5 years old on September 1 or he is not. If he is not, the testing criteria determine his eligibility, no matter how close to age 5 he is. While a bright line test may appear "artificial at its edges" or render a harsh result, that does not make the use of a bright line test illegal. *See, e.g., Quill Corp. v. North Dakota*, 504 U.S. 298, 315 (1992).

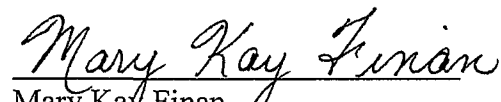
Based on our review of the record in this case, we find that it was neither arbitrary, unreasonable, or illegal for the local board to deny A.H. early entry into kindergarten due to his score on the assessment. *See Tonya L. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 08-19 (2008); *Perseveranda B. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 08-01 (2008); *Kelly C. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 07-22 (2007); *Chintagumpala v. Montgomery County Bd. of Educ.*, MSBE Op. No. 06-04 (2006).


CONCLUSION

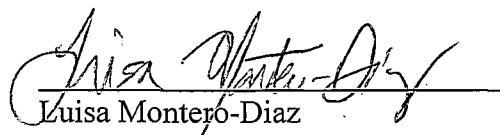
Accordingly we affirm the local board's decision denying appellant's request for early kindergarten entry.


James H. DeGraffenreidt, Jr.
President


Charlene M. Dukes
Vice President

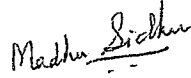

Mary Kay Finan


S. James Gates, Jr.


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Madhu Sidhu



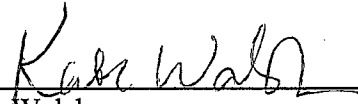
Guffie M. Smith, Jr.



Donna Hill Staton



Ivan C.A. Walks



Kate Walsh

March 27, 2012