ANGELA A.,

Appellant
v.

PRINCE GEORGE'S COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 13-45

OPINION

INTRODUCTION

The Appellant filed an appeal of the decision of the Prince George's County Board of Education (local board) denying her request that her son be allowed early entrance into kindergarten. The local board filed a Motion for Summary Affirmance maintaining that its decision should be upheld. The Appellant responded to the motion and the local board replied.

FACTUAL BACKGROUND

Appellant's son was born on September 4, 2007, making him eligible to attend public school kindergarten in the 2013-14 school year. Because Appellant wanted him to attend kindergarten in the 2012-13 school year, Appellant submitted an application for early entry.

The Prince George's County Public Schools Early Childhood Assessment Team[1] administered the early entrance exam on August 8, 2012. School system procedure requires that children seeking early kindergarten entry achieve a score of 90% or better in each area of the test to demonstrate developmental readiness. (PGCPS Administrative Procedure 5111.1). Appellant's son did not meet the requirements for early admission, receiving a score of 2% in reading, 16% in math, and 16% in spelling. (Assessment Report). By letter dated August 16, 2012, the Early Childhood Assessment Appeal Review Team advised Appellant that her son did not meet the eligibility requirements for early kindergarten entry because his assessment scores were below the 90% requirement. The letter identified the following sub-domains as particularly problematic: matching upper and lower case letters, letter identification, giving phonemic sounds, and forming numbers and letters. Appellant's son was also unable to answer questions after a short passage or answer general number identification questions.

On August 16, 2012, Appellant sent an email to the school system disputing the early entry assessment results and requesting that her son be allowed to attend kindergarten for the 2012-13 school year. In her email, Appellant maintained that the limited nature of the early entry test did not allow her son to demonstrate his readiness for kindergarten. She explained that her son had been in a structured school program since age 3 and that he was proficient in the areas identified on the early entry assessment. The Administrative Assistant for the local board

[1] The Team consists of early childhood educators, special education resource teachers, reading specialists, and early childhood instructional specialists.

forwarded the email to the Academics Office for review.[2] (8/16/12 Email). Hearing nothing in response, on December 11, 2012, Appellant sent additional appeal information to the Superintendent's designee reiterating her belief that the school system's early entry assessment did not accurately reflect her son's abilities. Appellant included in her filing the results of her son's performance on the DIAL-4 assessment that her son's preschool teacher conducted on September 8, 2012. On the Dial-4, Appellant's son received a total score of 53% with the breakdown as follows: 54% Motor; 58% Concepts, and 40% Language.

By letter dated January 25, 2013, the Office of Appeals denied Appellant's appeal, maintaining that her son's performance on the early entrance assessment fell short of the 90% requirement. (Price Letter, 1/25/13).

Appellant appealed the denial to the local board. On February 21, 2013, the local board upheld the denial of early entry to kindergarten because Appellant's son failed to achieve a 90% or better on the required early entrance assessment.

This appeal to the State Board ensued. In the State Board appeal, Appellant argues that the local board's use of its own early entry assessment, as opposed to some other standardized test, and the early entry policy requiring a 90% score on the test without consideration of other factors are arbitrary, unreasonable, and contrary to sound educational policy.

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 is judgment of that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.03E(1).

This case also involves a challenge to a local policy – the system-wide policy governing eligibility for early admission to kindergarten. When an administrative agency is acting in a manner which may be considered quasi-legislative in nature, the scope of review of that particular action is limited to assessing whether the agency was acting within its legal boundaries. *Department of Natural Resources v. Linchester Sand and Gravel Corp.*, 274 Md. 211, 223 (1975); *accord Adventist Health Care, Inc. v. Maryland Health Care Comm'n.*, 392 Md. 103, 117 n.12 (2006).

ANALYSIS

As an initial matter, we note that there was delay on the part of the school system in reviewing the Appellant's challenge to the early kindergarten entry request. Although the local board maintains that it did not become aware of an appeal until the Appellant's December 11, 2012 filing, the local board's administrative assistant forwarded Appellant's email containing her challenge of the early entry denial to the Academics Office on August 16, 2012. The result was that Appellant did not receive a local board decision until February 2013, more than halfway

[2] It is unclear precisely what happened with the email and why there was no response.

through the school year. As we point out in another early kindergarten entry decision being issued this month, the legal parameters in this arena are very well settled and lend themselves to swift decision making. The State Board intends to examine the time frames for local and State Board decision making in such appeals and will consider whether a regulatory change is necessary.

We proceed to decide this case on the legal principles we have so often applied when an appellant has asserted that the regulation and assessment process a local school system has adopted to govern early admissions to kindergarten is illegal.

There is no legal right to attend kindergarten before age five. *See* Md. Code Ann., Educ. §7-101 (guaranteeing 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 age five by September 1st of the year of kindergarten entry. COMAR 13A.08.01.02B. Each local board of education is required, however, to adopt regulations permitting a four year old, upon request by the parent or guardian, to be admitted to kindergarten if the local superintendent of schools or designee determines that the child demonstrates capabilities warranting early admission. *Id.*

Accordingly, the Prince George's County Public Schools (PGCPS) has developed a regulation to accommodate requests for early kindergarten entry for four year old children who will turn five between September 2nd and October 15th of the school year for which they are requesting early entrance. Early admission applicants must demonstrate developmental readiness by achieving a score of 90% or better on the early entrance assessment in each of the domains of reading, spelling, and math. (PGCPS Administrative Procedure 5111.1).

Adopting that regulation creating a bright line rule is not illegal. As we stated in *Dawn and Michael H. v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 12-11 (2012), even though "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." The local board is free to set the cut off score at 90% and need not look to anything other than the assessment results.

In addition, the local board's decision to use its own early entry test to measure kindergarten readiness rather than an already established standardized test such as the Maryland Model for School Readiness (MMSR) is not illegal. Based on the COMAR requirement, school systems may choose how they assess applicants for early kindergarten entry. We have previously stated that "it is within the discretion of the local board to determine the method by which it will assess students requesting early kindergarten entry" and there is "no legal mandate for a school system to use one type of a test over another." *David and Adrienne G. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 09-19 (2009).

We note the dilemma highlighted by the Appellant regarding the lack of information given to parents concerning the test and their inability to assess its reasonableness given that lack of information. PGCPS Administrative Procedure 5111.1 simply states that applicants will be tested on reading, spelling, and arithmetic. Nevertheless, in *Shariah M. v. Prince George's County Bd. of Educ.*, MSBE Op. No. 13-17 (2013), we upheld the school system's decision to conceal details regarding the test in order to protect the test from becoming invalid as a tool to

assess early entry. This is a sufficient basis to withhold disclosure of specific testing information.

Appellant included her son's results on the DIAL-4 administered in the fall of 2012 to support her belief that he should be admitted early to kindergarten. The school system is free, however, to rely on its own assessment and not one submitted by the applicant. *See, e.g. Theresa C. v. Montgomery County Bd. of Educ.*, MSBE Op. No.08-54 (2008)(score on nationally administered kindergarten readiness test introduced); *Tonya L. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 08-19 (2008)(private assessment introduced). Moreover, Appellant's son did not score in the 90th percentile on the DIAL-4.

Although Appellant believes that her son possessed the abilities for early kindergarten entry, he failed to attain acceptable scores on the school system's assessment. The local board's decision is not arbitrary or unreasonable on that basis. *See 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

For all of these reasons, we affirm the decision of the local board.

Charlene M. Dukes
President

Mary Kay Finan
Vice President

James H. DeGraffenreidt, Jr.

Linda Eberhart

Absent
S. James Gates, Jr.

Absent
Luisa Montero-Diaz

Sayed M. Naved

Madhu Sidhu

Madhu Sidhu

Donna Hill Staton

Donna Hill Staton

Guffrie M. Smith, Jr.

Guffrie M. Smith, Jr.

September 24, 2013