

LAVOY AND KAREN W.,

Appellant

v.

BALTIMORE CITY BOARD OF  
SCHOOL COMMISSIONERS,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 15-11

### OPINION

#### INTRODUCTION

This is an appeal of the denial of a request for early entrance into kindergarten. The Baltimore City Board of School Commissioners (local board) filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. The Appellant filed a response to the Motion and the local board replied.

#### FACTUAL BACKGROUND

M.W. was born on September 22, 2009, making her eligible to begin kindergarten in the 2015-2016 school year. The Appellants submitted a petition for M.W.'s early entry into kindergarten at Northwood Elementary School for the 2014-2015 school year. (Motion, Ex. B). The Appellants fulfilled all requirements in the application, including the parent questionnaire.

Baltimore City Public Schools' ("BCPS") policy requires the administration of two assessments to help determine the child's eligibility for early kindergarten admission. BCPS administers the *Kaufman Test of Educational Achievement, Second Edition* ("KTEA-II") and the *DIAL-III, Developmental Indicators for the Assessment of Learning* ("DIAL-III"). The KTEA-II assesses the child's academic achievement, and the DIAL-III assesses the child's motor skills. (Motion, Ex. A). To be eligible for early entry, the student must earn an average cumulative score at or above the 85<sup>th</sup> percentile. *Id.*

The Early Admission Team administered the tests on May 17, 2009 at Northwood Elementary. At the time, M.W. was 4 years and 7 months. M.W. scored as follows:

Subtest	Percentile Rank
Phonological Awareness	61
Letter & Word Recognition	53
Math Concepts & Applications	21
Listening Comprehension	30
Associational Fluency	21
Naming Facility	39
Motor [DIAL III]	99
Cumulative Average	46

(*Id.*). M.W.'s cumulative average score on the KTEA-II and DIAL-III was in the 46<sup>th</sup> percentile.

By letter dated May 27, 2014, Charlene Iannone-Campbell, Director of Early Learning, advised Appellants that M.W. did not meet the eligibility criteria for early admission into kindergarten because she failed to achieve an average cumulative score in the 85<sup>th</sup> percentile. She advised the Appellants that a prekindergarten placement was appropriate for M.W. for the 2014-2015 school year. *Id.*

The Appellants appealed Ms. Iannone-Campbell's decision. After reviewing the appeal, Maria Navarro, Chief Academic Officer, upheld the decision denying M.W. early kindergarten entry. (Motion, Ex. C). She reiterated that a prekindergarten placement would be the most appropriate placement for M.W. *Id.*

By letter dated July 21, 2014, the Appellants appealed Ms. Navarro's decision to the local board. The Appellants maintained that M.W.'s skills were commensurate with, and in some cases exceeded, the abilities of her peers. The Appellants stated that M.W. is both intelligent and enthusiastic about her studies, and that the Appellants would both support their daughter at home and be of assistance in the classroom. (Motion, Ex. D). The Appellants attached copies of M.W.'s work with letters, words, and numbers in support of their appeal.

On August 11, 2014, in response to the appeal, the Chief Executive Officer ("CEO") filed a motion to dismiss the case on the grounds that the Appellants, despite their letter of appeal, failed to file the requisite Appeal Information Form with the local board. (Motion, Ex. 1). Thereafter, on August 12, 2014, the Appellants filed the Appeal Information Form.

The local board referred the matter to a hearing examiner. On or about October 27, 2014, Hearing Examiner Rebeca Tabb conducted a hearing on the CEO's Motion to Dismiss and M.W.'s eligibility for early admission into kindergarten. (Motion, Ex. 2, Hearing Examiner Report). Hearing Examiner Tabb denied the CEO's Motion to Dismiss, concluding that the Appellants timely filed their appeal. *Id.* at 4. Hearing Examiner Tabb recommended that the local board affirm Ms. Navarro's determination of ineligibility for early kindergarten entry because M.W. failed to satisfy the eligibility criteria based on her assessment scores below the 85<sup>th</sup> percentile. She found no evidence in the record that the testing system utilized by the school system is educationally unsound. *Id.* at 5.

On November 12, 2014, the local board accepted the Hearing Examiner's recommendation and affirmed Ms. Navarro's decision. (Motion, Ex. 3). This appeal followed.

#### STANDARD OF REVIEW

In cases involving a local board's policy, or a controversy and dispute regarding the local board's rules and regulations, the local board's decision is considered *prima facie* correct. The State Board may not substitute its judgment for that of the local board unless the decision was arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05A.

LEGAL ANALYSIS

There is no legal right to attend kindergarten before age five. *See* Md. Code Ann., Educ. §7-101(a). In order to enroll in kindergarten, a child must be five years old by September 1st of the school year of kindergarten entry. COMAR 13A.08.01.02(B)(2). Each local board of education is required to adopt regulations permitting a four year old, upon request of 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. COMAR 13A.08.01.02(B)(3).

Accordingly, BCPS developed a regulation to accommodate requests for early kindergarten entry for children whose birth dates occur between September 2<sup>nd</sup> and October 15<sup>th</sup> of the school year for which they are requesting early entrance. (Motion, Ex. F, BCPS Administrative Regulation JEC-RA). Children seeking early admission must demonstrate developmental readiness by achieving an average cumulative score in the 85<sup>th</sup> percentile or above. *Id.*

Although the Appellants maintain that M.W. is ready for kindergarten, M.W. failed to achieve an acceptable score on the assessments, as required for early admission. This Board has held on numerous occasions that a school system may deny early entry to kindergarten based on the child's failure to attain the required scores on the assessment. *See Kristen M. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 13-16 (and cases cited therein).

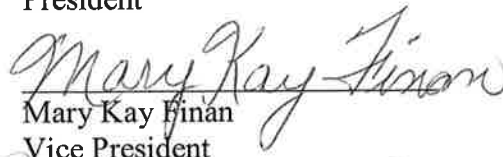
The Appellants argue, however, that the assessments administered by the school system are too advanced for children seeking early entry, and are targeted to test what children will learn in kindergarten. As we have previously stated, it is within the local board's discretion to determine the method by which the early kindergarten entry assessment is done. *See David and Adrienne G. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 09-19 (2009). The local board is free to use the KTEA-II and Dial-III and to set the cut off scores as it likes. *See Tim and Sherri B. v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 13-48 (2013).

CONCLUSION

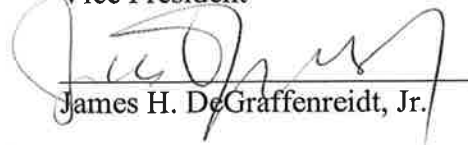
For the reasons stated above, we affirm the decision of the local board denying Appellants' request that their daughter be granted early kindergarten entry.



Charlene M. Dukes  
President




Mary Kay Finan  
Vice President

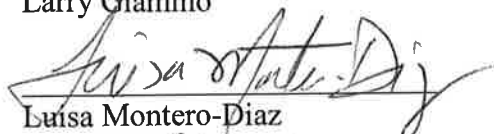


James H. DeGraffenreidt, Jr.

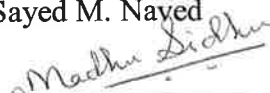
  
Linda Eberhart

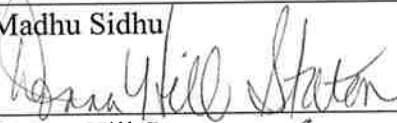
  
S. James Gates, Jr.

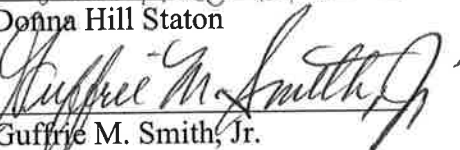
  
Larry Giammo

  
Luisa Montero-Diaz

Absent  
Sayed M. Nayed

  
Madhu Sidhu

  
Donna Hill Staton

  
Guffie M. Smith, Jr.

March 24, 2015