

SHARON B.,

Appellant
v.

BALTIMORE CITY BOARD OF
SCHOOL COMMISSIONERS,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 13-47

OPINION

INTRODUCTION

The Appellant filed an appeal of the decision of the Baltimore City Board of School Commissioners (local board) denying her request that her granddaughter be allowed early entrance into kindergarten. The local board filed a Motion to Dismiss the case for mootness. Alternatively, the local board filed a Motion for Summary Affirmance maintaining that its decision should be upheld.

FACTUAL BACKGROUND

Appellant's granddaughter, MC, was born on September 13, 2007, making her eligible to attend public school kindergarten in the 2013-14 school year. Because MC attended the pre-kindergarten program at Sarah M. Roach Elementary School during the 2011-12 school year, Appellant submitted an application for early kindergarten entry so that MC could begin kindergarten the following year (2012-13). (Appeal).

Although Appellant submitted a timely application for early kindergarten admission with the school system, school system personnel did not forward the application to the Office of Early Learning Programs and took no action on the application. Meanwhile, MC enrolled in and began kindergarten at the start of the 2012-13 school year without going through the early entry testing. The school system discovered the error when school officials reviewed the school system's enrollment report and discovered that approximately fifty-five four year olds had been enrolled in kindergarten without application or testing. (Hearing Examiner Report). The school system quickly assessed MC on August 28, 2012, within days of school starting.

School system procedure requires that children seeking early kindergarten entry achieve a score in the 85th percentile or above in all categories of the school system's assessment to demonstrate developmental readiness. (JEC-RA). The school system administers two tests: the *Kaufman Test of Educational Achievement, Second Edition* (KTEA-II) to assess academic achievement and the *Developmental Indicators for the Assessment of Learning* (DIAL-III) to assess motor skills.

MC scored below the required 85th percentile in six of the eight content areas tested. By letter dated September 4, 2012, Charlene Iannone-Campbell, Director of Early Learning, advised

Appellant that MC would not be granted early admission and that she needed to continue in pre-kindergarten.

Appellant appealed the decision. On September 10, 2012, Dr. Andres A. Alonso, Chief Executive Officer (CEO), denied Appellant's request for early entry to kindergarten for the 2012-13 school year. (Alonso Letter).

Appellant appealed to the local board. The local board referred the matter to a hearing examiner for review. The hearing examiner conducted a hearing on December 20, 2012. On February 13, 2013, he recommended that the local board affirm the CEO's decision denying early admission because MC was not eligible based on her test scores. (Johnson Letter, 2/26/13). By order dated March 13, 2013, the local board affirmed the hearing examiner's recommendation denying the early kindergarten entry application.

Appellant appealed the local board's decision to the State Board on April 11, 2013. She challenges the policies eligibility requirements.

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 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 the local board did not render a decision until March 12, 2013, despite the fact that the CEO issued his decision near the start of the school year on September 12, 2012. Given State Board precedent in this arena, the legal parameters are now 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 applied in so many previous cases when an appellant has asserted that the regulation a local school system has adopted to govern early admissions to kindergarten is illegal.

First, 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.*

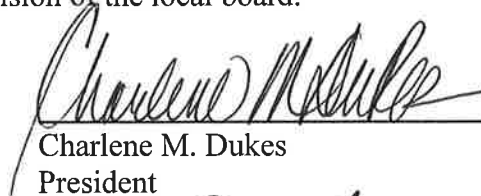
Second, there is no constitutional right for a 4 year old to attend kindergarten. *See* Md. Code Ann., Educ. §7-101. COMAR 13A.08.01.02B leaves it to the discretion of the local school systems to set their own eligibility requirements for early entry. Accordingly, the Baltimore City Public School System (BCPSS) 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 85% or better on the early entrance assessment in each of the eight domains tested. (JEC-RA).

Third, adopting that regulation creating a bright line rule does not violate the Equal Protection clause. Specifically, we find that the local board’s early entry policy requiring a minimum 85% on every category of the assessment is rationally related to an important governmental interest -- the superintendent’s mandated duty to determine whether a child demonstrates the capabilities warranting early admission to kindergarten. A bright line rule provides a benchmark for consistent decisions. As we have previously stated, bright line tests may “render a harsh result,” but that “does not make the use of a bright line test illegal.” *Dawn and Michael H. v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 12-11 (2012).

Applying those principles to this case, we find that the Baltimore City Public School System’s regulation is legal. In addition, although Appellant believes that her granddaughter possessed the abilities for early kindergarten entry, she 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

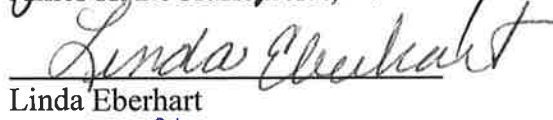
For all of these reasons, we affirm the decision of the local board.


Charlene M. Dukes
President


Mary Kay Finan
Vice President



James H. DeGraffenreidt, Jr.



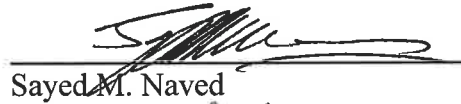
Linda Eberhart

Absent

S. James Gates, Jr.



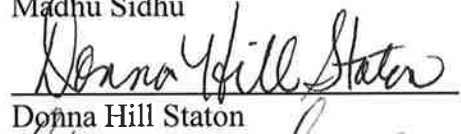
Luisa Montero-Diaz



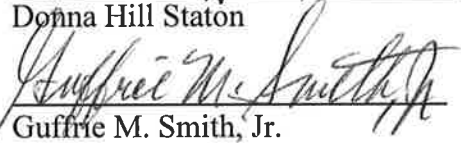
Sayed M. Naved



Madhu Sidhu



Donna Hill Staton



Guffrie M. Smith, Jr.

September 24, 2013