

SHANELLE I.,
Appellant

v.

BALTIMORE CITY BOARD
OF SCHOOL
COMMISSIONERS

Appellee.

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION

Opinion No. 17-03

OPINION

INTRODUCTION

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

FACTUAL BACKGROUND

Appellant's son, D.I., was born on October 11, 2011. This made him eligible to start pre-kindergarten during the 2016-2017 school year at the age of 4 and eligible to start kindergarten during the 2017-2018 school year at the age of 5.

D.I. applied for and received early admission to pre-kindergarten for the 2015-2016 school year, and he began attending the pre-kindergarten program at Furley Elementary School (Furley) at age 3. While at Furley, D.I. scored in the 97th percentile on the pre-kindergarten end of the year benchmark test and in the 100th percentile on the end of year math benchmark test. Both of these scores are in the "Advanced" score group. (Appeal, Student Profile). D.I.'s final pre-kindergarten report card showed that, at the end of the school year, he was performing at the highest levels. He was proficient in all pre-kindergarten subjects and was consistently demonstrating all skills. (Appeal, Pre-Kindergarten Report Card).

Students who are granted early entry to pre-kindergarten at Baltimore City Public Schools (BCPS) are not guaranteed early entry into kindergarten. They must apply for early entry, take a kindergarten assessment and attain a particular score. If they are not accepted, they may remain in pre-kindergarten for an additional year. JEC-RA.II.H. Appellant submitted the early kindergarten entry application for D.I. to attend kindergarten during the 2016-2017 school year at the age of 4.

School system procedure requires applicants seeking early kindergarten entry to achieve a score in the 85th percentile or above in all categories of the school system's assessment to demonstrate kindergarten readiness. (JEC-RA.II.A.1). The school system administers the *Kaufman Test of Educational Achievement*, Third Edition (KTEA-III), to assess academic achievement. The school system also uses a Parent Questionnaire to determine eligibility.

The Early Admissions Team administered the KTEA-III to D.I. on April 30, 2016. D.I. failed to attain the required score on the assessment, scoring below the 85th percentile in several categories. He scored as follows:

<u>Subtest</u>	<u>Percentile Rank</u>
Phonological Awareness	55
Math Concepts & Applications	82
Letter & Word Recognition	87
Written Expression	82
Listening Comprehension	66
<u>Oral Expression</u>	<u>99</u>
Cumulative Average	79

(Local Bd. Response, Ex. A).

By letter dated June 27, 2016, Perry T. Gorgen, Director of Early Learning, advised the Appellant that D.I. did not meet the eligibility criteria for early kindergarten entry. The letter advised that a continued pre-kindergarten placement would be the most appropriate. *Id.*

Appellant appealed the decision by letter dated June 29, 2016. (Local Bd. Response, Ex. B). Appellant maintained that D.I. had fulfilled the pre-kindergarten standards and she thought he would be bored and lose excitement about learning if he were not challenged at the kindergarten level. *Id.* Included in her documentation to support the appeal, Appellant attached letters from the principal of Furley and from D.I.'s pre-kindergarten teacher there, both supporting D.I.'s promotion to kindergarten. The principal highlighted that fact the D.I. had mastered all standards for pre-kindergarten. The pre-kindergarten teacher elaborated on the ways in which D.I. had demonstrated kindergarten readiness. (Appeal, Cephas & Johnson, 7/6/16 Letters).

Linda Chen, Chief Academic Officer, reviewed the appeal. By letter dated July 12, 2016, she advised the Appellant that she was upholding the determination of the Office of Early Learning denying early entry to kindergarten due to lack of eligibility. (Local Bd. Response, Ex. C).

On August 4, 2016, Appellant appealed the decision to the local board. (Local Bd. Response, Ex. D). The local board referred the matter to a hearing examiner for review and recommendation. On September 2, 2016, Hearing Examiner Carolyn Thaler issued a decision recommending that the local board uphold Ms. Chen's decision. (Local Bd. Response, Ex. F). Ms. Thaler noted that the individuals most familiar with D.I.'s classroom work had reported that he is eligible for promotion to kindergarten, and that his report card and awards show that he is clearly an excellent student. Nevertheless, Ms. Thaler determined that the early kindergarten entry policy requiring a minimum performance of 85th percentile on the KTEA-II prevented D.I. from moving on to kindergarten. *Id.* She stated as follows, in pertinent part:

In this case, it does seem a bit harsh because of the letters of support for [D.I.'s] academic achievements. However, at some point, Baltimore City

Public Schools has to establish a standard that is fair for all students. Even if students were one point away, eighty-five percentile is not the highest they could achieve. The eighty-fifth percentile is the baseline, and students who achieve over that have a better chance of success in the Kindergarten program.

Id. at 9. On September 29, 2016, the local board issued an Order accepting the recommendation and upholding the decision to deny D.I. early admission to kindergarten. *Id.*

This appeal followed.

We note that BCPS has allowed D.I. to attend kindergarten at Furley while this appeal has been pending. The principal and D.I.'s kindergarten teacher have submitted letters indicating that he is performing very well and would not benefit academically or socially from going back to pre-kindergarten. His report card shows that he is performing at proficient levels in all kindergarten subjects. (Appellant's Reply).

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.01.05.05A. A decision is arbitrary and unreasonable if it is contrary to sound educational policy or a reasoning mind could not have reasonably reached the conclusion the local board reached. COMAR 13A.01.05.05B.

LEGAL ANALYSIS

Appellant seeks early kindergarten entry for her son. She maintains that D.I. is kindergarten ready and that there is no reason to have him repeat the same BCPS pre-kindergarten course when he has already mastered all BCPS pre-kindergarten requirements.

There is no legal right to attend kindergarten before age five. *See* Md. Code Ann., Educ. §7-101 (guaranteeing a free public education to "[a]ll individuals who are 5 years old or older and under 21.") In order to enroll in kindergarten, a child must be age 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 or designee determines that the child demonstrates capabilities warranting early admission. *Id.*

Local schools systems have the discretion to set their own eligibility requirements for early entry to kindergarten. COMAR 13A.08.01.02B. Accordingly, BCPS has developed a regulation to accommodate requests for early kindergarten entry for children whose birth dates occur between September 2 and October 15 of the school year for which they are asking early entrance. Early entry applicants must demonstrate developmental readiness by achieving a score of 85 percent or better on the early entrance assessment in each of the domains tested. (JEC-RA).

This Board has previously upheld the establishment of BCPS’s bright line rule, as well as those of other jurisdictions, to determine eligibility for early entry to kindergarten, noting that bright line rules provide a benchmark for consistent decisions. *Sharon B. v. Baltimore City Bd. of Sch. Comm’rs*, MSBE Op. No.13-47. We have stated that 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). Relying on those bright line rules, the State Board has consistently upheld decisions of local board’s denying children early kindergarten entry based on a child’s failure to attain the required scores on the early entry assessment. *See Samira L. v. Howard County Bd. of Educ.*, MSBE Op. No 15-40 (2015) and cases cited therein.

This case, however, is a departure factually from all of our prior early kindergarten entry cases. Here, BCPS found D.I. eligible for early entry to pre-kindergarten and admitted him to the BCPS pre-kindergarten program. While in the pre-kindergarten program, D.I. mastered all aspects of the BCPS pre-kindergarten curriculum at the highest levels by the end of the school year. This is demonstrated on his report card and through his end of year scores of 97% on the benchmark test and a 100% on the math test. The school principal at Furley indicated that D.I. has mastered all standards required for pre-kindergarten and that he should be advanced to the next grade level. The pre-kindergarten teacher also reported that D.I. is kindergarten ready and that remaining in pre-kindergarten another year serves no purpose.¹ Moreover, BCPS allowed D.I. to attend kindergarten at Furley this year. Both the principal and the kindergarten teacher report that he is performing very well and should remain in kindergarten. Based on this limited and specific factual scenario, we find that the local board’s decision is not a reasonable or rationale educational decision. There is simply no educational benefit to pulling the student out of kindergarten at this late date in the school year.

By issuing this Opinion, we are in no way overturning our prior decisions recognizing a local board’s ability to establish a bright line rule to determine eligibility for early entry to kindergarten. Our decision here is limited to the specific facts of this case.

CONCLUSION

For the reasons stated above, we reverse the local board’s decision denying D.I. early kindergarten entry. The local board shall permit D.I. to remain in kindergarten at Furley Elementary School.

Signatures on File:

Andrew R. Smarick
President

Michele Jenkins Guyton

¹ Given the incongruity between the student’s performance in school and the early entry assessment, the local board may wish to review its early kindergarten entry policy.

Laurie Halverson

Stephanie R. Iszard

Rose Maria Li

Madhu Sidhu

Laura Weeldreyer

Absent:

Chester E. Finn, Jr., Vice President

Jannette O'Neill González

Barbara J. Shreeve

Guffrie M. Smith, Jr.

January 24, 2017