

WILLIAM AND DARDA W.,

Appellant

v.

BALTIMORE CITY BOARD
OF SCHOOL
COMMISSIONERS

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 18-05

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. Appellants did not respond to the Motion.

FACTUAL BACKGROUND

Appellants' son, D.W., was born on September 3, 2012, making him eligible to start kindergarten during the 2018-2019 school year at the age of 5. Because Appellants wanted D.W. to attend kindergarten during the 2017-2018 school year, they applied for D.W.'s early admission to the kindergarten program with the Baltimore City Public Schools (BCPS).

Students who apply for early entry to kindergarten at BCPS must take a kindergarten assessment and attain a particular score in order to receive an age waiver for admission. JEC-RA.II.H. BCPS procedure requires early entry applicants to achieve an average cumulative 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. (Motion, Ex. 2).

The Early Admissions Team administered the KTEA-III to D.W. on May 20, 2017. D.W. failed to attain the required score on the assessment, scoring below the 85th percentile in all categories. He scored as follows:

<u>Subtest</u>	<u>Percentile Rank</u>
Phonological Awareness	34
Math Concepts & Applications	70
Letter & Word Recognition	84

Written Expression	63
Listening Comprehension	18
<u>Oral Expression</u>	<u>8</u>
Cumulative Average	46

(Motion, Ex. 5).

By letter dated June 21, 2017, Perry T. Gorgen, Director of Early Learning, advised the Appellants that D.W. did not meet the eligibility criteria for early kindergarten entry. (Motion, Ex. 2). The letter advised that a pre-kindergarten placement would be the most appropriate. *Id.*

Appellants appealed the decision on or about June 5, 2017. (Motion, Ex. 3). Appellants explained that D.W. was already in a pre-kindergarten class and was doing well. They also maintained that D.W. may not have performed as well as he could have on the assessment because there was nobody familiar present when he took it and he “is shy around strangers and is slow to open up to new people.” *Id.*

Sean Conley, Chief Academic Officer, reviewed the appeal. By letter dated July 21, 2017, he advised the Appellants that he was upholding the determination of the Office of Early Learning denying early entry to kindergarten due to lack of eligibility. (Motion, Ex. 4).

On July 30, 2017, Appellants appealed the decision to the local board. (Motion, Ex. 6). The local board referred the matter to a hearing examiner for review and recommendation. On September 8, 2017, Hearing Examiner Aaron T. O’Neal issued a decision recommending that the local board uphold Mr. Conley’s decision. (Motion, Ex. 8). Mr. O’Neal noted that D.W. had an average cumulative score in the 46th percentile, which is below the required 85th percentile score. *Id.* On October 10, 2017, the local board issued an Order accepting the recommendation and upholding the decision to deny D.W. early admission to kindergarten. *Id.*

This appeal followed.

We note that D.W. has been attending pre-kindergarten at Montebello Elementary School, a BCPS school, this school year. (Appeal). Legal counsel for BCPS has confirmed that BCPS has allowed D.W. to do some kindergarten level work while in the pre-kindergarten class, and that the Appellants can apply for early entry to first grade for D.W. for the 2018-2019 school year.

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

Appellants seeks early kindergarten entry for their son. They maintain that D.W. is kindergarten ready and that there is no reason for him to remain in pre-kindergarten.

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). The State Board has previously upheld the establishment of BCPS’s bright line rule, as well as that of other jurisdictions, to determine eligibility for early entry to kindergarten, noting that bright line rules provide a benchmark for consistent decisions. *Sharon B. Baltimore City Bd. of Sch. Comm’rs*, MSBE Op. No. 13-47 (2013).

Although the Appellants believe that their son possesses the abilities for early kindergarten entry, he failed to attain the required scores on the school system’s assessment. 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.

CONCLUSION

For the reasons stated above, we affirm the local board’s decision denying D.W. early kindergarten entry.

Signatures on File:

Andrew R. Smarick
President

Chester E. Finn, Jr.
Vice-President

Michele Jenkins Guyton

Justin Hartings

Stephanie R. Iszard

Rose Maria Li

Michael Phillips

David Steiner

January 30, 2018