

N.Z.,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 18-36

OPINION

INTRODUCTION

Appellant challenges the decision of the Montgomery County Board of Education (“local board”) denying his daughter early entry into kindergarten. The local board filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal. The Appellant responded to the Motion and the local board replied to the response.

FACTUAL BACKGROUND

The Appellant’s daughter, A.Z., was born on September 16, 2013, beyond the September 1 cut-off date for kindergarten enrollment. Her birth date, however, placed her within the time period specified by the local board for submission of an application for early entrance to kindergarten. *See* Local Board Policy JEB and Regulation JEB-RB. On April 23, 2018, Appellant submitted an application seeking early kindergarten entry for A.Z. so that she could begin kindergarten in the 2018-2019 school year.

To be granted early entry to kindergarten in the Montgomery County Public Schools (“MCPS”), children must demonstrate capabilities warranting early admission through a screening process consisting of a standardized assessment, observational and MCPS primary assessments completed by staff, and information from parents. *See* Policy JEB.C.2; Regulation JEB-RB.B.5.b. The standard for early kindergarten admission in MCPS is that the child must achieve an “Acceptable” score on all areas of the early entry assessment.

A.Z. took the early entrance assessment at Beverly Farms Elementary School on April 24, 2018. She completed it in 30 minutes. (Mtn. Ex. 5). She achieved an “acceptable” score on four of the seven areas of assessment. Her scores were as follows:¹

¹ Although the June 27th Memorandum submitted by the local board as Exhibit 7 to its Motion states that A.Z. received a 15 in mathematics, A.Z. scored a 13 as originally shown on the June 13th Memorandum (Mtn. Ex. 6). The discrepancy is immaterial because neither score satisfies the minimum acceptable score for mathematics. In addition the acceptable score for Letter ID and Matching should be reflected as 17 out of 20. This discrepancy is also immaterial because A.Z. achieved a perfect score of 20 on that area of the assessment.

Area of Assessment	A.Z.'s Score	Acceptable Score
Letter ID and Matching	20	17 out of 20
Phonemic Awareness/Writing	5	4 out of 7
Sight Word Recognition	9	5 out of 10
Concepts About Print	7	10 out of 16
Mathematics	13	18 out of 23
Visual Motor Tasks	3	3 out of 3
Independent Task with Multi-Step Directions	4	6 out of 7

(Mtn. Exs. 6 & 7).

By letter dated April 30, 2018, the Principal of Beverly Farms, Spencer Delisle, advised the Appellant that A.Z. did not meet the criteria for early admission to kindergarten. (Mtn. Ex. 4). Mr. Delisle's also advised the Appellant that he could request a conference to discuss the decision. *Id.*

On May 17, 2018, Appellant met with Mr. Deslisle and Ms. Tolliver, the reading specialist who administered the assessment to A.Z. (Mtn. Ex. 5). At the meeting, Appellant had the opportunity to discuss the assessment, A.Z.'s performance, and the decision denying early entry to kindergarten. According to the Appellant, during the meeting Ms. Tolliver verbally informed him of A.Z.'s assessment scores, but Mr. Deslisle refused to provide A.Z.'s scores in writing until the Appellant had filed a formal appeal of his decision. *Id.*

By letter dated May 17, 2018, Appellant appealed Mr. Deslisle's decision to Dr. Andrew Zuckerman, Chief Operating Officer ("COO"), acting as the Superintendent's designee. (Mtn. Ex. 5). The Appellant raised three main arguments in support of his appeal: (1) thirty minutes was insufficient time for A.Z. to complete the assessment; (2) the content of the assessment was insufficient to assess a student's abilities and may not be consistent from student to student; and (3) the results of the assessment did not reflect A.Z.'s actual abilities in math and language, two of the three areas in which she did not meet standards. In the appeal, the Appellant also requested permission to view A.Z.'s numeric scores and score sheets to determine if the scoring rubric was fairly applied to his daughter. Attached to the appeal letter was a letter from A.Z.'s preschool teacher sharing her support for A.Z. to be admitted early to kindergarten. *Id.*

Dr. Zuckerman referred the case to hearing officer Janice N. Faden, former Director of Elementary Curriculum and Achievement, for review and recommendation. Ms. Faden compiled the pertinent information and reviewed the case with the Early Entry to Kindergarten ("EEK") Committee. (Mtn. Ex. 7). In addition to Ms. Faden, the EEK Committee consisted of the following individuals who are all education professionals: Mrs. Siobhan Alexander, Director of the Elementary Integrated Curriculum Team in the Office of Curriculum and Instructional Programs; two hearing officers, Mrs. Colette Hayes and Mrs. Sandra Walker, both former elementary school principals; Ms. Vickie Strange-Moscoco, a hearing officer and former Director of Special Education Operations; and Ms. Julie Bader, a hearing officer and former Supervisor of the Child Find/Early Childhood Disabilities Unit. The EEK Committee concluded that A.Z. did not meet the established criteria required for early kindergarten entry.

Ms. Faden issued a Memorandum summarizing the investigation and review of the case. In the Memorandum, Ms. Faden included the following observations made by Ms. Tolliver during A.Z.'s assessment: she came into the room willingly; she waited for directions; she did not engage in conversation about the book-even when prompted; she did not speak in sentences and gave one word answers; she got vocabulary confused with what was asked; she cut well and held hands in proper position; she wrote her name very well with neat and proper letter formation; she did not draw a picture of herself; she can count; she did not demonstrate that she mastered one-to-one correspondence; she can identify numbers; she was extremely quiet, almost silent throughout the assessment; and she kept looking at the examiner after and during each activity. *Id.* Ms. Faden recommended that A.Z. be denied early entry to kindergarten because she did not meet the requirements as evidenced by her assessment scores. *Id.* By letter dated June 14, 2018, Dr. Zuckerman adopted Ms. Faden's recommendation. (Mtn. Ex. 8).

On June 24, 2018, the Appellant appealed Dr. Zuckerman's decision to the local board. (Mtn. Ex. 9). He first asked the local board to provide him with the complete assessment scores for his daughter because the assessment score chart provided in Ms. Faden's June 13, 2018 memorandum confused the scores and omitted information. The memo should have included a scoring chart with three columns: a column showing A.Z.'s score in each assessment area, a column showing the acceptable score for each assessment area, and a column showing the total score possible for each assessment area.²

Appellant reiterated his prior arguments. He claimed that A.Z. was only provided 30 minutes to complete the assessment while other children were given an hour, and that 30 minutes was insufficient time to adequately complete the assessment. He argued that there were significant discrepancies between A.Z.'s account of the assessment content, the tasks that he has seen A.Z. perform, and the scores that A.Z. received. Based on this, he argued that the assessment was arbitrarily administered and inaccurately scored. He also questioned if sufficient safeguards were in place to ensure that the test giver adequately administered the assessment and assigned accurate scores. *Id.*

On July 10, 2018, Dr. Jack R. Smith, the local superintendent, responded to the appeal in a Memorandum to the local board. (Mtn. Ex. 10). With regard to the amount of time provided for the assessment, Dr. Smith explained that "MCPS assessors are trained to give each early entrance to kindergarten applicant enough time to complete each task." He stated that the assessors all receive a test manual with instructions for administration and a script for consistency. *Id.* Dr. Smith provided the Appellant with Ms. Tolliver's observation about A.Z.'s test taking style that she had recorded during the assessment. Ms. Tolliver noted that "[A.Z.] worked quickly without deliberation or self-correction and moved to the next item when she could not answer a previous question." *Id.*

While the Appellant believed A.Z.'s account that she was not tested on certain tasks, such as the cutting task, and he believed that A.Z. was able to perform certain other tasks, Dr. Smith explained that Ms. Tolliver's detailed notes on A.Z.'s score sheet indicate that she administered all of the tasks on the early entry assessment, including the cutting task. Dr. Smith also stated

² Ms. Faden provided the Appellant with a revised copy of her Memorandum dated June 27, 2018. It included a three column chart with A.Z.'s scores and the acceptable scores on each assessment area. (Mtn. Ex. 7). Dr. Zuckerman also provided an updated letter dated June 27, 2018. *Id.* With the exception of the addition of the scores and a new date, the contents of the June 27 Memorandum and cover letter are identical to the ones dated June 13.

that Appellant's list of the examples of tasks that A.Z. can perform "did not align with the tasks, skills, and concepts on the EEK Assessment." Dr. Smith further explained that, in addition to the test manual and script to ensure consistency in administering the assessment, the assessors are also trained to score answers using a score sheet with scoring instructions and examples. *Id.* Dr. Smith further noted that the MCPS early entry assessment has already been approved by the State Board to identify children who possess exceptional abilities and, thus, are prepared to enter kindergarten a year earlier than their peers. *Id.*

The Appellant responded to Dr. Smith's memorandum on July 12, 2018. Appellant restated his prior arguments. He also claimed that the discrepancy regarding the amount of time given to A.Z. to take the test versus the amount given to others was an Equal Protection violation. He challenged Dr. Smith's explanation that A.Z. controlled the pace of the assessment, claiming instead that the assessor controls the pace because the assessor asks the questions and determines how much time should pass when a child cannot answer before proceeding to the next question. Appellant also claimed that Ms. Tolliver's observational comments were contradictory because she stated that A.Z. "was extremely quiet, almost silent throughout the assessment" and that "she waited for directions," but also stated that A.Z. "moved to the next item."

In a Decision and Order issued July 30, 2018, the local board upheld the decision to deny A.Z. early entry to kindergarten, adopting the findings and recommendations of the COO and the information provided by the local superintendent. (Mtn. Ex. 12). The local board specifically stated that it was satisfied that A.Z. received sufficient time for her assessment and that the assessment was administered properly in terms of time and content. The local board highlighted that A.Z. did not meet the established criteria for early entry. It also noted that a team of educational professionals had reviewed all of the material in support of the appeal, including the assessment results, and determined that A.Z. should not be admitted early to kindergarten. *Id.*

This appeal to the State Board followed.

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. The State Board will 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

Preliminary Issue

The Appellant argues that the local board's decision is inadequate and cannot be effectively challenged because it contains only conclusory statements and no express findings. This argument goes to the basis for the early entry denial, the reasons that support the denial, and whether there is a sufficient basis for this Board to make a determination whether or not the local board's early kindergarten entry denial was arbitrary, unreasonable, or illegal. *See Mohan G. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 08-15 (2008)(citing *Rodriguez v. Prince*

George's County, 79 Md. App. 537, 550 (1989) (“It is not permissible for . . . any administrative body, simply to parrot general statutory requirements or rest on broad conclusory statements.”).

We find no merit to the Appellant’s argument. The local board’s Decision and Order addressed the Appellant’s primary arguments regarding the time discrepancy between A.Z. and other applicants, the content and administration of the assessment, and identified the basis for denying early entry as A.Z.’s failure to achieve the required results on the early entry assessment. The local board also adopted the findings and recommendations of the COO, which includes Ms. Faden’s memorandum, and the information regarding the appeal that was provided by the local superintendent. A review of the cited documents shows that they are detailed and address with specificity the Appellant’s arguments in support of his appeal and the basis for denying early kindergarten entry to A.Z. The local board’s decision contains a sufficient rationale for this Board to rule on this appeal.

Early Kindergarten Entry Decision

Under Maryland’s education laws, 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). As to this requirement, the State Board has 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.” *David and Adrienne G. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 09-19 (2009).

Accordingly, MCPS has developed a policy and regulation to accommodate requests for early kindergarten entry for children whose birth dates occur within a six week period beyond the established September 1 cutoff date. *See* Policy JEB and Regulation JEB-RB. In order to attend kindergarten one year prior to the age established by the State, children must go through a screening process that assesses academic, social, emotional, and physical maturity; motor development; learning skills; and other capabilities warranting early admission. JEB-RB.III.B.5.b. The screening includes a reading/language arts assessment; a mathematics assessment; and an observational assessment aligned with the MMSR indicators, including physical well-being and motor development, personal and social development, language and literature, and mathematical thinking. JEB-RB.III.B.5.c.

Appellant has made it clear that he believes A.Z. is kindergarten ready and should be admitted early. He bases this on his observations of the tasks that he claims A.Z. can accomplish. For example, he states that A.Z. can count past 200, that she can add and subtract easily, that she can read simple books, and that she can recognize several hundred words. Yet the school system assessed A.Z. in accordance with its established procedures and found that she did not qualify for early entry based on her assessment results. A.Z. did not obtain an “acceptable” score in all of the assessment areas as required by MCPS policy and regulation. The State Board has consistently upheld the use of assessment scores as a basis for denying early entry to kindergarten. *See Kristen M. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 13-16 (2013) and cases cited therein. As we have previously stated, “[i]t was reasonable for a school system to conclude that [the student’s] performance during the assessment and screening process demonstrated that [the student] was not ready for kindergarten. *Tonya L. v. Montgomery County*

Bd. of Educ., MSBE Op. No. 08-19 (2008). Although Ms. Tolliver was responsible for giving and initially scoring the assessment, on appeal the assessment results have been reviewed by the EEK Committee, which agreed on the initial outcome of the assessment.

In this case, however, the Appellant maintains that the assessment process was unfair. He maintains that Ms. Tolliver, the assessor, was in control of the pace of the assessment and gave A.Z. only 30 minutes to complete it while other children received an hour. He has also concluded that Ms. Tolliver failed to administer all of the assessment tasks based on the short time frame and on A.Z.'s recollection of the tasks she was asked to perform. Based on his view of his daughter's abilities, Appellant does not believe that A.Z. could have achieved the scores that she received without there being some error on Ms. Tolliver's part on conducting and scoring the assessment.³

The local board has explained that A.Z. was screened and assessed in accordance with the MCPS procedures using the same criteria applied to other children taking the early entry assessment. Regarding the timing of the assessment, Dr. Smith has stated that the assessors are trained to administer the test so that applicants are given enough time to complete each task. Thus, there was no thirty minute time limit and A.Z. could have taken more time if she needed it. As reflected by Ms. Tolliver's notes taken during the assessment, it was A.Z. who set the pace as she "worked quickly without deliberation or self-correction and moved to the next item when she could not answer a previous question." While there is a script that the assessors follow to ensure that the assessment is uniform, there is no set amount of time for children to provide an answer. The applicants move through the tasks on the assessment at their own pace. They do not specifically ask the assessor for the next question, as the Appellant suggests. The fact that it only took A.Z. 30 minutes to complete it does not mean that Ms. Tolliver improperly administered the assessment. Although the Appellant appears to dislike Ms. Tolliver's characterization of A.Z.'s testing style, those were her observations at the time.

In addition, although the Appellant believes that the assessment was improperly administered based on his daughter's recollection of the assessment tasks, Dr. Smith explained that Ms. Tolliver took detailed notes on A.Z.'s score sheet which indicate that she administered all of the tasks. It was reasonable for the local board to rely on the information provided by its professional educators who are specifically trained to administer the assessment. While Appellant thinks that his daughter can complete many tasks that were tested, Dr. Smith indicated that the examples Appellant provided do not align with the tasks, skills, and concepts on the assessment. With regard to the scoring, the Appellant also makes assumptions about how many questions an assessment tool contained based on the amount of possible points. Certain questions and tasks are more difficult and are assigned higher point values so it would be difficult for the Appellant to determine what the score should be. We do not find any evidence that the assessment was time limited or improperly administered or scored.

The record supports the conclusion that MCPS provided A.Z. with the complete assessment in accordance with the procedures utilized by MCPS for all students seeking early entrance to kindergarten, and that A.Z. did not earn acceptable scores in all areas of the

³ The Appellant believes that these issues are genuine disputes of material fact that require the State board to deny the local board's Motion for Summary Affirmance. In reality, the alleged disputes of material fact are simply the Appellant's disagreements with the conclusions reached by the school system. The Appellant may speculate and offer possible explanations for why the results were the way they were, but that does not mean that the facts are disputed.

assessment as is required for early entrance. A.Z. was denied early entry simply because she failed to satisfy the MCPS criteria for early kindergarten entry.

Assessment Implementation – Sound Educational Practice

The Appellant argues that the MCPS assessment procedure does not amount to “sound educational practice” because A.Z. was alone with the assessor who recorded her answers, and there was no monitoring to ensure that the assessor accurately recorded her answers. On any given day at schools around the State there are teachers and other school professionals who administer assessments to students without a monitor to make sure they are accurately recording student answers or student grades. There is nothing unsound about the school system relying on its education professionals to carry out the tasks that they have been hired and trained to perform. Indeed, the operation of the public school systems rely on school personnel doing what they have been hired to do.

To the extent that the Appellant is using the appeal process to request that the implementation procedure of MCPS’s early kindergarten entry policy be amended to provide additional or different procedures, such a request is a quasi-legislative matter that is not appropriate for resolution through a quasi-judicial State Board appeal. *See Robert & Jennifer N. v. Calvert County Bd. of Educ.*, MSBE Op. No. 06-21 (2006).

Equal Protection

Appellant claims that A.Z. was denied equal protection guaranteed by the 14th Amendment because the school system treated her differently than other students by allowing A.Z. less time to complete the assessment. As explained above, all applicants were given all of the time they needed to complete the assessment. A.Z. was given the same assessment as all other applicants and was able to dictate the pace of the test just like the other applicants could. There was no equal protection violation.

Due Process

Appellant argues that A.Z. was denied due process when MCPS declined to disclose her score sheets and detailed observation comments. “Due process requirements arise when a party is to be deprived of a property or liberty interest.” *Messick v. Wicomico County Bd. of Educ.*, MSBE Op. No. 12-14 (2012). There is no legal right to attend kindergarten as a four year old. Therefore, the local board’s denial of A.Z.’s early kindergarten entry application does not amount to deprivation of a property interest. The Appellant is not entitled to anything more than the basic due process requirements that are provided through the appeal process. The Appellant has appealed his case through various levels during which he has been given the opportunity to present his argument and be heard. *See Sherrie H. v. Carroll County Bd. of Educ.*, MSBE Op. No. 17-35 (2017).

With regard to the score sheet and the assessment comment document, there was apparently an issue disclosing those items due to confidentiality issues surrounding the assessment. We have previously noted the importance of concealing information regarding the assessment to protect the test from becoming invalid. *See Angela A. v. Prince George’s County Bd. of Educ.*, MSBE Op. No. 13-45. Nevertheless, Ms. Faden provided the assessment comments in her Memorandum and Dr. Smith shared that the score sheet indicated that Ms. Tolliver administered all tasks on the assessment to A.Z. Dr. Smith also provided Ms. Tolliver’s

observation regarding A.Z.'s testing style. In addition, the Appellant was provided the opportunity to speak with Mr. Delisle and Ms. Tolliver prior to initiating his appeal, and was given a detailed explanation about the assessment and A.Z.'s scores. We do not find a due process violation here.

CONCLUSION

For all of the reasons stated above, we affirm the decision of the local board denying A.Z. early kindergarten entry.

Signatures on File:

Justin M. Hartings
President

Stephanie R. Iszard
Vice-President

Vermelle D. Greene

Michele Jenkins Guyton

Jean C. Halle

Rose Maria Li

Joan Mele-McCarthy

Michael Phillips

David Steiner

Warner I. Sumpter

Dissent:
Chester E. Finn, Jr.

October 23, 2018