

KEVIN AND LEAH B.

Appellant

v.

HOWARD COUNTY  
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 17-38

## OPINION

### INTRODUCTION

Kevin and Leah B. (Appellants) appeal the decision of the Howard County Board of Education (local board) denying their daughter early entry into kindergarten. The local board filed a Motion for Summary Decision. Appellants responded to the Motion and the local board replied.

### FACTUAL BACKGROUND

Appellants' daughter H.B. turned five years old on September 12, which was 11 days after the cut-off birthdate for entry into kindergarten for the 2017-18 school year. Aware of the cut-off date, Appellants filed an application in March 2017 for early admission into kindergarten. (Motion, Record at 36, 37)

The Howard County Public School System (HCPSS) has developed a policy allowing children whose birth dates fall between September 2 and October 13 to apply for early entry into kindergarten. HCPSS Policy 9000; HCPSS Policy 9000-IP. The policy states that early admission "may be warranted for children who display an exceptionally high degree of academic, social, emotional and physical readiness to attend kindergarten." HCPSS Policy 9000-IP. The policy requires two development checklists and an assessment "using a standardized process." *Id.* The assessment covers four areas: General Knowledge; Reading; Graphomotor/Writing; and Mathematics.<sup>1</sup>

The developmental checklists must be completed by a parent or guardian and a non-related adult, such as a preschool teacher. The checklists cover 21 assessment items and require the individual to answer "Always," "Usually," "Sometimes," or "Never." For instance, the first item states "The child separates from his or her parent without tears or anxiety." The final item asks whether the child exhibits "the social and emotional maturity needed for productive functioning in a Kindergarten class of 18 or more children." (Motion, Record at 38-40).

In addition, HCPSS conducts an assessment of early kindergarten applicants. The assessment covers four areas: General Knowledge; Reading; Graphomotor/Writing; and

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<sup>1</sup> In advance of the 2017-18 school year, HCPSS assessed 158 children for early entry into kindergarten. HCPSS accepted 43 students into the program and denied the remaining 115. On appeal to the elementary school directors, 15 additional students were admitted into the program. (Motion, Record at 59).

Mathematics. An early childhood teacher administers the one-on-one assessment. Together, the two developmental checklists and the student assessment make up the six categories of the early kindergarten admission test. Students receive one of three ratings in each category: Advanced; Proficient; or Basic. Students must receive an Advanced score in four of the six categories in order to gain early admission. (Motion, Record at 41-42).

On April 3, 2017, a teacher conducted the assessment for H.B. On May 26, 2017, Appellants received a final evaluation for H.B. rating her as “Advanced” in General Knowledge and in the Parent/Guardian checklist and Proficient in the remaining four categories: Reading, Graphomotor/Writing, Mathematics, and the Preschool Teacher/Non-related Adult checklist. Specifically, her scores were as follows:

General Knowledge – 23 (23-27 is Advanced)  
Graphomotor/Writing – 31 (16-38 is Proficient)  
Reading – 63 (25-66 is Proficient)  
Mathematics – 17 (11-20 is Proficient)  
Preschool Teacher Checklist – 50 (45-56 is Proficient)  
Parent Checklist – 60 (54-60 is Advanced)

(Motion, Record at 56).

Because H.B. received an Advanced score in only two areas, HCPSS denied her early admission to kindergarten. (Motion, Record at 42).

On June 4, 2017, Appellants appealed the decision. They argued that H.B. has excelled in preschool and has shown that she is ready for kindergarten-level work. They attached to the appeal letters of recommendation written by H.B.’s preschool teacher; the director of the preschool; the owner of the preschool; the director of a dance, music, and art studio where H.B. is a dance student; and H.B.’s godmother. H.B. also wrote a short letter expressing her excitement for kindergarten. (Motion, Record at 43-52).

On June 16, 2017, the HCPSS administrative directors for elementary schools denied the appeal. They observed that H.B. failed to meet the early entrance criteria, having scored as Advanced in only two out of six categories. The directors explained that all children took the same test to ensure a consistent and fair outcome. Their letter stated that “the school system selected an array of assessments designed to predict a child’s success if admitted early to kindergarten. These scores are being used for their predictive value, not as a judgment on your child’s intelligence or ability.” (Motion, Record at 54-55). Following this letter, the HCPSS coordinator of assessment met with Appellants to discuss the test.

Appellants appealed the decision to the local board. They included letters of recommendation and work samples from H.B. (Motion, Record at 11-30). Appellants argued that (1) H.B.’s preschool teacher did not properly understand the developmental checklist and had since revised her answers on the checklist; (2) H.B. was only four points away from Advanced ratings in Reading and Mathematics and that the scores did not correctly reflect her abilities; (3) H.B.’s score in Graphomotor/Writing did not reflect her abilities; (4) the early childhood test is inaccurate and fails to properly capture a child’s abilities by focusing more on knowledge than one’s ability to learn; and (5) HCPSS is violating its policies concerning having

students “excel in a safe and supportive environment” and reach their full potential by delaying her early entrance into kindergarten, which could have adverse effects on her motivation and performance. (Motion, Record at 6).

Appellants attached to the appeal the development checklist with revised answers completed by H.B.’s preschool teacher. In the previous developmental checklist, dated March 2, 2017, the preschool teacher marked nine of the items as “always,” and 13 of the items as “usually.” She answered “yes” to the question about whether H.B. would be ready for kindergarten. (Motion, Record at 38-39). In the revised answers, dated June 22, 2017, the preschool teacher marked every item as “always.” (Motion, Record at 8-9). In an accompanying letter, the preschool teacher stated that she “revised the checklist with a better understanding of what is being asked of me when it comes to evaluating [H.B.]” She explained that it was her first time completing a developmental checklist for HCPSS and that she revised her answers because H.B.’s “abilities that were stated in March of 2017 are not her current abilities.” (Motion, Record at 10). On July 10, 2017, the preschool teacher submitted a second letter stating that she revised her answers “because [H.B.’s] abilities that were stated by the checklist I completed in March of 2017 did not represent her ‘then’ current abilities.” (Motion, Record at 33).

On July 27, 2017, the local board affirmed the decision. A majority of the board declined to accept the revised developmental checklist from H.B.’s preschool teacher, stating that “permitting a revised developmental checklist at this stage would be inconsistent with the assessment procedures and cause a disadvantage to the other candidates.” The board observed that, even with a third Advanced rating provided by the preschool teacher’s checklist, H.B. would still not meet the threshold of four Advanced ratings. The local board found that missing the Advanced rating in reading and mathematics by four points each was “significant” and determined that the decision to deny early entry into kindergarten was reasonable. The board found no merit in Appellants’ arguments against the assessment procedure and stated it was “satisfied that the assessment protocol . . . used consistently for a number of years has identified successfully younger students who can handle kindergarten work.” The board observed that HCPSS schools are “equipped to deal with students of varying academic strengths and make sure students are appropriately challenged.” (Motion, Local Board Decision).

This timely appeal 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 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; *see Deborah and Jeffrey K. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 17-36 (2017).

### LEGAL ANALYSIS

There is no legal right to attend kindergarten before age five. *See* Md. Code, Educ. §7-101 (guaranteeing a free public education to all individuals “who are 5 years old or older and under 21”). Children admitted to public school must be 5 years old or older on September 1 of

the school year in which the child applies for entrance. COMAR 13A.08.01.02(B)(2). Each local board is required, however, to adopt policies permitting a 4-year-old child, upon request of the child's parent or guardian, to be admitted to kindergarten "if the local superintendent of schools or the superintendent's designee determines that the child demonstrates capabilities warranting early admission." COMAR 13A.08.01.02(B)(3). Appellants raise several arguments against the local board's early admission policy and decision, which we shall address in turn.

#### *The HCPSS assessment test*

Appellants argue that the test is defective, that HCPSS has failed to prove its effectiveness, and that H.B.'s abilities clearly show that the test does not adequately screen students for early kindergarten entry. We have concluded on multiple occasions that it is not unreasonable for a local board to determine that a child is not ready for early entrance into kindergarten based on assessment scores. *See Syed Junaid M.*, MSBE Op. No. 13-18 (listing cases). We have ruled, particularly in early entry kindergarten cases, that the use of a bright line test, while it "may appear 'artificial at its edges' or render a harsh result" is not illegal. *See Deborah and Jeffrey K.*, MSBE Op. No. 17-36 (listing cases). Specifically, in the past four years, the State Board has twice upheld HCPSS's process as being legally valid. *See Samira L. v. Howard County Bd. of Educ.*, MSBE Op. No. 15-40 (2015); *Syed Junaid M. v. Howard County Bd. of Educ.*, MSBE Op. No. 13-18 (2013). We see no reason to depart from those prior decisions in this appeal.

#### *Improper waiver of scores*

Appellants argue that they were told by two HCPSS officials that the school system would "waive" scores if a student happened to be a few points off. This argument was not raised before the local board. The State Board may review additional evidence not presented to the local board if it is shown that the evidence is material to the issues in the case and there were good reasons for failure to offer the evidence in the proceedings before the local board. COMAR 13A.01.05.04C. It does not appear that Appellants have a good reason for failing to raise this argument sooner nor does this information appear to be material. The local board explains that the two HCPSS officials quoted by Appellant do not make early entry decisions and that H.B. missed the cutoff score by more than a few points: 8 points in one category, and 4 points in two other categories.

Relatedly, Appellants allege that HCPSS has agreed to waive test scores for other students who "show lesser potential." There is no evidence to support this statement in the record. We have consistently held that an Appellant must support allegations with factual evidence. *See King v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 14-19 (2014).

#### *Consideration of the revised developmental checklist*

H.B.'s preschool teacher completed one development checklist in March 2017 as part of the initial early admission packet. After the initial denial and appeal, H.B.'s preschool teacher revised her answers to state that H.B. "always" demonstrates all of the listed behaviors as of June 2017. She later sent a second letter explaining that H.B. also demonstrated those same behaviors in March 2017. The local board declined to accept the revised checklist, explaining that it would not be fair to other students who were not able to submit revised checklists.

In our view, it was not unreasonable for the local board to decline to consider the revised checklist, which was only completed once Appellants had begun their appeal. Even if the local board had accepted the revised checklist, though, H.B. would still have not had the four Advanced ratings required in order to gain early admission to kindergarten.

*Lack of information on the early entry process*

Appellants argue that HCPSS acted illegally by not providing sufficient information to the public about the early entry process. Specifically, they argue that they should have known what the cut scores for the assessment would be ahead-of-time. HCPSS has a detailed website describing the early admission process, which can be found at <http://www.hcpss.org/enroll/early-admission/kindergarten>. It explains the requirements for early admission, the applicable timeframe, and how to appeal decisions. In our view, it provides sufficient information to parents about the process. As to the cut scores, Appellants maintain that knowing the cut scores in advance would prove to parents that HCPSS is not altering cut off scores after testing to deny students admission into the program. The record indicates what the cut off scores were for this particular assessment. There is no evidence in the record to support Appellants' speculation that HCPSS is illegally altering these scores. Appellants have otherwise offered no explanation for why knowing the cut scores in advance would have been beneficial or changed the outcome here.

*Misleading information on the HCPSS website*

Appellants maintain that documents on the HCPSS website that describe skills a child is expected to learn in preschool and kindergarten mislead parents about what is required for the early entry assessment. As Appellants acknowledge, the HCPSS website states that "Children do not need any type of special preparation for the test." A description of skills that children can be expected to learn as a result of kindergarten is not a study guide for the early entry exam and HCPSS does not hold it out as such. In our view, the materials cited by Appellants on the HCPSS website do not mislead parents about the assessment process.

*Consideration of other factors in the early entry process*

Appellants argue that HCPSS should recognize other factors in the early kindergarten entry process, such as letters of recommendation, work samples, and other supporting documents. They maintain that they are not requesting a change in HCPSS policy, but merely using the documents to show that HCPSS's decision-making is flawed. We have previously addressed the legality of HCPSS's policy. To the extent that Appellants are seeking to change it, such as by having HCPSS consider other documents as part of its decision making, we have long held that a quasi-judicial appeal before the State Board is not an appropriate vehicle for effectuating a change in local policy that was adopted through a quasi-legislative process. *See Deborah and Jeffrey K., MSBE Op. No. 17-36* (citing cases).

*Neglect and harm to H.B.*

Appellants argue that the local board is "intentionally willing to harm a child" and committing illegal "child neglect" by failing to admit H.B. into kindergarten early. They explain that she has experienced emotional stress after getting news of the local board's denial of her

appeal. Appellants argue, without having had H.B. attend any HCPSS schools, that the school system will not be able to adequately meet her needs in the future if she is not immediately admitted into kindergarten. They worry she will lack motivation and be harmed academically.

In our view, applying a policy consistently to all children is not an intentional act against one child. Nor does it remotely constitute “child neglect.” H.B. may be disappointed with this outcome. As the administrative directors for elementary schools explained in one letter, however, “it is important that you not interpret this as a judgment about your child. . . . [t]hese scores are being used for their predictive value, not as a judgment on your child’s intelligence or ability.” (Motion, Record at 55). HCPSS has indicated its willingness to work with Appellants to assure that, once H.B. does begin kindergarten, that she is appropriately challenged and that the school system will work to address her unique needs.

#### *Violation of other HCPSS policies*

Appellants argue that the decision violates several HCPSS policies. They cite HCPSS Policy 2000, which states that, “Lifelong learning is essential for productive and responsible participation in a diverse and changing world.” They also cite HCPSS Policy 9020 that states “students must be provided the opportunity to excel in a safe and supportive environment that inspires and engages every student to discover and reach their full potential.” The policy also states that, “Students have the right to learn in a safe and supportive environment that fosters hope, engagement, and well-being for all.” These policies expressing the school system’s general educational philosophy do not guarantee early admission to kindergarten for any particular student.

#### *The Shanelle I. case*

Finally, Appellants argue that the State Board should reach the same result as it did in *Shanelle I. v. Baltimore City Bd. of Sch. Comm’rs*, MSBE Op. No. 17-03 (2017). In *Shanelle I.*, the State Board reversed the local board’s decision denying a student early entry into kindergarten. The student had already been admitted early-entry into the Baltimore City Public Schools’ pre-kindergarten program and mastered all aspects of the curriculum by the end of the school year. *Id.* While the appeal was pending, the student began attending kindergarten in the school system. *Id.* By the time the appeal was decided on January 24, 2017, the student had spent half the year in kindergarten, performed well, and both his principal and kindergarten teacher recommended he stay in kindergarten through the rest of the school year. *Id.* Under this unusual set of facts, the State Board reversed the local board, but explained that the decision was “limited to the specific facts of this case” and did not overturn prior State Board decisions concerning early entry into kindergarten. *Id.*

Contrary to Appellant’s assertions, H.B.’s case is not identical. Given that we limited *Shanelle I* to its facts, and that the facts of H.B.’s case are not analogous, we do not find a reason to reach the same unusual result here.

#### CONCLUSION

For all of these reasons, we affirm the decision of the local board because it is not arbitrary, unreasonable, or illegal.

Signatures on File:

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Andrew R. Smarick  
President

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Chester E. Finn, Jr.  
Vice-President

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Michele Jenkins Guyton

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Justin M. Hartings

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Stephanie R. Iszard

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Rose Maria Li

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Michael Phillips

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David Steiner

Absent:  
Irene M. Zoppi Rodriguez

October 24, 2017