

LELAH AND LEON A.,

Appellant

v.

PRINCE GEORGE'S  
COUNTY BOARD OF  
EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 18-40

## OPINION

### INTRODUCTION

Lelah and Leon A. (Appellants) appeal the decision of the Prince George's County Board of Education (local board) denying their daughter early entry into kindergarten at Chesapeake Math IT Academy North Elementary Public Charter School (Chesapeake Math IT). The local board filed a Motion for Summary Affirmance, maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellants responded and the local board replied.

### FACTUAL BACKGROUND

On January 9, 2018, Appellants submitted a lottery application to obtain a spot at Chesapeake Math IT for the 2018-19 school year on behalf of their 4-year-old daughter, L. Chesapeake Math IT is a public charter school. Admission is by lottery. Appellants wanted their daughter to attend Chesapeake Math IT because L's older brother already attended the school. Prince George's County Public Schools (PGCPS) rejected the application because L would not be age 5 as of September 1, 2018 and, thus, not eligible for kindergarten. (Appeal, Local Board Decision).

Because L's birthday falls on September 21, she was eligible to apply for early admission to kindergarten. On July 3, 2018, Appellants' daughter sat for the kindergarten entrance exam. She earned top scores and met PGCPS's requirements for early entry into kindergarten for the 2018-19 school year. Following the results of the exam, Appellants contacted the principal of Chesapeake Math IT and requested a spot for their daughter for the upcoming school year. The principal denied the request because the lottery for seats had already concluded. The principal explained that L could submit a sibling application, which receives greater weight in the lottery drawing, for the following school year. (Appeal, Early Admission Assessment Report, Correspondence with Chesapeake Math IT).

On July 23, 2018, Appellants appealed to the CEO's designee. The designee denied the appeal, concluding that PGCPS policy did not allow for automatic early entry into schools that had lottery-based admissions. (Price Letter).

On August 3, 2018, Appellants appealed to the local board. The local board denied the appeal, concluding that while Appellants' daughter was eligible for early entry into kindergarten, she could not attend Chesapeake Math IT because there were no available seats left by the time she became eligible for early entry. (Local Board Decision).

This 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.

### LEGAL ANALYSIS

#### *Timeliness of appeal*

As an initial matter, the local board argues that Appellants' appeal is untimely. PGCPs denied their lottery application in January and Appellants did not appeal to the local board until July. The local board, however, considered the merits of the appeal given that Appellants' daughter had subsequently earned early admission to kindergarten. The Appellants formally appealed the local board's decision to the State Board. We shall consider the merits.

#### *Early admission to kindergarten*

By law, a child who is five years old or older must attend school. Md. Code Ann., Educ. § 7-101(a). Maryland is among the majority of states that require students be five years old on or before September 1 in the year they start kindergarten. COMAR 13A.08.01.02B; *see Deborah and Jeffrey K. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 17-36 (2017). Each local board of education is required, however, to adopt regulations permitting a four year old, upon request by a parent or guardian, to be admitted early to kindergarten if the local superintendent determines the child has capabilities warranting early admission. COMAR 13A.08.01.02B.

There is no dispute that Appellants' daughter has earned early admission to kindergarten. Instead, the question raised by Appellants is whether their daughter has the right to attend a particular school because of her early entry status. Appellants argue that the local board's actions violate COMAR 13A.08.01.02.B(3), which governs early admission into kindergarten. Although that regulation requires the local board to adopt an early admission policy, it does not establish a right to attend a particular school if the child is granted early admission. PGCPs, by having a policy in place and allowing Appellants' daughter to attend kindergarten early, meets the requirements of the early admission regulation.

#### *Age discrimination*

Appellants argue that the local board's early entry and charter school lottery policies are illegal because they constitute age discrimination in violation of federal and local laws. Appellants first argue that PGCPs violated the Age Discrimination Act of 1975, which prohibits

discrimination on the basis of age in programs and activities that receive federal financial assistance. That Act does not, however, bar age distinctions contained in State or local law “adopted by an elected, general purpose legislative body” that establish “criteria for participation in age-related terms.” 45 C.F.R. §90.3. Requiring students to be 5 years old by September 1 of the year they begin kindergarten (or to apply for the charter lottery) is the type of age distinction permitted by law.

Appellants similarly argue that PGCPs policies prohibit discrimination or harassment based on age. They maintain that their daughter’s inability to attend Chesapeake MATH IT as an early-admission kindergarten student demonstrates that there is no equity in charter school access. The record shows no indication of harassment and the alleged discrimination was based on the fact that L was 4 at the time she applied to the charter school lottery and had not yet gained early entry into kindergarten. Wherever a cut-off date is set, it establishes a bright line rule that affects all children equally, regardless of how close they may be to the cut-off age. We have long held that “a bright line test of age, 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 (quoting cases) (internal quotation marks omitted).

#### *Charter lottery and early admissions process*

As the local board acknowledges, there is a conflict between the early admission to kindergarten policy and the charter school lottery process. The charter application process requires all charter applications to be turned in by the end of January, with placement decisions made several weeks after that and a wait list finalized by early April. See PGCPs Administrative Procedure 3506.1. Although it is possible for a student to have qualified for early entry into kindergarten by the end of the charter application process, it is more likely that a student will meet the early entrance requirements later in the school year and, thus, be unable to apply for the charter school lottery.

The local board argues that the charter lottery process must take place when it does to ensure an orderly lottery and allow the local board and charter schools to finalize their enrollment numbers in time to plan for the upcoming school year. For many charter schools, the list of potential applicants far outweighs the number of available seats and the lottery system provides the most equitable way to distribute those seats among eligible students. The local board maintains that “holding” spots for students who *might* become eligible for early entry into kindergarten would be an administrative burden, given that approximately 53 percent of early admission applicants do not end up meeting the early entry criteria. In addition, those “holds” would take a spot away from other students who are already eligible to attend a charter school.

In short, this case highlights the difficult decisions that local boards must make when faced with competing policy priorities. Under our standard of review, we do not substitute our judgment for that of the local board when it comes to deciding policy matters unless the board’s decision is arbitrary, unreasonable, or illegal. See COMAR 13A.01.05.05A. Because there is no indication that the board’s policy decisions are arbitrary, unreasonable, or illegal, we must affirm the local board’s decision.

CONCLUSION

We affirm the decision of the local board because it is not arbitrary, unreasonable, or illegal.

Signatures on File:

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Justin M. Hartings  
President

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Stephanie R. Iszard  
Vice-President

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Chester E. Finn, Jr.

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Vermelle D. Greene

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Michele Jenkins Guyton

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Michael Phillips

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Warner I. Sumpter

December 4, 2018