

SHERLINDA S.,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 19-33

OPINION

INTRODUCTION

Sherlinda S. (Appellant) filed an appeal of the decision of the Montgomery County Board of Education (local board) denying early entry into kindergarten for her daughter. The local board filed a response, maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellant responded and the local board replied.

FACTUAL BACKGROUND

Appellant has a four-year-old daughter, K, who will turn five on October 24, 2019. Because her birthday falls after September 1, 2019, K did not automatically qualify for admission into kindergarten for the 2019-20 school year. Appellant sought early entry for her daughter into kindergarten at Bel Pre Elementary School, part of Montgomery County Public Schools (MCPS). MCPS allows children whose birthdays fall within six weeks of September 1 (October 15) to apply for early admission into kindergarten if they “demonstrate capabilities warranting early admission.” MCPS Policy JEB. MCPS does not consider children for early entry if their birthdays fall after October 15. *MCPS 2019-20 Guide, Early Entrance to Kindergarten*. Officials at Bel Pre Elementary denied Appellant’s request for early entry because K’s birthday falls outside of the October 15, 2019 cut-off. (Appeal; Local Board Response, Ex. 6).

Appellant appealed to the superintendent’s designee who affirmed the denial, concluding that K’s birthday did not fall within the window for MCPS to consider her for early kindergarten entry. The designee provided information on how to find licensed and accredited early childhood programs in the county and a number to call for eligibility information on MCPS prekindergarten and Head Start programs. (Local Board Response, Ex. 3).

Appellant appealed to the local board. She argued that K has the aptitude and maturity to begin kindergarten and provided samples of her work, as well as letters of recommendation. The local board observed that the State Board adopted a regulation establishing September 1 as the cut-off date for enrollment in kindergarten, presuming that children with a later birthday are not socially, educationally, or emotionally prepared for full-day public kindergarten. As required, MCPS adopted a policy allowing for children with a birthday within the first six weeks of the

cut-off to apply for an early entry assessment. The local board concluded that MCPS consistently applied its policy to Appellant's case and affirmed the superintendent designee's decision. (Local Board Response, Ex. 6).

This appeal followed.

STANDARD OF REVIEW

Decisions of a local board involving a local policy or a controversy and dispute regarding the rules and regulations of the local board shall be 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.01.05.06A.

LEGAL ANALYSIS

Appellant challenges the local board's policy of not considering children for early entry into kindergarten if their birthdays fall more than six weeks after September 1. She argues that any four-year-old who has the potential and readiness to start school should be allowed to do so, and offers arguments as to why she believes her daughter is ready for kindergarten.

We most recently reviewed the history of the laws governing kindergarten enrollment last year in *Ahmed H. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 18-28 (2018). 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 to be five years old on or before September 1 in the year they start kindergarten. COMAR 13A.08.01.02B; *Ahmed H.*, MSBE Op. No. 18-28.

The September 1 cut-off has been part of Maryland law since the 2006-2007 school year. *Ahmed H.*, MSBE Op. No. 18-28. Through COMAR 13A.08.01.02(B), this Board phased in that date over the course of four years, beginning with a November 30 cut-off in the 2003-2004 school year and ending with the September 1 cut-off for the 2006-2007 school year. *Id.*

In connection with these changes, the State Board also required local boards of education to "adopt a regulation permitting a 4-year-old child, upon request by the 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). After local school systems received "a very large number" of applications for early admission, the Maryland State Department of Education provided guidance permitting local school systems to "promulgate regulations with a reasonable time period beyond the September 1 admission date . . . for early admission to prekindergarten or kindergarten." *Kenneth F. v. Baltimore County Bd. of Educ.*, MSBE Op. No. 10-23 (2010). MSDE determined this guidance met the intent of the early admission regulations, which were "intended for those children whose birth dates closely miss the cut-off date for school attendance but whose educational needs or demonstrated capabilities warrant early admission." *Id.* (citing guidance). Accordingly, MCPS created a cut-off date of October 15, six weeks after the September 1 cut-off set by law.

“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. A child is either on one side of the line or the other.” *Ahmed H.*, MSBE Op. No. 18-28. In *Ahmed H.*, this Board upheld an early entry denial of a student whose birthday fell nine days after the cut-off. *Id.* In doing so, the State Board observed that it had also upheld denials of children who were born two, five, and 11 days after the cut-off. *Id.* (citing cases). Appellant’s daughter, like the child in *Ahmed H.*, has a birthday that is nine days after the cut-off. 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. v. Montgomery County Bd. of Educ.*, MSBE Op. No 17-36 (2017) (quoting cases). MCPS applied its standard policy, which we have previously concluded is consistent with the law, to Appellant’s daughter. The local board did not act in an arbitrary, unreasonable, or illegal manner by doing so.

To the extent that Appellant wishes to see a change in the local board’s early entry requirements, we have long held that the quasi-judicial appeals process is not the appropriate avenue for such systemic change. *See Kenneth F.*, MSBE Op. No. 10-23. Instead, the local board’s quasi-legislative process, in which a local board could debate changes to its policy during an open meeting, is the appropriate vehicle for changes in local board policy.

CONCLUSION

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

Signatures on File:

Warner I. Sumpter
President

Jean C. Halle
Vice-President

Gail H. Bates

Clarence C. Crawford

Charles R. Dashiell, Jr.

Vermelle D. Greene

Justin M. Hartings

Rose Maria Li

Joan Mele-McCarthy

Michael Phillips

David Steiner

September 24, 2019