

SHERREA F. BEFORE THE
Appellant, MARYLAND
v. STATE BOARD
BALTIMORE CITY BOARD OF EDUCATION
OF SCHOOL COMMISSIONERS
Opinion No. 20-09
Appellee.

OPINION
INTRODUCTION

Appellant challenges the decision of the Baltimore City Board of School Commissioners (“local board”) denying her daughter early entry into kindergarten. The local board initially submitted a motion to dismiss the case for premature filing because the local board had not yet issued a decision in the case. Before the State Board ruled on the motion, however, the local board issued its decision. Upon the request of the State Board, the local board submitted a response to the merits of the appeal. The Appellant responded and the local board replied to the response.

FACTUAL BACKGROUND

The Appellant’s daughter, A.F., was born on October 10, 2014, beyond the September 1 cut-off date for kindergarten enrollment for the 2019-2020 school year. 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 Bd. Resp., Ex. 12 – Administrative Regulation JEC-RA(II)(A)(1)). Appellant submitted an application seeking early kindergarten entry for A.F. so that she could begin kindergarten at Guilford Elementary/Middle School in the 2019-2020 school year.

To be granted early entry to kindergarten in the Baltimore City Public Schools (“BCPS”), children must achieve an average cumulative score in the 85th percentile or higher on an assessment chosen by the school system. *Id.* (JEC-RA(II)(A)(1)(b)). BCPS utilized the Kaufman Test of Educational Achievement, Third Edition (“KTEA-III”), a nationally normed standardized assessment, as the early kindergarten entrance assessment during the assessment period in this case. (Local Bd. Resp., Ex. 2).

A.F. took the KTEA-III on June 24, 2019. (Local Bd. Resp., Ex. 1). She achieved an average cumulative score in the 64th percentile. The breakdown of her score is as follows:

Subtest	Percentile Rank
Phonological Processing	61
Math Concepts & Applications	87
Letter & Word Recognition	84
Written Expression	82
Listening Comprehension	45
Oral Expression	23
Cumulative Average	64

(Local Bd. Resp., Ex. 2). By letter dated July 2, 2019, the Director of Early Learning, Crystal Francis, advised the Appellant that A.F. did not meet the criteria for early admission to kindergarten. *Id.*

On July 10, 2019, Appellant appealed Ms. Francis' decision to the Chief Executive Officer ("CEO") maintaining that her daughter "has achieved above and beyond in her pre k class," that she is "advanced for her age," that she "has proven to have more knowledge than most children her age and older," and that she is "prepared to enter kindergarten." (Local Bd. Resp., Ex. 3). By letter dated August 9, 2019, John Davis, the Chief of Schools, acting as the CEO's designee, advised the Appellant that he was upholding the decision of the Office of Early Learning Programs. (Local Bd. Resp., Ex. 4).

On August 10, 2019, Appellant appealed Mr. Davis' decision to the local board. (Local Bd. Resp., Ex. 5). She stated that A.F. had successfully completed her pre-k program and that the teacher had recommended her for early entry to kindergarten. *Id.* The CEO responded to the appeal on August 30, 2019, maintaining that the local board should uphold the decision denying early kindergarten entry because A.F. did not meet the threshold requirement of achieving an average cumulative score in the 85th percentile or higher on the KTEA-III. (Local Bd. Resp., Ex. 6).

On September 10, 2019, prior to the local board rendering a decision in the case, Appellant filed an appeal with the State Board. (Local Bd. Resp., Ex. 7). On October 2, 2019, the local board requested that the State Board dismiss the appeal because it was filed prematurely. (Motion to Dismiss).

Meanwhile, the local board referred Appellant's appeal to Vivian Nunez, Hearing Examiner, for review and a recommendation. On October 3, 2019, the Hearing Examiner recommended that the local board uphold Mr. Davis' decision. (Local Bd. Resp., Ex. 8). On November 12, 2019, the local board accepted the Hearing Examiner's recommendation and affirmed Mr. Davis' decision to deny Appellant's request for early entry to kindergarten. (Local Bd. Resp., Ex. 9).

Because the local board issued its decision on the appeal before the State Board ruled on the motion to dismiss, the State Board requested that the local board respond to the merits of the appeal. The case has been fully briefed by the parties.

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

As a preliminary issue, the local board argues that the appeal should be dismissed because the Appellant filed her appeal to the State Board prematurely and did not file a new appeal after the local board issued its decision. There was some procedural confusion in the case because the local board issued its decision before the State Board ruled on its initial motion to dismiss. Thus, there was already an open case in the matter on the State Board's docket. Because the Appellant had already submitted her appeal and the local board decided the matter relying on the Hearing Examiner's decision without any new reasoning, the State Board requested the local board to respond to the merits of the appeal because the appeal was already on the State Board's docket as an open case. For this reason, we decline to dismiss the 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 1 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 "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, BCPS 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 Local Bd. Resp., Ex. 12 – JEC-RA(II)(A)(1)*). In order to attend kindergarten one year prior to the age established by the State, children must achieve an average cumulative score in the 85th percentile or higher on an assessment chosen by the school system. (*Id.* at JEC-RA(II)(A)(1)(b)).

Despite the Appellant's claim that A.F. is ready for kindergarten, the local board determined that A.F. is not entitled to early kindergarten entry based on her assessment scores. 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.

Appellant disagrees with the use of the KTEA-III assessment because she believes the school system teachers and administration have "no knowledge of the curriculum" used to develop the test, making it impossible for a BCPS pre-k student to reach the required percentage.

(Appeal, p.1). Appellant has presented no evidence to support this argument. The KTEA-III is a standardized assessment of academic achievement which covers a wide range of developmental areas. It is within the discretion of the school system to determine the method by which it will assess students requesting early kindergarten entry. There is no legal mandate for a school system to use one type of test over another. *See David & Adrienne G. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 09-19 (2019).

CONCLUSION

For all of the reasons stated above, we find that the local board's decision was not arbitrary, unreasonable or illegal. Accordingly, we affirm the decision of the local board denying A.F. early kindergarten entry.

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

February 25, 2020