

E.P. AND S.P.,

Appellant,

v.

CALVERT COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 21-49

OPINION

INTRODUCTION

Appellants appeal the decision of the Calvert County Board of Education (“local board”) denying early kindergarten entry for their son for the 2021-2022 school year. The local board filed a memorandum in response to the appeal maintaining that its decision was not arbitrary, unreasonable or illegal. The Appellants did not file a reply.

FACTUAL BACKGROUND

Appellants’ son turned five on September 2, 2021, one day after the September 1 cutoff date for kindergarten admission for the 2021-2022 school year. Because their son did not automatically qualify for kindergarten admission, Appellants sought early entry under local board Policy 2915 and Administrative Procedure (“AP”) 2915.1.

On April 16, 2021, Dr. Melissa Morris, a school psychologist for Calvert County Public Schools (“CCPS”), conducted an evaluation of Appellants’ son using the Differential Ability Scales, Second Edition, Early Years Battery (“DAS-II”), the assessment used by the school system to determine eligibility for early entry. The DAS-II measures reasoning and problem solving skills in three areas – verbal reasoning, non-verbal reasoning, and spatial reasoning – and generates a “General Conceptual Ability” score that estimates a child’s level of cognitive functioning. Appellants’ son scored in the Average range in verbal reasoning, the Below Average range in non-verbal reasoning, the Average range in spatial reasoning, and the Average range in general conceptual ability. (Memorandum, Ex. 5-02),

On April 26, 2021, Kristin Plancho, Early Childhood Learning Specialist, advised Appellants that their son was not recommended for early admission based on his scores on the assessment. She explained that CCPS requires applicants to receive a General Conceptual Ability score of 125 or higher to move on to the second level of assessment, and their son did not qualify due to a score of 95. (Memorandum, Ex. 6-01).

On April 30, 2021, Appellants appealed Ms. Plancho’s decision to Diane Workman, Assistant Superintendent of Instruction. They argued that their son missed the kindergarten entry deadline by one day, that he had received instruction through various childcare centers for several years, and that since March 2020 he had been receiving instruction at home from his

mom, an early childhood educator. (Memorandum, Ex. 7-02). Appellants also submitted a letter from their son's preschool teacher who stated that he would not benefit academically or socially from another year in preschool. (Memorandum, Ex. 7-03).

On May 10, 2021, Ms. Workman, acting as the Superintendent's Designee, denied the appeal based on the failure of Appellants' son to meet the assessment criteria. Ms. Workman explained that compliance with the cut-off date ensures a fair, equitable, and consistent practice because there will always be a child who misses it by a day, or five days or more. (Memorandum, Ex. 8-01).

Appellants appealed the decision to the local board on May 20, 2021, arguing that eligibility should not be based on their son's assessment score or a one-day age difference. They argued the following:

- Their son's individual learning needs were not taken into consideration when making the decision;
- Their son only missed the deadline by one day;
- Dr. Morris described their son as conversational, persistent with task, and cooperative, which are characteristics that should be taken into account in deciding kindergarten readiness. He also displayed social emotional maturity and appropriate classroom behavior while taking the assessment;
- The State does not require a child to demonstrate exceptionalities to be considered for kindergarten, which is the CCPS standard;
- A score of 95 on the DAS-II indicates school-age readiness;
- Their son's acceptance should be based on his readiness and he meets the Maryland Readiness Matters criteria;
- Appellants' son has been receiving instruction at home from his mother, a highly effective teacher who has an Advanced Professional Certificate in Special Education, Early Childhood Education, and English.

(Memorandum, Ex. 9-01). By memorandum to the local board dated May 28, 2021, Superintendent Curry responded to the appeal pointing to State Board precedent as supporting the denial of Appellants' early entry request. (Memorandum, Ex. 10-01).

On July 19, 2021, the local board affirmed Ms. Workman's decision. The local noted the long-standing State Board precedent upholding local board early kindergarten entry decisions that comply with school system policy and procedure, and which rely on the school system's chosen assessment. The local board explained that the decision in this case is consistent with that precedent. (Memorandum, Ex. 11-01).

This appeal followed. Appellants make the same arguments as they did before the local board. (Appeal to State Board).

STANDARD OF REVIEW

Local board decisions involving a local policy or a controversy and dispute regarding the rules and regulations of the local board are considered *prima facie* correct. The State Board will not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.06A. The Appellants have the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.06D.

LEGAL ANALYSIS

Under Maryland's education laws, there is no legal right to attend kindergarten before age five. Md. Code Ann., Educ. §7-101(a); *Kevin and Leah B. v. Howard County Bd. of Educ.*, MSBE Op. No. 17-38 (2017). 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 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). *See also Chiffon H. v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 19-11 (2019).

Accordingly, CCPS has developed a policy and administrative procedure to accommodate requests for early kindergarten entry for children whose birth dates occur on or before October 15 of the school year for which they apply for entrance. *See Memorandum, Ex. 2-01 (AP 2915.1(II.2))*. CCPS will consider an exception to the established age "if the evaluation results of a child document exceptional overall performance . . ." *Id.* (AP 2915.1(I.A)). AP 2915.1(III.E.1) states that "[a] battery of assessments will be used to determine a child's eligibility for early admittance," which "include aptitude testing and may also include assessments which gauge cognitive ability, academic performance, and social and emotional needs," and which "will be given and scored by appropriate [CCPS] personnel." AP 2915.1(III.E.1.d) further provides that the intent of the assessment "is to identify exceptional students, not simply students who may be capable of completing kindergarten work."

The Appellants dispute the requirement for exceptional overall performance, arguing that the State law does not require such a high bar. However, as stated above, local boards have the discretion to determine the method by which they assess early entry eligibility. *Sherrea F. v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 20-09 (2020). This Board has long upheld policies requiring very high benchmarks for early kindergarten admission, and has upheld decisions denying eligibility for failure to attain the required scores. *See Angela A. v. Prince George's County Bd. of Educ.*, MSBE Op. no. 13-45 (2013) ("The local board is free to set the cut off score at 90% and need not look to anything other than the assessment results.")

Appellants argue that the decision is arbitrary and unfair because their son missed the cutoff date by only one day. The State Board has routinely affirmed decisions to deny early kindergarten entry to students who miss the deadline by only a few days. We stated that

“[w]herever 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 ... 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.’” *Sherlinda S. v. Montgomery County Bd. of Educ.*, MSBE Op. no. 19-33 (2019) (citations omitted). The local board applied its standard policy, which is appropriate given that Appellants’ son missed the cut-off date.

Despite the Appellants’ claims that their son is kindergarten ready, the local board and each prior decision maker determined the he is not eligible for early entry based on his performance on the assessment. The State Board has made clear that the school system’s opinion as to whether an applicant for early entry is qualified is determinative, not the parents’ opinion. *See e.g. Angela A. v. Prince George’s County Bd. of Educ.*, MSBE Op. No. 13-45 (2013)(upholding use of assessment scores as a basis for denying early entry to kindergarten despite the parent’s view that her child possessed abilities for kindergarten). *See also Kristen M. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 13-16 (2013) and cases cited therein.

Additionally, Appellants argue that the local board should recognize other factors in the early kindergarten entry process. To the extent that Appellants would like 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. v. Baltimore County Bd. of Educ.*, MSBE Op. No. 10-23 (2010). 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. *See Sherlinda S., supra.*

CONCLUSION

For the reasons stated above, we find that the local board’s decision denying early kindergarten entry is not arbitrary, unreasonable, or illegal. We, therefore, affirm.

Signatures on File:

Clarence C. Crawford
President

Shawn D. Bartley

Gail H. Bates

Chuen-Chin Bianca Chang

Charles R. Dashiell, Jr.

Susan J. Getty

Vermelle Greene

Jean C. Halle

Rachel McCusker

Joan Mele-McCarthy

Lori Morrow

Warner I. Sumpter

Holly C. Wilcox

September 28, 2021