

E.D. AND M.D.,

Appellants

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 25-03

OPINION

INTRODUCTION

E.D. and M.D. (“Appellants”), parents of Student X, filed an appeal of the decision of the Montgomery County Board of Education (“local board”) denying early entry into kindergarten for their daughter. The local board filed a response, maintaining that its decision was not arbitrary, unreasonable, or illegal. The Appellants filed a reply, and the local board filed a sur-reply.

FACTUAL BACKGROUND

Student X turned five on October 1, 2024. Because her birthday fell after September 1st, the State-mandated cutoff date for kindergarten admission, Student X did not automatically qualify for admission into kindergarten for the 2024-2025 school year. Appellants submitted a timely application for early kindergarten admission to Montgomery County Public Schools (“MCPS”).

Students may be granted early kindergarten admission in MCPS if the child turns five during September 2 through October 15 and demonstrates capabilities warranting early admission. (R. 96-104, MCPS Policy JEB, Regulation JEB-RB.III.B, and 2024-2025 Guide: Early Entrance to Kindergarten). Regulation JEB-RB provides that “[s]creening procedures will be used to assess academic, social, emotional and physical maturity, motor development, learning skills, and capabilities warranting early admission. Procedures to be used include standardized instrument(s), observational and MCPS primary assessments completed by staff, and information from parents.” (R. 100). Applicants are given the opportunity to take the required assessment and must achieve an acceptable score in six of the eight assessment areas to meet the MCPS early kindergarten entry standard. (R. 9).

School system staff administered the assessment to Student X on May 22, 2024. (R. 1). Student X achieved acceptable scores in only three of the eight assessment areas and was observed being frustrated when presented with challenging assessment tasks. (R. 9-10). Her scores were as follows:

| Area of Assessment | Student X Score | Acceptable Score |
|---|-----------------|------------------|
| Letter Naming | 20 | 17 out of 20 |
| Phonological Awareness/Phonics | 36 | 36 out of 45 |
| High Frequency Words | 1 | 7 out of 10 |
| Phonics and Writing | 2 | 4 out of 7 |
| Decoding and Comprehension | 0 | 8 out of 10 |
| Mathematics | 11 | 12 out of 16 |
| Visual Motor Tasks | 2 | 3 out of 3 |
| Independent Task with Multi-Step Directions | 7 | 6 out of 7 |

Id. Because Student X did not achieve acceptable scores in six of the eight assessment areas, she was not eligible for early kindergarten. *Id.* By letter dated June 7, 2024, [REDACTED] [REDACTED] Elementary School Principal, advised the Appellants that Student X was not recommended for early admission to kindergarten based on failure to meet the established criteria. (R. 1).

On June 11, 2024, the Appellants appealed the denial to Dana Edwards, Chief of District Operations and Superintendent’s Designee, maintaining that Student X is kindergarten ready based on the strength of her social foundations, language and literacy skills, mathematics ability, and physical and motor skills. (R. 2-6). Appellants included an assessment from Student X’s prekindergarten teacher stating that Student X is ready for kindergarten. *Id.*

Ms. Edwards referred the matter to a hearing officer for review. (R. 7). The hearing officer recommended that Student X not be allowed early entrance to kindergarten noting that Student X did not meet the established criteria in five of the eight areas of assessment. (R. 8-10). By letter dated July 9, 2024, Ms. Edwards advised the Appellants that she concurred with the hearing officer’s findings and was adopting the recommendation denying Student X early kindergarten entry. (R. 7).

On July 10, 2024, the Appellants appealed Ms. Edward’s denial to the local board. (R. 12-58). The Appellants reiterated their earlier arguments and noted that Student X met the criteria for three of the assessment areas and narrowly missed the criteria in two areas by only one point each. The Appellants also claimed that the hearing officer applied a threshold not contained in the MCPS policy or regulation by stating that “children recommended for early entrance to kindergarten will need to demonstrate capabilities beyond expectations of the peer group.” *Id.*

On August 12, 2024, the local Superintendent submitted to the local board a memorandum in response to the appeal maintaining that the denial of admission should be upheld because Student X did not demonstrate capabilities warranting early admission to kindergarten for the 2024-2025 school year based on the assessment results. (R. 61-63). The Superintendent addressed the Appellants’ argument concerning the threshold stating as follows:

The 2024-2025 Guide: Early Entrance to Kindergarten clearly articulates the capabilities that warrant early admission into kindergarten for MCPS. This guide states that children recommended for EEK will need to demonstrate capabilities

beyond the expectations of the per group, warranting early admission and development in academic skills as well as social/emotional and physical development. The standards for early entrance are high to ensure that students are not frustrated by their advanced placement.

Id. at 62. The Appellants provided a response to the Superintendent’s memorandum. (R. 87).

On September 12, 2024, the local board issued a Decision and Order denying early entry to kindergarten to Student X based on the evidence in the record and the applicable standard. The local board adopted the findings and recommendations of the Superintendent’s Designee and the information provided by the Superintendent in response to the appeal. (R. 89-92). The local board explained that Student X was assessed in accordance with proper procedure and met the established criteria for only three of the eight areas of assessment when the standard requires acceptable scores in six areas due to the rigorous nature of the kindergarten curriculum. *Id.* The board also stated:

The Board has consistently agreed with the superintendent that it is appropriate to require a child who is seeking early entrance to kindergarten to demonstrate readiness by displaying exceptional, above-average academic, physical, and social/emotional skills on the designated assessment. Although the standard is not explicitly stated in the Board Policy JEB or Regulation JEB-RB, it is clearly stated in the *Guide to Early Entrance to Kindergarten* and has been the standard applied by MCPS for many years.

Id. at 91.

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. The Appellants have the burden of proof by the preponderance of the evidence. COMAR 13A.01.05.06D.

LEGAL ANALYSIS

Timeliness of Appeal Filing

As a preliminary matter we address the local board’s claim that the appeal was untimely filed. (Memorandum Response at 10). The local board issued its decision on September 12, 2024. COMAR 13A.01.05.02B(1) provides that an appeal to the State Board “shall be filed within 30 calendar days of the decision of the local board” and that the “30 days shall run from the later of the date of the order or the opinion reflecting the decision.” If the 30th day is on a Saturday, Sunday, or a State legal holiday, the time period ends on the next day that is not a

Saturday, Sunday, or a State legal holiday. COMAR 13A.01.05.02B(4). An appeal is deemed transmitted within the limitations period if, before the expiration of the time period, it has been submitted electronically to the State Board. COMAR 13A.01.05.02B(3). Because the 30th day here was a Saturday and Monday was a State legal holiday (Columbus Day), the appeal was due to be filed on Tuesday, October 15, 2024, which was the next business day. The State Board received the appeal by email on October 13, which was within the 30-day appeal time frame. Thus, the appeal was timely filed.

Early Kindergarten Entry

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 Cnty. Bd. of Educ.*, MSBE Op. No. 17-38 (2017). 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(2); *Ahmed H. v. Montgomery Cnty. Bd. of Educ.*, MSBE Op. No. 18-28 (2018).

Each local board of education is required to adopt "a regulation permitting a 4-year-old child, upon request of 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.08.01.02B(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 Cnty. 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).

Consistent with this requirement, MCPS has developed a standard policy and procedure for early kindergarten admission and applied it to Student X. The record shows that Student X was screened and assessed in accordance with the MCPS procedures using the same criteria applied to other children taking the early entry assessment. The Appellants have not demonstrated otherwise. As previously stated, in order to qualify for early admission to kindergarten, the child must receive acceptable scores in six of the eight assessment areas. Student X received acceptable scores in only three assessment areas and, thus, did not meet the criteria for early admission.

The Appellants believe that Student X is kindergarten ready and have submitted examples of her work from prekindergarten, pictures and a home video of her performing tasks and activities, and an assessment and recommendation by her teacher. However, Student X did not achieve the required scores on the school system's assessment. The State Board has consistently upheld local board determinations that a child is not ready for early entry based on failure to attain the required assessment scores. *See Syed Junaid M. v. Howard Cnty. Bd. of Educ.*, MSBE Op. No. 13-18 (2013) and cases cited therein. The Appellants maintain that Student X narrowly missed attaining acceptable scores in two areas each by just one point claiming statistical insignificance, but, as we have consistently ruled, particularly in early entry to kindergarten cases, 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. v. Montgomery Cnty. Bd. of Educ.*, MSBE Op. No. 17-36 (2017). Further, the State Board has made clear that the school system's opinion as to whether an applicant for early entry is qualified is determinative, and that

the school system is free to rely on its own assessment. *See Angela A. v. Prince George's Cnty. Bd. of Educ.*, MSBE Op. No. 13-45 (2013). MCPS applied its standard policy and procedure and did not act in an arbitrary, unreasonable or illegal manner by doing so.

New Evidence

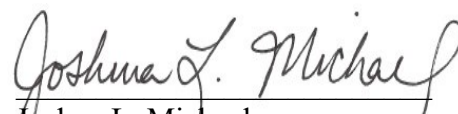
In the State Board appeal, the Appellants seek to introduce new evidence to support their argument that the early entry denial decision was based on illegal and unreasonable assessment procedures at the ██████ Elementary School (“█ES”), maintaining that the assessment is educationally unsound in either the test itself, administration of the test, or the discretion of the assessor during scoring. The Appellants claim that this is demonstrated by the fact that █ES has a 0% acceptance rate out of the 14 early kindergarten entry applicants from 2019 -2024 as compared to the overall MCPS acceptance rate which fluctuates over the years from 15% to 32%, that no █ES applicants during this period have achieved acceptable scores in four of the assessment categories, and that all 2024 █ES applicants received a zero in the newly added assessment area (Decoding and Comprehension). Appellants base these numbers on information received from the MCPS Office of Communications on September 18, 2024, in response to their Public Information Act request. The local board contests the Appellants’ reliance on new evidence that was not a part of the administrative record before the local board at the time it made its decision in this case.

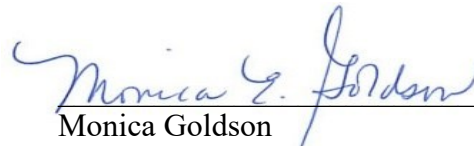
The State Board may consider additional evidence or remand the appeal to the local board for consideration of the additional evidence if the evidence is material to the case and the Appellants offer good reason for failing to present the information to the local board. COMAR 13A.01.05.04C. To be material, the evidence must be “of such a nature that knowledge of the item would affect a person’s decision-making.” *Shervon D. v. Howard Cnty. Bd. of Educ.*, MSBE Op. No. 17-10 (2017).

First, we do not find the evidence from the PIA request material as it is not axiomatic that the scores of 14 students over several years demonstrate that the assessment used by the school system is educationally unsound or was administered improperly. Second, the Appellants have not provided good reason for failure to offer the evidence during the proceedings before the local board. While the PIA response was not received until after the local board appeal was filed, the Appellants could have sought this information at any time given the public knowledge that the assessment is part of the early entry process and factors into the early entry decision. We decline to consider the additional evidence.

CONCLUSION

For the reasons stated above, we decline to consider the new evidence and affirm the decision of the local board because it was not arbitrary, unreasonable, or illegal.

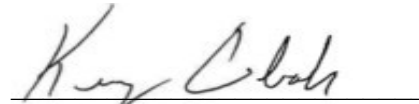

Joshua L. Michael
President




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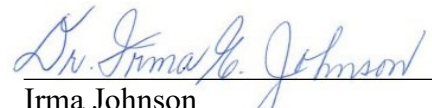
Kenny Clash



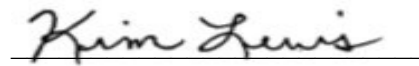
Clarence C. Crawford



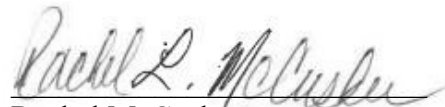
Nick Greer



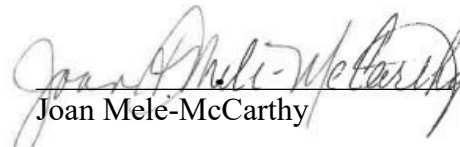
Irma Johnson



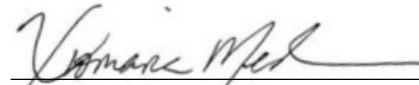
Kim Lewis



Rachel McCusker



Joan Mele-McCarthy



Xiomara Medina



Samir Paul

Absent:
Chuen-Chin Bianca Chang

January 28, 2025