

DEBORAH AND JEFFREY
K.,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 17-36

OPINION

INTRODUCTION

Deborah and Jeffery K., Appellants, challenge the decision of the Montgomery County Board of Education (local board) denying their daughter early entry into kindergarten. The local board filed a Motion to Dismiss to which the Appellants responded. The local board also filed a Motion for Summary Decision.

FACTUAL BACKGROUND

Because their daughter, S., would turn five years old on September 6, 2017, five days after the September 1 cut-off birthdate for entry into kindergarten for the 2017-2018 school year, on February 10, 2017, the Appellants filed an Application for Early Entrance into Kindergarten.

For early entry into kindergarten, a child is assessed in seven areas – Letter Identification and Matching, Phonemic Awareness/Writing Assessment, Sight Word Recognition, Concepts about Print, Mathematics, Visual Motor Tasks, and Independent Tasks with Multi-Step Directions. While their daughter met the assessment criteria for three of the assessments areas - - Letter Identification and Matching, Mathematics, and Independent Task with Multi-Step Directions, she did not meet the criteria for the other four.

For Phonemic Awareness/Writing Assessment, four out of seven points is an acceptable score, but S. scored two points. For Sight Word Recognition, she scored 3 out of 10 points, the acceptable score is five points. In Concepts about Print, with an acceptable score of 10 out of 16 points, she scored 8, and for Visual Motor Skills she scored two out of three points, but the acceptable score is 3. Thus, the school system staff denied early admission to kindergarten.

The Appellants appealed that decision on May 19, 2017. Mr. Andrew Zuckerman, the Superintendent's Designee, assigned the appeal to a hearing officer who recommended denial of early admission to kindergarten. Mr. Zuckerman accepted that recommendation on June 20, 2017. The Appellants appealed to the local board on July 5, 2017. The local board met on July 31, 2017 and sustained the Superintendent's decision to deny early entry. They informed the Appellants by phone of their decision and that a written decision would not be issued until the end of August.

Before a written decision was issued, the Appellants appealed to the State Board. The local board issued its written decision on September 1, 2017. We have expedited the briefing schedule in this case in order to render a decision on appeal in as timely a manner as possible given our once a month meeting schedule.

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

The Appellants make two arguments in support of their appeal. First, the September 1st birthdate cut-off for regular admission of five year olds into kindergarten should not apply in this case. Or, alternatively, the early kindergarten assessment sets such an impossible, irrational standard that their daughter's results on the assessment should not disqualify her from early entry. We address each argument *seriatim*.

September 1st Cut-off Birthdate for Regular Enrollment in Kindergarten

By law, a child who is five years old or older must attend school. Md. Code. Ann. Educ. §7-101(a). The date on which a child must be five years old varies among the States. Thirty-two states require that a child be five years old on or before September 1 in the year he/she starts kindergarten. Eleven states have cut-off birthdates between September 1 and October 15. One has a January 1 cut-off date. The remaining states allow the local school systems to set their own dates. *Age to Start Kindergarten By State*, <http://www.superpages.com/em/age-to-start-kindergarten-by-state>.

In Maryland, beginning in the 2003-2004 school year, the State Board, by regulation, began moving the cut-off birthdate to earlier in the school year. Specifically:

- (1) Beginning with the 2003-2004 school year through the 2005-2006 school year, a child admitted to the kindergarten program in the public schools shall be 5 years old or older on:
 - (a) November 30, 2003, if the child applies for entrance for the 2003-2004 school year;
 - (b) October 31, 2004, if the child applies for entrance for the 2004-2005 school year; and
 - (c) September 30, 2005, if the child applies for entrance for the 2005-2006 school year.
- (2) Beginning with the 2006-2007 school year and each school year thereafter, a child admitted to the kindergarten program in the

public schools shall be 5 years old or older on September 1 of the school year in which the child applies for entrance.

COMAR 13A.08.01.02(B).

Thus, for a child to enter kindergarten in the 2017-2018 school year, the child must be five years old on September 1, 2017. The Appellants argue that the State Board should have changed its regulation establishing the September 1 birthdate because in 2017-2018 the school year starts on September 5, not in late August as in years past. They argue that a child whose birthday was September 1 in years past could start kindergarten on August 25, five days before his/her 5th birthday. Yet here, their daughter will turn five just one day after the start of the school year and she cannot enter kindergarten. To the Appellants that is an absurdly unreasonable, and thus illegal, result. While it may seem so on its face, the result is not absurd or illegal.

States establish cut-off dates for enrollment into kindergarten for a variety of policy reasons, but wherever the cut-off date is set, it establishes a bright line rule. A child is either on one side of the line or the other. We have ruled, particularly in kindergarten cases, that the use of a bright line test of age, while it “may appear ‘artificial at its edges’ or render a harsh result” is not illegal. *Dawn and Michael H. v. Anne Arundel County Board of Education*, MSBE Op. No. 12-11 at 4 (citing *Quill Corp. v. North Dakota*, 504 U.S. 298, 315 (1992)); *see also Angela A. v. Prince George’s County Board of Education*, MSBE Op. No. 13-45 at 3 (adopting a bright line cut-off score of 90% on early kindergarten entry assessment). The application of the September 1 birthdate cut-off in this case was not arbitrary or unreasonable or illegal. Indeed, its application followed the law as set forth in COMAR 13A.08.01.02.

The Assessment

The Appellants assail the early kindergarten assessment administered by the Montgomery County Public Schools (MCPS) stating that “at best [it is] incorrect...and at worse is a subjective tool...” Response at 2. They believe that the assessment did not result in an accurate reflection of their daughter’s abilities or, in the alternative, that the standards set for early entry into kindergarten are too high.

MCPS adopted its early entry kindergarten assessment in MCPS Policy JEB-RB. To the extent that the Appellants challenge the policy establishing the assessment tool or the scores needed for early entry, we have long held that a quasi-judicial appeal before the State Board is not an appropriate vehicle for effectuating a change in local policy that was adopted through a quasi-legislative process. *See, e.g., Farhad P. v. Montgomery County Board of Education*, MSBE Op. No. 08-06 (2008) (challenging the early entry assessment); *Regan v. Montgomery County Board of Education*, MSBE Op. No. 03-05 (2003) (challenging use of American Indian imagery); *Astrove v. Montgomery County Board of Education*, MSBE Op. No. 02-14 (challenging the format of CTBS test result reporting). Absent illegality in the policy adopted, and we find no illegality here, a change in early kindergarten admission policy, including the assessment, must be effectuated through the local board’s quasi-legislative process.

Appellants believe that their daughter demonstrates the skills and behaviors of kindergarten readiness. However, the school system screened and assessed her and determined that she did not

qualify for early admission to kindergarten because she did not attain an acceptable score in all seven areas of the assessment as required by school system policy. This Board has upheld many cases denying early kindergarten entry based on the child's failure to attain the required assessment scores during the screening process. *See Tonya L. v. Montgomery County Board of Education*, MSBE Op. No. 08-19 (2008); *Perseveranda B. v. Montgomery County Board of Education*, MSBE Op. No. 08-01 (2008); *Kelly C. v. Montgomery County Board of Education*, MSBE Op. No. 07-22 (2007); *Chintagumpala v. Montgomery County Board of Education*, MSBE Op. No. 06-04 (2006). In our view, it is appropriate to do so here.

CONCLUSION

For all these reasons, we affirm the decision of the local board.

Signatures on File:

Andrew R. Smarick
President

Chester E. Finn, Jr.
Vice-President

Michele Jenkins Guyton

Justin Hartings

Stephanie R. Iszard

Rose Maria Li

Michael Phillips

Irene M. Zoppi Rodriguez

David Steiner

September 19, 2017