

JONATHAN AND  
DANIELLE P.,

Appellant

v.

CALVERT COUNTY  
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 18-43

## OPINION

### INTRODUCTION

Jonathan and Danielle P., Appellants, challenge the decision of the Calvert County Board of Education (“local board”) denying their son early entry into kindergarten. The local board filed a Motion for Summary Affirmance maintaining that its decision was not arbitrary, unreasonable, or illegal. The Appellants responded to the Motion and the local board replied to the response.

### FACTUAL BACKGROUND

Because the Appellants’ son, L.P., did not turn 5 prior to the September 1, 2018 kindergarten age of entry cut-off date, he was not eligible to attend kindergarten until the 2019-2020 school year. The Appellants, however, submitted an application seeking early kindergarten entry so that L.P. could enroll in kindergarten for the 2018-2019 school year.

Calvert County Public Schools (“CCPS”) grants early entry to kindergarten to children who demonstrate “exceptional overall performance.” *See* Motion, Ex. 2, Administrative Procedure 2915.I. CCPS uses a “battery of assessments” to determine the child’s eligibility for early entry, which includes “aptitude testing and assessments that gauge cognitive, social, and emotional needs.” *Id.* at III.D. Parents may also submit prior preschool records and evaluations, formal student evaluations completed by outside professionals, and other similar appropriate materials. *Id.* at III.A.

An Assessment Team, comprised of teachers, learning specialists, psychologists, and supervisors evaluates each early entry applicant using the same process. *Id.* at III.D; Motion, Ex. 3, King Affidavit. First, a school psychologist individually administers the Reynolds Intellectual Screening Test, Second Edition (“RIST-2”), which is a cognitive screening test. *Id.* On a subsequent date, members of the Assessment Team administer six different tests and conduct behavior observations of each candidate, both on a one-to-one basis and in group settings. *Id.* Once all testing is completed, the Assessment Team deliberates over each candidate individually. *Id.*

In evaluating each early entry candidate, the Assessment Team reviews all of the materials submitted by the parents, the candidate’s scores on the six relevant tests, the results of the behavioral observations, and the candidate’s RIST-2 score. *Id.* While the Assessment Team considers the RIST-2 score and the scores on the Phonemic Awareness test and the Beginning Phonics test to be particularly relevant factors in demonstrating exceptionality, the Team considers all of the information in a holistic fashion when making its early entry decision. *Id.*

L.P. underwent the required testing on June 15, 2018 and June 20, 2018. He received the following scores:<sup>1</sup>

Skill Area	Total Possible Points	L.P.’s Score
Phonemic Awareness	24	10
Beginning Phonics	40	28
Familiarity with Print	52	49
Word Recognition	22	6
Mathematical Thinking	26	14
Motor Skills	27	23
Personal/Social Development	Average-Above Average	Average
Cognitive Screening (RIST-2) <sup>2</sup>	Above Average – Significantly Above Average	Above Average - 113

(Motion, Ex. 4, King Letter). With regard to behavioral observations, the observers noted that L.P. was very talkative, falling out of his seat, shouting out answers, bouncing up and down in his seat, repeatedly putting his pencil in his mouth, wanting to jump or hop around the room, and kept asking “Are we done yet?” (Motion, Ex. 6, Behavioral Observation Form).

By letter dated July 11, 2018, Joyce King, the Supervisor of Primary Education and Chair of the Assessment Team, provided the Appellants with L.P.’s scores and advised them that L.P. was denied early entry to kindergarten. (Motion, Ex. 4). She stated “[b]ased on the Early Admission Committee’s careful review of your child’s observation and assessment results, along with the additional documentation you provided, your child has not been recommended for early admission to kindergarten.” *Id.*

Appellants met with Ms. King on July 24, 2018 to discuss the early entry denial. Ms. King reviewed L.P.’s entire file with the Appellants. Although Ms. King did not specifically discuss L.P.’s testing behaviors, his file contained the Behavioral Observation form which detailed the behaviors at issue. (Local Bd. Reply Memorandum, Ex. 1, King Affidavit). During the meeting, Appellants learned that the individual who conducted the Phonemic Awareness test and the Word Recognition test knew their son and had children attending the same daycare. Appellants considered this a conflict of interest and requested that the school system retest L.P.

<sup>1</sup> As explained in the Superintendent’s Memorandum, although the chart lists the “total possible points” that can be scored in the six testing areas, a student is not required to score perfectly on each of the relevant assessments in order to be admitted early. The listings for “Personal/Social Development” and “Cognitive Screening” are different than the other six line items because they are ratings that a student must typically meet or exceed to be considered for early admission. (See Motion, Ex. 5, p.4, n.11).

<sup>2</sup> The classification scheme for the RIST-2 is as follows: Significantly Above Average is  $\geq 130$ ; Moderately Above Average is 120-129; Above Average is 110-119; Average is 90-109; Below Average is 80-89; Moderately Below Average is 70-79; and Significantly Below Average is  $\leq 69$ . (Motion, Ex. 5, ref B).

completely. Ms. King allowed L.P. to retake the two tests in which Appellants claimed there was a conflict of interest. L.P. took the retests on August 16, 2018 and received higher scores on both, with a 14 (instead of 10) out of 24 possible points on Phonemic Awareness test and a 14 (instead of 6) out of 22 possible points on the Word Recognition test. (Motion, Ex. 7, ref H.).

On or about August 18, 2018, the Appellants appealed the decision of the Assessment Team. As part of their appeal, the Appellants submitted a spreadsheet which they described as “an analysis of the test scores from the students that were tested” for early admission in 2018. They noted that L.P., who is identified as student #15 on the spreadsheet, scored 18 points higher than Student #2, who was admitted. They pointed out that L.P. scored higher than Student #2 on every test except one, the RIST-2. Appellants argued that while L.P.’s RIST-2 score may be one point lower than Student #2’s, it should not be used as the deciding factor because students with lower RIST-2 scores have been admitted early, such as a student in 2017 with a score of 106. (Motion, Ex. 5). Appellants also argued that L.P. scored above average on the RIST-2, “which would indicate that he is sufficient enough in this category per the guidelines laid out in the paper work.” *Id.*

On August 22, 2018, the Appellants met with Ms. Diane Workman, Assistant Superintendent of Instruction acting as the Superintendent’s Designee. They submitted two additional documents to support their request for early kindergarten entry. The first document was a letter from L.P.’s preschool teacher recommending L.P. for early kindergarten entry. His teacher stated: “I feel [L.P.] demonstrates a great desire and willingness to work. I have provided [L.P.] with the necessary skills and foundation for him to be ready at this point in time both academically and socially.” (Motion, Ex. 5, ref. f). The second document was a “kindergarten readiness assessment” conducted by L.P.’s preschool teacher to support her recommendation. (*Id.* at ref. g)

By letter dated August 27, 2018, Ms. Workman advised the Appellants that she was denying their request for early kindergarten admission for their son. She quoted CCPS Policy #2915, *Regarding Age for School Attendance in the Early Childhood Programs*, which states that “the intent of the assessments is to identify exceptional students, not simply students who may be capable of completing kindergarten work.” Ms. Workman stated that “[a]lthough [L.P.’s] screening and pre-school teacher may show that he may be ‘ready’ for kindergarten, based on the battery of assessments, [L.P.] did not meet the criteria for early admittance into kindergarten.” (Motion, Ex. 5).

On August 28, 2018, Appellants appealed Ms. Workman’s decision to the local board. They argued that L.P. should have been admitted based on his testing profile in light of school system procedures for early admission to kindergarten. They pointed out that after doing the retest, L.P. scored higher overall (six tests and cognitive screening) than Students #2 and #13, yet Student #2 and Student #13 were admitted and L.P. was not. Appellants stated their belief that L.P. was being “discriminated against” and that there were “other unpublished factors that are playing a role in this decision.” Appellants also claimed that the criteria for identifying “exceptional” students was “nowhere to be found” and that Ms. Workman failed to support her conclusion that L.P. was not exceptional and should be denied early kindergarten entry when a review of the test profiles shows otherwise. (Motion, Ex. 7). The Superintendent opposed the appeal in a Memorandum to the local board. The Appellants filed a response to the Memorandum and the Superintendent filed a Surreply.

In a unanimous decision issued September 27, 2018, the local board upheld the decision of the Superintendent denying L.P. early entry to kindergarten based on the Assessment Team's evaluation of the materials in L.P.'s case which included weighing the submissions by the parents, L.P.'s scores on the six tests, the behavioral observations of the professionals conducting those tests, and L.P.'s RIST-2 score.

Appellants filed their appeal to the State Board on October 2, 2018.

### 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

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<sup>st</sup> 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).

Accordingly, CCPS has developed policy and regulation to accommodate requests for early kindergarten entry for children who do not turn five before the State mandated kindergarten cut-off date. *See* CCPS Policy 2915 and Administrative Regulation 2915. Board Policy 2915 provides that "[s]tudents are generally placed into an early childhood education program based on the age established by the Maryland State Board of Education and/or their previous formal education." (Policy 2915, Sec. II). It further provides that "there are rare situations when a student's individual learning needs require that an exception be made." *Id.* at Sec. III. Administrative Regulation 2915 provides the exception to the established age for kindergarten entry "if the evaluation results of a child document exceptional overall performance." *Id.* The Assessment Team performs the evaluation in order to identify "exceptional students," not "simply students who may be capable of completing kindergarten work." *Id.* at III.D.2 & III.E.2.

The local board relied on the Superintendent's Memorandum and Response in Opposition to Appeal and the Superintendent's Surreply to Appellants' Reply in making its decision to uphold the denial of early entry into kindergarten for L.P. (Motion, Ex. 11 at p.3). Those documents explain the evaluation process in detail and make clear that the Assessment Team takes into account factors other than the applicant's test score in making the early entry decision, as contemplated by the Administrative Regulation. These factors include the behavioral observations of the test administrators who document the behavior exhibited by the candidates during the assessments. The Superintendent's Memorandum and Surreply also make clear that

the Assessment Team places more emphasis on certain tests over others, and does not simply base its decision on which candidates achieve the highest overall score on the tests. Rather there is a weighing of all of the information considered by the Team.

In its decision, the local board cited to State Board precedent supporting the proposition that it is not arbitrary or unreasonable for a local board to rely solely on assessment results in making the early entry decision and that it is not illegal for the local board to use a “bright-line test” to make its decision. (Motion, Ex. 11). The Appellants argue that these references made by the local board to support its decision make no sense and are evidence of arbitrariness because their son would have been admitted early if the school relied solely on the highest test scores or applied a bright-line test.

Given the holistic approach of the Assessment Team in evaluating early entry candidates, we find language about bright-line tests and sole reliance on assessment results to be inappropriate and inapplicable to this case. Nevertheless, the local board’s inclusion of this language does not render its decision arbitrary, unreasonable or illegal. The Superintendent’s Memorandum and Surreply make it clear that the early entry decision was rationally and reasonably based on an evaluation of L.P. which reviewed all of the information that had been submitted by the parents, the assessment scores, behavioral observations and the RIST-2 score. While the better practice would have been for the local board to place its full explanation in the body of its decision rather than using a piecemeal approach that references other documents, our review of the documents relied upon leaves no doubt that the local board affirmed the early entry decision based on the holistic process utilized by the Assessment Team.

#### *Evaluation of Candidates*

Although the Appellants believe that L.P. should have been admitted early to kindergarten, the local board, as well as the Superintendent’s Designee and the Assessment Team, all believed differently. The behavioral observations of L.P. during the testing were a significant factor that contributed to the decision to deny early entry. The Assessment Team found that L.P.’s behaviors demonstrated a lack of maturity. L.P. was very talkative, falling out of his seat, shouting out answers, bouncing up and down in his seat, repeatedly putting his pencil in his mouth, wanting to jump or hop around the room, and asking “Are we done yet?”<sup>3</sup> L.P.’s scores, specifically his RIST-2, Phonemic Awareness, and Beginning Phonics tests, combined with his actions during the behavioral observation time led to the Assessment Team’s decision.

Appellants argue that the decision was arbitrary and unreasonable because Student #2 and Student #13 were both admitted with similar or worse scores than L.P., and a student from the 2017-2018 school year was admitted with a lower score. Here is a chart of the results for L.P and the candidates that were admitted early to kindergarten for the 2018-2019 school year:

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<sup>3</sup> The Appellants argue that the local board should be required to submit video footage of L.P.’s testing behaviors “to prove by a preponderance of the evidence that it occurred.” (Opposition to Motion). The local board does not have any such video footage and is not required to produce it, in any event.

Student #	Phonemic Awareness Test 1	Beginning Phonics Test 2	Familiarity With Print Test 3	Word Recognition Test 4	Mathematical Thinking Test 5	Motor Skills Test 6	Cognitive Screening RIST-2	Total Points	Admitted
2	10	16	20	3	15	16	145	225	Yes
9	24	33	43	15	15	17	125	272	Yes
13	20	36	45	3	11	19	114	248	Yes
15 (L.P.)	10 (14) retest	28	49	6 (14) retest	14	23	113	243 255	No
20	13	31	52	25	15	26	131	293	Yes

The Superintendent’s Memorandum and the Affidavit of Ms. King, Chair of the Assessment Team, address the Assessment Team’s analysis of the early entry candidates. *See* Motion, Ex. 5. While Student #2 scored lower in total points on the six tests as compared to L.P., he scored much higher than L.P. on the RIST-2. Student #2 scored 145 on the RIST-2, which is the highest score of any of the candidates, placing Student #2 in the “significantly above average” category. By comparison, L.P. scored a 113 on the RIST-2. The Assessment Team believed that Student #2’s high RIST-2 score was a significant indicator of exceptionality. In addition the Assessment Team was impressed by Student #2’s use of high-level analytical skills while taking the tests. He used the process of elimination technique and problem solving skills, which are not typical of four year olds. Student #2 also exhibited a high degree of maturity during the testing session. *Id.*

Student #13 scored only one point higher than L.P. on the RIST-2, but she scored a good percentage higher than L.P. on the Phonemic Awareness and the Beginning Phonics tests, which the Assessment Team find particularly relevant in demonstrating exceptionality. In addition, Student #13 was very mature, engaged, and focused throughout the behavioral observation time, despite having another child crying beside her throughout a significant portion of the time. She also demonstrated high-level processing skills, which the Assessment Team considered to be exceptional. *Id.*

The other students who were admitted (Students #9 and #20) outscored L.P. on the RIST-2 and scored higher on the Phonemic Awareness and Beginning Phonics tests, with the exception of Student #20 who scored one point lower on Phonemic Awareness compared to L.P.’s retest (but not compared to the original). However, Student #20 also outscored L.P. on every other test. As for the student from the prior school year who was admitted early to kindergarten, that student had a lower RIST-2 score but scored higher than L.P. on the Phonemic Awareness and Beginning Phonics tests. She also showed exceptional maturity and processing skills during her behavioral observation time. *Id.*

The Appellants take issue with the fact that the Assessment Team did not give credit to the recommendation of L.P.’s preschool teacher. The recommendation essentially stated that L.P. was kindergarten ready and had the skills to work hard. The readiness test his preschool

teacher attached to her recommendation merely measured L.P.'s basic kindergarten readiness skills. The Assessment Team did not find that the recommendation or the readiness test established L.P. as an exceptional student, which is the requirement for early entry. (Local Bd. Reply Memorandum, Ex. 2, King Affidavit). The Assessment Team was within its discretion to rely on the school system assessments, and not the assessment of the preschool teacher. *See, e.g. David and Adrienne G. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 09-19 (2009)(recognizing that the local board need not rely on assessments conducted by third parties rather than the assessments conducted by the school system).

The Appellants argue that the entire evaluation process was arbitrary and unreasonable because it required some degree of subjectivity on the part of the Assessment Team. Decisions that involve weighing various factors will always contain some degree of subjectivity, but mere subjectivity in the process does not render a decision arbitrary or unreasonable. Here there was an articulable procedure and an explanation of how the Assessment Team arrived at its decision. The Team has a clearly established practice that it utilized for each candidate, allowing for consideration of variables that, in the Team's experience and expertise, it believes are relevant in determining overall exceptionality. The documents relied upon by the local board provide a reasonable and rationale justification for denying L.P. early kindergarten entry. Appellants' disagreement with the method used here does not render the local board's decision arbitrary, unreasonable or illegal.

Appellants also argue that the local board discriminated against L.P. because he has sufficient test scores for early entry under the policy and regulation, yet he was not admitted early to kindergarten. As explained above, L.P. did not have the requisite scores according to the Assessment Team's evaluation process. The Assessment Team considered only the materials submitted by the candidates and the data obtained from the two days of testing and observation. It did not take into account extraneous and irrelevant factors such as a student's race, sex, religion, or other classifications prohibited from consideration. Nor were any candidates granted early entry based on who they know. (Motion, Ex. 5, King Affidavit). The Appellants have not presented any evidence of unlawful discrimination.

#### *Alleged Alteration of Documents*

The Appellants claim that the school system altered documents to support its decision to deny their son early kindergarten entry. Specifically they argue that the behavioral observation form for Student #13 contains erasure marks that have been written over or changed to make Student #13 look more qualified for early entry.<sup>4</sup> Appellants maintain that this is evidence of a "blatant cover up" to support the Assessment Team's decision.

The Superintendent explained in his Surreply that school personnel altered Student #13's Behavioral Observation Form when the Assessment Team realized during the administration of the assessments on June 20, 2018, that Student #13's form and Student #11's form were inadvertently placed into each other's folders following completion of one of the SESAT group tests. As the students moved through the additional assessments, the test administrators unknowingly provided their ratings and handwritten comments on the wrong forms. Ms. Maria DiBello, a member of the Assessment Team, corrected the scores on Student #13's form to reflect the correct ratings on the "Literacy Survey & Word Recognition Test." (Motion, Ex. 10,

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<sup>4</sup> Appellants also point out that the behavioral observation form for Student #2 was not included in the initial documentation they received, but the school system has since provided it to the Appellants.

Superintendent's Surreply, DiBello Affidavit). Ms. King also made alterations by erasing comments from Student #13's form that were intended for Student #11.<sup>5</sup> Ms. King did not correct all of the scores on the form (SESAT math), however, the Assessment Team had the correct assessment scores before it during the deliberative process. (*Id.*, King Affidavit). Although the Appellants maintain that the "errors" call into question the accuracy of the documentation relied on by the committee, it appears that school personnel discovered the errors and corrected them at the time it occurred. The Appellants have not presented any evidence that there were additional mistakes during the assessment process.

CONCLUSION

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

Signatures on File:

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Justin M. Hartings  
President

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Stephanie R. Iszard  
Vice-President

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Chester E. Finn, Jr.

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Vermelle D. Greene

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Michele Jenkins Guyton

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Jean C. Halle

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Rose Maria Li

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Joan Mele-McCarthy

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Michael Phillips

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<sup>5</sup> This includes the comments that Student #11 "wanted to stop" before completing testing (between fine motor and gross motor boxes), that she asked when they would be done testing (top left of fine motor box), and that she cried and wanted her father (under smiley face area). (Motion, Ex. 10, Superintendent's Surreply, King Affidavit).

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David Steiner

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Warner I. Sumpter

December 4, 2018