

CHIFFON H.,
Appellant

v.

BALTIMORE CITY BOARD
OF SCHOOL
COMMISSIONERS,
Appellee.

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION
Opinion No. 19-11

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 filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal. The Appellant responded to the Motion and the local board replied to the response.

FACTUAL BACKGROUND

The Appellant’s daughter, C.J., was born on September 19, 2013, beyond the September 1 cut-off date for kindergarten enrollment. 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 Board Administrative Regulation JEC-RA. Appellant submitted an application seeking early kindergarten entry for C.J. so that she could begin kindergarten in the 2018-2019 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. (Mtn. Ex. I, JEC-RA(II)(A)(1)(b)). BCPS utilized the Kaufman Test of Educational Achievement, Third Edition (“KTEA-III”) as the early kindergarten entrance assessment during the assessment period in this case. (Sur Resp. Ex. B).

On June 21, 2018, C.J. took the KTEA-III, administered by Catherine Ventura, a special education teacher and test administrator for BCPS. (Sur Resp. Exs. B & C). C.J. achieved an average cumulative score in the 50th percentile. Her scores were as follows:

Subtest	Percentile Rank
Phonological Processing	23
Math Concepts & Applications	84
Letter & Word Recognition	82
Written Expression	79
Listening Comprehension	7
Oral Expression	25
Cumulative Average	50

(Sur Resp. Ex. C). By letter dated July 6, 2018, the Director of the Office of Early Learning Programs, Crystal Francis, advised the Appellant that C.J. did not meet the criteria for early admission to kindergarten. *Id.*

By letter dated July 16, 2018, Appellant appealed the decision of the Office of Early Learning Programs maintaining that her daughter received a low score on the assessment because she had difficulty understanding the administrator, who spoke with an accent. (Sur Resp. Ex. D). Appellant highlighted that C.J.’s score on the Listening Comprehension component was very low as compared to the other components of the assessment. *See id.* By letter dated August 10, 2018, the Chief Academic Officer, Sean Conley, advised the Appellant that he was upholding the decision of the Office of Early Learning Programs. (Sur Resp. Ex. E).

On September 5, 2018, Appellant appealed Mr. Conley’s decision to the local board. (Mtn. Ex. E). She stated that “[a]fter the test, [C.J.] told me that it was hard to understand the instructor’s instructions due to her heavy accent. I believe [C.J.] received a below average score due to the poor communication between the instructor and student.” *Id.*

The local board referred the case to hearing examiner Aaron T. O’Neal, Esq. for review and a recommendation. Mr. O’Neal did not find the Appellant’s argument persuasive based on her failure to produce any evidence to support her claims. He recommended that the local board deny C.J. early entrance to kindergarten based on her failure to attain a cumulative average in the 85th percentile.¹ (Mtn. Ex. G). In a Decision and Order issued December 13, 2018, the local board accepted the recommendation of the hearing examiner and affirmed the CEO’s decision to deny the Appellant’s request for early kindergarten admission. (Mtn. Ex. H).

This appeal to the State Board followed.

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.

¹In his Hearing Examiner Report, Mr. O’Neal mistakenly stated that C.J. took the Kaufman Test of Educational Achievement, Second Edition (“KTEA-II”) and the Developmental Indicators for the Assessment of Learning, Third edition (“Dial-III”). (Mtn. Exs. I & L).

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 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, 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* Mtn. Ex. I, Administrative Regulation 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.*

Despite the Appellant's claims that C.J. is ready for kindergarten, the local board determined that C.J. 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.

The Appellant claims that C.J.'s assessment scores were negatively impacted by the "heavy accent" of Ms. Ventura, the test administrator. She argues that C.J. had difficulty understanding the test instructions read by Ms. Ventura, as well as the portion of the test in which Ms. Ventura read a story and then verbally asked C.J. questions. (Reply to Mtn.). In response, the local board maintains that there has never been an issue regarding Ms. Ventura's accent in her 8 years as a test administrator for the Office of Early Learning Programs. The record contains the affidavit of Ms. Francis, Director of the BCPS Office of Early Learning Programs, who has over 13 years of experience in the field of early learning education. Ms. Francis stated in her affidavit that Ms. Ventura is skilled and competent at carrying out her testing duties, that she is well-understood by students to whom she administers the KTEA-III assessment, and that her "slight accent" has not been a problem. (Mtn. Ex. K). In addition, the local board submitted the affidavit of Ms. Ventura who stated that she has administered the assessment to countless students who have achieved scores earning them early entrance to kindergarten. (Mtn. Ex. L).

We have reviewed the case record. The Appellant alleges that Ms. Ventura's accent resulted in her daughter's failure to achieve a sufficient score on the assessment to be admitted early to kindergarten. The Appellant, however, has not submitted any affidavits to support her position. In addition, the Appellant admits that she has never heard Ms. Ventura speak. (Reply to Mtn.). Appellant has not presented any evidence that, at any time during the assessment, C.J. told Ms. Ventura she was having difficulty understanding her or asked Ms. Ventura to stop, slow down or speak more clearly. Nor is there any evidence that C.J. would have attained a sufficient

score if she took the assessment with a test administrator without an accent. The Appellant has simply not met her burden here. As we have previously stated, “[i]t was reasonable for a school system to conclude that [the student’s] performance during the assessment and screening process demonstrated that [the student] was not ready for kindergarten. *Tonya L. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 08-19 (2008).

The Appellant also argues that the slight errors made by school system personnel in the various documents throughout the appeal process renders the local board’s decision to deny C.J. early kindergarten entry arbitrary, unreasonable, or illegal. Such errors include referring to Appellant as “parents” instead of “parent,” naming the incorrect school, referring to C.J. as Appellant’s “son” rather than “daughter,” referring to the KTEA-II instead of the KTEA-III, and referring to the DIAL-III as one of the assessments taken by C.J. While the documents produced by school system personnel would benefit from better proofreading, it is clear that BCPS was aware that C.J. was applying for early kindergarten entry and that she took the KTEA-III. The errors in the documents do not serve as a basis to invalidate the early kindergarten entry result.

CONCLUSION

For all of the reasons stated above, we affirm the decision of the local board denying C.J. early kindergarten entry.

Signatures on File:

Justin M. Hartings
President

Gail H. Bates

Vermelle D. Greene

Rose Maria Li

Michael Phillips

David Steiner

Warner I. Sumpter

Dissent:

Jean C. Halle

Abstain:

Joan Mele-McCarthy

Absent:

Stephanie R. Iszard
Vice-President

March 26, 2019