

AHMED H.,
Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,
Appellee.

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION
Opinion No. 18-28

OPINION

INTRODUCTION

Ahmed H. (Appellant) appeals the decision of the Montgomery County Board of Education (local board) denying his son early entry into kindergarten. The local board filed a Motion for Summary Affirmance, maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellant did not respond.

FACTUAL BACKGROUND

Appellant's son I.K. turned five on September 10, 2018. (Appeal). Because his birthday falls after September 1, 2018, he did not automatically qualify for admission into kindergarten during the 2018-19 school year. Montgomery County Public Schools (MCPS) allows, however, for children whose birthdays fall within six weeks of September 1 to apply for early admission into kindergarten if they "demonstrate capabilities warranting early admission." MCPS Policy JEB. All local boards of education must have similar policies in place. *See* COMAR 13A.08.01.02.

Appellant applied for I.K. to receive early admission into kindergarten. MCPS regulations require parents to submit an application, along with a checklist of skills and any other relevant records, evaluations, and recommendations the parents wish to include. MCPS Regulation JEB-RB III.B.2-3. MCPS also requires a screening process that includes a reading/language arts assessment, mathematics assessment, and observational assessment. The screening procedures "assess academic, social, emotional and physical maturity, motor development, learning skills, and capabilities warranting early admission." MCPS Regulation JEB RB III.B.5.

MCPS conducted an early entry assessment of I.K. on May 2, 2018. The assessment covered seven areas: Letter Identification and Matching, Phonemic Awareness and Writing, Sight Word Recognition, Concepts About Print, Mathematics, Visual Motor Tasks, and Independent Task with Multi-Step Directions. I.K. met the criteria in only two of the seven areas: Sight Word Recognition and Visual Motor Tasks. For Letter Identification and Matching, 17 out of 20 points is an acceptable score; he scored 3 points. For Phonemic Awareness and Writing, 4 out of 7 is an acceptable score; he scored 2 points. For Concepts About Print, 10 out

of 16 is an acceptable score; he scored 3 points. For Mathematics, 18 out of 23 is an acceptable score; he scored 2 points. Finally, for the Independent Task, a score of 6 out of 7 is acceptable; he scored 5 points. (Motion, June 19, 2018 Memorandum).

Appellant appealed and MCPS assigned the case to a hearing officer. As part of the hearing process, the hearing officer convened a committee of five other educators to review the application and assessment data. The hearing officer recommended denial of early admission into kindergarten. On June 25, 2018, Dr. Andrew Zuckerman, the superintendent's designee, adopted the recommendation. (Motion, June 19, 2018 Memorandum; June 25, 2018 Zuckerman Letter).

Appellant appealed to the local board. On July 30, 2018, the local board upheld the denial. The board observed that I.K. failed to achieve an acceptable score in five out of the seven assessment areas and therefore did not show the "exceptional above-average skills" required for early entry. The board explained that it used the same assessment instrument and protocol for all eligible children to ensure that they receive the same chance and opportunity for early entry. The board could not make an exception to the assessment policy for Appellant's son. The board determined that MCPS followed State regulations and its own procedures in denying the request for early entry. (Motion, Local Board Decision).

This appeal 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, 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.01.05.05A.

LEGAL ANALYSIS

Appellant argues that the September 1 birthdate cut-off for regular admission of five year olds into kindergarten should not apply to his son, whose birthdate is nine days later. Additionally, he argues that his son should not have to take the local board's early kindergarten assessment in order to qualify for early admission because children who are born by September 1 do not need to take the assessment.

By law, a child who is five years old or older must attend school. Md. Code Ann., Educ. § 7-101(a). Maryland is among the majority of states that require students be five years old on or before September 1 in the year they start kindergarten. COMAR 13A.08.01.02B; *see Deborah and Jeffrey K. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 17-36 (2017).

The September 1 cut-off has been part of Maryland law since the 2006-2007 school year. *Id.* Through COMAR 13A.08.01.02(B), this Board phased in that date over the course of four years:

- 2003-2004 school year: November 30, 2003 cutoff
- 2004-2005 school year: October 31, 2004 cutoff

- 2005-2006 school year: September 30, 2005 cutoff
- 2006-2007 school year: September 1, 2006 cutoff

Wherever 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. This Board has upheld denials for children who were born two¹, five², and 11 days³ after the cut-off. 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.” See *Deborah and Jeffrey K.*, MSBE Op. No. 17-36 (quoting cases) (internal quotation marks omitted); see also *William and Darda W. v. Baltimore City Bd. of Sch. Comm’rs*, MSBE Op. No. 18-05 (2018) (observing that the State Board has upheld the establishment of Baltimore City Public School’s bright line rule, as well as that of other jurisdictions).

Although the Appellant believes his son possesses the necessary abilities for early kindergarten entry, I.K. failed to attain the required scores on the school system’s assessment, passing only in two of the required seven areas. The State Board has consistently upheld decisions of local boards that deny children early kindergarten entry based on a child’s failure to attain the required scores on an early entry assessment. See *Samira L. v. Howard County Bd. of Educ.*, MSBE Op. No. 15-40 (2015) and cases cited therein.

CONCLUSION

We affirm the decision of the local board because it is not arbitrary, unreasonable, or illegal.

Signatures on File:

Justin M. Hartings
President

Stephanie R. Iszard
Vice-President

Chester E. Finn, Jr.

Vermelle D. Greene

Michele Jenkins Guyton

¹ *William and Darda W. v. Baltimore City Bd. of Sch. Comm’rs*, MSBE Op. No. 18-05 (2018)

² *Deborah and Jeffrey K. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 17-36 (2017).

³ *Kevin and Leah B. v. Howard County Bd. of Educ.*, MSBE Op. No. 17-38 (2017).

Jean C. Halle

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September 25, 2018