

DENISE M.,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 10-09

OPINION

INTRODUCTION

This is an appeal of a denial of an age waiver request for early entry into kindergarten. The Montgomery County Board of Education (local board) has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal because the child did not meet the criteria for early kindergarten entry. The Appellant has filed a response to the local board's motion and the local board has filed a surreply.

FACTUAL BACKGROUND

Appellant's daughter, B.G., turned 5 on September 17, 2009, making her eligible to attend public school kindergarten in the 2010-2011 school year. Because the Appellant wanted her daughter to attend public kindergarten in the 2009-2010 school year, Appellant submitted an application for early kindergarten admission.

The school system screened and assessed B.G. at Spark M. Matsunaga Elementary School. By letter dated May 12, 2009, the school principal advised Appellant that B.G. did not meet the established criteria warranting early admission to kindergarten. (Motion, Exh. 3).

Appellant appealed the denial of early admission to Larry A. Bowers, Chief Operating Officer and the superintendent's designee. She noted that her daughter was in the Bar-T Pre-Kindergarten program located at Matsunaga and that B.G. is ready for kindergarten. (Motion, Exh. 4). The Appellant included a letter from the pre-k teacher in support of the appeal. (Motion, Exh 5).

Hearing Officer Pamela Prue investigated the appeal. Ms. Prue noted that B.G. met the following three out of six assessment areas: Letter Identification, Visual Motor Tasks, and Independent Task with Multi-Step Directions. B.G. failed to meet the criteria in the other three areas, Record of Oral Language (7/10 points), Concepts About Print (5/10 points) and the Mathematics Assessment (5/14 points). (Motion, Exh. 6A). Comments on the assessment observation form stated that B.G. did not want to separate from her mother, was easily distracted,

was inconsistent with counting, recognized some numerals, did not want to use crayons, drew a picture of herself without arms or legs, was not able to complete patterns and had difficulty staying on task. (*Id.*).

After reviewing the information and conferring with Ms. Janine Bacquie, Director of the Division of Early Childhood Programs and Services, Ms. Prue concluded that B.G. should not be approved for early entrance to kindergarten because she failed to meet the standard of acceptance in all six areas of assessment, as required for early entrance. (*Id.*). Mr. Bowers concurred with Ms. Prue and denied Appellant's request for early entry. (Motion, Exh. 6).

Appellant appealed the denial of her request to the local board. In her appeal, the Appellant explained that B.G. had witnessed arguments between her parents the night before and morning of the assessment, causing B.G. to become clingy, upset and unable to perform to her ability. (Motion, Exh. 7). Appellant also maintained that the school failed to observe B.G. with other children in whole group activities within the school setting. (Motion, Exh. 11).

The Appellant included several letters with her appeal. A letter from B.G.'s pediatrician opined that B.G. "possesses the cognitive, emotional, social and physical skills" to "allow her to thrive in Kindergarten." A letter from a veteran second grade teacher stated that B.G. is ready for kindergarten. (Motion, Exhs. 8 & 9). A letter from B.G.'s grandmother, a licensed clinical social worker, stated the high likelihood that B.G.'s observation of the fights between her parents contributed to poor performance on the day of the assessment. (Motion, Exh. 11A).

The local board affirmed the decision of the Chief Operating Officer denying B.G. early entry to kindergarten for the 2009-2010 school year. 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.01.05.03E(1).

ANALYSIS

There is no legal right to attend kindergarten before the age of five. *See* Md. Code Ann., Educ. § 7-101 (guaranteeing a free public education to "[a]ll individuals who are 5 years old or older and under 21."). In order to enroll in kindergarten, a child must be 5 by September 1 of the year of kindergarten entry. COMAR 13A.08.01.02B. Each local board of education is required, however, to adopt regulations permitting a 4-year-old, upon request by 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. *Id.* Thus, whether or not a child is granted early entry is within the discretion of the school system.

Accordingly, Montgomery County Public Schools ("MCPS") has developed a regulation to accommodate requests for early kindergarten entry for children whose birth dates occur within a six-week period beyond the prescribed September 1 admission date, provided those children demonstrate kindergarten readiness based on a screening and assessment by the MCPS Division of Early Childhood Programs and Services. MCPS Regulation JEB-RB. The MCPS screening and assessment evaluates "academic, social, emotional and physical maturity, motor development, learning skills, and capabilities warranting early admission" using "standardized instrument(s), observational and MCPS primary assessments completed by staff, and information from parents." MCPS Regulation JEB-RB(B)(5)(b).

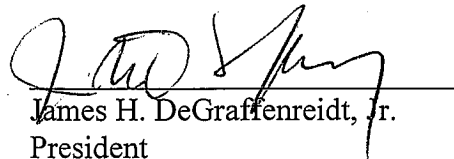
Appellant believes that B.G. demonstrates skills and behaviors for school readiness. The school system determined, however, that B.G. did not qualify for early admission to kindergarten because she did not attain an acceptable score in all six areas of the assessment as required by school system procedure. That is the criteria for early admission. B.G. failed to meet the criteria. The Appellant raises various arguments to explain why B.G. failed to meet the criteria. The arguments that the Appellant raises do not demonstrate that the decision to deny B.G. early admission was arbitrary, unreasonable or illegal.

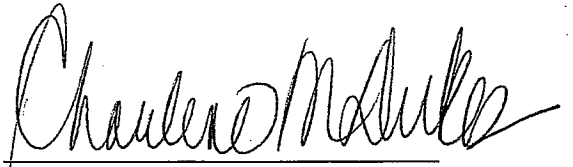
Based on our review of the record in this case, we find that it was reasonable for the local board to conclude that B.G. was not ready for early entrance into kindergarten due to her score on the assessment. See *Tonya L. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 08-19 (2008); *Perseveranda B. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 08-01 (2008); *Kelly C. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 07-22 (2007); *Chintagumpala v. Montgomery County Bd. of Educ.*, MSBE Op. No. 06-04 (2006).

In her State Board appeal, Appellant raises for the first time the argument that the school system does not consistently administer the early entry assessment and that a Division of Early Childhood Education representative is not present at each school to conduct the test. (Letter of Appeal, 10/26/09). The State Board has long held that it will not consider arguments raised for the first time on appeal to the State Board. See *Jan M. v. Prince George's County Bd. of Educ.*, MSBE Op. No. 08-40 (2008); *McDaniel v. Montgomery County Bd. of Educ.*, MSBE Op. No. 03-22 (2003); *Craven v. Bd. of Educ. of Montgomery County*, 7 Ops. MSBE 870 (1997).

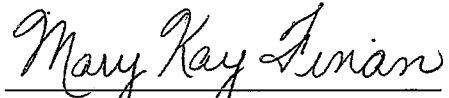
CONCLUSION

For these reasons, we do not find the local board's decision to be arbitrary, unreasonable or illegal. Accordingly, we affirm the local board's decision denying Appellant's request for early kindergarten entry.

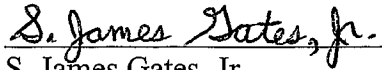

James H. DeGraffenreidt, Jr.
President



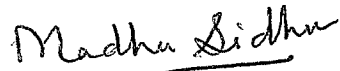
Charlene M. Dukes
Vice President



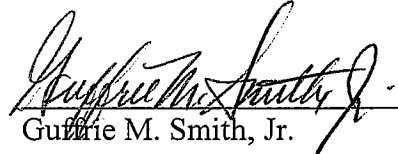
Mary Kay Finan



S. James Gates, Jr.



Madhu Sidhu



Guffie M. Smith, Jr.



Donna Hill Staton



Ivan C.A. Walks



Kate Walsh

February 23, 2010