

KENNETH F.,
Appellant
v.
BALTIMORE COUNTY
BOARD OF EDUCATION,
Appellee.

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION
Opinion No. 10-23

OPINION

INTRODUCTION

The Appellant filed an appeal of the decision of the Baltimore County Board of Education (local board) denying his request that his son be tested for early admission to kindergarten. The local board filed a Motion to Dismiss or for Summary Judgment. The Appellant filed a response by letter.

FACTUAL BACKGROUND

In January of 2009, the Appellant requested Baltimore County Public Schools (BCPS) to assess his son, MT, for early admission to kindergarten for the 2009-2010 school year. BCPS denied that request because MT did not meet the BCPS eligibility requirements for early admission assessment. Specifically, BCPS applied Board Policy 5110 which states that children who are five (5) before September 1 can be enrolled in kindergarten. The Policy advises a parent desiring to enroll a child under 5 years of age in kindergarten to follow the procedures in the *Guideline for Applying for Early Enrollment into Kindergarten*.¹ The *Guidelines* state that a parent may request early admission if his child turns 5 years of age between September 2 and October 14 of the school year for which early admission is requested.

MT would not turn 5 years of age until December 10, three months beyond the date set forth in the *Guidelines*. Therefore, the school system declined to assess MT reasoning that, because he was not age-eligible for early admission, he was not eligible for enrollment no matter what the results of the assessment.

MT's father appealed that decision essentially arguing that Policy 5110 and the *Guidelines* were unreasonable on their face and as applied. Ultimately the local board affirmed the decision declining to assess MT. (Motion, Ex. 1&3). This appeal followed.

¹ Neither party included Policy 5110 or the *Guidelines* in the record submitted to the State Board. We have added them to the record.

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).

This case also involves a challenge to a local policy - - the system-wide rule governing age-eligibility for early admission to kindergarten. This Board will dismiss an appeal that attempts to use a quasi-judicial process to force a change in local board policy - - which is a quasi-legislative decision. *See, e.g., Richard Regan v. Montgomery County Bd. of Educ.*, MSBE Op. No. 02-29 (2002) (appeal process is not the appropriate vehicle for modifying the curriculum or adopting a new policy governing the teaching of the curriculum.) When an administrative agency is acting in a manner which may be considered quasi-legislative in nature, the scope of review of that particular action is limited to assessing whether the agency was acting within its legal boundaries. *Department of Natural Resources v. Linchester Sand and Gravel Corp.*, 274 Md. 211, 223 (1975); *accord Adventist Health Care Inc. v. Maryland Health Care Comm'n.*, 392 Md. 103, 117 n.12 (2006).

LEGAL ANALYSIS

The Appellant sought early admission to kindergarten for the 2009-2010 school year.² The local board argues that because the 2009-2010 school year is just about over, this case is moot. A case is moot when "there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the courts (or agency) can provide." *In Re Michael B.*, 345 Md. 232, 234 (1997); *see also Bonita Mallardi v. Carroll County Board of Education*, MSBE Opinion No. 00-07. We concur with the local board that there is no effective remedy this Board can provide on the issue of early admission for MT. His opportunity for early admission to kindergarten has passed and no decision of this Board can affect that.

Yet a controversy remains. The Appellant argues that the local board's bright-line rule establishing the date of age-eligibility for an assessment for early admission is so unreasonable on its face as to be illegal. We address that issue here because, more likely than not, that issue is capable of repetition yet could evade review - one of the factors we consider when determining if a case is moot. *See Alberts v. Department of Health and Mental Hygiene*, 166 Md. App. 726, 744 (2006); *Lincoln Public Charter School, Inc. v. Prince George's County Public School*, MSBE Op. 06-30.

The local board's policy on early admission is based on two State regulations. One

² The record reflects that MT is currently enrolled in a kindergarten program in the Montessori School in Lutherville. (Appeal, Ex. 2, Psychoeducational Evaluation).

establishes that a child must be 5 on September 1 to enroll in kindergarten. COMAR 13A.08.01.02(B)(2). The other directs local boards to create an opportunity for early admission to kindergarten for four year olds:

The local board of education shall adopt a regulation permitting a 4-year-old child, 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.

COMAR 13A.08.01.02(B)(3).

Baltimore County Board of Education adopted such a regulation - - Policy 5110 and the *Guidelines for Early Admission into Kindergarten* - - containing a birth-date limitation. The limitation in the regulation was based, in part, on informal guidance from MSDE issued in 2005. At that time, local school systems had requested such guidance to assist them in processing numerous requests for early admission to prekindergarten and kindergarten. The guidance stated:

...

An informal survey conducted by the Early Learning Branch revealed that in some local school systems a very large number of applications for early admission were received and processed for the 2005-2006 school year. School systems had not established windows of eligibility within a specific time period after the actual date for entry. Based on the comments we have received from local school systems and after reviewing the intent of the early admission regulations, we have concluded that early admission is intended for those children whose birth dates closely miss the cut-off date for school attendance but whose educational needs or demonstrated capabilities warrant early admission to prekindergarten or kindergarten.

Therefore, a local school system may promulgate regulations with a reasonable time period beyond the September 1 admission date within which a child's birth-date must occur in order to be considered for early admission to prekindergarten or kindergarten. We believe that a six week period beyond the admission date would be a reasonable period because it focuses the early admission policy on the children who likely would be eligible for early admission and is sensitive to the reality of using scarce school system resources to implement costly testing procedures for every child who might seek early admission. However, we want to stress that the aforementioned COMAR regulations merely require local school systems to develop

early admission policies. The content of such policies must be determined by the local boards of education including establishing a time period beyond the actual admission date.

(Appeal, Ex. 1, November 16, 2005, Memo of Grafwallner to Early Learning Coordinators and Supervisors).

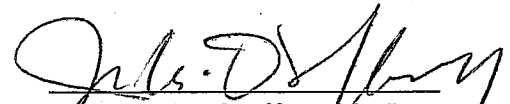
The local board refers to the MSDE guidance as a "mandate" implying that it had no choice in adopting that specific age limitation. Motion at 8. As the words of the advice memo make clear, however, the local boards were free to establish their own early admission policies.


The local board chose to follow the MSDE guidance which was based on the Department's view of the intent of COMAR 13A.08.02(B)(4). Because an administrative agency's interpretation of its own regulations is given considerable weight and deference by reviewing courts, *Board of Physicians Quality Assurance v. Banks*, 354 Md. 59, 69 (1999); *MTA v. King*, 369 Md. 274, 288 (2002), it is our view that advice from MSDE program staff on the intent of its own regulation provides a reasonable basis for the policy adopted by the local board here.


Other than assertions of unreasonableness, the Appellant offers no proof of the illegality of the local board's regulation. We reiterate - - we will not go behind a duly adopted local regulation or policy unless the Appellant proves the regulation or policy is illegal.

CONCLUSION

For all these reasons, we find that the local board was acting within its legal boundaries when it adopted its regulation. Moreover, the challenge to the applicability of that regulation to MT is moot. Accordingly, we dismiss this case.


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ABSENT
Kate Walsh

May 25, 2010