

TIA AND V.T.,

Appellant

v.

BALTIMORE CITY BOARD OF
SCHOOL COMMISSIONERS,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 13-31

OPINION

INTRODUCTION

This is an appeal of a denial of an age waiver request for early entry into kindergarten. The Baltimore City Board of School Commissioners (local board) has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. Appellant responded to the Motion and the local board replied.

FACTUAL BACKGROUND

Appellants' son, V.T., turned five years old on September 10, 2012, making him eligible to attend public school kindergarten in the 2013-2014 school year. Because Appellants wanted him to attend kindergarten in the 2012-2013 school year, they submitted an early entry application. Their application included a parent questionnaire and checklist, a Developmental Checklist for Kindergarten Readiness from V.T.'s pre-k 4 teacher and one from his pre-k 3 teacher assistant, and a separate developmental checklist (non-BCPSS form) from V.T.'s pre-k 3 teacher. (Application and Attachments).

School system procedure requires that children seeking early kindergarten entry achieve a score in the 85th percentile or above in all categories of the school system's assessment to demonstrate developmental readiness. (Administrative Regulation JEC-RA.II.A.1). The school system administers two tests: the *Kaufman Test of Educational Achievement, Second Edition* (KTEA-II) to assess academic achievement and the *Developmental Indicators for the Assessment of Learning* (DIAL-III) to assess motor skills. The KTEA-II and DIAL-III are primarily administered one on one with the children rotating throughout stations set up in the room. (T.122-123).

The Early Admission Team administered the early entrance assessments on June 26, 2012. V.T. failed to attain the required score on the assessment for early entry to kindergarten, scoring below the 85th percentile in five of the eight content areas. He scored as follows:

<u>Subtest</u>	<u>Percentile Rank</u>
Phonological Awareness	99.7
Letter & Word Recognition	97
Math Concepts & Applications	88
Listening Comprehension	82
Oral Expression	70
Associational Fluency	68
Naming Facility	10
Motor (DIAL-III)	68

(Assessment Report).

By letter dated July 18, 2012, Charlene Iannone-Campbell, Director of Early Learning, advised Appellants that V.T. did not meet the eligibility criteria for early kindergarten entry. She advised that a pre-kindergarten placement would be most appropriate. (Iannone-Campbell Letter, 7/18/12).

Appellants appealed the denial of early admission to the Chief Executive Officer. (Appellants' Letter to Iannone-Campbell, 8/1/12). They raised the issue of V.T. being an introvert, a fact that they argue may explain his test scores in light of his proficient performance in the school setting. The appeal included the following:

- 2011-2012 Pre-K Report Card from Alexander Hamilton Elementary School rating V.T. proficient in all categories;
- Early Admission Application;
- Undated letter from Hope O'Neal, Principal of Alexander Hamilton Elementary School, stating that V.T. was ready for kindergarten;
- 7/30/12 memorandum from Kathy O'Hanlon, Principal of Midtown Academy, a charter school in Baltimore City visited by V.T., stating that V.T. was ready to attend the Midtown kindergarten program;
- 7/30/12 letter from a licensed psychotherapist at Behavioral Counseling Group, LLC, stating he had seen V.T. several times and that he is a "shy, introverted child who does not openly express himself in new environments or among strangers." He stated that the assessments may not be indicative of V.T.'s abilities, in part, because he may not have established trust with the test administrators. He also stated that it would be emotionally and psychologically devastating to V.T. to not enter kindergarten;
- 7/30/12 letter from Cheryl Parks, MD, V.T.'s physician, stating her belief that it was in V.T.'s best interest to begin kindergarten and that his report card is a better reflection of his abilities than a test;
- 7/30/12 letter from Gilman ESF Summer Camps stating that V.T. performed well in various camp activities;

- 7/31/12 letter from Hamilton Baseball League stating that V.T. performed well in the “live pitch” league despite being younger than most players;
- Additional information from Gilman ESF camps about camp activities;
- Developmental Checklist from pre-k 3, 2010-2011 school year; and
- Introversion and Giftedness online article by Linda Silverman, Ph.D., Director of the Gifted Development Center in Denver, Colorado.

After reviewing of all of the information, Dr. Alonso denied Appellants’ appeal. (Alonso Letter, 8/16/12).

Appellants appealed Dr. Alonso’s decision to the local board. The local board referred the matter to a hearing officer for review. On September 21, 2012, Hearing Officer, Gary Brooks, conducted a hearing. Hearing Officer Brooks recommended that the local board uphold the decision denying early kindergarten entry. He found that V.T. had scored well below the 85th percentile score in five of the eight subjects. Given that the scores were significantly below the threshold, he found that the supporting documents held less weight than they might have if his scores were closer to the 85 percent threshold. As for Appellants’ argument that V.T. was an introvert who required a “warm up” around unknown adults and children prior to testing, Hearing Officer Brooks found that it was up to the Appellants to notify the school system prior to testing that their son potentially had a test taking issue, not after the fact. (Hearing Officer Report).

Appellants filed exceptions Mr. Brooks’ decision. They also submitted further documentation including a July 30, 2012 letter from Stephanie Stankowski, V.T.’s pre-k teacher at Hamilton Alexander Elementary School, explaining that V.T. is kindergarten ready; a September 5, 2012 letter from Arlington Baptist School admitting V.T. to kindergarten there for the 2012-2013 school year; and V.T.’s kindergarten report for the first grading period of the school year.

By order dated December 12, 2012, the local board affirmed Mr. Brooks’ recommendation to deny Appellants’ request for early kindergarten entry for their son. (LB Mtn., Ex.4).

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

Preliminary Issue

As a preliminary matter, the Appellants maintain that we should disregard the decision of the local hearing officer, which was affirmed by the local board, because the hearing officer failed to produce the decision within 30 days after the hearing as required by local board Policy BLA(III.C.5.f). The hearing took place on September 21, 2012 and the hearing officer issued his decision on November 21, 2012. The local board has not provided any explanation for the one month delay. Nonetheless, Appellants have not shown that they were prejudiced in any way by the one month delay or given any other basis for us to disregard the hearing officer's decision.

Although early kindergarten entry appeals are typically moot by the end of the kindergarten school year, in this case the Appellants maintain that if the local board's decision is reversed and it is found that V.T. should have been admitted early to public school kindergarten, then he will automatically be allowed to enter the public school 1st grade without early entry testing because he will have completed kindergarten at a private school at the end of this school year. The local board has not disputed this claim, nor has it maintained that the case is moot. Accordingly, the case is not moot because there remains a case and controversy between the parties and there is an effective remedy that this Board can provide.

Merits of Local Board Decision

There is no legal right to attend kindergarten before age five. *See* Md. Code Ann., Educ. §7-101 (guaranteeing a free public education to "[a]ll individuals who are 5 years or older and under 21."). In order to enroll in kindergarten, a child must be age 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 designee determines that the child demonstrates capabilities warranting early admission. (*Id.*).

Accordingly, the Baltimore City Public School System (BCPSS) has developed a regulation to accommodate requests for early kindergarten entry for children whose birth dates occur between September 2 and October 15 of the school year for which they are requesting early entrance. (Administrative Regulation JEC-RA.II.A.1). Children seeking early admission must demonstrate developmental readiness by achieving a score in the 85th percentile or above in every category. (*Id.*).

Appellants believe that their son is ready for kindergarten. The school system assessed him but determined that he did not qualify for early admission to kindergarten because he did not attain an acceptable score on the assessment as required by school system procedure. This Board has upheld many cases denying early kindergarten entry based on the child's failure to attain the required assessment scores. *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).

Appellants dispute the weight placed on the scores, claiming that there is no written process for weighing information and no explanation why the supporting documentation did not trump the assessment results. The fact that there is no written process for weighing the information does not make the local board's decision arbitrary or unreasonable. Maria Navaro, Deputy Chief Academic Officer, testified that all of information submitted in the early entry appeal is considered, although the assessment scores are generally attributed more weight than the other documents. (T.104, 113-116). In this case, she reviewed V.T.'s file and recommended to the CEO that early entry was not warranted. (T.116).

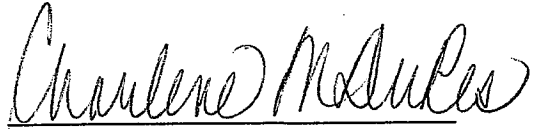
Appellants believe that the fact that their son is an introvert likely impacted his assessment scores given his school performance in pre-k as well as his other activities, and based on the documentation from the psychotherapist that testing could be impacted. This information was part of the portfolio and considered as part of the review process, although no mention of introversion was made before the assessments were administered and before early entry was denied by Ms. Iannone-Campbell. Miriam Greenleaf-Miller, Educational Associate, testified that the cases in which early kindergarten admission is typically granted on appeal are cases in which the child has multiple scores in the 90th percentile or above and has just missed the 85th percentile in other categories. (T.134). All of the Appellants' information was reviewed again on appeal to the local board after an evidentiary hearing before Mr. Brooks. We agree with Mr. Brooks that this case does not fall into the category of cases warranting early admission as described by Ms. Greenleaf-Miller. At least four of the assessment scores are well below the required 85th percentile.

Appellants argue that the school system should have provided their son testing accommodations for the early entry assessment based on his introversion even though they never requested it prior to the assessment or alerted the school system of the introversion. Appellants provide no legal argument to support this request.

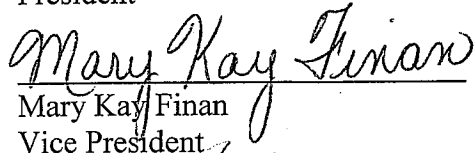
We note that Appellants did not mention anything about introversion in their application material or on the assessment day. (T.131). Although the school system does not explicitly ask about testing accommodations for the early entry assessment, there are questions on the parent questionnaire that would tend to identify such issues. For example, there were questions that asked whether or not the child has ever exhibited extremely aggressive, fearful or timid behavior; has difficulty separating from parents; is easily distracted or unable to concentrate on any single activity for more than five minutes; shows little interest in playing with other children; refuses to respond to people in general; avoids or seems aloof with other children or adults; or seems unusually passive. Appellants responded that they had never observed any of those behaviors. Although the Appellants stated in their questionnaire that V.T. needed a bit of time to "warm up" when interacting or playing with other children, Ms. Greenleaf-Miller testified that the test administrators, all of whom are certified early childhood educators, provide appropriate warm up time to the children as needed. (T.141).

CONCLUSION

For the reasons stated above, we affirm the local board's decision denying Appellants' request for early kindergarten entry.



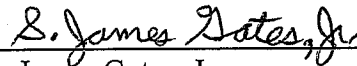
Charlene M. Dukes
President



Mary Kay Finan
Vice President



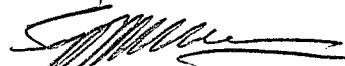
James H. DeGraffenreidt, Jr.



S. James Gates, Jr.



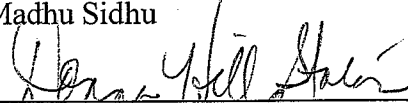
Luisa Montero-Diaz



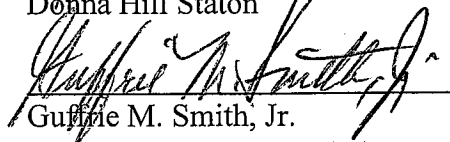
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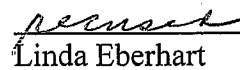
Madhu Sidhu



Donna Hill Staton



Guffie M. Smith, Jr.



Linda Eberhart

May 21, 2013