

GEORGE & THAVIPHONE B.,

Appellant

v.

HOWARD COUNTY BOARD  
OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

Opinion No. 09-01

### OPINION

#### INTRODUCTION

This is an appeal of a denial of an age waiver request for early entry into kindergarten filed by the parents of a child who is not eligible to begin kindergarten until the 2009-2010 school year. The Howard 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 kindergarten readiness. The Appellants have filed a response to the Motion.

#### FACTUAL BACKGROUND

Appellants' daughter, V.B., was born on September 24, 2003, and turned 5 on September 24, 2008, making her eligible to attend public school kindergarten in the 2009-2010 school year. Because Appellants wanted V.B. to attend public kindergarten at Clemens Crossing Elementary School for the 2008-2009 school year, Appellants submitted an application for V.B. to gain early entry.

In order to be admitted early to kindergarten, a child must receive a rating of "Advanced" in at least four of the six assessment categories, and no "Basic" ratings. The six categories are: Reading, General Knowledge, Parent/Guardian Developmental Checklist,<sup>1</sup> Mathematics, Graphmotor/Writing Skills, and Pre-school/Non-familial Developmental Checklist.<sup>2</sup> (Miller Letter, 5/12/08).

On April 7, 2008, the school system screened and assessed V.B. at the former Cedar Lane

---

<sup>1</sup>This is a checklist of 22 assessment items for which the parent or guardian evaluates his/her child's abilities.

<sup>2</sup>This checklist is the same as the Parent/Guardian Developmental Checklist but it is to be completed by the child's preschool teacher or other adult (not family or guardian) familiar with the child's development.

School. (Bradford Statement). Marion Miller, Director of Elementary Administration, advised Appellants that V.B. did not meet the established criteria warranting early admission to kindergarten. (Miller Letter, 5/12/08). Ms. Miller stated that V.B. received an "Advanced" rating in two areas of assessment: Reading and the Parent Developmental Checklist; and a rating of "Proficient" in the remaining four areas: General Knowledge, Mathematics, Graphomotor/Writing, and the Preschool/Non-familial Developmental Checklist. (*Id.*).

On May 21, 2008, V.B.'s mother, met with Dr. Teresa Alban, Director of Student Assessment and Program Evaluation, to review V.B.'s assessment scores. Dr. Alban determined that V.B. should have received a rating of "Advanced" on the Preschool/Non-familial Developmental Checklist, thereby giving her three "Advanced" ratings and three "Proficient" ratings. Dr. Alban also informed the Appellant that V.B. had missed scoring a fourth "Advanced" rating by three points. (Letter of Appeal; Local Board Decision).

Appellants appealed the denial of early admission to the Directors of Elementary Education ("Directors"). In their appeal, Appellants included a videotape of V.B. reciting the *Gettysburg Address*. (Local Board Decision). The Directors reviewed V.B.'s appeal file, including the corrected assessment score. (Miller/DeAngelis Letter, 6/12/08). They did not view the videotape, however, as there was no VCR available at the time. (Local Board Decision). By a letter dated June 12, 2008, the Directors upheld the earlier decision denying V.B.'s early admission to kindergarten. (Miller/DeAngelis Letter, 6/12/08).

Appellants appealed the Directors' decision to the local board on June 17, 2008. The local board reviewed V.B.'s file, including the *Gettysburg Address* videotape, at its July 30, 2008 meeting. The local board upheld the denial of Appellants' early entry request, finding that "the results of [V.B.'s] assessment did not meet all of the established criteria for an exceptionally high degree of skills." (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.01.05.03E(1).

#### ANALYSIS

##### *Denial of Early Kindergarten Entry Request*

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, the Howard County Public School System (“HCPSS”) has developed a regulation to accommodate requests for early kindergarten entry for children whose birth dates occur between September 2 and November 15, provided those children demonstrate “an exceptionally high degree of cognitive, social, emotional, and physical readiness” for kindergarten, based on a standardized screening and assessment by the HCPSS Office of Elementary Education. HCPSS Policy 9000-PR.

Appellants believe that V.B. demonstrates skills and behaviors for school readiness. Although V.B. missed making a fourth “Advanced” rating by just a few points, she nevertheless failed to attain the scores necessary to satisfy the school system’s early entry criteria. In a related argument, Appellants take issue with the requirement that a child obtain a certain score (“cut score”) in a given assessment area to earn an “Advanced” rating. The local board reasoned that “performance at a required achievement level on standardized testing is required to ensure a fair and consistent process for every test taker seeking admission.” (Local Board Decision). We agree. A cut score is essential to ensuring the objectivity of the assessment process. For these reasons, we find that it was reasonable for the school system to conclude that V.B.’s performance on the assessment demonstrated that she was not ready for early entrance into kindergarten.

Appellants also maintain that the HCPSS selection criteria and process are subjective in nature. The local board has explained that V.B. underwent the same assessment process as other students applying for early admission. Out of the six categories on the assessment, four of the categories are part of an early childhood test and deal with substantive verbal and writing skills which are measured by specific criteria. These areas, Reading, General Knowledge, Mathematics, and Graphmotor/Writing Skills, are therefore not left to subjective judgment. The child must achieve a certain score to attain a particular rating. Thus, Appellants have not demonstrated that the assessment process was flawed based on a subjective assessment and evaluation process.

We understand that this is a close case given that the child missed scoring a fourth “Advanced” rating by only three points. Many school systems have developed a bright line test for evaluating criteria for early entry to kindergarten. If the child does not achieve the necessary score on the school system’s assessment, the request for early entry is denied. This approach ensures that the school system will have consistent decisions within its jurisdiction regarding the children who are admitted to kindergarten prior to turning age five.

*Procedural Issues*

Appellants argue that the Directors violated their due process rights by failing to review the *Gettysburg Address* videotape included in the appeal file. Even if the Directors' failure to review the videotape constituted a procedural defect, such a defect was cured by the local board's review of the videotape at the July 30, 2008 meeting. See *Ashtianie v. Howard County Bd. of Educ.*, MSBE Op. No. 05-20 (2005); *Cory Williamson v. Board of Educ. of Anne Arundel County*, 7 Op. MSBE 649 (1997); *West and Bethea v. Board of Commissioners of Baltimore City*, 7 Op. MSBE 500 (1996). The local board stated in its decision, "[w]hile a young child's memorization skills may impress adults, Board Members cannot disregard a child's performance in the critical assessment categories." (Local Board Decision). Thus, the local board did not find the recorded evidence persuasive in light of the results of the screening and assessment conducted by the school system.

Appellants argue that the appeals process should have been accelerated. At no time, however, did the Appellants request that the case be reviewed on an expedited schedule. Moreover, only two and a half months elapsed between the date Appellants submitted their appeal to the local board, and the date that the local board rendered its written decision. We do not perceive any undue delay.

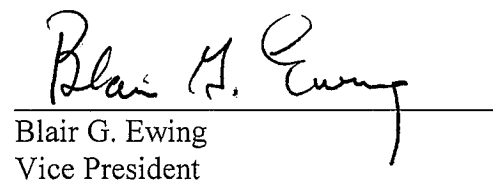
*Miscellaneous Issue*

Appellants have asked to review the minutes of the local board's July 30, 2008 meeting in order to learn the views of individual board members. To the extent that Appellants are seeking public information through this appeal, the State Board is not the appropriate forum to entertain such complaints. The Maryland Public Information Act (PIA), Md. Code Ann., State Gov't 10-611 *et seq.*, sets forth the proper process.

CONCLUSION

In light of the record in this case, we find that the decision of the local board was not arbitrary, unreasonable or illegal. Accordingly, we affirm the local board's denial of Appellants' request for V.B. to be admitted early to kindergarten.

  
James H. DeGraffenreidt, Jr.  
President

  
Blair G. Ewing  
Vice President

*Dunbar Brooks*

Dunbar Brooks

*Charlene M. Dukes*

Charlene M. Dukes

*Mary Kay Finan*

Mary Kay Finan

*Rosa M. Garcia*

Rosa M. Garcia

*Richard L. Goodall*

Richard L. Goodall

*Karabelle Pizzigati*

Karabelle Pizzigati

*absent*

Ivan C.A. Walks

*Kate Walsh*

Kate Walsh

January 27, 2009