

ERIC R. AND SHANNON
A.,

Appellants

v.

BALTIMORE CITY BOARD
OF SCHOOL
COMMISSIONERS

Appellee.

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION

Opinion No. 22-08

OPINION

INTRODUCTION

Appellants challenge the decision of the Baltimore City Board of School Commissioners (“local board”) denying their son’s early admission to first grade at ██████████ Elementary/Middle School. The local board filed a response to the appeal maintaining that its decision is not arbitrary, unreasonable or illegal. The Appellant responded and the local board replied.

FACTUAL BACKGROUND

The Appellants’ son, ██████, was born on September 20, 2015, and is currently enrolled in kindergarten for the 2021-2022 school year. His birthday placed him within the time period specified by the local board policy for submission of an application for early entrance to first grade.¹ (Local Bd. Resp., Ex. 2, Local Board Policy JEC (Early Admission to Kindergarten and First Grade), and Ex. 3, Local Board Administrative Regulation JEC-RA (Procedures for Early Admission for Kindergarten and First Grade)).

On May 26, 2021, Appellants submitted an application seeking early first grade entry for ██████ so that he could begin first grade in the 2021-2022 school year. To be granted early entry to first grade in the Baltimore City Public Schools (“BCPS”), children must achieve an average cumulative score in the 85th percentile or higher on an assessment chosen by the school system. (Local Bd. Resp., Ex. 3, JEC-RA(II)(B)(1)(b)).² ██████ was scheduled for an assessment on June 28, 2021. (Local Bd. Resp., Ex. 4). Due to COVID-19 restrictions in place at that time, the test was conducted virtually. (Local Bd. Resp., Ex. 11).

¹ Local board policy JEC and Administration Regulation JEC-RA establish the steps parents or guardians must take to apply for early admission for a child turning six between September 2nd and October 15th of the school in which they seek to enroll in first grade.

² As a result of the COVID-19 pandemic, BCPS amended the early admission process to allow for application without the previously required checklist forms. (Local Bd. Resp., Ex. 11).

On June 28, 2021, ■■■ took the assessment with several subtests and achieved a cumulative score in the 28th percentile. (Local Bd. Resp., Exs. 4 and 5). His scores were as follows:

Subtest	Percentile Rank
Phonological Processing	3
Math Concepts & Applications	6
Letter & Word Recognition	3
Listening Comprehension	16
Cumulative	28

By letter dated July 14, 2021, the Director of Early Learning Programs, Crystal Francis, advised the Appellants that ■■■ did not meet the criteria for early admission to first grade. *Id.* On July 20, 2021, the Appellants appealed the decision arguing that that ■■■’s teachers and parents believe ■■■ should be in first grade and that ■■■’s scores on the early admission test may not have been accurate because the test was administered virtually. (Local Bd. Resp., Exs. 6 and 11). By letter dated August 18, 2021, Joan Dabrowski, Chief Academic Officer, acting as the CEO’s designee, advised the Appellants that she was upholding the decision of the Office of Early Learning Programs. (Local Bd. Resp., Ex. 7).

On August 24, 2021, Appellants appealed the decision of the CEO’s designee to the local board. (Local Bd. Resp., Ex. 9). The Appellants argued that ■■■ deserves to be in first grade because he has completed pre-K twice and believe ■■■ is at the same level as his peers. *Id.* Through counsel, the CEO responded to the appeal on October 18, 2021, and recommended that the decision be upheld. (Local Bd. Resp., Ex. 10).

The local board referred Appellant’s appeal to Vivian Nunez, Hearing Examiner, for review and recommendation. In accordance with board policy governing appeals, the hearing examiner conducted a review on the record. (Local Bd. Resp., Ex. 8, Board Policy BLA. III(B)(8)). Ms. Nunez did not find the Appellants’ argument persuasive based on their failure to produce any evidence to support their claims. She recommended that the local board deny ■■■ early entrance to first grade based on his failure to attain a cumulative average in the 85th percentile. (Local Bd. Resp., Ex. 11). In a Decision and Order issued November 9, 2021, the local board accepted the recommendation of the hearing examiner and affirmed the CEO’s decision to deny early first grade admission. (Local Bd. Resp., Ex. 12).

This appeal to the State Board followed.

STANDARD OF REVIEW

Because this is an appeal of a decision of the local board involving a local policy or a controversy and dispute regarding the rules and regulations of the local board, the local board’s decision is considered *prima facie* correct. The State Board will not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable or illegal. COMAR 13A.01.05.06A.

LEGAL ANALYSIS

This case is an appeal of the local board's decision to deny ■■■ early entry to first grade. The local board's policy restricting early admission is founded on two State regulations. The first establishes that a child must turn six by September 1 in order to enroll in first grade. COMAR 13A.08.01.02(C)(2). The second requires each local board of education to adopt regulations permitting a five year old, upon request of the parent or guardian, to be admitted to first grade if the local superintendent of schools or designee determines that the child demonstrates capabilities warranting early admission. COMAR 13A.08.01.02(C)(3). As to this requirement, the State Board has held that the State regulations "leave the content of those policies to the discretion of the local board." See *Geoffrey W. and Delese L. v. Baltimore City Bd. of Sch. Cmm'rs.*, MSBE Op. No. 14-40 (2014)(upholding local board's early first grade admission policy).

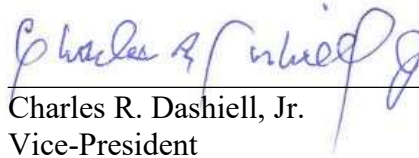
Accordingly, BCPS has developed a policy and regulation to accommodate requests for early first grade entry for children whose birthdates occur within a six-week period beyond the established September 1 cutoff date. See *Local Bd. Resp., Ex. 3 - JEC-RA II(2)(B)(1)*. In order to attend first grade one year prior to the age established by the State, children must achieve an average cumulative score in the 85th percentile or higher on an assessment chosen by the school system. *Id.* at JEC-RA(II)(B)(1)(b).

The Appellants do not dispute that ■■■ earned a cumulative score in the 28th percentile – 57 percentage points below the required score. Rather, they argue that ■■■ should be admitted to first grade despite his failure to meet the required score because they do not feel the score is reflective of his abilities. The record is devoid of any evidence to support their beliefs. BCPS's reliance on scores on an assessment is not unreasonable. The State Board has consistently upheld the use of assessment scores as a basis for denying early entry to kindergarten. See *Sherrea F. v. Baltimore City Bd. of Sch. Cmm'rs.*, MSBE Op. No. 20-09 (2020), citing, *Kristen M. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 13-16 (2013) and cases cited therein. The State Board has relied upon early admission decisions for kindergarten in analyzing early admission decisions for first grade. See *Geoffrey W. and Delese L. v. Baltimore City Bd. of Sch. Cmm'rs.*, MSBE Op. No. 14-40 (2014), aff'd, 2017 WL 695365 (2017)(citing *Kenneth F. v. Baltimore County Bd. of Educ.*, MSBE Op. No. 10-23(2010)(considering local board regulation relating to early application to kindergarten).

In this case, the record does not contain any reason for the State Board to depart from its well-established precedent deferring to the local jurisdiction use of assessments to determine eligibility for early admission to first grade or kindergarten.


CONCLUSION


For all of these reasons, we find that the local board's decision is not arbitrary, unreasonable or illegal. Accordingly, we affirm the local board decision denying ■■■ early first grade entry.


Charles R. Dashiell, Jr.
Vice-President


Shawn D. Bartley


Chuen-Chin Bianca Chang


Vermelle Greene


Jean C. Halle


Rachel McCusker


Lori Morrow


Warner I. Sumpter


Holly C. Wilcox

Absent:
Clarence C. Crawford
Gail H. Bates
Susan J. Getty
Joan Mele-McCarthy

March 22, 2022