

GEOFFREY W. AND DELESE L.,

Appellant

v.

BALTIMORE CITY BOARD OF  
SCHOOL COMMISSIONERS,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 14-68

## OPINION

### INTRODUCTION

The Appellants request that this Board reconsider its July 22, 2014 Opinion in *Geoffrey W. and Delese L. v. Baltimore City Bd. of Sch. Cmm'rs*, MSBE Op. No. 14-40 (2014). The Baltimore City Board of School Commissioners (“local board”) filed a response to the request for reconsideration and the Appellants replied.

### FACTUAL BACKGROUND

In *Geoffrey W. and Delese L.*, this Board affirmed the local board’s denial of Appellants’ request that their daughter be admitted early to first grade. The school system had unofficially moved the student into a kindergarten class part of the way through her prekindergarten year. Appellants then requested that the student be admitted early to first grade for the following year, but the school system denied the request because the student missed the local board’s age cutoff date for early entry eligibility by approximately six months. Under the policy, children are eligible to apply for early admission to first grade if they turn age six between September 2<sup>nd</sup> and October 15<sup>th</sup>. The school system developed a differentiation plan for the student, however, so that she could access the first grade classroom and curriculum as needed to address her academic needs throughout her kindergarten year.

In the State Board appeal, Appellants maintained that the local board’s first grade early entry policy that creates a window of eligibility restricting the early entry process to only those children who are of a certain age is illegal because it violates State regulation. We upheld the policy, relying on our reasoning in *Kenneth F. v. Baltimore County Bd. of Educ.*, MSBE Op. No. 10-23 (2010), in which we found the window of eligibility established by the school system for early kindergarten entry to be legal. In *Kenneth F.* we stressed deference to an administrative agency’s interpretation of its own regulations, noting that the local board’s policy relied on guidance from the Maryland State Department of Education (“MSDE”) that early admission was intended for children who closely missed the cutoff date for admission, but demonstrated capabilities warranting early admission. The guidance stated that “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.” The guidance also stated that the COMAR regulations

“merely require local school systems to develop early admission policies” but that the “content of such policies must be determined by the local boards. . . including establishing a time period beyond the actual admission date.”

In our Opinion in *Geoffrey W. and Delese L.*, we acknowledged that the issue of early admission to first grade was a matter of first impression before the State Board. We also acknowledged that the *Kenneth F.* case dealt with early admission to kindergarten. Nevertheless, we found the reasons set forth in *Kenneth F.* to be applicable. We stated:

The guidance from MSDE, that the regulations merely require local boards to develop early admission policies but leave the content of those policies to the discretion of the local boards, is directly applicable to the contested case policy in the present case. Because COMAR only requires that the local board develop a policy, which MSDE has interpreted as lawfully allowing for an age restriction for early entry eligibility, the local board’s policy does not violate COMAR. Further, deference to the State Board’s interpretation of COMAR continues to be a reasonable basis for supporting the policy adopted by the local board. Consistent with the State Board’s opinion in *Kenneth F.*, the local board’s policy is not arbitrary, unreasonable, or illegal.

#### STANDARD OF REVIEW

A decision of the State Board may not be disturbed unless there is sufficient indication that (1) the decision resulted from a mistake or error of law, or (2) new facts material to the issues have been discovered or have occurred subsequent to the decision. COMAR 13A.01.05.10.D. The State Board may refuse to consider facts that the party could have produced while the appeal was pending. COMAR 13A.01.05.10.E. The State Board may, in its discretion, abrogate, change, or modify the original decision. COMAR 13A.01.05.10.G.

#### LEGAL ANALYSIS

Appellants argue that the State Board’s reliance on *Kenneth F.* is misplaced because the MSDE guidance did not concern children entering first grade, but instead dealt with three and four year old children entering prekindergarten and kindergarten, who are not otherwise eligible to attend school. It is true that the guidance focused on prekindergarten and kindergarten students, but that does not mean that the State Board should not have relied on it in interpreting this case. The guidance noted that the intent of the early admission regulations was to allow early admission for those children who closely missed the September 1 cutoff date for school attendance, and allowed windows of age eligibility in recognition of that intent. Our intent was the same for the early admission regulations for first grade, making the guidance relevant to children who are five years old and seeking early entry to first grade with a September 1 cutoff date. The fact that the four year old children entering kindergarten have no right to school attendance was not a factor. It had to do with their closeness in age to the eligibility date because they would be more likely to demonstrate capabilities appropriate to that grade level placement, which includes various factors such as social, emotional, cognitive and physical development.

Appellants also argue that the State Board's interpretation of COMAR 13 A.08.01.02C(3) in this case is error because it ignores the plain meaning of an unambiguous regulation. The regulation states:

C. First Grade

(1) Beginning with the 2004-2005 school year through the 2006-2007 school year, a child admitted to the first grade in the public schools shall be 6 years old or older on:

(a) November 30, 2004, if the child applies for entrance for the 2004-2005 school year;

(b) October 31, 2005, if the child applies for entrance for the 2005-2006 school year;

(c) September 30, 2006, if the child applies for entrance for the 2006-2007 school year;

(2) Beginning with the 2007-2008 school year and each school year thereafter, a child admitted to the first grade in the public schools shall be 6 years old or older on September 1 of the school year in which the child applies for entrance.

**(3) The local board of education shall adopt a regulation permitting a 5-year-old child, upon request of the parent or guardian, to be admitted to the first grade if the local superintendent of schools or the superintendent's designee determines that the child has demonstrated capabilities warranting early admission.**

COMAR 13A.08.01.02. Appellants maintain that the fact that the regulation requires local boards to establish criteria for early admission for five year old children precludes them from establishing a more limiting window of age eligibility which allows only some five year olds to apply for early entry.

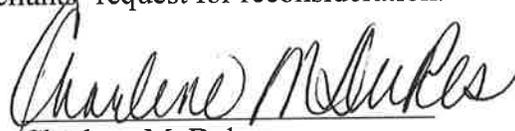
The Appellants' argument does not consider the provision as a whole, focusing only on the first part of COMAR 13A.08.01.02C(3). The provision leaves it to the discretion of the local board to establish the criteria for early admission of five year olds if the local superintendent or designee determines that the child has demonstrated capabilities warranting early admission. As stated above, the window of eligibility is a mechanism by which to focus the process on children closer to the entry cutoff date. By incorporating the window of age eligibility into its criteria, the local board has essentially recognized that those closest to the attendance cutoff date are the children who will be able to demonstrate capabilities warranting early admission, which include a wide range of developmental considerations.

The Appellants also argue that the early admission regulation could not have been intended to apply to children close to the cutoff date because the regulation includes its own eligibility window in COMAR 13A.08.01.02C(1) and (2), and such an intent would have rendered those provisions of the regulation meaningless. This is incorrect. COMAR 13A.08.01.02C(1) and (2) represent nothing more than the four year phase in of the September 1 cutoff date for entry to first grade, which had previously been December 31. It does not negate the fact that the early admission provisions were intended to apply to children close to the cutoff date.

Finally, Appellants maintain that the State Board's suggestion in the Opinion that it has grown concerned about local board policies on early admission to prekindergarten, kindergarten and first grade and its statement that the Board intends to revisit the issue given that the policies rely on MSDE guidance, supports a different decision in this case. We disagree. The statement was included simply to signal that the issue is worthy of further study to consider whether or not additional MSDE guidance is appropriate.

#### CONCLUSION

For the reasons stated above, we deny Appellants' request for reconsideration.



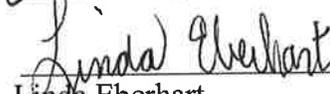
Charlene M. Dukes  
President



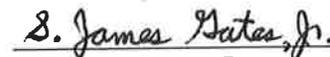
Mary Kay Finan  
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Linda Eberhart



S. James Gates, Jr.



Larry Giammo



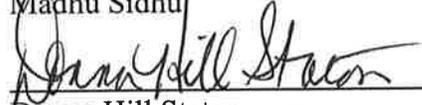
Luisa Montero-Diaz



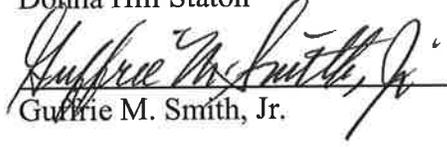
Sayed M. Naved



Madhu Sidhu



Donna Hill Staton



Guffrie M. Smith, Jr.

December 16, 2014