

NNEKA O.,

Appellant

v.

HOWARD COUNTY BOARD  
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 15-22

### OPINION

#### INTRODUCTION

Nneka O. (Appellant) appeals the decision of the Howard County Board of Education (local board) to assess her \$14,945.26 in non-resident tuition for her four children. The local board submitted a Motion for Summary Affirmance, maintaining that its decision was not arbitrary, unreasonable, or illegal. The Appellant responded to the motion and the local board replied.

#### FACTUAL BACKGROUND

On July 9, 2014, Appellant registered her four school-age children with Howard County Public Schools (“HCPS”). One of the documents she filled out was a “Multiple Family Disclosure” form that required her to identify a “host family” that she and her children would be living with in Howard County. She identified her father, who lived at an address on Elderberry Court in Elkridge. Both the host family and Appellant were required to provide proof of residency to HCPS. This residency form was notarized by a notary public in Baltimore City. (Motion, Ex. 2).

After noticing that the form was notarized outside of Howard County, HCPS staff began to investigate. Appellant’s driver license listed an address in Edgemere in Baltimore County and other record searches listed the same address. Records revealed that Appellant’s husband, who is the children’s stepfather, owned a home at that address. This led HCPS staff to question whether she or the stepfather were truly living with the children on Elderberry Court in Howard County. HCPS investigators placed a call to the Baltimore County house on August 29, 2014. Appellant answered the phone and confirmed her identity. (Motion, Ex. 2).

HCPS investigators also began to conduct surveillance. During multiple observations in September and October 2014, they saw Appellant leave the Baltimore County home and drop her children off at a bus stop near the Elderberry Court home in Elkridge. The children were never observed leaving the Howard County home. (Motion, Ex. 2).

On October 23, 2014, HCPS sent Appellant a letter informing her that her children were no longer eligible to attend HCPS and would be denied admission starting November 7 because they were not bona fide residents of the county. The letter also informed Appellant that she could appeal the decision, but that if the decision were denied, she would be charged tuition at a rate of approximately \$10,000 per year per student. (Motion, Ex. 2).

Appellant appealed the decision. In her appeal letter, she maintained that she lived with her parents on Elderberry Court in Elkridge because of health concerns and financial difficulties. (Motion, Ex. 2).

On November 19, 2014, Appellant participated in a hearing via telephone before Maryann Thomas, Specialist for Residency and Student Reassignment and the superintendent's designee. After being presented with the evidence gathered by HCPS, Appellant confirmed that her husband owned the Baltimore County house and she admitted that she traveled back and forth between the homes in Baltimore County and Howard County. Ms. Thomas concluded that Appellant and her children were not bona fide residents of the county and determined Appellant was liable for \$14,945.26 in tuition for her four children based on their attendance in Howard County schools between August 25 and December 5, 2014. (Motion, Ex. 2).

Appellant appealed to the local board. In her appeal letter, she maintained that she began living with her parents in July 2014 and provided a copy of her MVA change of address card that reflected her residency on Elderberry Court in Elkridge. Appellant acknowledged that the family was "going back and forth" during the month of September, but she maintained that, as of an unspecified date in September, the children had left every morning for school from her parents' home. She explained that the Baltimore County house was listed for sale in August 2014, but that a potential sale fell through in November 2014. Appellant stated that she planned to rent an apartment in Elkridge once the Baltimore County house was sold. As for the notary, Appellant explained that the residency form was notarized in Baltimore City because her parents' business is located there. The appeal packet contained a letter from her father attesting that Appellant lived in their home on Elderberry Court in Elkridge. Appellant later filed additional documents indicating that the Baltimore County house had been sold and was scheduled for settlement on January 23, 2015. (Motion, Ex. 2).

On January 16, 2015, the local board issued its decision. The board found ample evidence from the residency investigation and surveillance that Appellant and her children were not bona fide residents of Howard County during the fall of 2014, but were instead living in Baltimore County. The board determined that the calculation of tuition for the 66 days that the children were enrolled in school was reasonable.

This appeal to the State Board followed.

### STANDARD OF REVIEW

The decision of a local board concerning a local dispute or controversy is presumed to be *prima facie* correct and the State Board will not substitute its judgment for that of the local board unless the decision is shown to be arbitrary, unreasonable or illegal. COMAR 13A.01.05.05A.

A decision may be arbitrary or unreasonable if it is (1) contrary to sound educational policy or (2) a reasoning mind could not have reasonably reached the conclusion the local board or local superintendent reached. COMAR 13A.01.05.05B.

## LEGAL ANALYSIS

HCPS policy limits attendance in its schools to students whose parents or guardians have established bona fide residency in Howard County. HCPS Policy 9000 IV.D. Nonresident students may be required to pay tuition for the time they attend local schools. *Id*; *see also* Md. Code Ann., Educ. §7-101(b)(3) (“If a child fraudulently attends public school in a county where the child is not domiciled . . . the child’s parent or guardian shall be subject to a penalty payable to the county for the pro rata share of tuition.”). Tuition rates are set by the local board each year and parents or guardians may request tuition waivers or revised payment schedules based on financial hardship. HCPS Policy 9000 IV.H.

Appellant no longer contests the local board’s conclusion that she was not a bona fide resident of the county prior to January 2015. In fact, she admits in her appeal that she enrolled her children with HCPS in the fall of 2014 because she assumed the family’s Baltimore County home would sell quickly and that they would soon relocate to Howard County. Appellant and her children stayed only “sometimes” with her parents in Howard County during that time.<sup>1</sup> Instead of challenging the residency determination, Appellant seeks a waiver of the \$14,945.26 in non-resident tuition she was charged. Appellant explains that she is out of work and facing health and financial difficulties. Appellant maintains that she did not understand the school enrollment policies and did not deliberately try to break the rules.

In responding to this appeal, the local board has agreed not to collect on Appellant’s debt, acknowledging that Appellant is unemployed and on a limited income. Included in the filings is an affidavit from an accounting manager for HCPS, stating that Appellant may receive invoices reminding her of her financial obligation, but HCPS “will not take any further action to collect money from the family on this obligation.” (Motion, Ex. 5).

The local board declines, however, to waive the tuition entirely, arguing that it “deserves to have its decision summarily affirmed as a matter of law.” The local board maintains that a tuition waiver would appear to condone Appellant’s conduct, which violated Maryland law and HCPS policies. The local board contends that Appellant’s conduct was deliberate and deceitful and that declining to pursue the debt provides Appellant with an adequate remedy.

Appellant offers no argument against the local board’s proposal. As the local board points out, Appellant represented herself as a bona fide Howard County resident in the fall of 2014 even while she traveled back and forth between Howard and Baltimore counties. In light of this deliberate conduct, the local board’s desire not to condone such behavior by waiving the tuition does not appear unreasonable. We have previously upheld the right of local boards to collect tuition for the period of time non-residents attend local schools. *See, e.g., Mr. and Mrs. V. v. Howard County Bd. of Educ.*, MSBE Op. No. 11-37 (2011). But we have also urged local

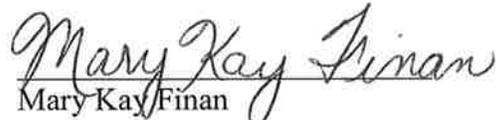
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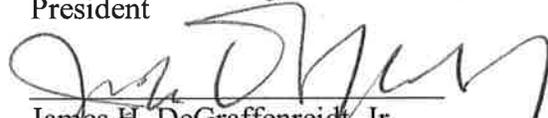
<sup>1</sup> As of January 29, 2015, Appellant’s children were re-enrolled with HCPS and the local board does not dispute that she currently is a bona fide resident.

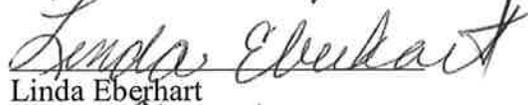
boards to exercise their discretion by choosing not to collect on tuition debts when appellants have financial hardships. See *Ayanna M. v. Howard County Bd. of Educ.*, MSBE Op. No. 12-56 (2012). The local board's decision to forgo collection in this situation is a reasonable one and consistent with our previous decision.

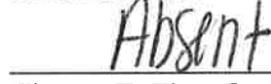
CONCLUSION

For all these reasons, we affirm the decision of the local board because it is not arbitrary, unreasonable, or illegal.

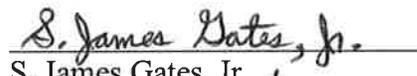
  
Mary Kay Finan  
President

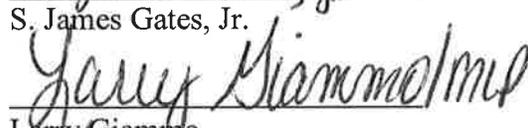
  
James H. DeGraffenreid, Jr.

  
Linda Eberhart

  
Absent

Chester E. Finn, Jr.

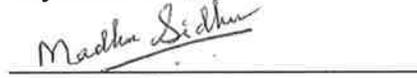
  
S. James Gates, Jr.

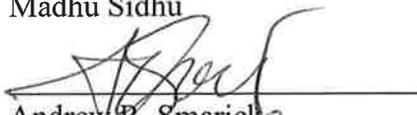
  
Larry Giammo

  
Luisa Montero-Diaz

  
Absent

Sayed M. Naved

  
Madhu Sidhu

  
Andrew R. Smarick

  
Guffie M. Smith, Jr.

June 23, 2015