

PRINCESS A.,

Appellant

v.

MONTGOMERY COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 14-52

OPINION

INTRODUCTION

Princess A. (Appellant) appeals the decision of the Montgomery County Board of Education (local board) to withdraw her three children from the school system based on a determination that they did not reside within the county. The local board submitted a Motion for Summary Affirmance, maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellant did not file a response.

On August 26, 2014, the State Board issued an order affirming the local board's decision. This opinion further elaborates on our reasoning in reaching that decision.

FACTUAL BACKGROUND

Appellant has three children who attended Montgomery County Public Schools (MCPS) during the 2013-14 school year. One child was a tenth-grade student at Paint Branch High School; another was a seventh-grade student at Briggs Chaney Middle School; and the youngest was a kindergarten student at Galway Elementary School.

MCPS began investigating the residency of Appellants' children in early October 2013 after mail was returned undelivered from the family's listed address on Schubert Place in Silver Spring. When Appellant's tenth-grade daughter was questioned about whether the family had recently moved, she stated she lived on Harbour Town Drive in Prince George's County. After MCPS officials told her that the address was outside of the county and that she might be withdrawn from school, the student asked to call her mother. MCPS officials heard the mother ask the student why she gave the school the Harbour Town Drive address. The student told her mother that "she lived there and didn't want to lie." (McClain Affidavit; Newsome Affidavit). The Harbour Town Drive address is about 1.5 miles away from the Schubert Place address.

Appellant came to the school with Donald I., who was identified as the children's father and the owner of the Harbour Town Drive home in Prince George's County. He told school officials that the children stay with him three to four times a week and catch a bus to school. Appellant told school officials that Donald I. had been informed when he purchased the Harbour Town Drive house that it was in Montgomery County, but later learned that it was actually in

Prince George's County. Appellant presented school officials with a shared housing form, signed the previous day, that stated she lived at the Schubert Place address in Silver Spring. (McClain Affidavit).

Around the same time, MCPS officials began examining the documents Appellant had used to enroll her children in school. In September 2013, Appellant presented Galway Elementary with a two-year lease for an address on Schubert Place in Silver Spring. As part of their investigation, MCPS officials learned that when two of Appellants' children attended Galway Elementary at the same time in 2006, each was registered using a different address. (Statham Affidavit; Miller Affidavit).

Jacqueline Miller, a pupil personnel worker, was assigned to investigate whether Appellant and her children lived at the Schubert Place address as she claimed. The home was owned by a married couple. Ms. Miller visited the home and spoke to the husband/owner, who stated that Appellant and her children lived there and would be home later in the evening. Ms. Miller drove by the home several times throughout the rest of the day, but did not observe any children coming or going from the house. When Ms. Miller returned to the home later that evening, the husband/owner admitted that the Appellant and her children did not live with them and that he had never seen the rental agreement she presented to MCPS. Ms. Miller reported this information to the three schools where Appellant's children were enrolled. (Miller Affidavit).

Two of Appellant's children were withdrawn from school on October 15, 2013, and the last child was withdrawn on October 31, 2013. Because the children were not considered residents of Montgomery County, MCPS required Appellant to pay tuition in order for her children to continue to attend MCPS. After Appellant requested a tuition waiver, MCPS sent Appellant letters denying her request. Appellant appealed and the matter was referred to a hearing officer. (Hearing Officer Memorandum).

On October 29, 2013, Appellant met with the hearing officer and again stated that she was renting two rooms in a home on Schubert Place in Silver Spring. The hearing officer called the couple who owned the home to verify this information. The wife confirmed that Appellant was renting two rooms from them, but her husband denied it. He stated that Appellant was a friend of his wife's and had asked about renting a room, but had not done so. (Hearing Officer Memorandum).

During the next week, Appellant met with the hearing officer several times. She initially stated that she had decided to leave Schubert Place and was going to live temporarily with her cousin in Burtonsville. Her cousin came to the office with her and confirmed that Appellant and her children would live with him. A few days later, Appellant told the hearing officer that the plans with her cousin fell through and that she was talking to a friend about staying there. Appellant acknowledged that she had previously lived with the children's father in Prince George's County, but stated that she no longer lived there. (Hearing Officer Memorandum).

On November 6, 2013, Appellant presented the hearing officer with a shared housing form and other supporting documentation indicating that she now lived on Fairland Road in Silver Spring. The owner of the home confirmed that Appellant and her children were going to live in his home and Ms. Miller visited the property to confirm the information. She observed suitcases and other personal belongings that the homeowner identified as belonging to Appellant

and her family. Ms. Miller saw the Appellant's children playing nearby the home and observed Appellant's car outside the home early the next morning. (Hearing Officer Memorandum).

Based on this new information, MCPS allowed Appellant's children to return to their schools. Appellant was informed that the children were approved for enrollment through the first semester of school, but that she would need to provide additional documentation of her residency by January 17, 2014.

In the meantime, MCPS began an investigation to confirm that Appellant and her children were actually living on Fairland Road in Silver Spring. The Fairland Road address is located a half mile away from the Harbour Town Drive address in Prince George's County. Ms. Miller, who lived near the Fairland Road address, had license plate tags for two cars listed in Appellant's name. She observed the residence 19 times on 17 different days at various hours between December 4, 2013 and January 17, 2014. These observations included "weekends, evenings, early morning prior to school bus pickups, and very late at night." She never once saw Appellant's vehicle at the home. A neighbor who lives near the home told Ms. Miller that he had not seen children at the address or riding the school bus to Galway Elementary. Ms. Miller made two visits to the home in January 2014, but Appellant and the children were not home on either occasion. She also made five observations of the children's father's home on Harbour Town Drive in Prince George's County. Appellant's vehicle was present at the Prince George's County address each time. On one occasion, Ms. Miller saw two children get out of a car near the Harbour Town Drive home around 4:30 p.m. and walk to the front door. (Miller Affidavit; Jan. 27 Bowers Letter; March 5 Superintendent Memorandum).

On January 16, 2014, Appellant submitted three documents to MCPS. One was a bill from U.S. Capital Associates, another was a document from the State of Maryland, and the final document was an AT & T bill. All three were addressed to Appellant at the Fairland Road address in Silver Spring. (Jan. 27 Bowers Letter).

On January 18, 2014, while Ms. Miller was watching the Fairland Road home, she saw Appellant's car drive up and park two doors down from that address until the school bus arrived. Appellant's son got out of the car and entered the school bus. A short time later, Appellant's car was observed at the Harbour Town Drive address. On the same day after school, Appellant's son was seen leaving the school bus and walking in the direction of the Harbour Town Drive address. (Bowers Letter).

On January 23, 2014, school officials spoke with the children's father. He stated that Appellant and her children live on Fairland Road, but acknowledged that the children "frequently" visit him and stay with him in Prince George's County when Appellant is working. He declined to tell MCPS officials how frequently the children stayed with him or visited. (Bowers Letter).

On January 27, 2014, Larry Bowers, chief operating officer, sent a letter to Appellant requiring the children be withdrawn from MCPS. He stated that "numerous observations and inquiries by MCPS staff do not support" her claim that she lived on Fairland Road in Silver Spring. "In fact, there is substantial evidence that your family resides at the . . . Harbour Town Drive, Beltsville home." Mr. Bowers stated that Appellant's children could continue to attend

MCPS schools pending the resolution of the appeal so long as Appellant paid 10 percent of the tuition costs for her children in advance.

Appellant appealed to the local board. She stated that her older daughter and son were heavily involved in school athletics and the family was rarely home at set times. Appellant accused Ms. Miller of failing to report that she saw Appellant's vehicle at the Fairland Road home on numerous occasions. She stated that she usually does not drive to work, but leaves her car with the children's father, who otherwise does not have a vehicle. Appellant stated that her older children also use her car. During the period of the investigation in December and January, Appellant stated that things were "chaotic." She stated that "[e]verybody was home and even guests from overseas. We were hardly in town." She emphasized that she was a representative for the Montgomery County Council of Parent Teacher Associations. Appellant paid the 10 percent deposit so that her children could continue to attend MCPS during the second semester while she pursued her appeal.

On March 5, 2014, the local superintendent recommended upholding the decision to withdraw Appellant's children. Appellant appealed the decision to the local board. In her appeal letter, she described the observations as a "blatant lie" and stated that her car was at the Fairland Road address "[e]ven when we were snowed in."¹ She challenged the observations of the neighbor who never saw children leaving the house, asserting that five children lived at the home (three of them hers) and it would be difficult not to see them coming and going. Appellant explained that Ms. Miller's first visit to the home occurred while she was at work and that the second visit occurred while she was at her daughter's basketball game and her son was at an after-school activity. She accused MCPS officials of taking her daughter's statement about where she lived out of context and making fun of her. Appellant stated it was virtually "impossible" for the car to have been observed at Harbour Town Drive because she used it frequently for work and the children's father frequently borrowed the car. She explained that the children's father sometimes dropped the children off at the school bus, which was why her car was seen dropping her son off and returning to Harbour Town Drive. She stated her son sometimes goes to a friend's house after school or goes to his father's home. Appellant maintained that "there is no way in the world" that she, her children, or their vehicle could not have been present during any of the observations.

Along with the appeal, Appellant submitted additional documents. These included:

- The shared housing form filled out by Appellant and signed by the owner of Fairland Road, along with property records verifying his ownership and utility bills in his name for the property
- A March 15, 2014 letter from the owner of the Fairland Road house stating that Appellant and her children live with him
- A March 20, 2014 letter from Educational Systems Federal Credit Union addressed to Appellant at the Fairland Road address

¹ Throughout the appeal process, Appellant complained about an unknown individual taking pictures of her car and residence and following her son after school. She claims that he identified himself to her as an MCPS investigator and showed her his ID card. MCPS has stated that the man was not an MCPS employee and that the car seen by Appellant was not a school system vehicle.

- A 2013 federal income tax return, listing Fairland Road as Appellant's address. The return claims Appellant's three daughters (two of whom are a part of the current appeal) as dependents, but does not list her son, who is also a part of the appeal.
- A Maryland Vehicle Emissions Inspection Notice sent to the Fairland Road address
- A Maryland Automobile Insurance Fund Statement, effective February 10, 2014, sent to the Fairland Road address
- An undated letter from a woman who states that Appellant babysits her children at the house on Fairland Road in Silver Spring
- A March 20, 2014 letter from Coach Stephen Burnett who stated that he had given Appellant's daughter rides home "in the two years I have known her and I distinctly remember that her home is . . . on Fairland Road in Silver Spring."
- A March 16, 2014 letter from a neighbor of the children's father who stated that he saw the "little girl" on "some weekends" but that he barely sees the older children and presumed that they only visited their father in the summer.

(Appeal, Exs. A1-A13).

In response, the local superintendent stated that Ms. Miller had no reason to fabricate her observations of the home. MCPS staff denied making any disparaging comments about Appellant. MCPS staff contacted the woman who stated that Appellant babysat her children; she stated that it occurred two to three days a week after school and that Appellant had done so for "a while."

On May 13, 2014, the local board affirmed the local superintendent's decision. The local board acknowledged that Appellant had provided documents listing Fairland Road as her home address, but stated that "all of the documents are of the type that rely upon [Appellant] to supply her address to the entity sending the documents." The local board found that the materials were "relevant" but that the MCPS investigation was "decisive" in reaching its decision. The local board concluded that Appellant's explanations for her absences could account for some, but not all, of the days in which the vehicle was not present. In addition, the local board found some of Appellant's explanations as to her schedule were inconsistent. The local board concluded, based on the evidence before it, that Appellant and her children did not live at the Fairland Road home.

This appeal followed. On August 26, 2014, we issued an order upholding the decision of the local board because we concluded the decision was not arbitrary, unreasonable, or illegal. We issued our expedited decision in the form of an order because the school year had already begun and we wanted to ensure that Appellant's children would be enrolled in school timely.

STANDARD OF REVIEW

Local board decisions involving a local policy or a controversy and dispute regarding the rules and regulations of the local board are 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.01.05.05A.

LEGAL ANALYSIS

Under State law, students are required to attend school within the jurisdiction in which they reside with their parent or guardian. Md. Code, Educ. Art. § 7-101(b). The local board's policy states that all school-aged individuals "who have an established bona fide residence in Montgomery County are to be admitted free to the Montgomery County Public Schools." MCPS Policy JED. MCPS defines "bona fide residence" as "one's actual or true residence, maintained in good faith, and does not include a temporary residence or superficial residence established for convenience or for the purpose of free school attendance in Montgomery County Public Schools." MCPS Regulation JED-RA. The burden of producing evidence of bona fide residency is on the student. MCPS Policy JED.

For parents and children in shared housing, MCPS requires a sharing housing disclosure form, a copy of the current property tax bill of the homeowner, and at least three supporting documents indicating residency. MCPS Regulation JED-RA. Appellant presented this information to MCPS and maintains that she and her children live on Fairland Road in Silver Spring.

The documents presented by Appellant would ordinarily satisfy her burden to prove residency. But MCPS had reason to question whether the Fairland Road address was Appellant's "actual or true residence, maintained in good faith" and not merely one established "for convenience or for the purpose of free school attendance" in Montgomery County. School records revealed that in 2006 two of Appellant's children had attended the same school at the same time, but were registered with different addresses. At the start of the 2013-14 school year, mail was returned from Appellant's address of record. After she presented a lease claiming that she and her family lived on Schubert Place, one of the home's co-owners denied that she lived there and said he had never seen the lease presented by Appellant. When Appellant's tenth-grade daughter was asked where she lived in October 2013, the girl stated that she lived at Harbour Town Place in Prince George's County.

Given these facts, it was not unreasonable for MCPS to wish to further verify Appellant's claim of residency on Fairland Road in Silver Spring. MCPS staff conducted 19 observations of the home and never once observed Appellant or her children there. Staff separately visited the Harbour Town Place address and found Appellant's car there on multiple occasions; they also witnessed her children entering the home after school. Even taking into account Appellant's explanation that their lives are busy and that the children's father and her older children use her car frequently (and that she sometimes has it at work), it is unlikely that her car would never once be seen at the home after 19 visits. Appellant claims that MCPS staff lied about the observations, but there is no support for this allegation in the record. Bolstering the observations was a neighbor who stated that he had never seen the children entering or exiting the home.

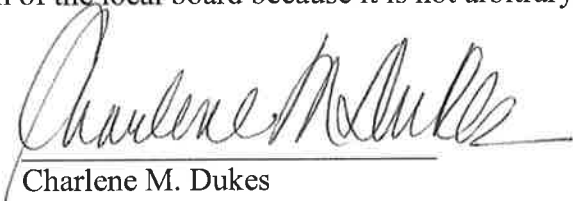
In addition, there are inconsistencies in the evidence presented by Appellant. For instance, her daughter's basketball coach stated in March 2014 that he had dropped Appellant's daughter off at the Fairland Road home several times during the previous two years, but the family had only been living at the address since November 2013. In addition, a woman stated that Appellant babysits her children two to three days a week after school and had been doing so for "a while"; by contrast, Appellant had only been living in the home for a few months, never

mentioned regular babysitting, and indicated that she was frequently away from her home at work or attending her children's school activities. The record also contains a letter from a neighbor of the children's father who states that he rarely sees the children at the Harbour Town Place home, but Appellant and the children's father have acknowledged that the children visit him there often. Finally, on the Appellant's 2013 tax return, Appellant's son, who is a part of this appeal, is not listed as a dependent living with her. Each of these inconsistencies, standing alone, might not be significant, but taken together they undercut Appellant's evidence and cast doubt on her claim that she and her children were bona fide residents of the Fairland Road address in Montgomery County.

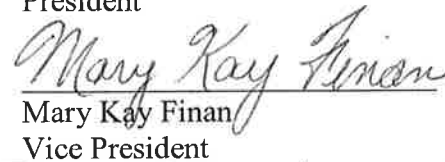
Although Appellant provided documents that indicate she lives on Fairland Road, MCPS presented a considerable amount of evidence suggesting that Appellant's children do not live in that home, but stay primarily with their father in Prince George's County. In our view, the observations of investigators and a neighbor, the statement from Appellant's daughter, and the inconsistencies in Appellant's evidence provided the local board with sufficient evidence to support its decision and it was not one that "a reasoning mind could not have reasonably reached."

CONCLUSION

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



Charlene M. Dukes
President



Mary Kay Finan
Vice President



James H. DeGraffenreidt, Jr.



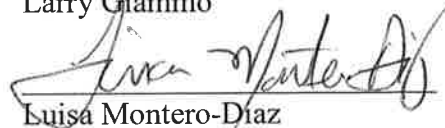
Linda Eberhart



S. James Gates, Jr.

Absent

Larry Giammo



Luisa Montero-Diaz

Absent

Sayed M. Naved

Madhu Sidhu

Madhu Sidhu

Donna Hill Staton

Donna Hill Staton

Guffie M. Smith, Jr.

Guffie M. Smith, Jr.

September 23, 2014