RHONDA T.,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
MONTGOMERY COUNTY BOARD OF EDUCATION,	OF EDUCATION
Appellee.	Opinion No. 15-16

OPINION

INTRODUCTION

Rhonda T. (Appellant) appeals the decision of the Montgomery County Board of Education (local board) denying her request for $2,010 in wages on behalf of her son. The local board submitted a Motion for Summary Affirmance, maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellant responded to the motion and the local board replied.

FACTUAL BACKGROUND

Appellant's son J.T. attended Rock Terrace School ("Rock Terrace"), part of Montgomery County Public Schools ("MCPS"), from 2005 until he graduated in 2011 at the age of 21. Rock Terrace serves students between the ages of 11 and 21 who have physical and cognitive disabilities. The school offers a three-year middle school program, four-year high school program, and three-year upper school transition program. The goal of the school is "to prepare students to transition to independent living through a modified MCPS program of studies and functional and vocational skills training." The school uses out-of-school and in-school work experience programs as part of that goal. (Motion, Ex. 1).

During his time at Rock Terrace, J.T. participated in the Culinary Arts program, which covers food service and catering. He worked in the school's cafeteria and bistro and assisted in preparing food, serving meals, and cleaning up. In addition to the work experience, J.T. also took courses in computer applications, social skills, math, office skills, and reading. (Appeal; Motion, Ex. 13).

In July 2011, after J.T. graduated, Appellant was informed by a MCPS para-educator that J.T. was entitled to be paid for his work in the school's bistro and for assisting with catering jobs. Appellant contacted the school and MCPS sent Appellant a check for $150, described as "pay for FY '11" in connection with Rock Terrace catering. (Motion, Ex. 6, 14).

Investigation of the work experience programs

In 2013, parents and guardians of students at Rock Terrace learned that accounts had been opened in their children's names at the Montgomery County Teachers Credit Union without

their knowledge. MCPS began an investigation into the program, as did the State's Attorney for Montgomery County. (Appeal Response, Attachment 1).

On January 14, 2014, the local superintendent issued a memorandum to the local board concerning the work experience programs. The memorandum explained that in the late 1990s, Rock Terrace began using money from the school's Independent Activity Fund "to pay small amounts to some students so they could learn the connection between work skills and pay in a more realistic way and, for some students, to gain additional skills related to learning how a bank account works." The amounts varied, and sometimes were based on a student's grade, but were never more than $2 per class, according to the memorandum. (Motion, Ex. 1).

Around 2004, Rock Terrace staff began assisting students in opening credit union accounts and money was put into those account in the names of the individual students. The credit union accounts were discontinued in 2010 and money that had been stored in the accounts was transferred back to the Independent Activity Fund. According to the superintendent, money withdrawn from the accounts was used for "community resource activities and school programs and activities." (Motion, Ex. 1).

Separately from the credit union accounts, some students participated in work outside of school full-time and were paid $3.65 per day, with the goal of eventually being hired by the businesses upon graduation.[1] Other students attended classes during part of the day and worked outside of school during the remainder of the time, but were not paid. (Motion, Ex. 1).

Based on advice of counsel, the superintendent informed the local board that the money paid to the students through the work programs was not taxable income because the payments were made for instructional and training purposes. The payments, instead, would be considered as gifts under IRS regulations. The superintendent suspended the payments to students in all of the programs prior to the start of the 2013-14 school year and announced that a work group would be formed to determine whether the payments should be continued and, if so, under what circumstances. (Motion, Ex. 1).

The superintendent acknowledged that poor recordkeeping made it "impossible to determine who withdrew funds or for what specific purpose or activity." In addition, the method in which the accounts were operated and incomplete records made it difficult to ascertain exactly how much should have been credited to each individual student. MCPS did, however, keep records (in the form of W-2s) for 32 students who were paid for work outside of school. (Motion, Ex. 1).

In response to concerns from parents and guardians, MCPS decided to pay students with W-2s the full amount stated on the forms regardless of whether the student had already withdrawn some of the money. For the remaining students who had credit union accounts, MCPS paid a flat amount of $200. The superintendent acknowledged that $200 was "more than some of the students received and less than others received," but he decided to offer the money to "make a good faith effort to acknowledge the deficiencies in the way these programs were run

[1] According to the Department of Labor, individuals with disabilities may be compensated at a special minimum wage rate lower than the regular federal minimum wage in certain circumstances.

and to rebuild the trust of this community." If parents or guardians could document that their children were owed more, the local superintendent agreed to pay that amount. (Motion, Ex. 1).

The current appeal

In May 2013, Appellant first learned that a credit union account had been opened in J.T.'s name without her knowledge. The account was opened by MCPS on March 19, 2007 and, between 2007 and 2009, regular deposits totaling $451.55 were made into the account. After 2009, no more funds were added, but some withdrawals were made. The account was closed on September 30, 2012. (Motion, Ex. 5).

Appellant disagreed with MCPS's offer of $200 to compensate her son for the amount in his credit union account and scheduled a meeting with the Rock Terrace principal. After Appellant produced records that showed $451.55 had been deposited in J.T.'s account, MCPS agreed to pay Appellant $301.55. MCPS reached this figure by subtracting the $150 J.T. had been paid in 2011. The principal confirmed the amount of the payment in a letter dated April 8, 2014. (Motion, Ex. 3, 4).

On May 19, 2014, Appellant filed a complaint with MCPS seeking wages she believed J.T. was owed for the 2007-2011 school years. She argued that the amount offered by MCPS did not cover the 2009-10 and 2010-11 school years and that the $150 she had already received was improperly deducted from the total amount owed to her son for the remaining years. The school principal denied the request on May 27, 2014. In a letter accompanying the denial, she explained that there was no evidence that students were paid for work experience activity and that token payments "were never intended to be compensation for work." (Motion, Ex. 5).

Appellant appealed to the superintendent's designee, who granted her appeal in part by agreeing that the $150 had been improperly deducted from the amount owed. In a response dated August 18, 2014, the superintendent's designee concluded J.T. was entitled to the full $451.55 that had been in his credit union account and that the $150 should not have been deducted. MCPS sent Appellant a check for $451.55 in August 2014. (Motion, Ex. 8).

Appellant appealed the decision, contending that the superintendent's designee had not addressed her claim for wages owed during the 2009-10 and 2010-11 school years. In total, she sought more than $2,000 in back wages for her son. (Motion, Ex. 9). The local board remanded the appeal to the superintendent to address questions the board had about the appeal. Specifically, the local board asked whether J.T. attended classes in the 2009 and 2010 school years; whether he was working in the cafeteria and bistro for compensation during that time; the purpose for the payments to Appellant; and other information concerning the work experience programs. (Motion, Ex. 12).

In response to the board's questions, the superintendent explained that J.T. attended classes at the beginning and end of each day and spent the rest of his time in the work experience program working inside the school. The superintendent stated that the $150 was paid to J.T. for "work in culinary arts 2010-2011" at the request of a para-educator, who recalled students receiving 50 cents or $1 per day for attending classes and performing tasks. The $451.55 was

the amount of money deposited in a credit union account in J.T.'s name. The superintendent included a document from the Department of Labor summarizing its limited investigation into the transition-to-work program. The agency concluded that MCPS did not violate federal law because the students qualified as unpaid "trainees" and the work experience program met the agency's test for school work programs involving disabled students. (Motion, Ex. 14, Attachment B).

On January 13, 2015, the local board upheld the superintendent's decision. Although the local board concluded that the record-keeping at Rock Terrace was "less than optimal," it found that J.T. did not perform compensable work for wages for MCPS. The local board determined that the work experience was an educational program designed to benefit students and that J.T. was not a school employee. (Motion, Ex. 16). In support, the local board cited the Department of Labor's investigative report. The record also includes detailed legal memorandum produced at the request of MCPS concluding that the students were not employees of the school system. (Motion, Ex. 2, 17).

This appeal 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

As a preliminary matter, Appellant objects to a one-week extension of time to file a Reply Brief that we granted to the local board. Because the extension did not delay our consideration of the appeal or otherwise prejudice the appellant, we decline to strike the reply brief from the record.

Appellant raises many general allegations about how MCPS operated its work experience programs, but this appeal concerns a narrower question: whether it was arbitrary, unreasonable, or illegal for the local board to deny Appellant's request for $2,010 she claims is owed to her son for food service work he performed while enrolled at Rock Terrace.[2]

The amount of money Appellant seeks is based on a rate of $6 per day for two 180-day school years. Appellant arrived at the $6 per day figure by relying on documents entitled "Rock Terrace School SYMS Department Store Voucher." These documents listed the names of

[2] The questions Appellant raises about the general operation of the work experience program is beyond the scope of this appeal. In addition, Appellant alleges that a crime was committed against J.T. by MCPS employees. The record indicates that the Montgomery County State's Attorney is investigating any criminal wrongdoing in connection with the program, and we leave conclusions concerning violations of the criminal law to that office.

students, the number of days they worked at a local department store, and the total amount each student was owed at a rate of $6 per day. (Motion, Ex. 3) Because these students appeared to receive $6 per day for their work, Appellant argues that her son likewise should be paid the same amount.[3] Appellant argues it was unfair not to pay J.T. because MCPS sold food products for profit and benefitted from his work by not having to hire a full-time employee.

Appellant does not contend that her son worked at the SYMS Department Store or at any other workplace outside of school. Instead, she argues that because some students appeared to have been paid as part of the work experience program that J.T. should have also been paid. The record contains no evidence, however, that Appellant or MCPS ever viewed J.T. as being a school employee rather than a student undergoing work training. MCPS had an obligation to provide J.T. with skills that would prepare him for the world of work and independent living. *See* COMAR 13A.03.02.09. Working part of his day in the school cafeteria and performing other food service work was consistent with that obligation. Two legal memoranda prepared for MCPS concluded the work experience students were not employees entitled to wages, as did a Department of Labor investigation. (Motion, Ex. 2, 17). In addition, his report card shows that he was enrolled in classes, such as math and reading, which indicates that the work was a component of his overall education.

The only evidence of payment for work was in the form of the $150 payment J.T. received in July 2011. The local board acknowledged that the payment "does raise questions," but it concluded that this payment, in light of other evidence in the record, did not establish an employer-employee relationship. The record indicates that the para-educator who requested the $150 payment for J.T. from the MCPS "Independent Activity Fund" did so under the belief that students were entitled to 50 cents or $1 per day "if they attended class and performed tasks." (Motion, Ex. 14). Her statement does not support Appellant's claim that J.T. was an employee being paid wages. Based on the record as a whole, it was not arbitrary, unreasonable, or illegal for the local board to conclude that J.T. was not entitled to $2,010 in back wages.

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. DeGraffenreidt, Jr.

[3] The local superintendent found no evidence that wages were paid by the SYMS Department Store on behalf of students, but acknowledged that the department store donated funds to the school in exchange for student work. Because J.T. did not work at the SYMS store, whether or not students were paid to work there is not a dispute of material fact for purposes of this appeal.

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May 19, 2015