

JOYCE N.

Appellant

v.

PRINCE GEORGE'S COUNTY BOARD  
OF EDUCATION

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 07-24

### OPINION

#### INTRODUCTION

Appellant, the mother of D.N., appeals the denial of her request for D.N. to attend Kenmoor Middle School for the 2006-2007 school year based on homeless student status. The local board has submitted a Motion for Summary Affirmance maintaining its decision is not arbitrary, unreasonable or illegal. Appellant has filed a response to that motion.

#### FACTUAL BACKGROUND

On August 22, 2006, Appellant asserted homeless status for both her son, D.N., and her daughter with Prince George's County Public Schools seeking various school based services available to homeless students and admission to the schools serving their temporary addresses. Appellant submitted signed and dated Homeless Student Forms. D.N.'s form stated that Appellant and D.N. temporarily resided at 2905 Mueserbush Court in Hyattsville, Maryland and requested that D.N. be enrolled in Kenmoor Middle School ("Kenmoor"). The last permanent address listed was 1119 Nalley Road. The daughter's form stated that Appellant and her daughter resided at 6703 Hastings Drive in Capitol Heights, Maryland and requested that the daughter be enrolled in Central High School ("Central"). The last permanent address listed on that form was 2905 Mueserbush Court. (Homeless Student Services Forms, 8/22/06).

In addition, Appellant provided Kenmoor with a notarized letter, dated August 22, 2006, from her brother which stated that Appellant and D.N. lived with him at the Mueserbush Court address. (Letter from J.N., 8/22/06). Appellant also provided Central High School with a notarized letter, dated August 22, 2006, from her mother which stated that the Appellant and her daughter lived at the Hastings Court address. (Letter from M.N., 8/22/06). Thereafter, the children were enrolled in their respective schools pursuant to Appellant's request. (Hearing Officer's Report).

Several weeks into the school year at Kenmoor, school personnel attempted to reach Appellant by phone to inform her that D.N. had an injury to his eye. When their attempts to contact her were unsuccessful, the Assistant Principal, David Barnes, asked D.N. where he lived. D.N. stated that he resided at 1119 Nalley Drive and that his mother used the Mueserbush

address as a means of obtaining enrollment at Kenmoor. He further offered that his mother picked him up each evening from his uncle's house to return home to the Nalley Road address. (Hearing Officer's Report). Based on this information, by letter dated September 15, 2006, Kenmoor's Registrar notified Appellant that D.N. would be withdrawn from Kenmoor and that he should be enrolled at G. James Gholson Middle School, the school serving the Nalley Drive address.<sup>1</sup> (Letter to Appellant from R.M. Johnson, 9/15/06).

Kenmoor proceeded to investigate the matter because the information placed D.N.'s status as a homeless student in question. On September 19, 2006, school personnel spoke with a representative of Nalley Apartments who verified that Appellant resided at 1119 Nalley Road, #331, and that she had applied for recertification of her lease. The Principal of Kenmoor determined that D.N. failed to meet the definition of a homeless student and provided Appellant with a written Notice of Denial of Services.

On September 20, 2006, Appellant appealed the principal's decision and requested that D.N. be enrolled at Kenmoor "due to [Appellant's] displacement because of an abusive relationship." (Appeal Form for Homeless Students, 9/20/06). The Chief Executive Officer's designee, Ms. Dorothy Stubbs, denied Appellant's request on September 22, 2005, stating that "the parent has given conflicting and questionable enrollment information to two schools regarding the current residence/address." (*Id.*).

Appellant further appealed to the local board of education. The matter was assigned to a hearing officer for the local board who, after conducting a hearing, found that the evidence supported the school's decision to disenroll D.N. from Kenmoor because he did not qualify as a homeless student. The hearing officer recommended that the local board affirm Mrs. Stubbs' decision, noting that this appears to be a situation intended to circumvent D.N.'s assigned school through the use of the homeless student provisions. (Hearing Officer Report). The local board affirmed Mrs. Stubb's decision and notified Appellant that D.N. must attend Gholson Middle, the school serving her residency area. (Letter from Thomas, 11/14/06).

This appeal followed.

#### STANDARD OF REVIEW

Because this appeal involves a decision of the local board involving a local policy, the local board's decision is considered *prima facie* correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.03E(1).

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<sup>1</sup>Because Appellant challenged the determination, the school system did not withdraw D.N. from Kenmoor.

## ANALYSIS

### *Substantive Issues*

Consistent with federal and State law, a student attending Prince George's County Public Schools can claim "homeless" status if that student satisfies the following definition:

A "homeless" student means a child or youth who is eligible to attend Prince George's County Public Schools, and who lacks a fixed, regular, or adequate nighttime place of abode; or has a primary nighttime place of abode that is a (a) supervised public or private shelter designed to provide temporary living accommodations, or (b) public or private place not designated for or ordinarily used as a regular sleeping accommodation for individuals. The question of whether a student is homeless should be made on a case-by-case basis and the relative permanence of the living arrangement should be considered.

Administrative Procedure 5010, Section III; *See also* McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11302 and COMAR 13A.05.09. Those students who meet this definition qualify for various services and the right to attend either the school serving the student's temporary address or the student's school of origin.

The record reflects that Appellant provided the school system with conflicting information which compromised her credibility in seeking homeless status. She provided the school system with a Homeless Student Services Form on August 22, 2006 stating that she and her daughter resided at Hastings Drive. She supplemented this representation with a notarized statement from her mother, also dated August 22, 2006, stating the same. Yet, on that same date, Appellant provided the school system with another Homeless Student Services Form stating that she resided at Mueserbush Court with her son, D.N. She supplemented this representation with a notarized letter from her brother confirming that she resided with him at the Mueserbush address.

The forms contained other inconsistencies. Her daughter's form stated that Appellant and her daughter had moved to Hastings Drive in April 2006 and identified Mueserbush Court as the last permanent address which was vacated in February 2006. D.G.'s form stated that Appellant and D.G. had moved to Mueserbush Court in June 2006 and identified Nalley Road as the last permanent address which was vacated in June 2006.

There is also information from sources beyond the forms which support the local boards decision. First, Appellant's son affirmatively stated that he and his mother reside at the Nalley Road address, using the Mueserbush residence only to obtain admission to Kenmoor Middle School. Second, a representative of the Nalley Apartments informed school personnel that

Appellant resides there and sought recertification of her lease. Combining this information with the inconsistent representations made by Appellant on the forms, we find that the local board reasonably concluded that Appellant asserted homeless status to secure admission to Kenmoor.

Appellant argues that there is a discrepancy in the addresses because she and her son are temporarily residing at Mueserbush Court with Appellant's brother while and her daughter temporarily resides with Appellant's mother at Hastings Court. While children can qualify for homeless status even if they reside at different locations apart from their parents and other family members, the fact that the daughter and son reside at different addresses was not the basis for the local board's denial. Rather, the conclusion was based on all of Appellant's contradictory representations when applying for homeless services, as well as independent evidence that she maintained a fixed and permanent address on Nalley Road.

Appellant explains that her name is on the Nalley Road lease because she has been living there for the past ten years and had to leave due to an abusive relationship. For the first time, Appellant has submitted a copy of the lease from Nalley Apartments and an acknowledgment of receipt form from the lease recertification. These documents show that there is another individual listed on the lease as co-head of household and that recertification of the lease took place in January 2006 when the lease was renewed, rather than at a time later in the year when Appellant's residency came into question. This information was not a part of the record before the local board. COMAR 13A.01.04.04 provides that, if the Appellant can show to the satisfaction of the State Board that the additional evidence is material and that there were good reasons for the failure to offer the additional evidence in the proceedings before the local board, the State Board may receive the additional evidence or remand the appeal to the local board for the limited purpose of receiving the additional evidence. This Board will not consider these documents because Appellant has not provided any reason why they were not made a part of the record before the local board. Even if we were to consider the new evidence, these documents do not contradict a finding that Appellant resides at Nalley Road.

Given the record in this case, Appellant's credibility is at issue. It is well established that determinations concerning witness credibility are within the province of the local board as trier of fact. *See, e.g., Board of Trustees v. Novik*, 87 Md. App. 308, 312 (1991), *aff'd*, 326 Md. 450 (1992) ("It is within the Examiner's province to resolve conflicting evidence. Where conflicting inferences can be drawn from the same evidence, it is for the Examiner to draw the inferences."); *Board of Education v. Paynter*, 303 Md. 22, 36 (1985)(same). Moreover, the State Board may not substitute its judgment for that of the local board unless there is independent evidence in the record to support the reversal of a credibility decision. *See Dept. of Health & Mental Hygiene v. Anderson*, 100 Md. App. 283, 302-303 (1994); *Scheper v. Baltimore County Board of Education*, 7 Op. MSBE 1122 (1998); *Williamson v. Board of Education of Anne Arundel County*, 7 Op. MSBE 649 (1997); *Warren v. Board of Education of Baltimore County*, 7 Op. MSBE 328 (1996).

In addition to reviewing documentation from the school system's investigation, the local

hearing officer heard testimony from and observed the demeanor of witnesses at the hearing. The hearing officer rejected Appellant's assertions that she vacated the Nalley Road apartment and was living at the Mueserbush address. In contrast, the hearing officer found the testimony of school system witnesses to be convincing, including the discussion that Mr. Barnes, the Assistant Principal at Kenmoor, had with D.N. regarding residing at Nalley Road. As the decision was substantially based on credibility issues, this Board will not substitute its judgment for that of the local board and its hearing officer.

CONCLUSION

Because the local board's decision is neither arbitrary, unreasonable nor illegal, the State Board upholds the denial of Appellant's request to enroll D.N. at Kenmoor based on homeless status.

*Edward L. Root*

Edward L. Root  
President

*Dunbar Brooks*

Dunbar Brooks  
Vice President

*Lelia T. Allen*

Lelia T. Allen

*J. Henry Butta*

J. Henry Butta

*Beverly A. Cooper*

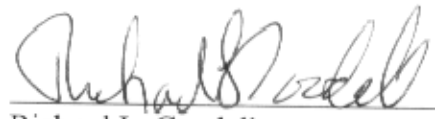
Beverly A. Cooper

*Calvin D. Disney* <sup>TPS</sup>

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May 30, 2007