

KIMBERLY B.

Appellant

v.

PRINCE GEORGE'S COUNTY BOARD  
OF EDUCATION

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 07-31

## OPINION

### INTRODUCTION

Appellant appeals the local board's decision affirming the denial of her request for homeless student status for her four children attending Prince George's County Public Schools (PGCPS) so that they may continue at their current schools. The local board has submitted a Motion for Summary Affirmance maintaining that the record supports the finding that Appellant and her children are not homeless under the homeless student provisions, and are therefore ineligible to remain at the requested schools. Appellant has not submitted an opposition to the local board's motion.

### FACTUAL BACKGROUND

Appellant is a mother of seven children, some of whom have been attending Prince George's County Public Schools during the past several years. Appellant's family became homeless after Appellant became unemployed in December 2004. Appellant's husband was also unemployed and taking care of the children at that time. The family moved into the Ramada Inn in Fort Washington in March 2005. After three weeks, the family moved into a house in Washington, D.C. which is owned by a friend of a friend. Appellant has stated that the owner of the house purchased it as an investment property and it is in need of improvements. The owner has permitted the Appellant and her family to live in the house rent free since March 2005, with Appellant paying only utilities. After Appellant's unemployment compensation ended, she began receiving cash assistance. Her husband is currently employed, but Appellant maintains that his salary is insufficient to pay rent if they were to relocate. (Letter of Appeal; Hearing Officer Report).

On August 16, 2006, Appellant claimed homeless status for the 2006-2007 school year on behalf of four of her children - three attending Concord Elementary School (Concord) and one attending Ernest Everett Just Middle School (E. Everett Just). The Homeless Education Coordinator for PGCPS sent Appellant a Notice of Denial of Services on August 31, 2006, advising that Appellant's children were ineligible for homeless status because she and her family maintained a fixed, regular and adequate nighttime dwelling in the District of Columbia.

Appellant appealed the denial of services. The principals of Concord and E. Everett Just further denied homeless status in November 2006 because the family no longer met the definition of homeless. (Appeal Forms). Ms. Dorothy Stubbs, Special Assistant in the Office of Appeals serving as the Superintendent's Designee, upheld the denials. (Stubbs' Decisions). Appellant was advised of this decision and told to contact the District of Columbia Public Schools to arrange for her children to be enrolled in the school serving her current residence. (Letter from Nussbaum, 8/31/06).

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 finding that Appellant's children did not qualify as homeless students. The hearing officer recommended that the local board affirm Mrs. Stubbs' decision, noting that Appellant's family has lived in the same home in Washington, D.C. since March 2005. (Hearing Officer Report). The local board affirmed Mrs. Stubbs' decision based on the family's housing situation. (Letter from Thomas, 3/12/2007).

### 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).

### ANALYSIS

#### *Legal Background*

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* COMAR 13A.05.09.<sup>1</sup>

A student may be considered homeless under various circumstances. The following are examples of homeless students: children sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; children living in motels, hotels, trailer parks, or camping grounds due to lack of alternative adequate accommodations; children living in emergency or transitional shelters or housing; children abandoned in hospitals; children awaiting foster care placement; children who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation; children living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations or similar settings; and migratory children. COMAR 13A.05.09.02B(3)(b). Students who qualify as homeless are eligible for various services and the right to attend either the school serving the student's temporary address or the student's school of origin. *See* McKinney-Vento Homeless Education Assistance Improvement Act, 42 U.S.C. 11431 *et seq.*; COMAR 13A.05.09.

### *Merits of Case*

The record supports the local board's determination that Appellant has a fixed, regular, or adequate nighttime place of abode, and is therefore not homeless. Although Appellant claims that the Washington, D.C. home is a temporary dwelling, it is a private home where she and her family have resided for over two years. There is no evidence that they will be vacating the premises anytime in the near future. This is not a situation where the family is living with another family or staying in a shelter or in a Department of Housing and Urban Development (HUD) placement. We therefore find that Appellant's residence in the private home for such a long period of time, even without the payment of rent, makes that home a fixed and regular nighttime place of abode.

Furthermore, the record contains no evidence that the house is an inadequate nighttime place of abode. The home is the type of dwelling normally used as a regular sleeping accommodation for individuals, unlike a vehicle or park bench. Although Appellant testified that the house needs improvements in excess of \$50,000, she provided no information regarding the type of improvements needed, other than stating in her letter of appeal that there is paint peeling off some walls. She presented no evidence that the house is uninhabitable or substandard. The

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<sup>1</sup>The McKinney-Vento Homeless Assistance Act defines a homeless individual as: (1) an individual who lacks a fixed, regular, and adequate nighttime residence, and (2) an individual who has a primary nighttime residence that is (a) a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill); (b) an institution that provides a temporary residence for individuals intended to be institutionalized; or (c) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. 42 U.S.C. 11302.

record is devoid of anything to suggest that the condition of the house places Appellant's family at risk of physical safety, such as the presence of contamination, structural damage, extensive deterioration, asbestos, or other natural hazardous substances. Thus, we conclude that the house is an adequate nighttime place of abode.

CONCLUSION

It is Appellant's burden to show by a preponderance of the evidence that the local board's decision is not arbitrary, unreasonable or illegal. COMAR 13A.01.05.05D. Appellant has not satisfied that burden here. Accordingly, we uphold the local board's decision to deny Appellant's request for homeless status.<sup>2</sup>



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Dunbar Brooks  
President



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Beverly A. Cooper  
Vice President



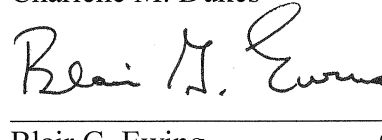
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Lelia T. Allen



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J. Henry Butta

RECUSED

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Charlene M. Dukes



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Blair G. Ewing



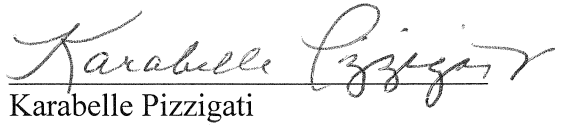
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Mary Kay Finan

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<sup>2</sup>Dr. Charlene M. Dukes has recused herself from this decision.

  
Rosa M. Garcia

  
Richard L. Goodall

  
Karabelle Pizzigati

  
David F. Tufaro

August 29, 2007