

RACHEL K.,

Appellant

v.

ANNE ARUNDEL COUNTY BOARD
OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 16-03

OPINION

INTRODUCTION

The Appellant, Rachel K., appeals the decision of the Board of Education of Anne Arundel County (local board) denying her son's residency appeal. The local board filed a Motion for Summary Affirmance. The Appellant responded and the local board replied. This case has been expedited because the local board declined to allow the Appellant's son to remain in Lakeshore Elementary in Anne Arundel County until the State Board decided this appeal.

FACTUAL BACKGROUND

Appellant's son, a third grader, attends Lake Shore Elementary School. When he was first enrolled, he lived with his mother, his mother's father and her stepmother at 8434 Bussenius Road, Pasadena, Maryland. In the summer of 2014, apparently because of family disagreements, her family directed her to move out of 8434 Bussenius Road. The Appellant contends that she moved into the home of her friend and daycare provider, Susan Karczmarek at 8469 Bussenius Road. The local board contends that the Appellant moved in with her mother at 6508 Baltimore Avenue, Dundalk, Maryland. Each party presents documentary evidence to support their positions. There was no evidentiary hearing in this case.

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 judgement for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05A.

LEGAL ANALYSIS

State law requires a "bona fide residency" as a condition of free attendance at Maryland's public schools. *See* Md. Code, Educ. Art. §7-101. Except in certain circumstances, children who attend a Maryland public school "shall attend a public school in the county where the child is domiciled with the children's parent...." *Id.* §7-101(b).

Local board Policy JAB/900.01, "Assignment and/or Transfer of Students to a School," requires students to attend the school designated to serve the attendance area of their bona fide residence, unless one of the enumerated exceptions apply. "Bona fide residence" is defined as "the actual place of residence the student maintains in good faith. It does not include a temporary

residence established for the purpose of free attendance in the public schools.” (JAB-RA, sec. C.1.d). The policy places the burden of proof to established bona fide residency on the student, caretaker, parent or guardian.

A parent can establish residency by providing the school system with documents specified in the policy. (JAB-RA, sec. C.2.e). When a parent uses a Tenant Residence Verification Disclosure form, as the Appellant did here, the parent must provide the notarized Tenant Residence Verification form; a copy of a mortgage document, deed, or rental agreement; and one of the following pieces of documentation:

- Utility bill, cable bill, or work order issued by the utility or cable company;
- Bank statement;
- W-2 Form or Form 1099 issued the previous year;
- Pay stub;
- Valid Commercial Driver’s License (CDL);
- Any government issued documentation, such a social security check, domestic relations/child support check, Department of Social Services food stamps of community medical assistance letter, or unemployment award; or
- PPW verification letter or form verifying residence after a home visit.

With regard to parents who live apart, the Regulation also includes the following provisions

(4) If the parents live apart, the child’s bona fide residence is the bona fide residence of the parent who has primary physical custody or the parent with whom the child lives the majority of the school week, if a custody order in not in place.

(5) If the parents share physical custody, the student may attend the school assigned to either parent’s bona fide residence, unless one parent has educational decision-making rights in which the child shall attend the school to the parent’s bona fide residence.

(Bd. Ex. 6A, Reg. JAB-RA, C.2.e., p. 5).

The Appellant and her husband are divorced and, according to her ex-husband he lives at 403 Cody Drive, Glen Burnie, MD. He and the Appellant share 50/50 custody of their son. The Glen Burnie residence of the father is not in the attendance area for Lakeshore Elementary, however.

Thus, we turn to the documents that the Appellant provided to establish residency at 8469 Bussenius Road for school year 2015-2016. Admittedly, prior to a receipt of a July 22, 2015 letter from the Principal of Lakeshore Elementary asserting that the Appellant lived at 6508 Baltimore Avenue in Dundalk, the Appellant had provided no documentation to the school of her move in 2014 to 8469 Bussenius. Thus, the school notified her that her son would be withdrawn from Lakeshore as of August 10, 2015. On or about July 29, 2015, Appellant sent to the school system a copy of her lease with Susan Karczmarek for 8469 Bussenius Road signed August 1, 2014. She also submitted a Tenant Verification form signed by Ms. Karczmarek.

As best we can tell from the documents in the record, over the course of the months until the local board decided her appeal on December 22, 2015, the Appellant submitted the following documents to the school system. All are addressed to the Appellant at the 8469 Bussenius Road address:

- 2015 W-2 Wage and Tax Statement
- 10/21/15 Letter from Wells Fargo Bank
- 10/27/15 – 11/26/15 AT&T Bill
- 11/10/15 – 12/8/15 Wells Fargo Statement of Accounts
- 11/20/15 – Nationwide Insurance Payment Notification
- 11/9/15 – 5/9/16 – Revised Nationwide Policy
- 11/2/15 – Victoria's Secret Credit Card Bill
- 12/20/15-1/02/16 Pay Stub

Thus, in view of the school system's list of required documentation, we find that the Appellant provided all and more of the documentation needed to establish a presumption of residency (the lease, the Tenant Verification form, a W-2, a Pay stub, as well as a phone bill).

In the months before the Appellant submitted those documents, however, the school system opened an investigation of residency. It was based on the statements of the student that he crossed the Key Bridge to come to school and a statement from the Appellant's estranged father and stepmother that Appellant lived in Dundalk. The investigation was conducted from July 2015 to September 2015. Appellant's car was seen at the Dundalk address on Sunday, July 19, 2015 at 2:14 p.m. and Sunday, September 20, 2015 at 6:10 p.m. Appellant and her car were seen once, on Saturday, August 26, 2015, at the Bussenius Road address. Six other observations at the Bussenius Road address sighted no car belonging to the Appellant parked at the home.

The Appellant explained those observations this way:

I noticed in the packet that an investigator had been visiting my home for several months, trying to verify my address. She went to my mother's address [the Dundalk address] on two separate occasions on a weekend while I was visiting and during the summer while my mom had my car since hers was out of commission. My mother is not in the best of health and my children and I do visit her frequently as well as getting our mail that has been sent to her address. [The investigator] also visited my address 8469 Bussenius Rd. on several occasions during the day while I am at work or after I have taken [my son] to school. On occasion I do take my children out for breakfast or run an errand in the morning and then I take my youngest child back home where Susan watches him while I'm at work...Being a single mom I work full time and do some house cleaning and various other jobs on the side to make a little extra money in hopes of getting my family to where we need to be financially to move out on our own. Quality time with my boys is not very often but I try to make sure they have good memories of doing fun stuff with mom like waking up early to grab something to

eat at McDonalds. My children and I have busy lives, [my son] is very active in Lake Shore Panthers Athletics, he has wrestled for 3 years, plays football for Lake Shore Panthers and has practice 4 nights a week and games every weekend, this year he has decided to start playing lacrosse for CYLA. I also want to point out that as the investigator reported there are several cars parked at my address. Between Susan and her family they have several cars and I don't always park in the driveway, there are other places to park around the house, which I often do to free up space in the driveway. My point in this explanation is no one knows someone else's situation fully and visiting my address a couple of times during the day can and will not give you the full picture.

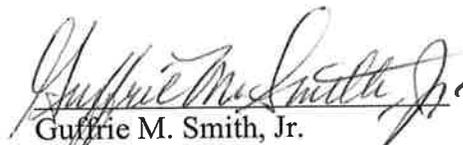
(Letter of December 7, 2015 from Appellant to Local Board).

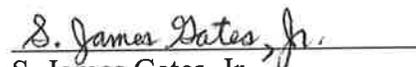
Based on the documents in the record, it is our view that the Appellant met her burden through documentation to establish the presumption of residency at 8469 Bussenius Road. It is also our view that the local board has not overcome that presumption by the evidence it presented. Although that evidence appears weighty at first glance, upon review it is not. It relies, in part, on statements made by the Appellant's father and stepmother about whom the Appellant, in her letters, chronicles a difficult and vindictive relationship leading to her estrangement from them. Indeed, three of the eleven school system "observations" are documented as calls or visits to the father and stepmother about the Appellant's residency. Interestingly, during the time of the investigation, no one called the Appellant or her mother to talk with them about where Appellant lived.

The Appellant's explanation of her presence on Sundays at her mother's home at the Dundalk address rings reasonable to us. Her explanation of where she may have parked at the Bussenius address also is reasonable. Taking the record as a whole, it is our view that the Appellant has met her burden of proof and the local board has not presented sufficient evidence to overcome the presumption of residency at Bussenius Road.

CONCLUSION

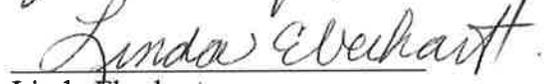
For all the reasons stated, we reverse the decision of the local board as arbitrary and unreasonable and direct that the Appellant's son be re-enrolled in Lakeshore Elementary.


Guffie M. Smith, Jr.
President

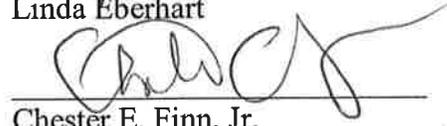

S. James Gates, Jr.
Vice-President



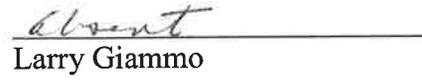
James H. DeGraffenreid, Jr.



Linda Eberhart



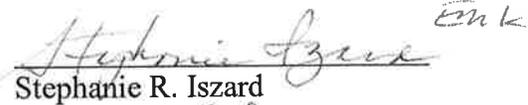
Chester E. Finn, Jr.



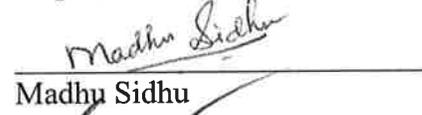
Larry Giammo



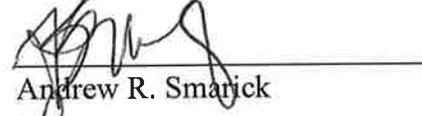
Michele Jenkins Guyton



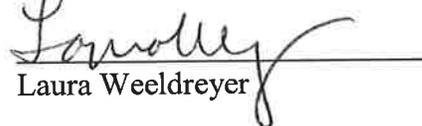
Stephanie R. Iszard



Madhu Sidhu



Andrew R. Smarick



Laura Weeldreyer

February 12, 2016