

VIOLETA G.,

Appellant

v.

HOWARD COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 15-13

OPINION

INTRODUCTION

Appellant challenges the decision of the Howard County Board of Education (local board) charging her tuition for the 2013-2014 school year based on failure to establish bona fide residency in Howard County. The local board filed a Motion for Summary Affirmance maintaining that its decision was not arbitrary, unreasonable or illegal and should be upheld. The Appellant did not respond.

FACTUAL BACKGROUND

Appellant's daughter attended Long Reach High School ("Long Reach") as a senior during the entire 2013-2014 school year. During that time, Appellant's home address was listed as 7983 Brightmeadow Court in Ellicott City. In March 2014, mail sent to the Appellant at that address was returned to the school with a forwarding address of 3746 Birch Lane in Owings Mills noted on the envelope. The school sent Appellant a letter at the Brightmeadow Court address requesting a current utility bill to prove her residency there, but Appellant did not respond. Additional attempts by the school to contact the Appellant at the Brightmeadow address by mail were unsuccessful.

School officials initiated a residency investigation. MVA records for Appellant's driver's license showed Appellant's current address as Birch Lane in Owings Mills. A real property search through Lexis Accurint indicated that Appellant's residence at Brightmeadow Court in Ellicott City ended in August 2013 and that her residence at Birch Lane in Owings Mills began in August 2013.

In addition, Appellant's daughter's school records revealed that the daughter had been tardy 37 times during the 2013-2014 school year. The investigator noted that the Owings Mills address is a 24 mile commute from school, whereas the Brightmeadow Court address is 1.9 miles from school requiring approximately six minutes of travel time.

By letter dated May 8, 2014, David Burton, Principal of Long Reach, advised the Appellant that her daughter would be withdrawn from Long Reach at the end of the school day on May 23, 2014 because Appellant had not proven residency in Howard County. The letter further advised that Appellant's daughter would not be withdrawn if Appellant submitted a

current utility bill demonstrating residency in Howard County by May 23. The letter also advised the Appellant that she could appeal the decision to withdraw her daughter and that if she did not prevail in the appeal, Appellant would be retroactively charged for tuition for the time that her daughter was enrolled in school.

Appellant appealed Mr. Burton's residency decision. She submitted a lease of the Brightmeadow Court property in her name for the period ending August 31, 2013. She also submitted the deed for the Birch Lane residence in Owings Mills showing that Appellant acquired ownership of the residence on August 23, 2013. The deed lists the Birch Lane residence as the Appellant's principal place of residence, as does the signed Affidavit of Qualification as First Time Maryland Homebuyer.

On May 27, 2014, Maryann Thomas, Specialist for Residency and Student Reassignment, and Restia Whitaker, Coordinator for Pupil Support Services, conducted an appeal conference by telephone with the Appellant. During the conference, the Appellant explained that she resides with her boyfriend at his home on Brightmeadow Court and that she owns the Baltimore County property where her older daughter, who attends Towson University, resides. The Appellant stated that she does not have a lease for either property. Although the Appellant is a native Spanish speaker, the school system states that at no time during the conference did she indicate a problem understanding what was being said in English nor did she request an interpreter or language accommodation. (Thomas Affidavit).

By letter dated May 29, 2014, Ms. Thomas advised the Appellant that she would be liable for the payment of tuition in the amount of \$8624.55 because she had not demonstrated that she was a resident of Howard County during the 2013-2014 school year.¹ Tuition was assessed for the period from August 26, 2013 through May 30, 2014. Ms. Thomas cited Howard County Public School System ("HCPSS") Policy 9000 (Student Residency, Eligibility, Enrollment and Assignment) which provides that students who become non-residents after achieving Junior status will be allowed to remain at school through graduation upon the payment of tuition. (Thomas Letter).

Appellant appealed to the local board. (Garcia Letter 6/19/14). She provided the following documents as part of the appeal:

- AT&T mobile phone bill for May - June 2014, addressed to Appellant at Brightmeadow Court;
- BG&E utility bill for billing period June 10, 2014-July 10, 2014; and
- 2013 U.S. Individual Income Tax Return Form 1040 and 2013 Maryland Tax Return listing Birch Lane as Appellant's home address where she resides with her two dependent daughters.

In a unanimous decision, the local board affirmed Ms. Thomas' decision that the Appellant was not a bona fide resident of Howard County and, therefore, owed the school system tuition for the 2013-2014 school year. The local board pointed out that the Appellant had no

¹ Tuition was assessed at 165 days x \$52.27 per day.

lease confirming her residence in Howard County and no lease confirming her rental of the Owings Mills home to her older daughter. It also noted that public documents demonstrated that Appellant is the owner of the Owings Mills home, and that the Owings Mills address was listed as her current address on her driver's license and her tax returns. In its decision, the local board stated that it did not consider the mobile phone bill addressed to Appellant at the Howard County address to be acceptable documentation of residency. It also stated that it did not consider the BG&E utility bill to be acceptable documentation of residency because it lacked an address.²

This appeal followed.

STANDARD OF REVIEW

Because this is an appeal involving local board policy and procedures, 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 its decision is arbitrary, unreasonable or illegal. COMAR 13A.01.05.05A.

LEGAL ANALYSIS

Alleged Language Barrier

As a preliminary matter, we address Appellant's claim that she did not submit the appropriate information to the school system to establish residency due to a language barrier. She is a native Spanish speaker. (Appeal). The local board responded that the Appellant did not raise the language barrier issue during her telephone conference with Ms. Thomas and that she understood the local board appeal procedures based on her submission of documents in response to correspondence from the administrative assistant for the local board.

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of national origin and requires that persons with limited English proficiency ("LEP") have meaningful access to programs conducted by a recipient of federal funds.³ 42 U.S.C. §2000d – 2000d-7; 34 C.F.R. 100.3(a) and (b). As recipients of federal funds, public school systems must follow this mandate and provide language assistance to LEP individuals. The United States Office of Civil Rights ("OCR") has long taken the position that this includes language assistance not only for the students enrolled in a public school system, but to parents of students as well. *See* OCR 11/5/10 Guidance: Title VI Standards for Communication with Limited English Proficient Parents ("OCR 2010 LEP Parents Guidance") and citations therein.

School systems are required to take reasonable steps to ensure that LEP individuals have meaningful access to programs. OCR 2010 LEP Parents Guidance. The reasonableness of those

² The record contains a two page BG&E utility bill addressed to Appellant and Wilmar R. Hernandez at Brightmeadow Court. The address with Appellant's name appears on the invoice page of the bill only. We will address this evidence in our analysis of the case.

³ An individual who is not a native English speaker and who has a limited ability to read, speak, write or understand English may be LEP. *See* OCR 2010 LEP Parents Guidance; <http://lep.gov/faqs/faqs.html>.

steps is assessed using a four factor standard as follows (1) the number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program; and (4) the resources available to the recipient and the costs.⁴ *Id.* at 5. The analysis is fact-dependent and requires a balancing of these considerations. *Id.* at 5-6.

OCR has commented on the manner in which public school systems should identify parents who may need language assistance. The OCR guidance states as follows:

Although schools and districts cannot be expected to know of the existence of every LEP parent, schools and districts can be held to reasonable expectations about their efforts to determine the presence of LEP parents, and to provide assistance to these parents once identified. Such efforts may include home language surveys, interaction between parents and staff, and taking into account that LEP students, whom districts have an obligation to identify, also may have LEP parents.

Under the terms of DOJ's four-factor analysis, basic knowledge of one's LEP population is necessary for a recipient of Federal financial assistance to assess the reasonableness of its actions. Thus, for example, a school or district would have to know the general size of its population, and basic characteristics of that population such as languages spoken, in order to assess the first DOJ factor, "The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee." The second DOJ factor, "The frequency with which LEP individuals come in contact with the program," also cannot be properly determined without knowledge of the size and other basic characteristics of the LEP parent population.

OCR 2010 LEP Parents Guidance at p.8. While LEP parents are not required to approach a school and affirmatively identify themselves as being LEP, information about parents' self-identification as LEP and requests for assistance inform school system reasonable efforts to determine the presence of LEP parents. *Id.*

School systems have discretion regarding the manner of providing meaningful access to LEP parents. *Id.* at 10. They are required, however, to let LEP parents know that the services are available at no charge in a language that the LEP parents will understand. *Id.* at 10-11. Without such notification, LEP parents may not know that language assistance services exist or the method by which they can obtain the services. *Id.* The U.S. Department of Justice and U.S. Department of Education Fact Sheet sets forth a list identifying certain areas which require

⁴ These factors, adopted by OCR, were originally set forth in a Title VI LEP guidance document from the United States Department of Justice issued in August, 2000 entitled "Improving Access to Services for Persons with Limited English Proficiency."

communication by school systems to LEP parents in a language they can understand.⁵ See DOJ/DOE Fact Sheet, *Information for LEP Parents and Guardians and for Schools and School Districts that Communicate with Them*, <http://lep.gov/faqs/faqs.html>. Information about registration and enrollment in school is one of the designated areas.

In addition to language services, school systems may need to translate certain types of documents to ensure an LEP parent meaningful access. *Id.* In this regard, OCR has stated the following:

It is important to ensure that written materials routinely provided in English are also provided in regularly encountered languages other than English. It is particularly important to ensure that vital documents are translated into the non-English language of each regularly encountered LEP group eligible to be served or likely to be affected by the program or activity. A document will be considered vital if it contains information that is critical for obtaining federal services and/or benefits, or is required by law. Vital documents include, for example: applications, consent and complaint forms; notices of rights and disciplinary action; notices advising LEP persons of the availability of free language assistance; prison rulebooks; written tests that do not assess English language competency, but rather competency for a particular license, job, or skill for which English competency is not required; and letters or notices that require a response from the beneficiary or client. For instance, if a complaint form is necessary in order to file a claim with an agency, that complaint form would be vital. Non-vital information includes documents that are not critical to access such benefits and services. Advertisements of federal agency tours and copies of testimony presented to Congress that are available for information purposes would be considered non-vital information.

Vital documents must be translated when a significant number or percentage of the population eligible to be served, or likely to be directly affected by the program/activity, needs services or information in a language other than English to communicate effectively. For many larger documents, translation of vital information contained within the document will suffice and the documents need not be translated in their entirety.

DOJ/DOE Fact Sheet, #9 (emphasis added).

⁵ The list is not exhaustive. Some other examples are report cards, student discipline policies and procedures, parent-teacher conferences, special education and related services, gifted and talented programs, grievance procedures and notices of nondiscrimination, and more. See DOJ/DOE Fact Sheet.

In light of the Title VI requirements concerning national origin, the question regarding the alleged language barrier boils down to whether or not the school system provided the Appellant meaningful access to the complaint/appeal process in a case involving residency, enrollment, and access to free education. Unfortunately, we have no way of answering this question because the record is lacking the information relevant to such an analysis.

The only information on the language issue in the record is that the Appellant did not request Spanish language assistance from the local board and that she filled out the Appeal Information Form and submitted materials in response to the correspondence she received from the local board assistant. We also know that there was no face to face meeting with the Appellant at any point in the appeal process which may have provided information regarding her level of understanding. At the State Board level, we communicated verbally with the Appellant and ascertained her need to have the appeal filings and correspondence translated into Spanish, which was done. Unfortunately, the Appellant failed to respond to the local board's motion for summary affirmance and did not submit any additional documentation to support residency in Howard County. There is simply not enough information to assess Appellant's claim on the language issue. Thus, we find that the Appellant has not met her burden of proving a violation regarding the language barrier issue because she has only alleged a violation without more and she failed to respond to the local board's motion.

Bona Fide Residency Determination

Appellant claims that she and her daughter were bona fide residents of Howard County and that they were living with Appellant's boyfriend at the Brightmeadow Court residence during the time period in question. Appellant maintains, therefore, that her daughter should have been permitted to attend school free of charge.

Section 7-101(b) of the Education Article, Annotated Code of Maryland, requires a child to attend a public school in a county where the child is domiciled with the child's parent, guardian or relative providing informal kinship care.⁶ If a child attends school outside the county where the child is domiciled with a parent, the parent incurs liability for tuition. Section 7-101(b)(3) provides:

If a child fraudulently attends a public school in a county where the child is not domiciled with the child's parent or guardian, the child's parent or guardian shall be subject to a penalty payable to the county for the pro rata share of tuition for the time the child fraudulently attends public school in the county.

The local board has established procedures for determining the eligibility of students to attend and enroll in public schools in Howard County in Policy 9000. The policy is based on the concept of bona fide residency. It defines a "bona fide residence" as "[t]he person's actual residence maintained in good faith. It does not include a temporary residence or a superficial residence established for the purpose of attendance in the Howard County Public School System." Policy 9000(III.B). Determination of a person's bona fide residence is a factual one

⁶ This is known as the bona fide residency requirement.

and must be made on an individual basis. *Id.* At the request of a school administrator, the Office of Pupil Personnel investigates residency status when there is cause to suspect an unreported change in residency. Policy 9000-IP(II.A).

In order to establish residency, individuals must submit documentation as proof. For homeowners and renters, HCPSS policy requires the following:

- a. Homeowners must provide a deed or a deed of trust that has all required signatures, along with any one of the following issued within the previous 45 days of registration: a television service bill, bill for land line telephone, gas and electric bill, or current water and sewer bill. If a home was just purchased and no deed is available, signed settlement papers may be submitted. Within 30 days of enrollment, the parent must submit a deed or a deed of trust with all required signatures.
- b. Renters must provide an original, current lease with all required signatures, along with a gas and electric bill, or water and sewer bill issued within the previous 45 days of registration. If utilities are included in the rent payments, as stipulated in the rental agreement, a television service bill or bill for a landline telephone issued within the previous 45 days of registration may be substituted.

Policy 9000-IP(I.A.8).

For families residing in shared housing arrangements with host families, the procedures for a multiple family determination apply, although they differ depending on if the host leases or owns the property. Policy 9000-IP(II.C). In this case, we are concerned with the procedure pertaining to a host who leases the property.⁷ The procedure is set forth below:

- a. Guest families living with host families who are leasing a property must complete a Multiple Family Disclosure form at a meeting with the school's Pupil Personnel Worker. One member of both the guest and host family will attend. The host and guest must each bring photo identification for the purpose of notarization. The representative of the host family must be listed on the lease as a leaseholder.
- b. The host family will provide an original, current lease with all required signatures, along with a gas and electric bill, or water and sewer bill issued within the previous 45 days. If utilities are included in the rent payments, as stipulated in the rental agreement, a television service bill or bill for a landline

⁷ This is based on the assumption that Appellant's boyfriend is the lessee of the Brightmeadow Court apartment.

telephone issued within the previous 45 days of registration may be submitted.

- c. Guest families will provide two proofs of residency within 14 days of enrollment, including but not limited to a pay stub, Post Office change of address label, credit card statement, tax statement, or bank statement. Any other official mail documents not listed are subject to approval by the assigned Pupil Personnel Worker.
- d. Guest families who are able to have their names and the names of their children added to the lease of the host family are considered occupants/tenant and are not required to complete a Multiple Family Disclosure form.

Policy 9000-IP(II.C.1).

We turn to the documentation submitted by the Appellant to determine if Appellant has established residency in Howard County. Appellant submitted an AT&T mobile phone bill for May-June 2014 addressed to the Appellant at Brightmeadow Court; a BG&E utility bill for the period ending June 10, 2014-July 10, 2014 addressed to the Appellant and Wilmar R. Hernandez at Brightmeadow Court; and Appellant's 2013 federal and State income tax returns listing the Birch lane address in Baltimore County as Appellant's home address where she resides with her two dependent daughters.

With regard to the AT&T mobile phone bill, HCPSS does not accept mobile phone bills as reliable evidence of residency because a subscriber can have a mobile phone bill sent to any address. *See* Policy 9000-IP, Implementation Procedures, at I.A.8 (specifying bill for landline telephone as proof of residency); HCPSS website at <http://www.hcpss.org/f/schools/checklist.pdf>. As for the BG&E utility bill addressed to the Appellant and Wilmar R. Hernandez at Brightmeadow Court, the bill is for the period June 10, 2014 – July 10, 2014. Because this time period is after the last day of the 2013-2014 school year for seniors which was May 30th, it does not establish residency during the period of time at issue. The tax returns submitted by the Appellant undercut her claim that she resides in Howard County. She filed her federal and State income tax returns as a Baltimore County resident and indicated on the tax return documents that she resides at the Owings Mills address with her two dependent daughters.

Moreover, at no time did the Appellant submit either a deed, lease, or Multiple Family Disclosure form showing that she resided in Howard County during the relevant time period as is required under HCPSS policy to prove residency. Because the Appellant does not claim to own or rent property in Howard County, but rather maintains that she and her daughter live with her boyfriend at Brightmeadow Court, the Appellant should have submitted a Multiple Family Disclosure form pertaining to hosts who rent the property and the other documents required by Policy 9000(II.C.1). Appellant did not submit any of the documents required to establish residency under those policy provisions. In addition the local board had before it the expired lease of the Brightmeadow Court apartment, as well as the deed for the Owings Mills residence

showing Appellant as the owner of the Baltimore County home beginning August 23, 2013. In the deed, Appellant certified under penalty of perjury that she intended to use the home as her principal place of residence. Appellant's driver's license also listed the Owings Mills address.

While we often see lengthy investigations of an individual's residency status in these types of cases, in this case the Appellant failed to meet her threshold burden of establishing residency because she did not submit the required documentation. Although Appellant maintains that she and her daughter lived with her boyfriend in Howard County at the Brightmeadow Court address while her college-aged daughter rented the Owings Mills home during the 2013-2014 school year, Appellant has not presented any evidence to support these claims. Accordingly, the local board's decision that the Appellant was not a bona fide resident of Howard County is not arbitrary, unreasonable or illegal.

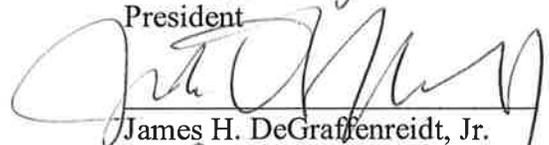
Tuition Charges

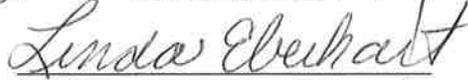
The local board affirmed the assessment of tuition charges against the Appellant because she did not establish bona fide residency in Howard County while her daughter was attending HCPSS. As stated above, school systems are allowed to charge tuition for fraudulent enrollment. Md. Code Ann., Educ. §7-101(b)(3). Consistent with this, the HCPSS policy states that "[f]or a student who becomes a nonresident after achieving Junior status, the student will be allowed to remain at the student's current school through graduation upon payment of tuition." Policy 9000(IV.F). The school system charged the Appellant tuition in the amount of \$8624.55 for her daughter's attendance at Long Reach during her senior year based on its determination that she was no longer a resident of Howard County at that time. We find that to be reasonable.

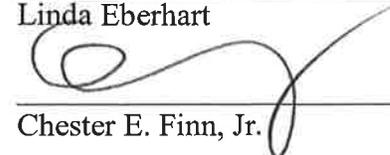
CONCLUSION

For the reasons stated above, we affirm the decision of the Howard County Board of Education.


Mary Kay Finan
President


James H. DeGraffenreidt, Jr.

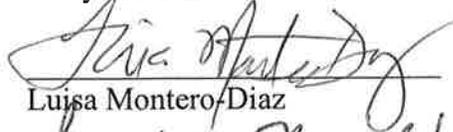

Linda Eberhart


Chester E. Finn, Jr.

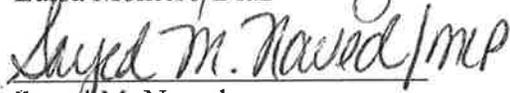

S. James Gates, Jr.



Larry Giammo



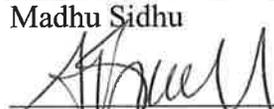
Luisa Montero-Diaz



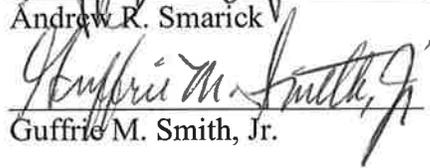
Sayed M. Naved



Madhu Sidhu



Andrew R. Smarick



Guffrie M. Smith, Jr.

May 19, 2015