

MARY E.

Appellant

v.

ANNE ARUNDEL COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 13-13

OPINION

INTRODUCTION

In this appeal, the Appellant challenges the decision of the Anne Arundel County Board of Education (“local board”) finding that she and her daughter are not bona fide residents of Anne Arundel County. The local board has submitted a Motion for Summary Affirmance arguing that its decision was not arbitrary, unreasonable or illegal and should be upheld. Appellant responded to the Motion and the local board replied.

FACTUAL BACKGROUND

Appellant’s daughter, JW, has attended Mills-Parole Elementary School (“Mills-Parole”) since the 2009-2010 school year and is currently in the third grade.

On or about May 24, 2012, staff at Mills-Parole requested that a pupil personnel worker (“PPW”), conduct a residency investigation of JW after JW told the school counselor that she lived in Oxon Hill since she was born and told her classroom teacher several times during the 2011-2012 school year that she lives in Oxon Hill. (Motion, Ex. 1). Oxon Hill is in Prince George’s County, Maryland.

The PPW began her investigation with a record review. She discovered that Appellant had enrolled JW at Mills-Parole based on a series of Tenant Residence Verification Disclosure forms indicating that the Appellant and the student were residents of 137 Dorsey Drive. The Appellant’s father, John McKinney, Jr., owns and resides at the Dorsey Drive property. The Appellant and JW were the only ones listed on the Tenant Residence Verification Disclosure forms.¹ (*Id.*).

The PPW conducted a post office inquiry which disclosed that in May and June of 2012, the Appellant and her husband were receiving mail at the Oxon Hill property. As of June 26, 2012, Appellant also received mail at the Dorsey Drive property. (*Id.*).

¹ Appellant’s husband is not listed on the forms as living with them at Dorsey Drive.

In addition, the PPW conducted a Maryland Motor Vehicle Administration ("MVA") search for the Appellant and her husband. The search revealed that the Appellant's address of record with the MVA is the Dorsey Drive property and that she owns a white Cadillac Escalade registered to her at that address. It showed Appellant's husband's address of record as the Oxon Hill property, which is an apartment, and did not list him as owning any vehicles. On June 4, 2012, the PPW spoke with the administrative assistant at the apartment complex and verified that Appellant's husband is a leaseholder for the Oxon Hill property, but that the Appellant and JW are not listed on the lease. (*Id.*).

On June 8, 2012, the PPW spoke to JW. JW stated that she stays in Oxon Hill every night and that she wakes up at 3:00 a.m. to go to her grandfather's house. She stated that her mother does not work on Mondays, Tuesdays or Wednesdays, but that they still wake up on those days at 3:00 a.m. to drop her stepfather off at the Naval Academy where he works. JW also stated that she takes the bus to her grandfather's house after school. (*Id.*).

The PPW visited the Dorsey Drive and Oxon Hill properties. She made the following observations:

- 5/25/12 visit to Dorsey Drive property from 7:20 a.m. to 8:40 a.m. – Two vehicles were parked outside: a white Chrysler registered to the Appellant's brother at the Dorsey drive address and a red Mercury registered to the Appellant's father at the Dorsey Drive address. The PPW did not see the Appellant or JW at the property. Appellant dropped JW off at Mills-Parole that morning.²
- 6/5/12 visit to Dorsey Drive property from 8:20 p.m. to 8:40 p.m. – Two vehicles were parked outside: the white Chrysler registered to the Appellant's brother and the red Mercury registered to the Appellant's father.
- 6/6/12 visit to Dorsey Drive property from 7:20 p.m. to 7:25 p.m. – The two vehicles owned by Appellant's father and brother were parked outside.
- 6/10/12 visit to Dorsey Drive property arriving at 4:20 p.m. – The two vehicles owned by Appellant's father and brother were parked outside.
- 6/18/12 visit to Dorsey Drive property from 8:15 a.m. to 8:25 a.m. – Vehicle owned by Appellant's brother and a red Kia van registered to Angela Marie McKinney were parked outside.
- 6/18/12 visit to Oxon Hill property from 11:45 a.m. to 12:10 p.m. – Appellant's white Cadillac Escalade was parked outside the apartment building. Appellant saw the PPW there taking pictures and told her that she did not live at the Oxon Hill property and that she was going to call the police.

² School hours at Mills-Parole are from 8:45 a.m. to 3:10 p.m.

(*Id.*).

By letter dated June 19, 2012, the principal of Mills-Parole notified the Appellant that JW was being withdrawn from Mills-Parole as of June 26, 2012 because Appellant and JW did not reside in the attendance area. (Ex.3). Appellant appealed the decision to the local superintendent who referred the matter to a designee. The superintendent's designee denied the appeal on July 20, 2012. (Exs. 4 & 5). Meanwhile, JW continued to attend Mills-Parole.

Appellant appealed the decision to the local board. (Ex.6). She maintained that she lives at the Dorsey Drive property with her daughter so that she can provide care for her 87 year old father who needs daily assistance because he suffers from significant dementia. She stated that she prepares his meals, monitors his activities, washes his clothes, shops for him and takes him to his appointments, among other things. She indicated that she periodically spends time with her husband, but that at the current time she resides with her father. Appellant included with her appeal a letter from her father's doctor stating the he "suffers from significant dementia" and "needs assistance with all of his activities of daily living". She also included a statement from her father that she and JW reside with him in his house and that all of the bills are in his name.³ (*Id.*).

Meanwhile, the PPW continued her investigation over the summer and made these additional observations:

- 7/23/12 visit to Dorsey Drive property at 9:03 p.m. – Vehicle owned by Appellant's father was parked outside.
- 8/5/12 visit to Dorsey Drive property from 9:20 p.m. to 9:22 p.m. – Vehicle owned by Appellant's brother was parked outside.
- 8/6/12 visit to Dorsey Drive property from 7:10 a.m. to 7:15 a.m. – Vehicle owned by Appellant's brother was parked outside.
- 8/15/12 visit to Dorsey Drive property from 2:45 p.m. to 2:48 p.m. – No vehicles parked outside. She saw an African American male approximately 40-55 years of age get the mail, sit in a chair in the front lawn, and look through the mail.
- 9/10/12 visit to Dorsey Drive property at 7:50 a.m. – Vehicle owned by Appellant's brother was parked outside and no activity at house. PPW drove to JW's bus stop on Old Solomon's Road and saw Appellant arrive at the bus stop at 8:05 a.m. in her white Escalade Cadillac. JW got out and boarded the bus at 8:17 a.m. Appellant remained at the bus stop speaking to another woman until 8:44 a.m.

³ Although Appellant claims the letter is notarized it is lacking a notary seal.

(Motion, Ex. 1).

On October 24, 2012, the local board rendered its decision finding that the PPW had conducted an exhaustive investigation which showed, among other things, that Appellant and her husband both receive mail at the apartment in Oxon Hill, Prince George's County; that JW told the school counselor that she has lived in Oxon Hill since she was born, and that JW told her teacher on several occasions that she lives in Oxon Hill. Although the local board noted that Appellant and JW have a connection to the Dorsey Drive address because the grandfather resides there, it found no evidence that they reside in the house.

Appellant appealed the local board's residency decision to the State Board on November 20, 2012. Appellant reiterated her arguments and explained that she works unusual hours at the United States Naval Academy, reporting at 3:45 a.m. on some days and 6:00 a.m. on others. The State Board has expedited the processing of the case.

Meanwhile, the Anne Arundel County School System disenrolled JW from Mills-Parole on December 6, 2012. Appellant attempted to enroll JW at school in Prince George's County but, according to the Appellant she was unable to do so because she and JW are not listed on the Oxon Hill apartment lease and she could not prove residency in Prince George's County. Appellant filed a request that the State Superintendent of Schools stay the local board's decision regarding residency at the Dorsey Drive address and allow JW to attend Mills-Parole until the State Board reaches a decision in this case. The State Superintendent of Schools granted the stay on February 4, 2013 and ordered the local board to enroll JW at Mills-Parole pending this Board's decision. (Order 13-1).

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

LEGAL ANALYSIS

State law requires 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 establish bona fide residency on the student, caretaker, parent or guardian.

A parent can establish residency by providing the school system with documents as specified in the policy. (JAB-RA, sec. C.2.e). When a parent uses a Tenant Residence Verification Disclosure form, 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 as social security check, domestic relations/child support check, Department of Social Services food stamps or community medical assistance letter, or unemployment award; or
- PPW verification letter or form verifying residence after a home visit.

(*Id.*). The school principal and the Office of Pupil Personnel have the discretion, however, to require additional proof of residency. (*Id.*).

When she enrolled JW in Mills-Parole in 2009, Appellant furnished the notarized Tenant Residence Verification Disclosure form; a copy of her father's deed for the Dorsey Drive property; a May 2010 bank statement addressed to her at the Dorsey Drive address; and a March 2009 human resources notice from her employer, the Department of the Navy, addressed to her at the Dorsey Drive address. While this documentation meets the Appellant's initial burden of production under the policy, the local board had contradictory evidence before it. Most notably, JW, who is eight years old, advised the school counselor that she has lived in Oxon Hill since she was born, told her teacher on several occasions during the 2011-2012 school year that she lives in Oxon Hill, and informed the PPW that she stays in Oxon Hill every night and wakes up early to go to the grandfather's house.

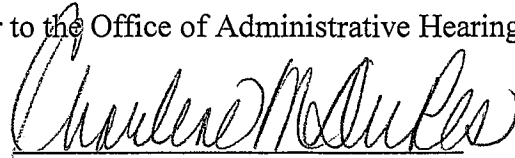
The local board also had the PPW's site investigation results in which the Appellant's vehicle was not observed at the Dorsey Drive address, despite several visits at varying times of day and night. There appear to be some deficiencies, however, in the PPW's investigation. The PPW failed to observe either address during a.m. hours consistent with the Appellant's claim regarding her work hours and information provided by JW regarding their a.m. schedule. In addition, the Oxon Hill address was observed only one time during the middle of the day in June. Although the PPW witnessed Appellant and her vehicle there at the time, the observation took place from 11:45 a.m. – 12:10 p.m.

Appellant resides either in Anne Arundel County or Prince George's County. Based on the evidence before us we believe it is a close call. We have considered the options available to decide this matter and have concluded that this may be one of those few cases in which there is a

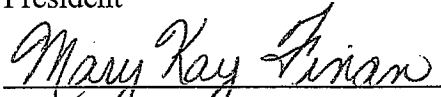
genuine dispute of material fact to resolve. When such a dispute of fact exists in the record, the State Board is authorized to refer the case to the Office of Administrative Hearings for a review. COMAR 13A.01.05.07A(3).

CONCLUSION

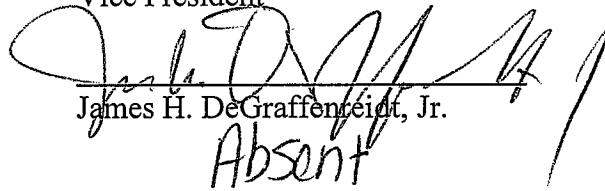
For all these reasons, we transfer this matter to the Office of Administrative Hearings for a determination regarding Appellant's residency.



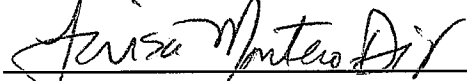
Charlene M. Duker
President



Mary Kay Finan
Vice President



S. James Gates, Jr.



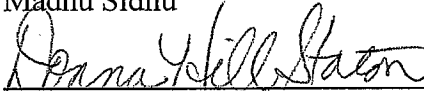
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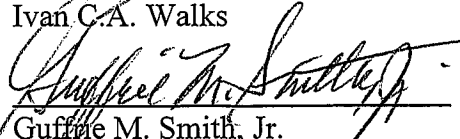
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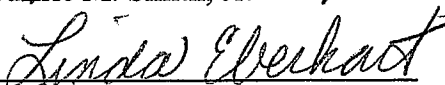
Donna Hill Staton



Ivan C.A. Walks



Guffie M. Smith, Jr.



Linda Eberhart

February 26, 2013