

A. W.

Appellant

BEFORE THE
MARYLAND

v.

STATE BOARD

MONTGOMERY COUNTY BOARD
OF EDUCATION

OF EDUCATION

Appellee

Opinion No. 07-10

OPINION

INTRODUCTION

This is an appeal of the denial of Appellant's request to allow her three children to attend public school in Montgomery County free of charge based on a determination that she is not a bona fide resident of Montgomery County. The local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. Appellant has submitted a response opposing the local board's motion.

FACTUAL BACKGROUND

Until recently, Appellant's children attended Montgomery County Public Schools ("MCPS") without any issues related to their residency status. For the 2005-2006 school year, Appellant's two daughters were enrolled at Burtonsville Elementary School and her son was enrolled at Benjamin Banneker Middle School. During July 2005, Appellant's status as a Montgomery County resident came under scrutiny when staff at Benjamin Banneker discovered that the address listed on her son's school records was in Beltsville, Maryland which is located in Prince George's County. (Hearing Officer Report, p.1).

By letters dated July 20, 2005 and August 25, 2005, the principals of Benjamin Banneker and Burtonsville notified Appellant and her husband that their children would no longer be permitted to attend MCPS on a tuition-free basis unless they obtained a tuition waiver because their primary residence was not located in Montgomery County. (Letters to Mr. and Mrs. Willis).¹

Subsequently, Appellant wrote the Residency Compliance Office ("RCO") and requested

¹ Appellant also met with Melissa Smith, principal of Burtonsville on July 27, 2005, who informed Appellant that she was not in compliance with MCPS's residency regulations. (Hearing Officer Report, p. 1). Appellant maintains that Ms. Smith had previously advised her that ownership of real property in Montgomery County was sufficient to enroll her children in MCPS free of charge. (Appeal, p. 2).

a tuition waiver. She explained that she and her husband own property in Montgomery County on Bender Court in Burtonsville. She informed the RCO that the family would be moving into the property. (Hearing Officer Report, p.1).

In an August 29, 2005² letter, Dr. Anita Moscow of the RCO notified Appellant that her request for a tuition waiver was approved to the end of the first semester of the 2005-2006 school year. (Letter to Appellant, 8/29/05). Dr. Moscow further stated that if Appellant submitted sufficient documentation by January 23, 2006, demonstrating that the family had moved their primary residence from Prince George's County to Montgomery County, the children would be permitted to remain in MCPS for the second semester. (*Id.*).

Prior to the January 23, 2006 deadline, Appellant submitted a variety of documents to prove that her primary residence was in Montgomery County. She submitted utility bills, property tax bills, mortgage statements, homeowners association dues statements, and a notice of discontinuation of her lease to a third party on the Montgomery County property. She also submitted notices that she changed her voter registration, driver's license, automobile insurance, and homeowner's insurance from the Prince George's County address to the Montgomery County address. (Appeal, p. 6 - 7). The RCO determined that the documents did not verify that the family was living at the Burtonsville address. On January 23, 2006, Dr. Moscow notified Appellant of the RCO's conclusion that Appellant's primary residence was "not in Montgomery County" because the Montgomery County residence was "established for convenience or for free attendance in Montgomery County Public School." She advised that the children would be withdrawn on February 3, 2006. (Letter to Appellant, 1/23/06).

Appellant appealed the RCO's decision to the Chief Operating Officer, Mr. Larry Bowers, acting as the superintendent's designee. Mr. Bowers referred the matter to a hearing officer who concluded that the family resides in Prince George's County. The hearing officer stated the following in her report:

At our meeting, Mrs. Willis explained that her children had always attended Montgomery County Public Schools. She reported that two of her children enrolled at Burtonsville Elementary School at a time when she was living in Montgomery County. She reported that she moved to Beltsville, Maryland in 1991, and submitted a change of address form, together with documentation that she was paying property taxes on the house she owned in Burtonsville, Maryland, which she rented to another family. Mrs. Willis stated that she provided such documentation on an annual basis since that time, to ensure that her children could remain in Montgomery County Public Schools. Report cards and mail were regularly sent

² The date on the letter stated "August 29, 2004" in error. The correct year was 2005. The parties have cited the correct date in their submissions to the State Board.

to her address in Beltsville, Maryland. Mrs. Willis reported that she thought that she was in compliance with Montgomery County Public Schools' regulations, and stated that she had two residences, the house in Beltsville, Maryland, and the townhouse in Burtonsville, Maryland. She reported that her renters had moved out of the townhouse in May, and that the family was currently using the Burtonsville townhouse. She stated that her home in Beltsville, Maryland, was close to the county line, and that she had child-care for her daughters with a sitter near Burtonsville Elementary School. However, she admitted that the family slept in the Beltsville home.

The hearing officer recommended that the children be permitted to complete the 2005-2006 school year in MCPS tuition-free and be withdrawn at the end of the school year. (Hearing Officer Report, p.2). Mr. Bowers concurred with the hearing officer's findings and adopted the recommendation. (Letter to Appellant, 2/14/06).

Appellant further appealed to the local board. In her letter of appeal, Appellant maintained that she was in compliance with MCPS' residency requirements, although she again conceded that the family does not sleep overnight in her Montgomery County home. (Letter to Local Board, 3/13/06).

In a unanimous decision, the local board upheld the decision of the Chief Operating Officer determining that Appellant is not a bona fide resident of Montgomery County and granting her a tuition waiver for her children to finish out the 2005-2006 school year free of charge. (Local Board's Memorandum, p. 3).

This appeal to the State Board followed.

STANDARD OF REVIEW

Local board decisions involving a local policy or a controversy and dispute regarding the rules and regulations of the local board must be 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.01.05.05A.

ANALYSIS

I. *Bona Fide Residency*

At issue in this appeal is whether Appellant and her children are bona fide residents of Montgomery County. The bona fide residency requirement is a condition of free attendance at Maryland's public schools. See Md. Code Ann., Educ. §7-101, 7-301, 8-404(a); COMAR

13A.08.01.01A. 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 child's parent, guardian" Md. Code Ann., Educ. §7-101(b). In essence, a student living with a parent or guardian is a bona fide resident of the jurisdiction where the parent or guardian resides and is entitled to attend school in that jurisdiction free of charge.

The Montgomery County Board of Education has developed Policy JED – Residency, Tuition, and Enrollment which elaborates on the bona fide residency requirement in MCPS. It states the following:

1. Bona fide residence is one's principal residence, maintained in good faith, and does not include a residence established for convenience or for the purpose of free school attendance in Montgomery County Public Schools. However, an intent to reside indefinitely or permanently at the present place of residence is not necessarily required. Determination of a person's bona fide residence is a factual one and must be made on an individual basis.
2. All qualified school-aged individuals, whether U.S. citizens or noncitizens, who have an established bona fide residence in Montgomery County will be considered resident students and will be admitted free to the Montgomery County Public Schools.
3. All qualified school-aged individuals, whether U.S. citizens or noncitizens, who do not have an established bona fide residence in Montgomery County, will be considered nonresident students and will be subject to paying tuition unless an exception is made under the terms of this policy.

Thus, actual residence of the parent and student is the relevant issue in determining bona fide residency. This determination is made by the school system on a case by case basis.

Appellant maintains that she is a bona fide resident of Montgomery County based upon her ownership of real property in Burtonsville, and her payment of property taxes, a mortgage, and utilities for the home. Appellant states that she has "dwelled" in the home for the entire 2005-2006 school year. Appellant also offers that she has a driver's license listing her as a Montgomery County resident and that she is a voter registered in Montgomery County. The local board maintains that Appellant and her children are not bona fide residents of Montgomery County because they are domiciled in Prince George's County, despite Appellant's ownership of a residence in Montgomery County.

Although Appellant owns real property in Montgomery County, ownership alone is insufficient to establish bona fide residency under MCPS policy and under the State Board's

prior decisions. See *Gustafson v. Board of Education of Allegany*, 7 Op. MSBE 308 (1996) and *Klingensmith v. Howard County Board of Education*, MSBE Op. 01-32 (2001), holding that neither the payment of property taxes nor ownership of county property is sufficient to establish a bona fide residence. Rather, the issue is whether the individual is domiciled in the jurisdiction. Furthermore, in order for residency to be bona fide, it must be “maintained in good faith” and “not for the convenience or for the purpose of free school attendance in [MCPS].” (See Local Board Policy JED (A)(1)).

The documents Appellant submitted to the local board demonstrate that she and her children were not bona fide residents of Montgomery County during the 2005-2006 school year. Appellant stated that she and her husband purchased a single family home in Prince George’s County at 4901 Daisey Creek Terrace in Beltsville where the family resided while the children attended public school in Montgomery County. She provided evidence that she rented the Burtonsville property until some time in late 2005 when the lease was terminated. While Appellant maintains that her family resumed occupancy of the Burtonsville property after the termination of the lease during the 2005-2006 school year, she admits that the family did not sleep there at night and instead slept “in their own beds” in Prince George’s County. (Appeal, p. 5). She also made a June 8, 2006 statement that the family will be “residing” in the Burtonsville home on or about June 12, 2006. (See June 8, 2006 letter). We agree with the local board that these facts support a primary domicile in Prince George’s County during the 2005-2006 school year.

As stated by the local board,

Although Ms. Willis contends that her family uses the Montgomery County house on a daily basis, the evidence, which includes Ms. Willis’s own admission that the family sleeps at the Prince George’s County home indicates that the family’s actual or bona fide residence is in Prince George’s County. It is clear that the Montgomery County house is used by the family for convenience and, at least in part, for the purpose of free school attendance in Montgomery County.

(Local Board Decision at p.2). We concur.

Appellant now claims that she is a bona fide resident of Montgomery County because the family began sleeping at the Burtonsville address sometime during the summer of 2006. The local board’s decision, issued on May 9, 2006, is what is currently before the State Board for its consideration. Appellant must present any new facts to the school system for a determination regarding residency status in the 2006-2007 school year.

II. *Estoppel*

Appellant further contends that MCPS should be prevented from denying her children free admission to school because the school system allowed them to attend its public schools free of charge for years, despite her disclosure that the family resided at the Prince George's County address. Appellant, in support of her contention, cites a statement made by the Hearing Officer that "since the School System had made a mistake, [she would] recommend to Mr. Larry Bowers, that the children should be able to at least complete the 2005-2006 school year." (Appeal, p. 3). She also refers to the fact that MCPS school staff advised her that she need only own property in Montgomery County for her children to attend school there without charge. (Appeal, p. 2). Appellant argues further that since she has been receiving all school correspondence at her Prince George's County home for the past five years, the local board has "accepted" the fact that she lives in Prince George's County. (*Id.*).

It is well established that estoppel cannot be asserted against the government when it is performing its governmental functions. *Salisbury Beauty Schools v. State Board of Cosmetologists*, 268 Md. 32 (1972). Because a local board's determination whether a family satisfies the legal requirements of bona fide residency as prescribed by the State is a governmental function, the local board cannot be estopped from denying Appellant's children free admission to its schools. It does not matter that the children had previously been admitted to MCPS without Appellant being charged tuition, even though the school system arguably knew of the Prince George's County address. Once the mistake was discovered, the local board was within its authority deny free admission. With regard to the hearing officer's grant of the tuition waiver for the 2005-2006 school year, the hearing officer was merely providing a courtesy to the Appellant during the pendency of her appeal.

III. *Other Claims*

Appellant also contends that the factual information throughout the case has been incorrect and claims that these mistakes are material to the case. The local board does not however, rely on any mistaken facts in the record in their motion.

In addition, Appellant alleges that school staff advised her that she had to sell her Prince George's County home and document the sale in order to be considered a bona fide resident of Montgomery County. The local board does not address this contention. Nevertheless, as stated above, the issue here is not ownership of property, but whether or not Appellant is domiciled in Montgomery County.

CONCLUSION

Based on the record in this matter, we find that the Montgomery County Board of Education's decision is not arbitrary, unreasonable or illegal. Accordingly, we uphold the

decision of the local board that Ms. Willis and her family were not bona fide residents of Montgomery County.

Edward L. Root

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February 27, 2007

David F. Tufaro
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