AUSTIN G.,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
PRINCE GEORGE'S COUNTY BOARD OF EDUCATION,	Opinion No. 08-43
Appellee	

OPINION

INTRODUCTION

In this appeal, Appellant challenges the decision of the Prince George's County Board of Education to uphold the withdrawal of his daughter from Eleanor Roosevelt High School (Roosevelt) based on failure to establish residency in the geographic attendance area for the school. 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 to the local board's motion. The local board has submitted a surreply.

FACTUAL BACKGROUND

Appellant's daughter, N.G., attended a middle school that feeds into Duval High School. Her attendance at that middle school was based on an address at 9126 Alcona Street in Lanham, Maryland.

At the beginning of the 2005-2006 school year, Appellant enrolled N.G. in the 9th grade at Roosevelt High School. He established residency in the Roosevelt boundary area through a shared housing affidavit, in which he claimed that he and his daughter resided with his sister at 6707 Village Park Drive in Greenbelt, Maryland. (Motion, Exh. 1). N.G. completed the 9th and 10th grades at Roosevelt.

N.G. began attending the 11th grade at Roosevelt for the 2007-2008 school year. That fall, the administration at Roosevelt conducted a routine review of students enrolled through shared housing affidavits. Prince George's County Public Schools (PGCPS) Administrative Procedure 5111 permits the school system to periodically re-verify information contained in the shared housing affidavit or to seek additional information to confirm continued residency within the school boundary. As a result of this review, N.G.'s residency came into question. On November 27, 2008, N.G. informed her father that the school was requiring that he provide proof of residency in order for her to continue to attend school at Roosevelt. (Letter of Appeal).

On November 29, 2007, Appellant met with Joyce Jones, Supervisor for Tuition Waivers and School Boundaries. Appellant claims that he told Ms. Jones that he owns a house in Lanham but that he resides in Greenbelt with his sister due to a separation from N.G.'s mother. Ms. Jones informed Appellant that it was the school's belief that he did not reside at the Greenbelt address, and that N.G. would be withdrawn from Roosevelt due to a failure to establish residency in the school's attendance area. (Response to Motion).

Appellant subsequently met with Roosevelt's principal and registrar on December 3, 2007. Although Appellant told them that he had resided at the Greenbelt address since 1999, he stated that he was using the address of his house on 9126 Alcona Street in Lanham for his car registration, medical insurance, credit cards, tax returns, and pay stubs.

The principal requested that Appellant provide information to verify his continued occupancy of his sister's home on Village Park Drive in Greenbelt. In response to the request Appellant provided the following documents: (1) a copy of the deed for the Greenbelt house in his sister's name; (2) a Washington Gas bill dated October 1, 2007 addressed to Appellant and his sister at the Greenbelt house; (3) a Bank of America Statement dated December 5, 2007 addressed to Appellant and his sister at the Greenbelt house; (4) N.G.'s student registration form for Roosevelt from 2005 with the Greenbelt address; (5) a Roosevelt Shared Housing Disclosure form from 2005 using the Greenbelt address; and (6) a Navy Federal Credit Union financial statement dated September 21, 2005 addressed to Appellant and his sister at the Greenbelt home. After reviewing all of the information, the principal and school registrar determined that N.G. did not reside in the Roosevelt attendance area. N.G. was withdrawn from Roosevelt effective November 27, 2007. (Motion, Exh. 2).

Appellant enrolled his daughter at DuVal High School (DuVal), the high school serving the attendance area for the Alcona Street address in Lanham. As proof of his residency at the Lanham address, Appellant presented a Deed of Trust for the Alcona Street property in his and N.G.'s mother's names, an electric bill for the Alcona Street property in his name alone, and a current Maryland driver's license with the Alcona Street address. (Motion, Exhs. 3 & 5).

Meanwhile, Appellant appealed N.G.'s withdrawal from Roosevelt. Dorothy Stubbs, when acting as the Superintendent's designee, held a conference in which Appellant presented argument and documentation to verify residency at the Greenbelt address. Some of the documentation reflected address changes made after the start of the 2007-2008 school year.

Ms. Stubbs also visited the Alcona Street address on December 22, 2007 and found Appellant and N.G. present there. Neighbors confirmed to Ms. Stubb's that Appellant and N.G. live at the address. Roosevelt's registrar had previously visited the address and Appellant was present at that time as well. In addition, Appellant, a PGCPS employee, changed his address in the PGCPS Oracle system to the Greenbelt address on December 9, 2007, even though he claimed residence at that address since 1999. (Motion, Exhs. 8 & 9).

Ms. Stubbs denied the appeal finding that there was inadequate proof of residency at the Greenbelt address. She explained that the documents presented to DuVal for enrollment, which were different from those presented to Roosevelt, confirmed primary residence at the Alcona Street address. She also explained that there were inconsistencies in the evidence and changes to official documentation related to residency as late as December 10, 2007. (Motion, Exh. 5).

Appellant appealed to the local board. He submitted additional documentation with the Greenbelt address including a December 4, 2007 letter from Carefirst Blue Cross Blue Shield, a November 30, 2007 account statement for a physician's office, a December 3, 2007 account statement from a dentist, a MVA vehicle registration and an emissions testing reminder with no issue date, and various bank statements.

Ms. Stubbs responded to the appeal restating the facts as set forth herein. Ms. Stubbs recommended that the local board uphold the withdrawal of N.G. from Roosevelt based on lack of residency in the school zone. (Motion, Exhs. 8 & 9).

On January 25, 2008, Roger C. Thomas, legal counsel for the local board, advised Appellant that the local board denied Appellant's appeal, accepting the findings and recommendations of Ms. Stubbs as the basis for its decision. Mr. Thomas stated that N.G. was required to attend DuVal, the high school serving the Lanham address. (Motion, Exh. 10).

This appeal 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

Right to a Hearing

As a preliminary matter, Appellant argues that he was deprived of due process because the local board did not conduct a full evidentiary hearing in this matter.

In *Hethman v. Prince George's County Bd. of Educ.*, 6 Op. MSBE 646, 649 (1993), the State Board addressed whether an appeal to a local board requires a full evidentiary hearing, The Board stated:

> In *Bricker, et al. v. Board of Education of Frederick County*, 3 Op. MSBE 99 (1983), we addressed the circumstances in which the

> principles of due process would require the granting of a full oral evidentiary hearing in an appeal proceeding. The *Bricker* case involved appeals dealing with the nonrenewal of three non-tenured teacher contracts. The probationary teachers maintained that they had a right to oral evidentiary hearing on their appeals. We disagreed. The parties conceded that there were no material facts in dispute. Relying upon principles articulated by Kenneth Culp Davis in 2 Administrative Law Treatise, Ch. 10 & 12 (2nd Ed. 1079), we ruled that due process does not require oral argument or an evidentiary hearing on nonfactual issues. "In other words, the term 'hearing' does not necessarily embrace the right to present *oral argument* or the right to an *oral evidentiary hearing*." Bricker, 3 Op. MSBE at 102. We reiterated these principles in two more recent decisions on teacher transfer appeals; *Anderson & Blake v. Board of Education of Prince George's County*, 5 Op. MSBE 415 (1989) and *Hurl v. Board of Education of Howard County*, Op. No. 93-10 (1993). (emphasis in original).

Thus due process does not require oral argument or a full evidentiary hearing in all cases.

Appellant claims that because there are disputed material facts, he was entitled to a hearing before the local board. We disagree. The material facts in this case are not in dispute. All of the documentation submitted by Appellant speaks for itself. The local board has never disputed the fact that Appellant receives some of his mail at the Greenbelt address, and that there are documents in Appellant's name reflecting the Greenbelt address. Nor does Appellant dispute that he owns the Lanham home and receives mail there, including utility bills and his pay stub, at least until December 2007. He also does not dispute that he and his daughter were present in the Lanham house during Ms. Stubbs' home visit and that neighbors reported to Ms. Stubbs that he lives there. Rather, what is in dispute is the inference to be drawn from the totality of the evidence in satisfying the residency requirement.

In addition, this case does not deprive Appellant of a constitutionally protected liberty or property interest for which a hearing is required. *See Board of Regents v. Roth*, 408 U.S. 562 (1972). The State Board has long held that there is no right to attend a particular school. *See Bernstein v. Bd. of Educ. of Prince George's County*, 245 Md. 464 (1967); *Goldberg v. Montgomery County Bd. of Educ.*, MSBE Op. No. 05-35 (2005); *Chacon v. Montgomery County Bd. of Educ.*, MSBE Op. No. 01-39 (2001); *Williams v. Bd. of Educ. of Montgomery County* 5 Op. of MSBE 507 (1990).

Although Appellant relies on *Bernstein v. Bd. of Educ. of Prince George's County*, 245 Md. 464 (1967), in support of his contention that an evidentiary hearing is required in an individual residency appeal, *Bernstein* does not resolve the issue. In *Bernstein*, the Court of Appeals considered the obligation of a local board to afford a public hearing process in a school redistricting case, and the sufficiency of opportunities for hearings and notification to the public on the proposed boundary changes. The Court of Appeals did not address whether a local board

must provide an evidentiary hearing in an individual residency appeal.

We note that, despite the fact that Appellant was not entitled to an evidentiary hearing before the local board, he was provided the opportunity to argue his position and submit evidence in his case before the Superintendent's Designee, and to submit written argument and additional documentation to the local board.

Residency Issue

Each local board of education establishes the geographical attendance area for the public schools within its jurisdiction. Md. Code Ann., Educ. 4-109(c). In order to determine what school within the jurisdiction a child is to attend, a student's parent or guardian provides residency information to the school system upon the child's enrollment in school. Examples of items that may be considered as proof of residency include deeds of property, mortgage statements, rental receipts, settlement papers, tax bills, utility bills, and employment verification. PGCPS Administrative Procedure 5111 (IV.A.f.i).

Appellant maintains that the local board incorrectly affirmed Ms. Stubbs' determination that he resides at the Lanham address, and that the evidence proves his residency in Greenbelt.

Based on our review of the record, we believe that the local board had before it sufficient information to establish residency at the Lanham address. Appellant owns a home at the Lanham address as evidenced by the deed in his name. Although ownership of property is not necessarily dispositive of residence, the home visits by Ms. Stubbs and the school registrar appeared to confirm that Appellant and his daughter resided at the Lanham address. The neighbors confirmed that the Appellant and his daughter lived in the Lanham home. Appellant enrolled his daughter at DuVal using a utility bill in his name alone for the Lanham address and a driver's licence using that address. Further, Appellant admitted to Roosevelt's registrar that he used the Lanham address for his car registration, medical insurance, credit cards, tax returns and paychecks. (Motion, Exhs. 8 & 9).

During the course of the appeal, Appellant submitted various documents with the Greenbelt address in an attempt to prove residency there which he had claimed began in 1999. Much of the information is dated after the start of the 2007-2008 school year. Examples of such information include an October 2007 utility bill for the Greenbelt address in Appellant's and his sister's names, a correction to Appellant's driver's licence dated October 4, 2007, a GEICO insurance policy issued December 4, 2007, and a voter notification card dated November 26, 2007. Pay stubs were not mailed to the Greenbelt address until the address change in December 2007. With regard to the address changes, the fact that these changes came so many years after Appellant claims to have established residency at the Greenbelt address created suspicion with Ms. Stubbs and the local board regarding the legitimacy of the information. We do not find that their suspicion is unfounded given the circumstances. One does not typically wait eight years to correct the address on a driver's license, or to correct the address where paychecks are mailed.

Both Ms. Stubbs and the local board weighed the evidence and determined that it established residency at the Lanham address. Where conflicting inferences can be drawn from the same evidence, it is within the province of the local board to draw those inferences. *See, Board of Trustees v. Novik*, 87 Md. App. 308, 312 (1991) *aff'd*, 326 Md. 450 (1992) ("It is within the Examiner's province to resolve conflicting evidence"); *see also*, *Board of Educ. v. Paynter*, 3034 Md. 22, 36 (1985). It is for the State Board to determine only if those inferences are arbitrary, unreasonable or illegal. Based on the facts of this case, we do not believe that they are.

The Appellant argues that the local board did not apply the correct legal standard as it pertains to residency because it determined that Appellant did not reside in the Greenbelt home due to the fact that he uses the Lanham address for various legal reasons. He cites *Mundy v. Erie Insurance Group*, 396 Md. 656 (2007), in which the Maryland Court of Appeals examined the meaning of the term "resident" as it was used in an automobile insurance policy. In construing the term, the Court stated

> We find persuasive *United Serv. Auto. Ass'n v. Swann*, 170 Vt. 302, 749 A 2d. 23, 26 (2000), which noted the "shared characteristics of residency ... to be 'physical presence within a common abode on [a] reasonably regular basis at a reasonably recent time, regardless of whether the individual uses the address for various legal and practical purposes or subjectively considers it his home.'"

First of all, the local board determined that Appellant resides in Lanham based on more than the fact that he uses the Lanham address for various legal purposes. The local board considered the uncontroverted evidence that Appellant and N.G. were present at the Lanham address during a home visit and neighbors stated that he and his daughter live there. Even if we were to use the standard suggested by Appellant, in our view one could reasonably conclude, based on the totality of the evidence, that Appellant resides at the Lanham house.

Appellant contends that it is contrary to sound educational policy to withdraw N.G. from Roosevelt after she attended school there from the beginning of her freshman year until the first portion of her junior year. He claims that it is illogical to remove N.G. from a positive environment with her friends and teachers, where she thrived academically and in sports for over two years to another school. We understand that N.G. would prefer to remain at the high school that she attended for just over two years. Students are required, however, to attend the schools in the geographical attendance area where they reside with their parent or guardian. *See* PGCPS Administrative Procedure 5111 (A). Therefore, once the school system discerned that N.G. did not reside in the Roosevelt attendance area, it was consistent with educational policy to have her enroll in the school for which she is slated.

Finally, Appellant maintains that N.G. should be allowed to remain at Roosevelt because the move to DuVal has caused her to suffer academically and emotionally, and she is now being treated for anxiety and depression. Response at 6. This issue was not raised before the local board. The State Board has consistently declined to address issues that have not been reviewed

initially by the local board. *See Craven v. Bd. of Educ. of Montgomery County*, 7 Op.MSBE 870 (1997); *Hart v. Bd. of Educ. of St. Mary's County*, 7 Op. MSBE 740 (1997); *McDaniel v. Montgomery County Bd. of Educ.*, MSBE Op. No. 03-22 (June 27, 2003). Therefore, the State Board cannot consider this argument on appeal.

CONCLUSION

For all of these reasons, we do not find the local board's decision affirming N.G.'s withdrawal from Roosevelt to be arbitrary, unreasonable or illegal. Accordingly, we affirm the local board's decision.

James H. DeGraffenreidt, Jr.
President

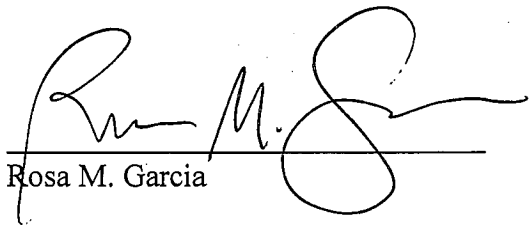
Blair G. Ewing
Vice President

absent
Dunbar Brooks

Lelia T. Allen

Charlene M. Dukes

Mary Kay Finan



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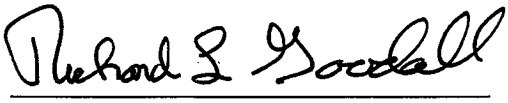

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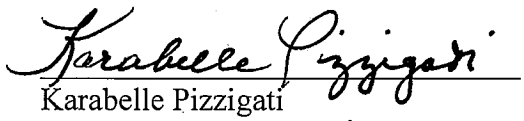

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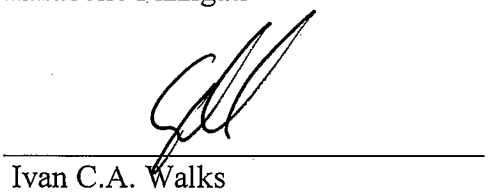

Ivan C.A. Walks

Kate Walsh

September 23, 2008