

YI N. & NANPING W.,

Appellant

v.

HOWARD COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 08-51

OPINION

INTRODUCTION

The Appellants appeal the Howard County Board of Education's (local board) decision that they must pay tuition for their son to attend public school in the jurisdiction based on a determination that Appellants are not bona fide residents of Howard County. The local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. Appellants have responded to the local board's motion.

FACTUAL BACKGROUND

The Appellants' son, P.W., began attending the 9th grade at Centennial High School (Centennial) in Howard County at the start of the 2007-2008 school year. In November of 2007 the school system questioned P.W.'s residency when the postal service returned a letter to the school, which had been addressed to the Appellants at 8732 Ruppert Court in Ellicott City.

The school system investigated the situation. Leslie Evans, Pupil Personnel Worker, went to the Appellants' Ellicott City address. When she arrived there, the house was empty and there was a realtor's lock box on the door. Ms. Evans searched the public records database for Appellants' address. The database listed a Montgomery County address for the Appellants at 16504 Harbour Town Drive, Silver Spring. (Evans E-Mail, 11/14/07).

By letter dated November 15, 2007, Centennial's Principal, Scott Pfeifer, advised Appellants that the school system had information that P.W. was not living at the Ellicott City address and was not a bona fide resident of Howard County. He stated that P.W. would be withdrawn from the Howard County Public School System (HCPSS), effective December 5, 2007, unless Appellants appealed the determination. (Pfeifer Letter, 11/15/07).

On November 16, 2007, Appellants appealed Mr. Pfeifer's decision to Pamela Blackwell,

Director of Student Services for HCPSS. In the appeal, P.W.'s mother stated as follows:

For some personal reasons that I can explain, [P.W.] is living in two houses, one in Ellicott City (my address below) and the other in Montgomery County. In the past few weeks my house was under repair due to water leak. Now the repair has completed. (sic) [P.W.] will continue to live in Ellicott City. If you require [P.W.] to spend 100% of the time in Ellicott City in order for him to attend school in Howard County, I can arrange for him to do so.

On December 7, 2007, Dr. Linda Bartle, Facilitator for Pupil Personnel, conducted an appeal conference at which the Appellants and Ms. Evans were present. During the conference, Appellants stated that they owned the Silver Spring house. They confirmed that, as of the date of the conference, they were still living in Montgomery County. Appellants also stated that they purchased the Ellicott City house in August of 2007, but had not yet moved in to it. Appellants presented the deed for the Ellicott City home showing an August 17, 2007 purchase date. The Maryland State Department of Assessments and Taxation (SDAT), however, had no record that Appellants had recorded the deed. Based on this information, Dr. Bartle, acting as the superintendent's designee, determined that P.W. would be withdrawn from HCPS as of December 21, 2007 unless Appellants opted to pay tuition. (Bartle Letter, 12/13/07).

The Appellants appealed this decision to the local board. (Letter of Appeal, 12/20/07). In the appeal, Appellants stated that they had not completely moved out of their Silver Spring residence because of the slow housing market and other personal issues. Appellants claimed that in addition to the deed for the home in Ellicott City, they showed Dr. Bartle utility bills for the property in their name. Appellants attached a copy of the recorded deed for the Ellicott City property, showing that it was recorded as of September 6, 2007. They also stated that SDAT had updated its records and the information in the public database reflected that they were the current owners of the property. In closing, the Appellants stated that they "live in Ellicott City" and their son should be allowed to attend Centennial without the payment of tuition. (*Id.*).

Appellants also stated on the *Appeal Information Form* that they did not move into the Howard County home at the beginning of the 2007 school year due to a water leak and other personal issues. They stated that they moved into the Ellicott City house on December 23, 2007. As proof of this, they submitted a U-Haul receipt with the December 23 date.

On January 15, 2008, while the appeal was pending before the local board, Steve Drummond, Coordinator of School Security, completed an investigation of Appellants' residency status. (Evans' Memorandum to Local Board, 2/1/08). Mr. Drummond, went to the Montgomery County address and witnessed a car registered to Appellants at that address leave the driveway at 6:47 a.m. on January 11 and at 6:49 a.m. on January 15. (Drummond Investigation Report). At the time of his investigation, Mr. Drummond learned that the Appellants listed the Montgomery County address as their principal residence with SDAT for

tax purposes, and that the Appellants use the Montgomery County address for credit and financial purposes, according to one of the credit bureau locator services. Mr. Drummond concluded that, based on his investigation, Appellants were not bona fide residents of Howard County. (*Id.*).

On January 15, 2008, Ms. Evans advised Appellants that the school system was unable to confirm residency in Howard County through its investigation. On January 18, 2008, Appellants spoke to Dr. Bartle and informed her that they stay at the Montgomery County residence three days a week because P.W. has evening tennis lessons in that area. Dr. Bartle advised Appellants that they needed to pay tuition for P.W. to remain at Centennial.

On January 22, 2008, Appellants paid full tuition to HCPSS for the school year. On January 22, Appellants also e-mailed Ms. Evans to inform her that they had “started the process to switch [their] ‘principal residence’ [to Howard County], which means [Appellants] will live there 75% of the time”. On January 28, Appellants faxed documents to the school system showing that they had changed their principal residence with SDAT to the Ellicott City address and that they had changed their address on their driver’s licenses. On January 31 Appellants requested a refund of the tuition they had paid for P.W. to continue to attend Centennial.

On February 26, 2008, the local board upheld Dr. Bartle’s decision regarding P.W.’s residency. The local board stated in its decision that, “It seems beyond dispute that at the time of Dr. Bartle’s decision on December 13, 2007, and at least through December 23, 2007, [P.W.] and his parents did not reside primarily at their Ellicott City home, and, perhaps had never resided there at all.” The local board made no determination regarding P.W.’s residency after December 13. The local board remanded the case to Dr. Bartle for a determination regarding residency between December 13, 2007 and March 14, 2008, stating that if the Appellants were able to provide sufficient documentation of residency during that time, the school system should rebate the appropriate prorated amount of tuition.

Upon remand of the case, Dr. Bartle concluded that the Appellants established residency in Howard County in the latter part of January or early February, 2008. She informed the Appellants that the school system would be refunding the tuition they paid for the 2008 spring semester. She also informed Appellants that because residency in the County had been established, P.W. was now eligible to participate in sports at Centennial. (Bartle Letter, 3/13/08).

This appeal to the State Board followed.

STANDARD OF REVEIW

Decisions of a local board involving a local policy or a controversy and dispute regarding the rules and regulations of the local board shall 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

Residency Prior to December 13, 2007

A 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. *See A. W. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 07-10; *Yeon Soon Kim v. Bd. of Educ. of Montgomery County*, MSBE Ops. No. 00-2; *Armour v. Bd. of Educ. of Montgomery County*, 2 Op. MSBE 123 (1979).

The Howard County Board of Education has developed Policy 9000 - "Enrollment, Residency, Student Assignment and Admission to Pre-K and Kindergarten" which elaborates on the bona fide residency requirement in HCPSS. Policy 9000(IV)(C) provides that school aged students whose parents have established bona fide residence in Howard County will be considered resident students and will be admitted to the Howard County Public School System without the payment of tuition. This provision is read in conjunction with 9000(III)(A) which states:

Bona fide residence -- The 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 schools. Determination of a person's bona fide residence is a factual one and must be made on an individual basis.

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

Appellants maintain that they were bona fide residents of Howard County from the start of the 2007-2008 school year, and that HCPSS should not have charged them tuition for the first half of the school year. Appellants' own admissions, however, prove otherwise. For example, during their conference with Ms. Bartle on December 7, Appellants stated that they were still living at the Montgomery County home. In the Appeal Information Form filed with the local board, they stated that they moved into the Ellicott City house on December 23, 2007. Even in the filings to the State Board, Appellants confirm that they only began regularly living at the Ellicott City address as of December 23. (Opposition to Motion).

There is also other evidence that supports the residency determination. During a home visit

to the Ellicott City property in November 2007, Ms. Evans discovered that the house was empty and had a realtor's lock box on it. Mr. Drummond's investigation disclosed that the Appellants were using the Montgomery County residence as their principal residence for tax, financial, and credit purposes. He also witnessed the Appellants' vehicle leaving the Montgomery County home in the early morning in January 2008. All of this evidence supports a finding that the Appellants were not bona fide residents of Howard County as of December 13, 2007.

Since the time of Ms. Bartle's December 13 decision, Appellants have submitted updated evidence to the school system to support their claim of residency at the Ellicott City address. This evidence includes items such as an updated SDAT record naming the Ellicott City house as their principal residence, more furniture being moved into the Ellicott City address, and updated driver's licenses reflecting the Ellicott City address. None of this evidence, however, is dispositive of Appellants' residency as of December 13, 2007.

Appellants argue that their ownership of the Ellicott City property supports their residency claim. There is no dispute that the Appellants became owners of the Ellicott City property sometime around the start of the 2007-2008 school year. Ownership of property and payment of real estate taxes to a jurisdiction, however, does not in and of itself establish bona fide residency. *Gustafson v. Bd. of Educ. of Allegany County*, 7 Ops. MSBE 308 (1996). Rather, as stated above, actual residence of the parent and student is the determinative issue.

Miscellaneous Issues

Appellants question why Dr. Bartle issued her decision on December 13, when she told them during their December 7 conference that they could have until January 2, 2008 to complete their move into the Howard County residence. (See Bartle Memorandum to Local Board, 2/2/08). It is unclear what Dr. Bartle may have intended by such a statement, and it is not addressed in the local board's filings. Nonetheless, regardless of what transpired during the conference, Dr. Bartle issued a written decision on December 13 which speaks for itself. The matter has since been appealed and reviewed by the local board.

Appellants express their dissatisfaction that the school system planned to withdraw P.W. from Centennial while their appeal was pending unless they paid tuition. Although Appellants were unhappy with the decision by HCPSS, there is no legal requirement that a school system maintain a student's enrollment while an appeal is pending once it has determined that the student is not a bona fide resident of the jurisdiction.

Appellants also dislike the manner with which the school system conducted its residency investigation -- looking into the windows of their home, waiting outside their house, and knocking on their door. They state that P.W. was frightened because he had to open the door to a stranger and answer questions about his residency when Appellants were not home for fear that the school system would assume nobody lived there. While Appellants may have preferred that the school system use other methods of investigation, they have not presented any evidence that

there was a violation of law or policy.

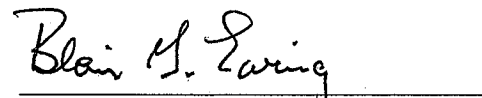
Based on Appellants' filings in this case, it appears that they are also appealing Ms. Bartle's March 13 decision.

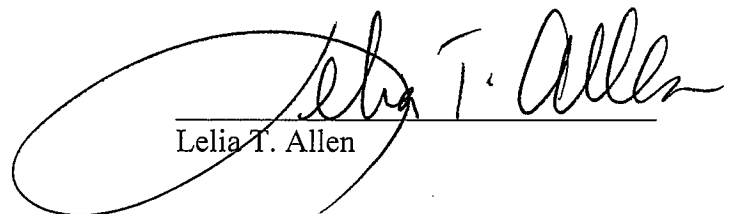
Appellants have not appealed Ms. Bartle's March 13 decision to the local board. The State Board has consistently declined to address issues that have not been initially reviewed by the local board. *See McDaniel v. Montgomery County Bd. of Educ.*, MSBE Op. No. 03-22; *Craven v. Montgomery County Bd. of Educ.*, 7 Ops. MSBE 870 (1997); *Hart v. Board of Educ. of St. Mary's County*, 7 Ops. MSBE 740 (1997). Because there is no local board decision regarding Ms. Bartle's March 13 decision and the issue of Appellants' residency after the December 13, 2007 date, there is nothing for the State Board to review.

CONCLUSION


For all of these reasons we do not find that the local board's decision is arbitrary, unreasonable or illegal. Accordingly, we affirm the local board's determination that, prior to December 13, 2007, Appellants were not bona fide residents of Howard County and were, therefore, not entitled to free school attendance in the jurisdiction.

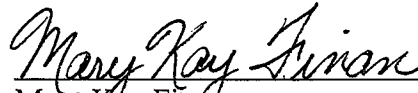

James H. DeGraffenheidt, Jr.
President

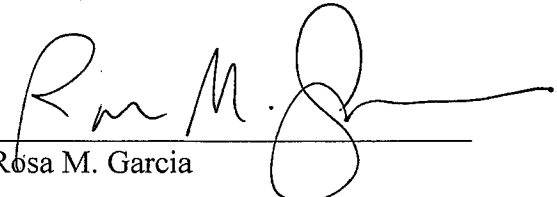

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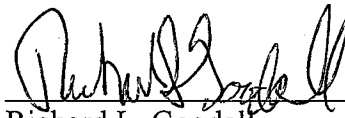

Lelia T. Allen


Dunbar Brooks

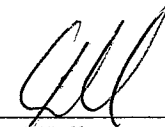

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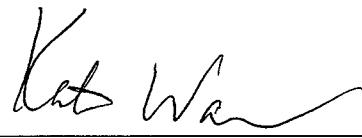

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October 28, 2008