

AUTUMN S.,

Appellants

v.

ANNE ARUNDEL COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 09-24

OPINION

INTRODUCTION

In this appeal, Appellant challenges the decision of the Anne Arundel County Board of Education to uphold the withdrawal of her daughter from Ridgeway Elementary School 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.

FACTUAL BACKGROUND

Appellant's daughter, C.S., was enrolled in kindergarten at Ridgeway Elementary School (Ridgeway) for the 2007-2008 school year. Her attendance at that school was based on an address at 1620 Shannon O Circle in Severn, Maryland, where Appellant says she and her daughter live with Appellant's mother.

During the 2007-2008 school year, staff at Ridgeway initiated a residency investigation because Appellant had failed to respond to requests for supporting residency documentation. Anne Arundel County Public Schools' (AACPS) Regulation JAB-RA requires proof of bona fide residency in the form of a lease, deed, or tenant residency verification form, plus one additional form of acceptable documentation. Although Appellant had submitted the tenant residency verification form listing the Shannon O Circle address, she had not submitted any additional documentation as set forth in the Regulation.

Ernest E. Miles, III, Pupil Personnel Worker, conducted the residency investigation for the school system. He observed the home at Shannon O Circle at approximately 7:30 a.m. on November 28, 2007, December 6, 2007, and January 7, 2008. Mr. Miles did not see the Appellant or C.S. leave the property on any of those occasions, but the student was present at school each of those days. Mr. Miles also learned that C.S. does not ride the school system's transportation and that she attends before and after school care at her Aunt's house on Allard Court in Glen Burnie. In addition, Mr. Miles discovered that a Ridgeway staff member observed

Appellant driving with her daughter from MD Route 100 to the school one morning, although no portion of the Ridgeway attendance area requires the use of MD Route 100. Due to the lack of documentation and the results of the investigation, Mr. Miles concluded that Appellant did not reside at the Shannon O Circle address. He was unable to verify Appellant's actual residence, however.

The school Principal, Vickie Wardell, advised Appellant that C.S. was being withdrawn from school as of January 28, 2008, because Appellant had failed to sufficiently establish residency within the Ridgeway attendance zone. She advised Appellant to enroll C.S. at the school in the area of her bona fide residence. (Wardell Letter, 1/8/08).

Appellant appealed the Principal's determination to Dr. Rhonda Gill, the Director of Student Services. Before the decision was rendered, the principal withdrew C.S. from the school. Thereafter, the principal's decision was upheld on the grounds that the investigation had been unsuccessful in determining her bona fide residence and the tenant verification form was not verified. (Gill Letter, 2/11/08).

Appellant appealed the decision to the Superintendent's Designee, Arlen Liverman. While that appeal was pending, Appellant advised Deborah Wooleyhand, Pupil Personnel Worker, that she leaves her home prior to 6:30 a.m. to take C.S. to before school care, thus a home visit would have to take place before that time in order for her to be observed leaving the Shannon O Circle address with C.S. Appellant did not produce any additional residency documentation.

The school system's residency investigation continued with Ms. Wooleyhand conducting additional home visits. On Saturday, March 1, 2008 she visited the property two times, at 8:30 a.m. and 3:30 p.m.. She did not observe anybody at home on either occasion. On Sunday March 2, 2008, she visited the property at 10:30 a.m. and observed only the car belonging to Appellant's mother in the driveway. Ms. Wooleyhand also visited the home at 6:15 a.m. on a school day, again observing the car belonging to Appellant's mother at the address. She did not observe Appellant or C.S. at the property during any of these visits. Based on this information and a lack of documentation to verify residency, the Superintendent's Designee upheld the determination that Appellant had not established residency in the Ridgeway attendance zone. (Liverman Letter, 3/14/08).

Appellant appealed the decision of the Superintendent's Designee to the local board. Appellant explained that she has lived with her mother at the Shannon O Circle address since November of 2005, and that she does not have utility bills or a lease in her name because of the living arrangement. (Appellant Letter, 3/31/08). Attached to her appeal, Appellant submitted two W-2 statements from tax year 2007 which were addressed to her at the Shannon O Circle address, and copies of several envelopes, including one from her employer, postmarked May 2008 addressed to her at that address.

The school system continued its investigation while the appeal was pending before the local board. Mr. Miles conducted another home visit on June 6, 2008. He knocked on the door of the home at 7:30 a.m. and there was no answer. The car belonging to Appellant's mother was at the property. On June 10, 2008, a Ridgeway cafeteria worker who lives in the same community as Appellant's mother claimed that she has never observed Appellant or C.S. at the Shannon O Circle address.

Thereafter, the local board affirmed the decision of the Superintendent's Designee, finding that Appellant failed to establish bona fide residency within the school attendance zone. The local board considered the additional documents submitted by the Appellant in her appeal, but found that those documents failed to establish that she was residing at the Shannon O Circle address. Rather, the local board stated that the documents proved only that Appellant had given the address to others as her place of residence. (Local Board Decision).

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

Due Process

There is a procedural issue of concern in this case, although it was not raised by the Appellant. Based on the record, it appears that the school system removed C.S. from school at the end of January 2008, after the principal determined that Appellant did not reside at the Shannon O Circle address, but before a decision was rendered at the first level of appeal to the Director of Student Services. (Wardell Letter, 1/8/08). This action is supported by AACPS Regulation JAB-RA(C)(6) which provides that a student who is fraudulently enrolled in AACPS will be withdrawn from school within 15 calendar days upon written notice by the principal.¹ Our concern over a child being removed from school without the school system providing appropriate due process prior to removal has led us to examine this matter.

Maryland students have a right to a free public school education. Article VIII, Section 1 of the Maryland Constitution provides for the establishment of a "thorough and efficient system

¹The Regulation allows for an extension of that notification period for an additional 15 days, at the discretion of the principal. *Id.* The record does not show that the principal extended the time frame here.

of free public schools” State statute has implemented this mandate providing that “all individuals who are 5 years old or older and under 21 shall be admitted free of charge to the public schools of this State.” Md. Code. Ann., Educ. 7-101(a). Thus, this entitlement to education is protected by the due process clause of the Fourteenth Amendment as a property interest. *Thomas v. Allegany County Bd. of Educ.*, 52 Md App. 312, 319 (1982). As such, an individual is entitled, at a minimum, to notice and an opportunity to be heard prior to the deprivation of that property right. *Cleveland Bd. of Educ. v. Loudermill, et al.*, 470 U.S. 532, 542 (1985); *Goss v. Lopez*, 419 U.S. 565, 579 (1975).

We recognize that under State law, students are required to attend school within the jurisdiction in which they reside with their parent or guardian, Md. Code Ann., Educ. 7-101, and that within those jurisdictions, the local boards of education establish the geographical attendance area for the public schools that those children will attend. Md. Code Ann., Educ. 4-109(c). Nonetheless, if a student enrolled in a school has been advised by that school that they have not demonstrated bona fide residency sufficient to remain enrolled there, the school system must provide a fundamentally fair process to determine whether residency has been misrepresented prior to depriving that student of their right to attend school.

In this case, on January 8, 2008, the principal first advised Appellant that her daughter was being removed from school at the end of the month due to a problem establishing residency in the attendance area. The Appellant challenged the residency determination made by the school principal, appealing it first to the Director of Student Services, then to the Superintendent’s Designee, and then to the local board. After the principal issued her decision, she permitted C.S. to remain in school until such time that Appellant’s appeal to the Director of Student Services was due to be filed. At this point, but prior to a decision being rendered by the Director of Student Services, the principal removed C.S. from school.

The concept of due process includes the guarantee that a person will not be deprived of a protected interest before she has notice of the impending action, an opportunity to explain why it should not occur and a decision in the matter. We conclude that when the school system removed C.S. from school before a decision was rendered by the Director of Student Services, it violated C.S.’s due process rights.²

²In cases such as this one, we encourage school systems to consider giving the student the option to remain enrolled in school until the local board has rendered its decision. Such an action would help avoid the unfair or mistaken exclusion of the student from the educational process in the event of an error. Such an action would not necessarily result in financial loss to the school system if it turns out that the student actually resides in a different jurisdiction. School systems are permitted to charge tuition to the parent if the student is fraudulently enrolled in a school in a jurisdiction where the child is not domiciled with the child’s parent or guardian. Md. Code Ann., Educ., §7-101(a)(3). In AACPS, Regulation JAB-RA (C)(6) provides that the parent is financially liable for the tuition for the entire time of fraudulent enrollment or attendance.

Residency Determination

Each local board of education establishes the geographical attendance area for the public schools within its jurisdiction. Md. Code Ann., Educ. 4-109(c). Like the other jurisdictions in Maryland, Anne Arundel County Public Schools (AACPS) requires students to attend the school designated to serve the attendance area of their bona fide residence. *See* AACPS Regulation JAB-RA(B). In order to determine what school within the jurisdiction a child is to attend, a student's parent or guardian provides proof of bona fide residency to the school system upon the child's enrollment in school. AACPS requires a parent to provide two forms of documentation as proof of residency. Mandatory documentation includes a lease, deed, or tenant verification form. JAB-RA (C)(1)(c). A second form of proof is also required, such as a utility bill, telephone bill, current bank statement, property tax/income tax notice, W-2 form, Social Security check, child support check issued by the Office of Child Support Enforcement, Passport, Visa-entrance into the United States, or voter's registration. *Id.* The parent has the burden of establishing bona fide residency to the satisfaction of the school principal. *Id.*

In this case, throughout most of the school system's appeal process, the Appellant failed to submit the appropriate documentation to establish residency at the Shannon O Circle address, despite multiple requests for proof of residency by school system personnel. It was only in her appeal to the local board that Appellant finally submitted two W-2 statements from the 2007 tax year and envelopes addressed to her at the Shannon O Circle home. Until that juncture, Appellant had submitted nothing more than the tenant residency verification form which is insufficient on its own under AACPS Regulation to establish bona fide residency in a school attendance area.

In its decision, the local board looked at the totality of the evidence before it in deciding to uphold the residency determination made by the Superintendent's Designee. The evidence in the record included Appellant's tenancy verification form listing the Shannon O Circle address³ and the two W-2 forms in her name at the same address. Under Regulation JAB-RA (C)(1)(c), this is all that Appellant was required to submit to demonstrate bona fide residency.

Yet the local board dismissed the W-2 forms as irrelevant, stating as follows:

The Board has not ignored the documents presented by [Appellant]. She has submitted two W-2 statements from tax year 2007, showing the Shannon O Circle address, along with envelopes showing that mail has been sent to her at that address. The Board does not need to determine if [Appellant] ever lived at that address in the past or if she has given that address to others as her residence. She may have done so. We find, however, that she has

³The form was signed by Appellant who attested that the information was accurate. The form was also signed by Appellant's mother as the name of the homeowner/renter.

not proven that she and [C.S.] reside there now.

While this explanation may make sense concerning the envelopes, we do not think that the same can be said for the W-2 forms. Rather, it seems unreasonable for the local board to dismiss the W-2 forms as merely showing that the Appellant lived at that address at some point or that Appellant gave the address out to others as her residence when the AACPS Regulation allows an individual to submit W-2 forms as proof of residency. The tax forms are for the tax year 2007. One of the forms was sent by mail postmarked January 22, 2008. Thus, they appear relevant to the time frame at issue in the appeal.

An examination of the evidence leads us to question whether a reasoning mind could have reasonably reached the same decision as the local board. Therefore, we turn to the investigation results in order to discern if the information is sufficient to overcome the presumption of residency established by the Appellant.

The local board found the multiple home visits made by Mr. Miles to be of particular importance. (Local Board Decision at 3). Although C.S. was present in school on each of those visitation days and Mr. Miles never observed Appellant and C.S. leave the Shannon O Circle address, on each occasion Mr. Miles visited the property at approximately 7:30 a.m. Appellant later advised Ms. Wooleyhand that she leaves the property prior to 6:30 each morning to take her daughter to before-school care prior to going to work. Thereafter, only one home visit took place prior to 6:30 a.m. on a school day – the visit conducted by Ms. Wooleyhand on March 23, 2008. Although Ms. Wooleyhand failed to observe the Appellant or C.S. leave the home to go to before-school care on that day, we do not believe that one home visit prior to 6:30 a.m. is sufficient to overcome the residency documentation submitted by the Appellant.

In addition, Ms. Wooleyhand's three weekend visits to the property do not seem conclusive regarding residency. Two of the visits took place on the same day and nobody was home either time. The next day, Ms. Wooleyhand drove by the home at 10:30 a.m. and the car belonging to Appellant's mother was in the driveway. Ms. Wooleyhand did not approach the house or knock on the door to see if the Appellant or C.S. were present.

The local board also places credence on the fact that a Ridgeway employee who lives in the same neighborhood as the Shannon O Circle address reported that she has never seen the Appellant or C.S. at that address. This fact holds little weight. It is possible to live in a neighborhood without observing all who live there. The record contains no information about where this employee lives in relation to the Shannon O Circle address (other than being in the same neighborhood) and whether the employee has conducted home visits of that residence.

The record also contains information that a Ridgeway staff member observed Appellant driving her daughter to school one morning from MD Route 100 when no portion of the Ridgeway attendance area requires the use of MD Route 100. Again, this information reveals nothing. School system staff did not question Appellant about her whereabouts that morning or

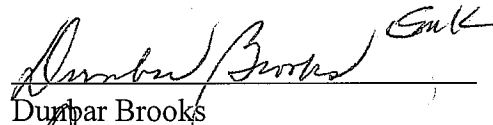
ask her why she was traveling that route. Appellant could have been traveling that route for any number of reasons.

We recognize that it is the Appellant's burden to demonstrate bona fide residency in the Ridgeway attendance area. The Appellant submitted a tenant verification form claiming the Shannon O Circle address as her residence and two W-2 forms for tax year 2007 listing Appellant at the Shannon O Circle address. This is all that is required under AACPS Regulation for the Appellant to establish residency. The question is whether the information produced during the school system's investigation trumps this presumption of residency at Shannon O Circle. As explained above, we believe the school system's investigation was ill-timed and faulty, which calls into question the weight to be given to the information it produced. Given the totality of the information that was before the local board, we conclude that a reasoning mind could not have reasonably reached the decision that Appellant failed to establish residency at the Shannon O Circle address.

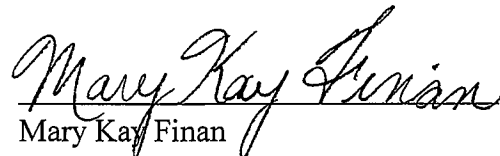
CONCLUSION

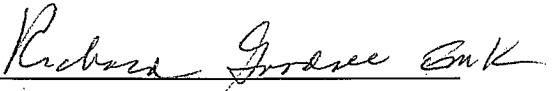
A decision is illegal if it is unconstitutional or results from unlawful procedure. COMAR 13A.01.05.05C. A decision is arbitrary or unreasonable if a reasoning mind could not have reasonably reached the conclusion the local board reached. COMAR 13A.01.05.05B(2). For the reasons discussed above, we believe that the school system's actions were arbitrary, unreasonable and illegal. Therefore, we reverse the decision of the local board.


James H. DeGraffenreidt, Jr.
President

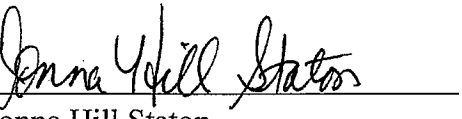

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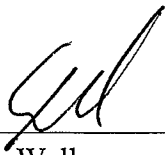

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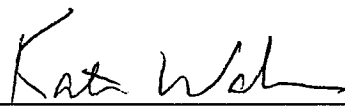

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June 30, 2009