

ALANA C.,

Appellant

v.

BALTIMORE COUNTY BOARD
OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 09-35

OPINION

INTRODUCTION

In this appeal, Appellant challenges the local board's decision that she was ineligible to attend Towson High School (Towson) because she failed to establish that she resided in the Towson attendance area. The Baltimore County Board of Education (local board) has filed a Motion to Dismiss the appeal maintaining that it is moot given that Appellant has already graduated from Towson High School. Alternatively, the local board has filed a Motion for Summary Affirmance maintaining that the residency decision is not arbitrary, unreasonable, or illegal. Appellant has responded to the Motions.

FACTUAL BACKGROUND

During the 2008-2009 school year, Appellant was a senior attending Towson. At some point prior to the start of the school year, school administrators became concerned about Appellant's residency status when the school received returned mail that had been addressed to the Appellant at 8 Knoll Ridge Court, Apt. 1722 in Baltimore, Maryland, her address on record with the school. The returned envelopes indicated a forwarding address of 1500 Karens Way in York, Pennsylvania. (Motion, Ex. 2, Supt. 9A&B). School administrators had also learned that Appellant had told classmates that she had moved into a new home in Pennsylvania. (Motion, Ex. 3, Superintendent 8; Tr.61-62).

Pupil Personnel Worker, Adrienne Dickerson conducted a residency investigation. She discovered that Appellant's mother, Alicia Braxton, had purchased the home in Pennsylvania on July 2, 2008.¹ (Motion, Ex. 2, Supt. 10; Tr.64). On August 18, 2008, Ms. Dickerson conducted a home visit of apartment #2011 at 32 Over Ridge Ct. in Baltimore, Maryland, 21210, where Ms.

¹Ms. Braxton maintains that she bought the home in December 2007. There is no explanation in the record for this discrepancy.

Braxton claimed she was now residing with her daughter.² The name C. Brown was on the door of the apartment. C. Brown stands for Curtis Brown, Ms. Braxton's fiancé. Ms. Dickerson spoke with an unnamed female who stated that she lived in an apartment upstairs and that Mr. Brown had recently moved into apartment #2011. (Tr. 65). Ms. Dickerson also spoke to the property manager who stated that Ms. Braxton had moved to Pennsylvania during the summer and no longer resides at the apartment complex. The property manager would not provide any information regarding Mr. Brown's lease with the apartment complex. (Tr.65-66).

Based on this information, by letter dated August 19, 2008, the school principal notified Ms. Braxton that the school had conducted a residency investigation and determined that Appellant was fraudulently enrolled in Baltimore County Public Schools (BCPS). The principal advised that Appellant would be withdrawn from Towson on September 2, 2008. (Motion, Ex. 2, Supt. 7). Ms. Braxton appealed the residency decision. By letter dated August 28, 2008, Mary Jo Slowey, the Residency Liaison, denied the appeal.

Ms. Braxton appealed Ms. Slowey's decision. Carol R. Batoff, the Superintendent's Designee, reviewed the case and met with Ms. Braxton. During that meeting, Ms. Braxton provided the following information pertaining to Appellant's residency: During the 2007-2008 school year, Ms. Braxton and her daughter had resided at an apartment at 8 Knoll Ridge Ct. in Baltimore, Maryland. In December 2007 Ms. Braxton purchased a home for investment purposes in Pennsylvania. She and Appellant moved into that home temporarily during the summer of 2008 with Ms. Braxton's fiancé, Mr. Brown, and his daughter. While they resided in Pennsylvania, Ms. Braxton's mail was forwarded to the Pennsylvania address. In mid-August 2008, however, Ms. Braxton and Appellant moved back to the Baltimore area, and have been residing with Mr. Brown and his daughter at Mr. Brown's apartment at 32 Over Ridge Ct. in Baltimore, Maryland. Mr. Brown is the leaseholder for the apartment and Ms. Braxton, Appellant, and Mr. Brown's daughter are listed as occupants. Ms. Braxton's mail is no longer forwarded to Pennsylvania and she receives her mail at the Over Ridge Ct. address. (Motion, Ex. 2, Supt. 2).

Dr. Batoff reviewed the case and the results of Ms. Dickerson's investigation. Dr. Batoff reported the following:

During my investigation, I learned that during a visit to the Elkridge Estates Apartments, Ms. Dickerson was informed by the community manager of the apartments that you do not reside in the Elkridge Estates Apartments and that you moved to Pennsylvania. While researching this appeal, I also found that you have informed Towson HS and Ms. Dickerson that you had rented a house in Pennsylvania for the summer and that you and [Appellant] had

²The Over Ridge Ct. apartment is in the same complex as the Knoll Ridge Ct. apartment. Ms. Braxton works for the company that manages the property.

moved back to the Over Ridge Court apartment when the summer ended. Furthermore, in an effort to document your residency, you provided to the school a copy of a document entitled. "Allen and Rocks, Inc. Employee Occupancy License," stating that an agreement was made on August 1, 2008 "by and between Allen & Rocks, Inc. . . . and [you]" granting you a "license to occupy an apartment at 32 Over Ridge Court, #2011 Baltimore, Maryland 21210." The agreement also lists [Appellant] as the only person authorized to occupy the apartment unit other than you.

Moreover, on November 7, 2008, Ms. Dickerson visited 32 Over Ridge Court, Apartment 2011 once more. She encountered a resident of the building whom she had met on her earlier visit. The resident again stated that no one other than Mr. Brown resides in apartment 2011 and that "occasionally a young girl comes to visit."

Dr. Batoff upheld Ms. Slowey's decision finding that Appellant did not reside in Baltimore County.

Appellant appealed to the local board. The local board assigned a Hearing Examiner who conducted an evidentiary hearing. Appellant submitted the following relevant evidence bearing the Over Ridge Ct. address:

- Appellant's Maryland Provisional Driver's License issued August 18, 2008 (Motion, Ex. 2, App's. 1);
- College Board SAT scores sent to Appellant by undated letter post marked December 12, 2008 (Motion, Ex. 2, App's. 2);
- Ms. Braxton's Maryland Driver's License issued December 13, 2007 with Knoll Ridge Ct. address with address correction card dated August 11, 2008 (Motion, Ex. 2, App's. 3);
- MVA Registration Certificate for Appellant's car, expiring September 30, 2010 (Motion, Ex. 2, App's. 4);
- Ms. Braxton's ADP Earnings Statement for January 2009 (Motion, Ex. 2, App's. 5);
- BG&E bill for Mr. Brown and Ms. Braxton for billing date October 20, 2008 (Motion, Ex. 2, App's. 6);
- Envelope sent by certified mail to Ms. Braxton with Pennsylvania address crossed out and Over Ridge Ct. address written in postmarked November 10, 2008 (Motion, Ex. 2, App's. 7);
- Envelope sent by regular mail to Ms. Braxton with Pennsylvania address crossed out and Over Ridge Ct. address written in postmarked November 10, 2008 (Motion, Ex. 2, App's. 7);
- Envelopes from school system sent to Ms. Braxton at Over Ridge Ct.

address postmarked August 28, 2008, October 22, 2008, and November 10, 2008 (Motion, Ex. 2, App's. 8);

- Lease Agreement for Over Ridge Ct. apartment signed September 6, 2008 by Mr. Brown, listing Ms. Braxton, Appellant and Mr. Brown's daughter as occupants (Motion, Ex. 2, App's. 9);
- Ms. Braxton's SECU Statement for December 2008 listing Over Ridge Ct. address (Motion, Ex. 2, App's. 12);
- M&T Bank Statement for Ms. Braxton and Mr. Brown for October 2008 listing Over Ridge Ct. address (Motion, Ex. 2, App's. 13).

The Employee Occupancy License referenced by Ms. Batoff in her decision is not a part of the record. Appellant testified at the hearing before the Hearing Examiner that she initially submitted the Employee Occupancy License because she was originally going to lease the apartment in her name from her employer, Allen and Rocks, Inc. As an employee, she could lease an apartment in the complex and have the rent deducted from her salary. Ms. Braxton later decided that it was not in her economic interest to lease the apartment in her name, and she terminated the agreement with her employer. Mr. Brown leased the apartment in his name instead. (Tr.22-24). Ms. Braxton explained that although Mr. Brown signed the lease on September 6, 2008, he had taken possession of the apartment in August 2008. (Tr.22). This is corroborated by the fact that when Ms. Dickerson conducted her home visit on August 16, Mr. Brown's name was on the door. (Tr.65).

Testimony at the hearing disclosed that Ms. Dickerson visited the Over Ridge Ct. apartment on two occasions. On August 18, 2008, she visited in the middle of the day, at approximately 1:30 p.m., but nobody was home. That visit is discussed in more detail above. On or about November 5, 2008, Ms. Dickerson visited the apartment for a second time at approximately 3:00 p.m. Again, nobody was home. The same female from the prior visit told Ms. Dickerson that Mr. Brown lives in the apartment and a young girl comes from time to time. (Tr.66).

Part of the testimony and evidence at the hearing focused on the delivery of an envelope sent by the school system to Ms. Braxton at the Pennsylvania address by certified mail postmarked November 10, 2008. Although the school system stamped the envelope "Do Not Forward", the Pennsylvania address was crossed out and the statement "FWD: 32 Over Ridge Court Baltimore MD 21210" was handwritten on the envelope. (Motion, Ex. 2, App't's 7). The certified mail return receipt for that envelope shows that it was delivered on November 21 and signed for by Appellant. Ms. Braxton testified that the Appellant signed for the envelope at the Over Ridge Ct. apartment when she was home from school due to illness. The return receipt does not show that the envelope was delivered to an address other than the Pennsylvania address that is listed on the return receipt card, despite the area on the card for listing a different delivery address. (Motion, Ex.2, Supt. 2).

The Hearing Examiner found that the information developed during the course of the investigation by Ms. Dickerson clearly indicated that the family resided at the house in York, Pennsylvania. The Hearing Examiner placed heightened importance on the fact that the Appellant had signed the return request receipt for a letter addressed to her mother at the Pennsylvania address on November 21, 2008. From this, the Hearing Examiner concluded that Appellant was recuperating from her illness at the Pennsylvania address. The Hearing Examiner stated that Ms. Braxton gave no explanation why her daughter would be convalescing in Pennsylvania if she was truly living at the Over Ridge Court address.

Oral argument before the local board took place on May 5, 2009. The local board was unable to reach a concurrence of a majority of the members. Three members voted to adopt the Hearing Examiner's Decision and Recommendation and six members voted to reject the Decision and Recommendation. (Motion, Ex. 6).

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

Motion to Dismiss

The local board has filed a Motion to Dismiss maintaining that the issue of Appellant's residency is moot given that she has completed her senior year at Towson High School. A question is moot when "there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the courts [or agency] can provide." *In Re Michael B.*, 345 Md. 232, 234 (1997); *See also Arnold v. Carroll County Bd. of Educ.*, MSBE Opinion No. 99-41 (1999); *Farver v. Carroll County Bd. of Educ.*; MSBE Opinion No. 99-42 (1999); *Chappas v. Montgomery County Bd. of Educ.*, 7 Op. MSBE 1068 (1998).

Appellant maintains that the matter is not moot because her mother is subject to the payment of tuition if it is determined that she was not a Baltimore County resident during the 2008-2009 school year. Rule 5150(V)(A) states that if the school system determines that a student is fraudulently enrolled in Baltimore County Public Schools, the parent will be financially liable for tuition for the entire time of fraudulent enrollment or attendance. In addition, Rule 5150 (IV)(B)(5) provides that if a student has completed the 11th grade at a BCPS high school and the parent moves from Baltimore County, the student may complete 12th grade at the student's current BCPS high school if the parent pays tuition. We therefore find that,

although Appellant has completed her senior year at Towson and has already graduated from high school, the issue of her residency status is not moot because Ms. Braxton is subject to the payment of tuition if Appellant fails to establish that she was legitimately enrolled in a Baltimore County Public School.

Local Board's Decision

As a preliminary matter we raise, *sua sponte*, a procedural issue that has resulted in an internal inconsistency regarding the local board's Opinion and Order. The Opinion and Order states as follows:

Based upon this Board's independent review of the record, and having heard Oral Arguments by the parties on May 5, 2009, and there not being a concurrence of the majority of the whole Board (i.e., seven (7) Members) to reject the Findings of Fact, Conclusions of Law and Recommendation of the Hearing Examiner the Board hereby adopts the Findings of Fact, Conclusions of Law and Recommendation of the hearing Examiner, John A. Austin, Esq. . . .

Accordingly, it is this 6 day of May, 2009, ORDERED, that the Findings of Fact, Conclusions of law and Recommendation are adopted and the decision of the Superintendent concerning the enrollment of [Appellant] is hereby affirmed.

The Opinion and Order is signed by 9 of the board members. Three members voted "to adopt the Findings of Fact, Conclusions of Law and Recommendation of the Hearing Examiner," six voted "not to adopt the Findings of Fact, Conclusions of Law and Recommendation of the Hearing Examiner." The other three members did not sign. (Local Board Opinion and Order).

A local board may not adopt a motion or resolution without the concurrence of a majority of the whole board. COMAR 13A.02.01.01A; *see also* BCPS Policy 8320. The local board needed the vote of 7 members to either adopt or reject the Hearing Examiner's decision, yet only 3 voted to adopt and 6 voted to reject. When a local board cannot reach a concurrence of the majority on a vote it is as though the board has taken no action. Thus, the Opinion and Order should not state that the local board adopted the Hearing Examiner's decision and affirmed the local Superintendent's decision on this matter. Rather, the local board took no action and the local Superintendent's decision remained in effect.

Residency Decision

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, Baltimore County requires students to attend the school designated to serve the attendance area in which they reside with their parent or guardian. BCPS Rule 5140 (II). In order to determine what school within the jurisdiction the child is to attend, a student's parent or guardian provides proof of residency to the school system upon the child's enrollment in school. It is the parent's burden to establish residency. Policy 5150(1).

Typically the parent would need to produce a deed or lease showing an interest in a residential dwelling unit in the geographic attendance area. Rule 5150(II)(A). In cases in which the parent does not own or lease the residential dwelling unit in which they live, the parent can establish residency through a "shared domicile arrangement." Rule 5150(II)(B). To establish the "shared domicile arrangement", the parent must submit a completed and notarized BCPS Shared Domicile Disclosure Form that has been signed by the parent and the owner/leaseholder of the residential unit, as well as a copy of the deed or lease establishing the owner's/leaseholder's interest in the property. In addition, the parent must submit photo identification³ and three items of proper documentation of residency as set forth in Rule 5150. (*Id.*). Proper documentation includes a mailing to the parent from a government agency, charge account/credit card billing statement, bank account statement, utility bill, Motor Vehicle Administration vehicle registration, driver's license that was not previously used as photo identification, first class mail from a business or agency, mailing from a Baltimore County public school or office, and a paycheck/paystub stating name and address. Rule 5150(II)(A)(3).

Because Appellant maintains that she and her mother were living in the Over Ridge Ct. apartment with Mr. Brown, the leaseholder, Appellant's residency would fall under the "shared domicile arrangement."

In order to satisfy the residency requirements, Ms. Braxton submitted Mr. Brown's lease for the Over Ridge Ct. apartment, a photo identification, and several other documents bearing her name or Appellant's name and the Over Ridge Ct. address. Those documents are as follows:

- Ms. Braxton's MVA address correction card dated August 11, 2008;
- Appellant's provisional driver's license issued August 18, 2008;
- BG&E bill for Mr. Brown and Ms. Braxton dated October 20, 2008;
- Appellant's MVA vehicle registration;
- Envelopes addressed to Ms. Braxton from BCPS dated August 28, 2008, October 22, 2008, and November 10, 2008;
- Ms. Braxton's ADP Earnings Statements for January 2009;

³The document used as photo identification cannot also be used as one of the three additional documents required to verify the address of residence. Rule 5150(II)(A)(1).

- Ms. Braxton's SECU statement for December 2008; and
- Ms. Braxton's and Mr. Browns' M&T Bank Statement for October 2008.

These are all acceptable items of proof of residency under Rule 5150 (II)(A)(3).

It appears that the only required item that Ms. Braxton failed to submit was a Shared Domicile Disclosure Form. The absence of this form, however, is not mentioned in any of the school system's decisions regarding Appellant's residency status. Nor is it clear whether the school system's residency officer provided this form to Ms. Braxton as provided in Rule 5150(II)(B)(1)(b). In any case, Ms. Braxton and Appellant are listed as occupants of the Over Ridge Ct. apartment on Mr. Brown's lease with the apartment complex.

An examination of the evidence that the Appellant submitted raises a strong presumption that the Appellant resided at Over Ridge Ct. We turn to the investigation results and the other evidence and testimony submitted at the hearing in order to discern if the information is sufficient to overcome the presumption of residency established by the Appellant.

Ms. Braxton has never denied that she owns the Pennsylvania home or that she and Appellant lived there during the summer months of 2008. Ms. Braxton testified that she had her mail forwarded to the Pennsylvania address during the summer months after moving from her prior address at Knoll Ridge Ct. This would explain why the school received returned mail stamped August 18, 2008 and September 25, 2008 addressed to Appellant at Knoll Ridge Ct. noting that the forwarding order to the Pennsylvania address had expired. Because Ms. Braxton claims that she and her daughter moved to the Over Ridge Ct. apartment in mid-August, the residency investigation must start there to determine where they were actually residing for the 2008-2009 school year.

We know that Ms. Braxton was not the leaseholder for the Over Ridge Ct. apartment. The apartment was leased by Mr. Brown, Ms. Braxton's fiancé. Ms. Braxton and Appellant are listed as occupants on the lease. There may have been some confusion at the onset of the school year because Appellant had initially submitted to Dr. Batoff a copy of an Employee Occupancy License in her name for the apartment. Appellant testified that it took her and Mr. Brown some time to determine the best economic arrangement for the leasing of the apartment. They decided that it made more economic sense for Mr. Brown to lease the apartment in his name alone so that Ms. Braxton's employer would not deduct the rent payment from her paycheck. (Tr.22-24).

As part of her investigation of the case, Ms. Dickerson made two home visits to the Over Ridge Ct. apartment. Nobody was home at the apartment either time. The fact that Ms. Braxton's name was not on the door is explained by the fact that she was not the leaseholder. No visits were made to the York, Pennsylvania home.

Ms. Dickerson spoke with two individuals during those home visits. During the first visit in August, the apartment manager told Ms. Dickerson that Ms. Braxton and her daughter moved

to Pennsylvania during the summer and no longer lived at the apartment complex. It is unclear whether the apartment manager would have been aware of the change in Ms. Braxton's living arrangements for the school year. The apartment manager was unwilling to provide Ms. Dickerson with any information about the validity of Mr. Brown's lease. No explanation for this refusal was provided. Ms. Dickerson also spoke with an unnamed female who claimed to be a tenant in one of the upstairs apartments. This individual told Ms. Dickerson that Mr. Brown lives in the apartment and a young girl visits him from time to time. It is questionable that school system personnel would put stock in a statement from this person without knowing if she had any reason to be aware of the living arrangements at Mr. Brown's apartment.

The school system also had in its possession the signed return receipt for the certified mail that the school sent to Ms. Braxton at the Pennsylvania address with the envelope marked "Do Not Forward." The receipt contains Appellant's signature and a delivery date of November 21, 2008. The receipt does not disclose where the letter was delivered, although no alternative address is provided in the space for the letter being delivered somewhere other than where it is addressed. From this, the school system concluded that Appellant signed for the envelope at the Pennsylvania address on November 21, a day when she was not in school due to illness, and that this tends to prove that Appellant resided at the Pennsylvania address. The Hearing Examiner also reached the same conclusion, placing substantial weight on this evidence.

At the hearing, Appellant submitted the envelope bearing the same United States Postal Service tracking number as the return receipt. Although the school system stamped "Do Not Forward" on the envelope, the Pennsylvania address was crossed out and "FWD: 32 Over Ridge Ct., Baltimore MD 21210" was written on the envelope. Ms. Braxton testified that she did not write the address on the envelope and that it was possible that her friend who was temporarily living at the Pennsylvania home gave the address to the mail carrier during the delivery attempt. Ms. Braxton also testified that Appellant was out sick from school that day and she signed for the envelope at the Over Ridge Ct. apartment. (Tr. 18-19). Given the totality of this information, we cannot agree with the conclusion reached by the Hearing Examiner. Even if we were to assume the Hearing Examiner did not believe Ms. Braxton's testimony, we are still left with the inconclusive documentary evidence of an envelope bearing the two addresses.

In the appeal to the State Board, Appellant seeks to introduce evidence that Appellant signed for the envelope at the Over Ridge Ct. address. That evidence is the United States Postal Service delivery record matching the tracking number for the envelope. That record states that the envelope was delivered on November 21, 2008 at 3:07pm in Baltimore, Maryland 21210, the same zip code as the Over Ride Ct. address. The State Board may receive that evidence if it is material to the case and there were good reasons for Appellant's failure to offer the evidence during the proceedings before the local board. COMAR 13A.01.05.04C.

We consider the additional evidence despite the local board's objection to its admission. Even though the address where the certified mail envelope was delivered was not the only factor considered by the Hearing Examiner to determine residency in this case, the Hearing Examiner


gave substantial weight to the conclusion that Appellant signed for the envelope in Pennsylvania, finding the return receipt and Ms. Braxton's note excusing Appellant from school on November 21 to be "[p]erhaps the most important items of evidence". (Hearing Examiner Decision at 9). This new evidence discounts entirely the assumption that Appellant signed for the envelope at the Pennsylvania address. Additionally, while counsel for the Appellant did not present this evidence during the hearing before the Hearing Examiner, counsel attempted to introduce evidence from the United States Postal Service that the envelope was signed for by the Appellant in Baltimore at oral argument before the local board. The local board did not allow the introduction of the evidence. (Tr. of Oral Argument at 18).


Given the evidence contained in the record, we are not surprised that the local board had difficulty with this case and that six of the nine members in attendance would have reversed the superintendent's decision. We too have our concerns. The local board was only one vote shy of rejecting the Hearing Examiner's decision and reversing the local Superintendent's decision that Appellant was fraudulently enrolled in a Baltimore County Public School. Based on the evidence before us, we will do so.

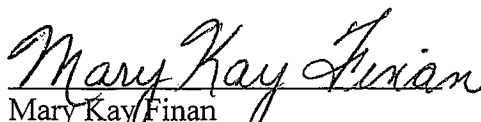
CONCLUSION

We deny the local board's Motion to Dismiss because this case is not moot given that Ms. Braxton is subject to the payment of tuition for the 2008-2009 school year if Appellant is considered to have been fraudulently enrolled in Towson High School.

As to the merits of this case, for the reasons discussed above, we believe that the school system's actions were arbitrary, unreasonable or illegal. Therefore, we reverse the superintendent's decision that Appellant did not reside in Baltimore County during the 2008-2009 school year.


James H. DeGraffenreidt, Jr.
President


Charlene M. Dukes
Vice President


Mary Kay Finan

abstained

S. James Gates, Jr.

Madhu Sidhu

Madhu Sidhu

Guffrie M. Smith, Jr.

Guffrie M. Smith, Jr.

Donna Hill Staton

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Ivan C.A. Walks

Kate Walsh

Kate Walsh

October 27, 2009