

DAVID & NINO K.

Appellant

v.

ANNE ARUNDEL COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 09-43

OPINION

In this appeal, David and Nino K. (“the Appellants”) challenge the decision of the Anne Arundel County Board of Education (“local board”) finding they were not bona fide residents of the attendance area where their children attended school. The local board has submitted a Motion for Summary Affirmance arguing that its decision was not arbitrary, unreasonable or illegal. The Appellants submitted a Response to the local board’s motion, to which the local board filed a Reply.

FACTUAL BACKGROUND

At the start of the 2008-2009 school year, the Appellants indicated on the school system’s Personal & Family Information/Student Registration form that the family lived at 1257 Baltimore-Annapolis Boulevard, Arnold. This address is included in the attendance area where the Appellants’ three children – GDK, LK, and DK – were enrolled in schools. GDK attended Severna Park High School, and LK and DK attended Severna Park Middle School. (Local Bd. Motion, Exh. 2.)

On August 18, 2008, Suzan Altman Farrell, Pupil Personnel Worker, was asked to conduct a residency investigation for LK and DK. (Local Bd. Motion, Exh. 1.) The investigation was prompted by statements from students that LK “lives in a brown castle in Bowie.” (Local Bd. Motion, Exh. 1, Att. 2.) School administrators believed that the Appellants actually resided in Prince George’s County at 2414 Crain Highway, Upper Marlboro.

Ms. Altman Farrell reviewed the students’ files, which included a month-to-month lease of their Baltimore-Annapolis Boulevard address. The lease was executed on August 25, 2008 and became effective on September 30, 2008. (Local Bd. Motion, Exh. 6.) Ms. Altman Farrell confirmed through a property search that the home was owned by Maya and Mikhail Vayshelboym. (Local Bd. Motion, Exh. 8.)

As described in detail in her affidavit, Ms. Altman Farrell conducted a residency investigation between August 19, 2008 and February 9, 2009, which included multiple visits to

the Appellants' Baltimore-Annapolis Boulevard address and their suspected address in Upper Marlboro. (Local Bd. Motion, Exh.1, Att. 1.)

During her visit to the Upper Marlboro address on August 20, 2008 around 11:30 a.m., Ms. Altman Farrell found Mrs. K. at the house, dressed in a bathrobe with her small dog. Mrs. K. stated that this was her work address, where she would spend some nights after working late. Ms. Altman Farrell also observed three vehicles – a white van, blue BMW, and black LandRover - with Pennsylvania tags parked outside the home. Ms. Altman Farrell later confirmed with the U.S. Postal Service on September 26, 2008 that the Appellants receive mail at this address. (Exh. 17.)

Ms. Altman Farrell also visited the Appellants' Baltimore-Annapolis Boulevard address at least 12 times, including weekends, early morning and late evening hours. (Local Bd. Motion, Exh.1, Att. 1.) During these times, Ms. Altman Farrell never observed the Appellants or their children in or coming out of the home. On a couple of dates, she observed LK and DK being transported in a black LandRover from Baltimore-Annapolis Boulevard or walking on Baltimore-Annapolis Boulevard to the bus stop. On other early mornings when she did not observe the boys being transported by school bus or car from Baltimore-Annapolis Boulevard, Ms. Altman Farrell confirmed with school officials or attendance records that the boys were present at school on most of those days. (Exh. 11, 18-19.)

In addition, Ms. Altman Farrell spoke with the Appellants' landlords, who stated the family lived in the basement. However, Ms. Altman Farrell received confirmation from the U.S. Postal Service on an "Address Verification" form that the Appellants did not receive mail at the Baltimore-Annapolis Boulevard address as of August 28, 2008. (Exh. 10.) Moreover, Ms. Altman Farrell spoke to a next door neighbor on two occasions, who indicated that she was not aware of the family living there, and that she and her husband see and hear a black SUV driven by a woman with dark hair drop off two boys around 6:45 a.m. and pick them up around 4:00 p.m. several days a week.

Ms. Altman Farrell conducted additional research into public records online. She checked a reverse phone listing that shows that the three phone numbers provided by the Appellants in school records are listed to an Upper Marlboro and Philadelphia, Pennsylvania address. (Exhs. 12-13.) She conducted a "people search" and whitepages.com search for Mr. K. and found Upper Marlboro, Maryland and Philadelphia, Pennsylvania among his addresses, but nothing at the Baltimore-Annapolis Boulevard address. (Exh. 14, 21.) Further, she searched Maryland court records and found Mr. K. was issued a traffic citation on November 1, 2008 and the address given was 2805 Granite Street, Philadelphia, Pennsylvania. (Exh. 20.)

Based on Ms. Altman Farrell's investigation, the school system concluded that the Appellants resided at 2414 Crain Highway in Upper Marlboro. The Appellants were informed that their children would be withdrawn from their respective schools and that they would need to

be enrolled at a school in their bona fide residence attendance area. (Local Bd. Motion, Exhs. 7, 15-16).

The Appellants appealed the residency determination to the local superintendent's designee, Sarah S. Pelham. Ms. Pelham denied the appeal, concluding that the evidence supported Ms. Altman Farrell's conclusion that the Appellants were not bona fide residents of the Baltimore-Annapolis Boulevard address.

The Appellants next appealed to the local board. On January 22, 2009, M.E. Connolly, Executive Assistant to the Board, sent a certified letter requesting each party to submit "all written documentation, comments and arguments that you believe are essential for the Board to review" by February 12, 2009. (Local Bd. Motion, Exh. 2.) The Appellants received the letter but did not submit any materials for the board to review.

In its decision rendered on March 19, 2009, the local board noted that the Appellants did not respond to the request for information relevant to the appeal. (Local Bd. Decision at 2.) The local board explained that its policy places the burden of establishing bona fide residency on the student, caretaker, parent or legal guardian. Because the Appellants failed to submit any materials for the board's review, the board concluded that the Appellants "forfeited their opportunity to persuade the Board that their sons meet the applicable residency requirements." (*Id.*) Accordingly, the local board upheld the decision of the superintendent's designee.

Following the local board's decision, the Appellants' children were administratively expelled from the school system on April 3, 2009. The Appellants timely filed their State Board appeal on April 13, 2009, and requested an emergency stay of the local board's decision to allow the children to complete their educational placements for the remainder of the school year. On April 23, 2009, the parties filed a Joint Consent to stay the administrative expulsion until the end of the school year.

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; *Austin G. v. Prince George's County Bd. of Educ.*, MSBE Op. No. 08-43 (2008); *A.W. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 07-10 (2007).

LEGAL ANALYSIS

The central issue of this appeal is whether the Appellants and their children are bona fide residents of Anne Arundel County. The bona fide residency requirement is a condition of free attendance at Maryland's public schools. *See* Md. Code, Educ. Art. §§7-101, 7-301; 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 children’s parent...” Md. Code Educ. Art. §7-101(b).

Local board Policy JAB/900.01, *Assignment and/or Transfer of Students to a School*, addresses the bona fide residency requirement in the county. The policy provides that “[s]tudents must attend the school designated to serve the attendance area of their bona fide residence.” (*Id.*, sec. C.) “Bona fide residence” is defined as “the actual place of residence the student maintains in good faith. It does not include a temporary residence established for the purpose of free school attendance in the public schools.” (Reg. JAB-RA, Sec. C.1.d.) Moreover, the student, caretaker or parents bear the burden of establishing bona fide residency to the satisfaction of the school principal and Division of Student Services. (*Id.*)

Establishing bona fide residency requires two forms of documentation: (1) either a lease, deed or Tenant Verification Form; and (2) an additional form of documentation, which may include a current bank statement or property tax/income tax notice. (*Id.*) The Appellants submitted a copy of their monthly lease at the Baltimore-Annapolis Boulevard address, which the local board considered as part of the local superintendent’s exhibits. The local board did not find that the Appellants’ lease persuasively demonstrated by a preponderance of the evidence that they were bona fide residents of the county. We agree.

The Appellants’ lease was executed on August 25, 2008 and effective September 30, 2008. (Local Bd. Motion, Exh. 6). According to the 2008-2009 school calendar on the local board’s website, schools opened by August 28, 2009 for all students.¹ This means that the Appellants were not legally entitled to occupy the rental space at this address until September 30, more than one month after their sons started school. In our view, the Appellants’ lease did not persuasively demonstrate they were living in the attendance area for the schools their sons attended by the start of the school year.

While the Appellants stated that they lived in the county for the past four years (*see, e.g.*, Response at 2), they did not provide another address besides the Baltimore-Annapolis Boulevard address in their appeal. It is unclear from the record, therefore, where in the county the Appellants resided prior to executing the monthly lease for the Baltimore-Annapolis Boulevard address.

Secondly, the Appellants state that Mr. K. previously submitted various pieces of mail to school officials showing their residency at the Baltimore-Annapolis Boulevard address, which they attached to their State Board appeal. The Appellants do not address when or to whom they supplied this documentation. Based on our review of the record, we do not find the Appellants’ statements to be credible.

A majority of the mail the Appellants attached to their State Board appeal was dated near

¹ The school system’s calendar indicates that schools opened on August 25-26, 2008, but Ms. Altman Farrell’s affidavit states that Severna Park Middle School opened two days late due to school construction. (Local Bd. Motion, Exh. 1.)

or after the conclusion of the residency investigation, and after the local board's January 22, 2009 request for supporting documentation.² However, the record shows that the Appellants were aware of Ms. Altman Farrell's investigation as early as August 20, 2008, when she spoke with Mrs. K. at the Upper Marlboro address and explained by phone to Mr. K. a day later that she was conducting a residency investigation. (See Affidavit at 1.) Most of the mail submitted by the Appellants is dated more than five months after they were aware of Ms. Altman Farrell's investigation. The Appellants do not address this timing gap, but notably, Ms. Altman Farrell's sworn affidavit details her thorough investigation and does not mention any mail or other documentation the Appellants say they provided. Because this information was not included with the local superintendent's exhibits, it was not reviewed by the local board.

The State Board has consistently declined to address issues that have not been reviewed initially by the local board. See, e.g., *K.W. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 07-20 (2007) (failure to address negative interactions between son and his teacher constituted waiver on appeal); *Lucinda & Jeffrey Miller v. Howard County Bd. of Educ.*, MSBE Op. No. 06-02 (2006); *McDaniel v. Montgomery County Bd. of Educ.*, MSBE Op. No. 03-22 (2003); *Hart v. St. Mary's County Bd. of Educ.*, 7 Op. MSBE 740 (1997). The Appellants seek to circumvent this precedence by arguing that their failure to present requested information to the local board was a mere "technicality" that entitles them to a re-hearing on the merits as the State Board directed in *Jones v. Carroll County Bd. of Educ.*, MSBE Op. No. 01-02.

In *Jones*, the Appellant appealed the local board's decision requiring him to pay the school system tuition. In his appeal before the local board, the Appellant was requested to submit supporting materials for his appeal, but he failed to do so by the specified 10 day deadline. As a result, the local board determined that he failed to meet his burden of proof and denied his request for a tuition waiver.

On appeal, the State Board found that neither the notice from the local board nor the Appeal Information Form contained the 10 day deadline that Mr. Jones missed. Further, Mr. Jones, who was not an attorney, would have had to "carefully read more than two pages of procedural text" before finding the deadline in the local board's procedures. (*Id.* at 4.) In addition, Mr. Jones ultimately mailed the requested materials to the local board, which crossed in the mail with the local board's decision. Under these circumstances, the State Board held that the local board should reconsider Mr. Jones' appeal.

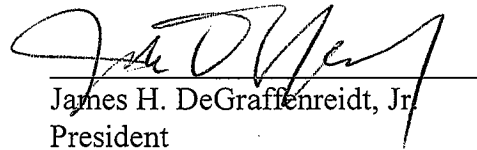
² Ms. Altman Farrell's residency investigation concluded around 2/9/09. With their State Board appeal, the Appellants submitted the following mail that was dated near and after the end of the residency investigation: a 2/3/09 insurance survey; 2/5/09 and 2/11/09 medical appointment reminders; 2/21/09 notice from the Department of Human Resources; cover page of a bank statement for the period ending 2/23/09; and "calendar year 2008" mortgage interest statement. They also submitted a 3/31/09 home school report for LK, which was dated after the local board's decision. The only mail dated before the conclusion of the residency investigation is a 10/17/08 emergency department summary. (Notice of Appeal, Exh. A.)

In our view, the facts in *Jones* are dissimilar to the facts of this case. While it is true the Appellants are not attorneys and were not represented by counsel earlier in their appeal, the local board's notice to them was clear. The nature of the request and time for submitting documents for the board's consideration was conspicuously provided to the Appellants in plain language: "In order to consider this matter thoroughly, the Board of Education decided that the appellant and the Superintendent of Schools submit, by 2:00 p.m. on Thursday, February 12, 2009, to the Board, all written documentation, comments and arguments that you believe are essential for the Board to review." (Local Bd. Motion, Exh. 2.) Our view is that the Appellants' failure to submit evidence to the local board was not a "mere technicality" that should be overlooked.

Based on our review of the record before the local board, the local board evaluated the results of an exceedingly thorough residency investigation, and the Appellants failed to meet their burden of proof to establish they were bona fide residents of the Baltimore-Annapolis Boulevard address. In our view, therefore, the local board's decision was not arbitrary, unreasonable or illegal and should be upheld.

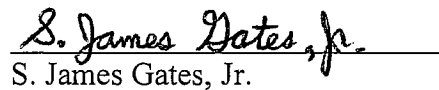
CONCLUSION

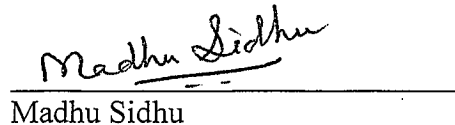
For all these reasons, we affirm the decision of the Anne Arundel County Board of Education.


James H. DeGraffenreidt, Jr.
President

ABSENT
Charlene M. Dukes
Vice President

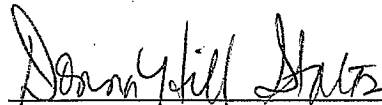

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Kate Walsh

December 10, 2009