

STACEY M.,

Appellant

v.

ANNE ARUNDEL COUNTY BOARD
OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 10-11

OPINION

INTRODUCTION

In this appeal, Appellant challenges the decision of the Anne Arundel County Board of Education (local board) to uphold the withdrawal of her children from Anne Arundel County Public Schools (AACPS) based on failure to establish residency in Anne Arundel County. The local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal.

FACTUAL BACKGROUND

The Appellant has two children attending public school in Anne Arundel County. At the start of the 2009-2010 school year, K.S. was in the fifth grade at Glendale Elementary School (Glendale) and S.S. was in the seventh grade at Lindale Middle School (Lindale). The children were enrolled at school based on a home address at 100 Warfield Road in Glen Burnie.

Appellant is married to Gregory Eason. Mr. Eason owns a barber shop located at 759 Washington Boulevard in Baltimore City. Mr. Eason lives in the residence located in the building. The children also have a biological father who lives in Baltimore City.

The Appellant claims her children reside at 100 Warfield Road in Glen Burnie. She states that the home at that address "has remained in [her] family for over 50 years and [she has] lived there for over 25 years." (Letter of Appeal to Local Board, 9/30/09). She states that she lived there with her grandmother, who passed away in the spring of 2009, at which time the children went to live with relatives in Baltimore City. She does not dispute that the children lived in Baltimore City from March 2009 through May 2009 while they were mourning and while repairs were being made to the 100 Warfield Rd. home. K.S. lived with Mr. Eason and S.S. lived with her father. (Letter of Appeal to State Board). The Appellant also admits that she did not live at the Warfield Rd. home during that time period. (*Id.*). Appellant claims, however, that she has returned to 100 Warfield Rd.

Questions arose in early 2009 regarding the family's residency when the Appellant started picking K.S. up at school in lieu of riding the bus. In addition, staff members overheard K.S. saying that he lived in Baltimore City. On one occasion, K.S. stated that he lived behind his stepfather's barber shop. Another time, while K.S. was riding a bus during a field trip with his class, he pointed to an area near M & T Bank Stadium where he claimed to live. (Residency Investigation Report at 2).

A team of three pupil personnel workers (PPW's) conducted a full and detailed residency investigation in this case. Here is some of the general information they gathered:

- Maryland State Department of Assessments and Taxation (SDAT) records list Dorothy A. M. and Donald I. M. as the owners of the property at 100 Warfield Rd. in Glen Burnie, where the Appellant claims to reside. Dorothy A. M. is the Appellant's aunt.
- The United States Postal Service report states that the Appellant receives mail at both 100 Warfield Rd. and 759 Washington Blvd.

As is customary in these sorts of cases, the investigators conducted home observations to help ascertain residency. From March 2009 through May 2009, they found no evidence of the Appellant's children residing at the 100 Warfield Rd. home. Rather, they found evidence that the Appellant and K.S. were residing at the Washington Blvd. address in Baltimore City with Mr. Eason. For example, they observed Mr. Eason driving K.S. to the Warfield Rd. address in the mornings to wait in the car for the school bus. They also observed Mr. Eason leave Washington Blvd. with K.S. in the early morning to take him directly to school one day. The PPW's also observed Mr. Eason's and Appellant's cars parked regularly outside the Washington Blvd. address in the mornings and afternoons. (Residency Investigation Report).

During the week of July 13, 2009, two PPW's shared responsibilities simultaneously observing the Washington Blvd. and Warfield Rd. addresses at approximately 7:30 a.m. During those five days, a PPW saw the Appellant's car parked outside the Washington Blvd. address each morning, and never saw it parked outside the Warfield Rd. home in the mornings. One of the PPW's also observed the Warfield Rd. address on 3 different days at both 7:00 p.m. and 11:00 p.m. and did not see the Appellant or her vehicle there at those times. (*Id.* at 12). On July 20, 2009 at 7:30 a.m. the PPW's observed the Appellant exiting the 759 Washington Blvd. residence. (*Id.* at 13).

Based on these observations, the PPW's determined that the Appellant did not reside with her children at 100 Warfield Rd. Rather, it was their belief that the children resided with the Appellant in Baltimore City at the 759 Washington Blvd. address. (Residency Verification Form).

At some point prior to the start of the 2009-2010 school year, the school system notified the

Appellant of the residency issue. On September 1, 2009, Sarah S. Pelham, Assistant Superintendent for Student Support Services, advised the Appellant that her request to have her children remain at their schools was denied. She explained that the school system had conducted an investigation and determined that the Appellant resided in Baltimore City. (Pelham Letter, 9/1/09).

The Appellant appealed the residency determination to the local board. In her appeal, she maintained that she and her children have always lived with the Appellant's grandmother at the Warfield Rd. address. She explained that her grandmother passed away in the spring of 2009 and that the children stayed with their father in Baltimore City while they were mourning and also while some repairs were being made on the Warfield Rd. home. She maintained that the children were currently staying with relatives until the hot water heater could be repaired. She also stated that she spends long hours at Mr. Eason's barber shop "overseeing upgrades and enhancements" to the business. (Appeal to Local Board, 9/30/09 and 10/30/09 Letters).

As part of her appeal to the local board, the Appellant submitted the following documents:

- Tenant Residence Verification Disclosure Form signed on October 29, 2009 by Felicia M. attesting that the Appellant and her children reside at the Warfield Rd. address;
- Letter from Felicia M. stating that the Appellant and her children are residents of the Warfield Rd. address; that the Appellant is not subject to a formal lease; and that the Appellant does not pay rent due to her limited finances;
- Copy of the Appellant's Maryland Driver's License issued March 26, 2008 listing the Warfield Rd. address;
- Copy of Appellant's W-2 Wage and Tax Statement for 2008 listing the Warfield Rd. address;
- Copy of Appellant's 2008 Tax Return listing the Warfield Rd. address;
- Department of Social Services Statement listing Warfield Rd. address.

The school system supplemented its investigation after the Appellant appealed to the local board. During the month of October 2009, a PPW passed by both addresses on almost a daily basis. The PPW regularly observed the Appellant's car parked outside of the Washington Blvd. address. The PPW observed the Appellant's car parked at the Warfield Rd. address in the morning on only three occasions that month. The PPW believed that the Appellant had become aware of the investigation and made arrangements to have her car parked there.

On October 27, 2009, one of the PPW's conducted a home visit of the Warfield Rd. house. She described the visit as follows:

I knocked on the door 3 times. A woman answered. I introduced myself and asked for [the Appellant]. The person answered "She isn't here right now." I explained that I was there as part of a

residency investigation for [AACPS] and asked if I could see where the children sleep. I was told the house is under repair and is a mess. I explained I just wanted to see where the children sleep. I was invited into the house. The person answering the door identified herself as Delores [M.], aunt. . . . I was shown two bedrooms. Each bedroom had a bed and various items stored in the bedrooms. A bed was in each room. The beds had sheets and blankets on them as well as articles of clothing. In one of the bedrooms was a pair of small shoes. I asked if they belonged to [K.S.]. I was told yes. . . . I asked if the children stayed there on a regular basis. I was told they are family and they visit back and forth. Ms. Delores [M.] said the home belonged to her mother and she passed away. Ms. [M.] stated that she maintains a home in Baltimore. She said Mr. Eason also has another home. "Sometimes they visit here and they are at the barber shop." As I was walking out of the house I noticed a white binder on top of some boxes labeled "My Trip to Italy". I asked who owned the notebook. Ms. [M.] moved a piece of paper and showed me it belonged to [S.S.]. (Residency Observation, 10/27/09).

On October 28, 2009, a PPW observed Mr. Eason, K.S., and S.S. leave 759 Washington Blvd. at 7:00 a.m. in the Appellant's car. The PPW drove to 100 Warfield Rd. Although the Appellant's car was not there, the pupil personnel worker observed the children come out of the house and get on their respective buses. At 8:28 a.m. another PPW observed the Appellant's car parked outside the Washington Blvd. address. The same vehicle was observed there at 8:30 p.m. (Residency Investigation Report at 14-15).

The local board reviewed all of the evidence before it, including the results of the investigation and the documentation submitted by the Appellant. The local board found that there was no credible evidence that the Appellant and her children resided at the 100 Warfield Rd. home. The board recognized, however, that the Appellant has a connection to the address as family members have resided there. The board noted the fact that K.S. had stated that he lived in Baltimore City and pointed to the area where he lived; that the children were dropped off at the Warfield Rd. address in the mornings to take the bus; and that the PPW's collectively visited the two addresses at issue more than thirty times between March 2009 and October 2009, and never found any evidence of the Appellant or her children living at the 100 Warfield Rd. address. (Local Board Decision).

STANDARD OF REVIEW

Because this appeal involves a decision of the local board involving a local policy, the local board's decision is 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.01.05.03E(1).

LEGAL ANALYSIS

The issue in this case is whether the children resided in Anne Arundel County during the two school years that span this case.

The law states that each child shall “attend a public school where the child is domiciled with the child’s parent, guardian or relative providing informal kinship care” Md. Code Ann., Educ. §7-101(b). That provision establishes a residency requirement. In essence, a student living with a parent, guardian or relative providing informal kinship care 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. As this Board stated in *Armour v. Board of Educ. of Montgomery County*, 2 Ops. MSBE 123 (1979):

[A] child is a bona fide resident if at a minimum that child actually lives within the school district with a parent, guardian, or other individual who has legal custody of that child. The determination of whether a child is a bona fide resident is a factual one and must be made on an individual basis. Many of the indicia enumerated by the Court of Appeals concerning the determination of an individual’s domicile will be pertinent, but a bona fide resident of a school district need not necessarily have the intent to reside indefinitely or permanently at his/her present habitation. (*Citations omitted*).

Anne Arundel County Public Schools has developed procedures to help guide the assignment of students to schools within the County. Regulation JAB-RA states that “[s]tudents must attend the school designated to serve the attendance area of their bona fide residence.” JAB-RAB. The regulation further states:

Bona fide Residence refers to 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. The burden of establishing bona fide residency to the satisfaction of the school principal and Division of Student Services is that of the student, caretaker, or parent(s)/guardian(s).

JAB-RA C.1.d. Thus, actual residence of the student is the relevant issue in determining bona fide residency.

The question of bona fide residency in this case needs to be measured in two time periods – the 2008-2009 school year (March to May 2009) and the 2009-2010 school year (evidence through October 2009).

The Appellant does not dispute that she and her children did not reside at the 100 Warfield Rd. home from March 2009 to May 2009. She admits that the children were living in Baltimore

City. The school system's residency investigation corroborates this information, Although the Appellant asserts that the children were only temporarily living outside of the school attendance area, the issue of residency is determined by the location where the children actually reside. There is no evidence that the children were actually residing at the Warfield Rd. home during this time period.

The disputed issue in this case is the whether the Appellant's children resided at 100 Warfield Rd. at the start of the 2009-2010 school year. The local board considered evidence through October 2009. That is the evidence that we will review in this case as that is what was before the local board at the time it rendered its decision.

The local board considered documentation submitted by the Appellant bearing the 100 Warfield Rd. address, as required by the school system's policy for proof of residency.¹ That documentation included a tenant verification form, W-2 form, tax return, driver's license, and other business mail addressed to the Appellant at the 100 Warfield Rd. address. The local board balanced that information, however, against the results of the residency investigation to determine if the residency investigation results were sufficient to overcome the presumption of residency established by the Appellant's documentation.

The residency investigation in July and October 2009 continued to produce results showing a similar pattern of behavior to the earlier investigation. During the week of July 13, 2009, the PPW consistently observed the Appellant's car parked outside the Washington Blvd. address in the early morning hours, but never outside of the Warfield Rd. address. Nor did the PPW observe the Appellant's car at the Warfield Rd. address in the evening hours. (Residency Investigation Report at 12). On July 20, the PPW's observed the Appellant leaving the Washington Blvd. address in the early morning. (*Id.* at 13).

In October 2009, the PPW's again observed Mr. Eason taking the children from the Washington Blvd. address to the Warfield Rd. address to catch the school bus in the morning. The PPW's saw the Appellant's car parked regularly outside the Washington Blvd. address during the entire month. In addition, during a visit to the Warfield Rd. home in October, the Appellant's aunt confirmed that the Appellant's children do not regularly reside there, but that "sometimes they visit". (Residency Observation, 10/27/09).

As the local board stated, the Appellant obviously has a connection to the Warfield Rd. home. It belongs to a family member and the Appellant is able to use the address for the purpose of receiving some of her mail. The Appellant's children may very well have lived there regularly

¹Regulation JAB-RA requires two forms of documentation as proof of residency. Mandatory documentation includes a lease, deed, or tenant verification form. 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. JAB-RA C.1.d.

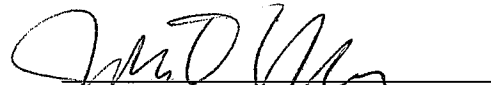
at some point, and may very well have overnight visits at the aunt's home. In light of the investigation results, however, Appellant's connection to the home does not mean that the children actually resided there at the time of the local board's residency determination.

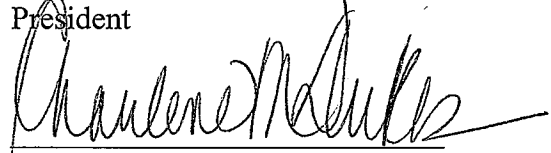
Based on the results of the residency investigation, we believe that the local board could reasonably conclude that the Appellant's children did not actually reside at the Warfield Rd. address at the start of the 2009-2010 school year.


The Appellant claims in her appeal to the State Board that she and her children are currently residing at the Warfield Rd. address. She states that repairs have been completed on the home, that she has a formal lease that began on January 1, 2010, and that her husband is moving back to Warfield Rd. and no longer has possession of the residential portion of the Washington Blvd. property. These are new facts that the Appellant will have to present to the school system to establish bona fide residency. The decision before this Board is whether or not to affirm the local board's residency decision based on the evidence that was before it at the time that it made its decision. We believe that there was sufficient evidence to support that decision.


CONCLUSION

For these reasons, we find that local board's decision withdrawing K.S. and S.S. from Anne Arundel County Public Schools is not arbitrary, unreasonable or illegal. Accordingly, we affirm the local board's decision.


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February 23, 2010