

YEON SOON KIM,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 00-2

OPINION

This is an appeal of the local board's denial of Appellant's request for a tuition waiver for her daughter, Anne Kim, to attend public school in Montgomery County at Lucy V. Barnsley Elementary School.¹ The local board has filed a response to the appeal indicating that its decision is not arbitrary, unreasonable or illegal. Appellant has submitted a reply opposing the board's position.

BACKGROUND

Anne Kim is a nine year old United States citizen who was living with her parents in Korea prior to the family's visit to the United States in November, 1998. The family took up residence with Anne's grandmother and aunt in Rockville in a house owned by the aunt. Although Anne finished the second grade in Korea, she has not been in school since her arrival to the United States. The family indicates that Anne has suffered greatly from her lack of schooling, that the family cannot pay tuition due to financial problems driven by the Asian economic crisis, and that Anne's parents cannot permanently reside in the United States at this time because Anne's father no longer has his "green card."

By letter dated January 8, 1999, Anne's aunt, Ae Ran Chung, requested a tuition waiver so that Anne could attend public school in Montgomery County free of charge. The letter states the following:

Anne is residing with me, her aunt, at her parents' request in order to provide her with the best possible opportunities available to an American citizen. Anne's parents have been affected economically as a result of the recent Asian economic crisis, and are not able to provide Anne with the best education in Korea. Anne is residing in Montgomery County, Maryland only because

¹Ms. Beulah Yoo, the family's pastor, is acting as an interpreter for Appellant in this appeal and has acted in this capacity throughout the appeal process at the local level. We assume for the purposes of this appeal that Ms. Yoo is acting with Appellant's authorization and is accurately translating Appellant's position.

I live here. Anne did not come to the United States for the sole purpose of taking advantage of the Montgomery County Schools.

The letter was accompanied by a Korean notarized statement executed by Anne's parents, giving custody and decision-making authority to the aunt. On March 17, 1999, the Residency and Tuition Review Committee denied the tuition waiver request, indicating that the documentation supporting the request failed to justify a crisis situation, and demonstrated that the parents reside in Korea.

Anne's grandmother, Che Suk Kim, appealed the denial to the superintendent who referred the matter to a hearing officer for review. The hearing officer held a conference with members of Anne's family. At the time of the conference, Anne's parents were in the United States on visitors' visas, with the father's expiring on or about April 22, 1999, and the mother's expiring on or about August 12, 1999. The mother indicated her intent to get a one year extension of her visa and stay with her daughter in the United States. Both the aunt and the grandmother indicated their willingness to have Anne stay with them until she completed her education in the United States.

The hearing officer also spoke with Mr. Alberto Reluzco, the supervisor of the International Student Admissions Office. The hearing officer stated,

According to Mr. Reluzco, the parents told him, through Ms. Yoo, that they were here only to get their daughter into school, and they were both returning home in April. Mr. Reluzco explained that the parents were here on visitors' visas only, and a change of visa status would be needed in order to begin the pursuit of permanent residence. He said he had explained to the parents that if they would provide evidence of application for a change of visa status to the International Student Admissions Office, he would approve Anne's placement in Montgomery County Public Schools.

Based on his investigation, the hearing officer recommended that the denial of the tuition waiver be upheld, citing the fact that the parents had temporary visitors' visas and were informed by Mr. Reluzco that Anne would be placed in school as soon as they produced evidence of application for a change of their visa status. Additionally, the hearing officer referenced the presentation of conflicting documentation regarding the parents' residency in the United States.

The superintendent adopted the recommendations of the hearing officer. By letter dated April 28, 1999, he advised Ms. Kim that her request for a tuition waiver for her granddaughter was denied. He further advised Ms. Kim that Mr. Reluzco "has stated that he will enroll Anne in Montgomery County Public Schools as soon as her parents have provided evidence of application for a change of visa status. I urge you to provide this documentation

as soon as possible to Mr. Reluzco.”

The matter was appealed to the local board. On July 13, 1999, the local board issued a majority opinion (6-1, 1 abstention) upholding the superintendent’s denial of Appellant’s request for a tuition waiver.

ANALYSIS

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. Section 7-101 includes language concerning domicile, stating in pertinent part:

(a) Admissions. – 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.

(b) Location. – (1) Except as provided in § 7-301 of this title and in paragraph (2) of this subsection, each child shall attend a public school in the county where the child is domiciled with the child’s parent or guardian.²

(2) Upon request and in accordance with a county board’s policies concerning residency, a county superintendent may allow a child to attend school in the county even if the child is not domiciled in that county with the child’s parent or guardian.

(3) If a child fraudulently attends a public school in a county where the child is not domiciled with the child’s parent or guardian, the child’s parent or guardian shall be subject to a penalty payable to the county for the pro rata share of tuition for the time the child fraudulently attends a public school in the county.

Additionally, the Maryland Student Records System Manual , 1994 & Supp. 1, incorporated by reference in COMAR 13A.08.01.01A explains which students may be considered bona fide residents. See IV-5 - IV-6. The bona fide residency requirement has been affirmed by the State Board on multiple occasions. See *John P. Gustafson v. Board of Education of Allegany County*, 7 Op. MSBE 308 (1996); *Armour v. Board of Education of Montgomery County*, 2

²The terms domicile and guardian are not statutorily defined in Title 7 of the Education Article.

Op. MSBE 123 (1979).

The State Board regulations require local school systems to establish written policies and procedures to be followed for the purpose of determining whether a student is a bona fide resident. *See* Maryland Student Records System Manual at IV-5 - IV-6. Accordingly, the Montgomery County Board of Education has developed Policy JED - Residency, Tuition and Enrollment which states that “[a]ll qualified school-aged persons, whether U.S. citizens or noncitizens, who do not have an

established bona fide residence in Montgomery County, will be considered nonresident students and will be subject to paying tuition unless an exception is made under the terms of this policy.” *See* Policy JED at D.1. The policy defines a bona fide residence as “one’s actual residence, maintained in good faith, and does not include a temporary residence or superficial residence established for convenience or for the purpose of free school attendance in the Montgomery County Public Schools.” The policy indicates that an intent to reside indefinitely or permanently at the present place of residence is not required, and that the determination of bona fide residency is a factual one made on an individual basis. *See* Policy JED at D.3.

The policy provides two exceptions to the bona fide residency requirement that are relevant to this case. The first exception exists for circumstances where documentation is provided establishing that the parents or guardians of the nonresident student have definite plans to establish a bona fide residence in Montgomery County, but for reasons beyond their control cannot establish such a residence prior to enrolling the student in a Montgomery County public school. *See* Policy JED at G.2.a.1. The second exception covers circumstances where there is a crisis, unusual or extraordinary circumstances fully documented by the student, justifying waiver of tuition. *See* Policy JED at G.2.a.3.

The local board has determined that Anne is not a bona fide resident of Montgomery County for school purposes, and that her circumstances do not meet any exception to the tuition requirement for nonresident students. Among other things, the local board’s decision focuses on the parents’ temporary status, the aunt’s lack of court granted “legal” guardianship, the lack of evidence to support the mother’s intent to reside permanently in the United States, and the lack of a crisis to justify an exception to the residency requirement.

Based on our review of the documentation in this record, we find that Anne is temporarily living at her aunt’s address, and that Anne is in Maryland for the primary purpose of pursuing educational opportunities.³ On several occasions, the school system advised

³Despite Appellant’s apparent failure to demonstrate that Anne is entitled to a free public education in the State, Appellant may nonetheless be violating Maryland’s compulsory attendance law, Md. Code Ann., Educ. § 7-301 (“[e]xcept as otherwise provided in this section, each child who resides in this State and is 5 years old or older and under 16 shall attend a public school regularly during the entire school year. . . .”). *See also* COMAR 13A.08.01.01A (student attendance). We are concerned that the family may be found in neglect for keeping Anne out of school while in Maryland. The family has several options which would facilitate compliance with the compulsory attendance law, including paying tuition to the school system, home schooling, or enrolling Anne in private school. Of course, there is always the alternative of Anne returning to Korea to reside with her parents, in which case compliance with this law would not be an issue. If the family does not satisfactorily resolve the matter of Anne’s schooling, further intervention may be necessary.

Appellant to submit appropriate documentation demonstrating her intent to reside permanently within the United States so that Anne could be admitted to the school system tuition free. Appellant has failed to submit the necessary papers and has not explained her reason for failing to do so. Furthermore, the local board has determined that the financial problems briefly referenced in this case do not constitute a crisis justifying a tuition waiver.

This same issue of bona fide residency arose in *Sinan Erk v. Montgomery County Board of Education*, 6 Op. MSBE 612 (1993). In that case, Appellant sought a tuition waiver for her nephew to attend public school in Montgomery County. The State Board determined that the child was not entitled to receive a free public education in the State because his primary purpose for being in Montgomery County was to receive an education, and therefore he was not a bona fide resident. As in *Erk* and for the reasons noted above, we do not believe that Appellant has met her burden of demonstrating that the local board acted arbitrarily, unreasonably or illegally in this matter.

CONCLUSION

For these reasons we affirm the decision of the Board of Education of Montgomery County.

Edward Andrews
President

Raymond V. Bartlett

JoAnn T. Bell

Philip S. Benzil

Reginald Dunn

George W. Fisher, Sr.

Marilyn D. Maultsby

Judith McHale

Edward Root

Walter Sondheim, Jr.

John Wisthoff

February 1, 2000