

ASHLEY SELBY,

Appellant

v.

HOWARD COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 02-13

OPINION

This is an appeal of a request for a tuition waiver by Ashley's parents for Ashley to attend public school in Howard County. The local board has submitted a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal. Ashley's parents have submitted an opposition to the Motion.

FACTUAL BACKGROUND

Prior to the beginning of the 2001-2002 school year, Mr. and Mrs. Selby sold their home in Howard County and purchased another property in Howard County where construction on their new home began. The Selby's had lived in Howard County for several years, but during the construction of their new home they lived with relatives in Montgomery County. Up until this time, Ashley attended Fulton Elementary School in Howard County where she was a second grade student.

The Selby's home under construction is located in the Clarksville Elementary School district in Howard County. On September 24, 2001, the Selby's applied to the Howard County Public School System for an exception to allow Ashley to be enrolled in Fulton Elementary School for the 2001-2002 school year. The Selby's did not want to interrupt Ashley's schooling by sending her to several schools in one year. They plan to enroll her at Clarksville Elementary School for the 2002-2003 school year.

By letter of September 25, 2001, Roger L. Plunkett, Assistant Superintendent of School Administration, advised the Selby's that he had approved the request to allow Ashley to remain at Fulton for the full 2001-2002 school year under the following conditions:

- The Selby's must pay out of county resident tuition;
- The Selby's are responsible for providing Ashley's transportation to and from school;
- The Selby's must move into the new home within 90 days from the first day of attendance otherwise Ashley will be returned to the school district where the parents reside;
- If Ashley does not maintain prompt and regular attendance, engage in learning, or if she becomes involved in excessive

behaviors requiring disciplinary action, she will be returned to her home school.

The Selby's appealed to the local board requesting a tuition waiver.¹ They explained that although they were staying with relatives in Montgomery County during the new home construction, they had been paying property taxes on two lots within Howard County for over one year. They stated that they were Howard County residents for tax purposes the previous year and that they would be Howard County residents for tax purposes for the coming year. Given that they would chose to relocate within Howard County and would make that transition within a time certain, the Selby's maintained that they should not be required to pay tuition.

The local board voted unanimously to deny the request for a tuition waiver. In its decision the local board noted that the denial was consistent with local policy and state law. It also noted that once the Selby's move back to Howard County, the tuition they have paid will be prorated and they will be provided a refund for the difference.²

ANALYSIS

Residency Standards

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) 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

¹Because the Selby's paid the tuition, what they actually seek is tuition waiver and reimbursement.

²Ashley attended Fulton Elementary as of August 27, 2001. At the time of the local board's decision on November 15, 2001, the Selby's had not yet returned to live in Howard County and did not expect to move into the new home before January, 2002. There is no evidence in the record to indicate whether they have moved in.

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.

The Maryland Student Records System Manual ("Manual"), incorporated by reference in COMAR 13A.08.01.01A, further defines the term, bona fide resident. *See* Manual at IV-10 -- IV-11 (2001). The bona fide residency requirement has been affirmed by the State Board on multiple occasions. *See Yeon Soon Kim v. Board of Education of Montgomery County*, MSBE Opinion No. 00-2 (February 1, 2000); *Gustafson v. Board of Education of Allegany County*, 7 Op. MSBE 308 (1996); *Armour v. Board of Education of Montgomery County*, 2 Op. MSBE 123 (1979). In essence, a student living with a legal guardian is a bona fide resident of the jurisdiction where the legal guardian resides.

Local school systems are required to establish written policies and procedures to be followed for the purpose of determining whether a student is a bona fide resident. *See* Manual at IV-11. Accordingly, the Howard County Board of Education has developed Policy 3201-R - "Enrollment, Residency, and Tuition." Policy 3201-R (I.F) states that "[a]ll qualified school-age minor persons **whose parents have an established bona fide residence in Howard County . . .** shall be considered resident students and shall be admitted tuition-free to Howard County public schools." *See* 3201-R (I.F.) (Emphasis added). The Policy further states:

Nonresident Students - All qualified school age minor persons **whose parents/guardians do not have an established bona fide residence in Howard County . . .** shall be considered nonresident students. Such students may be admitted to the Howard County public schools; however, **tuition shall be charged and paid unless waived.**

See 3201-R (I.H.) (Emphasis added). Based upon our review, we believe these provisions must be read in conjunction with 3201-R (I.G) which provides as follows:

Bona fide residence is the person's actual residence maintained in good faith and does not include a temporary or a superficial residence established for the purpose of free school attendance in the Howard County public schools. Determination of a person's bona fide residence is a factual one and must be made on an individual basis. Although an intent to reside indefinitely or permanently at the present place of residence is not necessarily required, the following factors are pertinent in determining one's

bona fide residence: **the parent/guardian must occupy an owned or rented domicile in Howard County.** As proof, the parent/guardian must provide the following with his/her name on it:

1. Current lease/deed.
2. One of the following: current utility bill, current telephone bill; current cable bill.
3. Other factors as determined by the Office of Pupil Personnel.
(Emphasis added).

Thus, we find that the actual residence of the legal guardian and the student is the relevant issue in determining bona fide residency. That determination is made on a case by case basis. Moreover, in *Gustafson* the State Board ruled that payment of real estate taxes to a jurisdiction does not in and of itself establish bona fide residency. *See also Christel Klingensmith v. Howard County Board of Education*, MSBE Opinion No. 01-32 (September 26, 2001).

An exception to the Howard County School System residency policy exists for parents who are relocating from within and outside of Howard County. *See* Circular No. 234, issued by the local superintendent on May 2, 2001 and Attachment A - Guidelines for Administrative Transfers. The exception allows a student an administrative transfer when a home is under construction, provided that construction will be completed within 90 school days from the first day of attendance. It also requires out-of-county pupils to pay the full tuition due prior to entry with reimbursement being made as appropriate on a prorated basis. The local board has interpreted that exception as applicable to the Selby's case.³

Discussion

Because this is a controversy over a decision of a local board involving a local policy, the standard of review is that the decision of the local board shall 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.01.01.03E(1).

The record in this case discloses that during all levels of this appeal, the Selby's were not residents of Howard County. While the Selby's may own real property in Howard County, ownership alone is insufficient to establish bona fide residency under HCPS residency policy as well as under the State Board's decision in *Gustafson*. The Selby's must actually occupy a residence in Howard County to be eligible for free attendance in Howard County Public Schools.

³A local board's interpretation of its own regulation is entitled to deference by the State Board. *See Charles and Michelle Sullivan v. Montgomery County Board of Education*, MSBE Opinion No. 01-10 (February 27, 2001).

Based upon our review of the record, we find that the local board has acted reasonably in the Selby's case. During the past two years, the local board has by motion adopted a moratorium on its prior practice of permitting out-of-county residents to enroll in the school system with the payment of tuition.⁴ Ashley, who was an out-of-county resident while living with her parents in Montgomery County, was accorded special consideration and permitted to remain at Fulton Elementary School with payment of tuition given the Selby's circumstances, despite the out-of-county status. This appears to have been done in recognition of the advantages to Ashley of maintaining consistency in her school assignment.⁵

The Selby's disagree with the local board's policy and believe that individuals relocating within Howard County by a time certain should be considered bona fide residents despite temporary residency outside the county during home construction. Whether or not the local residency policy should be amended to separately accommodate individuals in the Selby's position is a matter for the local board. It is not an issue that is before the State Board. Rather, the State Board's role here is to determine whether the local board's decision to charge tuition in this case was arbitrary, unreasonable or illegal given existing laws, policies, and procedures. For the reasons noted above, we find that the local board acted reasonably in this matter.

CONCLUSION

For all of these reasons, we affirm the decision of the Board of Education of Howard County to deny a tuition waiver in this case.

Marilyn D. Maultsby
President

⁴This moratorium was a policy decision of the local board to stabilize enrollment in response to local issues regarding redistricting, school overcrowding, building utilization, and efficiency of resource allocation.

⁵The local board notes in its motion that since May, 2001, 320 parents have requested that the school system allow their children to attend school in a district other than the one in which they are living due to the building, buying, or leasing of a home. These families abided by the school system's policy by either making in-county residency arrangements (e.g. hotels, extended stay hotels, short term apartments, or staying with family or friends living in Howard County) or by paying tuition. *See* Rationale attached to November 15, 2001 decision by local board.

Reginald L. Dunn
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March 27, 2002