

LONDON S.,

Appellant

v.

BALTIMORE COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 19-40

OPINION

INTRODUCTION

Appellant challenges the decision of the Baltimore County Board of Education (local board) withdrawing her sons from Edmonson Heights Elementary School based on lack of bona fide residency in Baltimore County. The local board filed a memorandum in response to the appeal. The Appellant responded to the memorandum and the local board replied.

FACTUAL BACKGROUND

Appellant's two sons have been attending Edmonson Heights Elementary School since the 2017-2018 school year based on a Baltimore County address at 1459 Barrett Road, Gwynn Oak, Maryland. Before attending Edmonson Heights, the children attended Calverton Elementary/Middle School in Baltimore City.

Baltimore County Public Schools (BCPS) refers residency matters to the Office of Pupil Services for investigation if questions arise regarding residency to determine whether or not there has been fraudulent enrollment. Superintendent's Rule 5150(II.I) defines "fraudulent enrollment" as "the intentional misrepresentation of documentation or material fact regarding domicile, providing false information or documentation or applications and/or the failure to notify BCPS of a change in domicile or change in hardship conditions for which enrollment was approved."

At some point after the start of the 2018-2019 school year, the BCPS residency investigator conducted a home observation of the Barrett Road address and concluded that the Appellant and her sons did not maintain a bona fide domicile there.¹ (Memorandum Ex. 5, Sup't. Ex.7). The investigator saw a black car arrive and drop off two boys and a girl, who entered the home at 8:05 a.m. The children left the home 20 minutes later and walked to Edmonson Heights to attend school. *Id.* The investigator discovered through an SDAT real property search that the Appellant and her husband own a home at 3826 Roland View Avenue in Baltimore City, purchased in 2016, and that the SDAT records identify the home as the Appellant's principal residence. The search also disclosed that as recently as May 2018,

¹ The report states the observation took place on October 18, 2018, but we think this date may be an error given the sequence of events.

Appellant and her husband were approved for a Homestead Tax Credit for the residence. (Memorandum Ex. 5, Sup't. Ex.6).

On October 4, 2018, the principal at Edmonson Heights issued withdrawal letters advising that Appellant's sons were being withdrawn from school based on fraudulent enrollment. (Memorandum Ex. 5, Sup't. Exs. 2 & 3). At the time, the children were in the 2nd and 5th grades.

On October 10, 2018, the Appellant appealed the withdrawals to David Greenberg, BCPS Residency Liaison, maintaining that she lives with her sons at the Barrett Road address. (Memorandum Ex. 5, Sup't. Ex. 4). In the appeal, Appellant stated that she works two jobs, one from 10:00 p.m. to 6:00 a.m. and the other from 8:30 a.m. to 5:00 p.m. Appellant explained that her sons stay overnight at the Roland View residence where her mother-in-law lives so that she can watch them while Appellant works her night job, and then Appellant picks them up in the morning to drop them off at the Barrett Road address for school. *Id.* Appellant included a letter from her mother-in-law, Catherine Lee, confirming this.² *Id.* Mr. Greenberg upheld the withdrawal based on the results of the investigation and the statements by the Appellant and Ms. Lee. (Memorandum Ex. 5, Sup't. Ex. 7). Appellant's sons remained in school at Edmonson Heights during the appeals process and completed the 2018-2019 school year there.

Appellant appealed Mr. Greenberg's decision to Allyson Huey, the Superintendent's designee, who met with the Appellant and her husband on December 4, 2018. They presented the following relevant information to Ms. Huey.

- Appellant moved out of the Roland View residence two years ago;
- Appellant is unable to remove her name from the mortgage at this time;
- Appellant and her sons reside in Baltimore County at the Barrett Road address, which Appellant leases with her grandmother and sister who also reside there;³
- Appellant's husband lives in Baltimore City at the Roland View address;
- Appellant and her husband are separated and have no formal custody agreement in place;
- Appellant's sons stayed overnight with Appellant's mother-in-law at the Roland View residence during the week while Appellant was at her overnight job and her husband was incarcerated. Appellant picked them up in the mornings to take them to the Barrett Road address to go to school; and
- Appellant's sons no longer stay overnight at the Roland View residence during the week.

On January 25, 2019, Ms. Huey upheld the residency determination based on fraudulent enrollment, finding that the Appellant's bona fide domicile was not in the Edmonson Heights attendance area. (Memorandum, Ex. 1). Ms. Huey concluded that it "is more likely than not that [Appellant's] bona fide domicile is the Roland View address." Ms. Huey based her decision on the home observation and the fact that the children stayed overnight at the Roland View residence during the school week. She also relied on Appellant's co-ownership of the Roland View residence with her husband, and the Homestead Tax Credit that was approved and in

² Although the Appellant now states in her State Board appeal that the letter is from her grandmother and not her mother-in-law, Ms. Lee clearly states that she is the "paternal grandmother" of the Appellant's sons and lists her address as the Roland View residence.

³ Appellant's school age niece also resides there.

effect. She noted that, on the tax credit application, both co-owners are required to declare, under penalty of perjury, that the property is the single principal residence of the applicants. *Id.*

On February 21, 2019, Appellant appealed Ms. Huey's decision to the local board. The local board referred the matter for a full evidentiary hearing before a hearing examiner. On July 25, 2019, hearing examiner, John Austin, conducted a hearing at which he heard testimony and reviewed documentary evidence.⁴ The Appellant did not submit any exhibits for the hearing officer's consideration or call any witnesses to testify. The Appellant, however, reiterated that her mother-in-law watched her children at the Roland View residence because Appellant cannot leave them alone at the Barrett Road residence overnight. (T.27). She stated that she submitted documentation with the Homestead Tax Credit application indicating that she did not reside there due to medical necessity. (T. 25). The Appellant also stated that one of her sons has cancer and receives home and hospital teaching through BCPS at the Barrett Road address, and that the home and hospital teacher could confirm the Appellant's residence there. (T. 27)

On August 12, 2019, Mr. Austin issued a report recommending that the local board uphold the residency decision because the Appellant did not present evidence demonstrating that the Barrett Road address was the permanent bona fide domicile of the children and at least one of the parents. He acknowledged that the evidence regarding where Appellant's sons reside was not straightforward. He stated:

The evidence presented indicated that, at best, the children were living primarily at the Roland View Avenue address but then occasionally would spend time at the Barrett Road address with other family members. [Appellant] likewise was splitting her time between both homes, particularly after her husband was released from confinement. In light of all of these factors, it is plain that the domicile of [Appellant's children] is not in Baltimore County at the Barrett Road address but rather is in Baltimore City at the Roland View Avenue address.

(Memorandum, Ex. 6 at p. 8).

Mr. Austin sent the decision to the Barrett Road address via certified mail, return receipt requested. The tracking history indicates that the United States Postal Service (USPS) attempted delivery on August 15, 2019, however, no authorized recipient was available. USPS left notice of the delivery attempt, but the Appellant did not claim the mail at the post office.

On September 3, 2019, Appellant hand-delivered a request for oral argument to the local board. The local board declined the request because it was untimely. On September 10, 2019, the local board adopted the recommendation of the hearing officer.

Appellant filed this appeal to the State Board on September 24, 2019.

⁴ The hearing, originally set for March 28, 2019, was rescheduled at the Appellant's request. (Memorandum, Exs. 3 & 4).

STANDARD OF REVIEW

Local board decisions involving a local policy or a controversy and dispute regarding the rules and regulations of the local board are considered *prima facie* correct. The State Board will not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable or illegal. COMAR 13A.01.05.06A.

LEGAL ANALYSIS

Residency Decision

State law invests local boards with the authority to determine the geographical boundaries of the schools in its jurisdiction. Md. Code Ann., Educ. §4-109(c). The local board has determined school boundaries and requires students to attend the school serving the attendance area in which they have a bona fide domicile with their parent or guardian, unless one of the enumerated exceptions apply. (BCPS Policy and Superintendent's Rule 5150). "Bona fide domicile" is defined as the "place in which an individual has a settled connection for legal purposes and the place where a person has his/her true, fixed permanent home, habitation and principal establishment, without any present intention of leaving. It does not include a temporary residence established for the purpose of free school attendance in the public schools." (Superintendent's Rule 5150(II)(A)). The parent has the burden of establishing bona fide domicile. (*Id.* at III.B).

At the time that the local board issued its decision, it had before it evidence that the Appellant and her husband were co-owners of the Roland View residence and that it was listed by SDAT as their principal residence with a Homeowners Tax Credit in effect. It also had before it the residency investigation consisting of a one-time home observation in which Appellant dropped her sons off in the morning at the Barrett Road address so they could attend school. In addition, it had confirmation from the Appellant and her mother-in-law that the children stayed at the Roland View residence overnight while Appellant was at work, and that Appellant picked them up in the mornings to take them to the Barrett Road address.

On the other hand, the Appellant claimed that she resided at the Barrett Road residence with her sons, her grandmother, sister and niece. Appellant, however, submitted no evidence of the living arrangements by way of a lease or testimony from any of the family members. Appellant's claim that her sons stayed overnight at the Roland View residence Monday through Friday supports the notion that her sons spent the majority of their time there. Furthermore, Appellant did not explain why the children would have been alone overnight at the Barrett Road address when she claims that they lived there with Appellant's grandmother, sister and niece. In addition, although the Appellant maintained that she submitted a letter of medical necessity with her Homeowner's Tax Credit application to exempt her from living in the Roland View residence, she did not submit any evidence at the hearing to support the claim, or any other documentary evidence for that matter. Finally, although the Appellant claimed that her son received home and hospital teaching at the Barrett Road address, this is not dispositive of the living arrangements and the record contains no information from the teacher.

Based on all of the information that was before the local board, we find the local board's decision adopting the recommendation of the hearing officer was not arbitrary, unreasonable or illegal.

New Evidence

In the appeal before the State Board, however, the Appellant seeks to introduce new evidence that she did not present in the proceedings below. The evidence includes:

- (1) A Residential Dwelling Lease for the Barrett Road address signed September 3, 2019 for a lease period beginning on February 19, 2019 and ending January 31, 2020, designating the Appellant and her sons as the occupants at a lease rate of \$950 per month to be paid to Touch of Perfection Realty, LLC;
- (2) A PayPal transaction history printout from January 2, 2017 through September 23, 2019 showing monthly payments in the amount of \$1,100 to City Lights Stained Glass which Appellant states is proof that she pays her rent;
- (3) A printout from the Maryland State Department of Assessments and Taxation website stating that the dwelling on which an individual seeks a Homestead Tax Credit must be the principal residence where the person lives at least six months of the year, unless the individual is “unable to do so because of [his/her] health or need of special care.”;
- (4) A letter dated October 8, 2018, from Anne Arundel Medical Center stating that the Appellant works there Monday through Friday from 10:00 p.m. to 6:00 a.m.;
- (5) A copy of Appellant’s Johns Hopkins Health Services identification badge;
- (6) A copy of Appellant’s MVA driver license address correction card dated July 31, 2017 showing the Barrett Road address;
- (7) A letter dated July 23, 2019, from Roundpoint Mortgage Servicing Corporation regarding late payments addressed to the Appellant at the Roland View address;
- (8) A letter dated July 16, 2019 addressed to Appellant at the Barrett Road address from Nationwide Web Support;
- (9) A letter dated August 26, 2019 from the Leukemia and Lymphoma Society; and
- (10) A letter dated May 8, 2019 from the Social Security Administration addressed to the Appellant at the Barrett Road address.

In the State Board appeal, the Appellant also explains that she left the Roland View residence because her husband was verbally and physically abusive. She further explains that the medical necessity exemption for the Homestead Tax Credit was due to her depression from being in an unsafe environment subject to mental and physical abuse.

The State Board may admit additional evidence or remand for consideration by the local board when the evidence is material and there were good reasons for the failure of the appellant to offer the evidence in the proceedings before the local board. COMAR 13A.01.05.04(C).

The local board maintains that with the exception of the August 26, 2019 letter from the Leukemia and Lymphoma Society, all of the documents could have been provided at the hearing before Mr. Austin and the Appellant failed to do so. The local board also argues that the lease is suspect because it was signed September 3, 2019, and the lease period is backdated to a start date of February 19, 2019. In addition, the local board points out that the lease does not cover the time period that was at issue in the appeal.

We are troubled by this case. The matter is before this Board approximately one year after the initial withdrawal letters were issued based on fraudulent enrollment. The Appellant’s

sons have been out of school since the beginning of the current school year. During the past year, the Appellant maintains that the overnight arrangements for her sons has changed and they currently stay full time at the Barrett Road address.

The Appellant has now submitted a lease signed September 3, 2019 reflecting that she leases the Barrett Road property. She has also submitted an August 26 letter from the Leukemia and Lymphoma Society addressed to her at the Barrett Road address. Both of these items are dated after the hearing before Mr. Austin, thus, the Appellant could not have submitted them at that time. Given this information, the fact that the record contains no home observation since the one conducted in October 2018, and the lengthy passage of time during which the Appellant maintains that her sons have been living exclusively at the Barrett Road address, we remand this matter to the local board to determine the Appellant's residency for the 2019-2020 school year.

CONCLUSION

For the reasons stated above, we remand the appeal to the local board to determine if the Appellant and her sons currently maintain a bona fide domicile at the Barrett Road address. We direct the local board to immediately enroll Appellant's sons in Edmonson Heights Elementary School pending its determination on the residency status of the Appellant and her sons.

Signatures on File:

Warner I. Sumpter
President

Jean C. Halle
Vice-President

Gail H. Bates

Clarence C. Crawford

Charles R. Dashiell, Jr.

Vermelle D. Greene

Justin M. Hartings

Michael Phillips

David Steiner

Absent:
Rose Maria Li
Joan Mele-McCarthy

December 3, 2019