

KRISTIN H.,

Appellant

v.

HOWARD COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 22-16

OPINION

INTRODUCTION

Appellant challenges the decision of the Howard County Board of Education (“local board”) withdrawing her son from the Howard County Public School System (“HCPSS”) and charging tuition for days attended because the Appellant failed to establish *bona fide* residency in Howard County after the school system discovered she owned a home in Baltimore County. The local board responded to the appeal maintaining that its decision was not arbitrary, unreasonable or illegal. The Appellant responded and the local board replied to the response.

FACTUAL BACKGROUND

For the 2021-2022 school year, Appellant enrolled her son (“the Student”) in kindergarten at ██████████ Elementary School (“█████ES”) after contacting ██████ in August 2021. Based on the information provided, it was the understanding of the Pupil Personnel Worker (“PPW”) that Appellant and her son would be living with the Appellant’s uncle, Willie H., at a home owned by him located at ██████████ in Elliott City, Howard County. Appellant provided a lease for the ██████████ address executed January 1, 2020 between Appellant and her uncle for ██████████ for a lease term dated May 1, 2020 through May 31, 2023.

Policy 9000 IP (III.C) (*Implementation Procedures – Student Enrollment*) provides that guest families residing with host families may establish residency through the completion of the Multiple Family Disclosure Form. Based on the information provided, the PPW at ██████ registered Appellant’s son under a Multiple Family Determination on September 8, 2021. (Local Board Record (“LR”) 46). Appellant submitted a Multiple Family Disclosure Form and Affidavit and presumably provided the other documentation required by Policy 9000 IP for enrollment.¹ (LR 50, 78).

¹ The record is unclear regarding precisely what other documents the Appellant submitted at the time, but the PPW determined there was sufficient documentation to enroll the Student at TRES. Documents required under the Multiple Family Determination include, among other things, two proofs of residency from the parent. Policy IP (III.C.2).

The Multiple Family Affidavit submitted by the Appellant states, in pertinent part:

- This affidavit indicates that all individuals listed on the MFD are actually living at the (MFD) address on a daily basis and that they maintain no concurrent or secondary residence elsewhere. If the guest family owns another home, which is listed as their principal residence, or if the guest family has a current lease at another address, the guest/family is not eligible to enroll their child/children using this process.
- Multiple family enrollments are subject to investigation at any time. A finding that falsified information was used to establish a multiple family enrollment will result in the student(s) of the guest family being withdrawn from school. Tuition will be charged from the first date of entry to the date of withdrawal.

(LR 79).

Thereafter, the Office of Pupil Support Services and the Office of Student Reassignment and Residency (“Residency Office”) initiated an investigation following concerns about the Student’s attendance. The school front office noted that the Student was not taking the assigned bus as indicated under the family’s transportation preference. (LR 46). The PPW discovered that the Appellant was listed with her husband on the deed of a principal residence purchased July 6, 2020 located at [REDACTED] in Woodstock, Baltimore County. *Id.*

A student is not eligible for school enrollment under the Multiple Family Determination if the guest family owns another home that is their principal residence. Thus, based on the new information regarding ownership of the Baltimore County home as a principal residence, by letter dated October 20, 2021, the school principal notified Appellant that the school system had information that she and her son may not be *bona fide* residents of Howard County pursuant to Policy 9000 and that her son was improperly attending [REDACTED]ES. The letter advised Appellant that her son would be denied admission to HCPSS effective November 3, 2021 and that she should contact the assigned school serving the attendance area where she resides to enroll her child in the appropriate school. (LR 74). The letter also advised Appellant of her appeal rights and that the Student would not be withdrawn while the appeal to the Residency Office was pending. *Id.*

Appellant appealed the principal’s decision to the Residency Office. (LR 73). She stated in her appeal letter that she intended to submit the lease, paid property taxes, separation agreement, and residency verification letter. Appellant did not submit these documents prior to the residency hearing. (LR 54).

A virtual residency hearing was held on December 7, 2021 before Kris Woodson, Student Reassignment and Residency Specialist, acting as the Superintendent’s Designee. Members of the residency team were also present. The PPW shared the following information at the residency hearing:

- Accurint² reflects the [REDACTED] address in Woodstock, Baltimore County as the address associated with Appellant, as well

² Accurint is a service that provides access to a comprehensive database of public records.

as P.O. Box [REDACTED] in Woodstock. According to Accurint, all vehicles are registered to this P.O. Box;

- Accurint reflects a recent address for Appellant at [REDACTED] Lane, [REDACTED] in Baltimore City;
- Accurint reflects an association with the [REDACTED] address in Howard County from 2003;
- HCPSS conducted early morning surveillance of Baltimore County address on four separate occasions during October and November 2021 from 7:00-7:30 a.m. Each time the family minivan and a truck, both associated with drop offs of the Student at [REDACTED]ES, were parked in the driveway at the Baltimore County address.

During the hearing, Appellant explained that she and her husband are separated and that her husband resides at the Baltimore County address while she resides at the Howard County address. She claimed that she was merely a co-signer on the loan for her husband to own the home. She also stated that the minivan is a shared vehicle that is often parked at the Baltimore County address for transporting the children to sports and other activities.³ Appellant indicated that she has another vehicle (BMW) that she also drives. Appellant further stated that she moved to the Howard County address in early 2020 after a fire at her Baltimore City condominium at [REDACTED] Lane and that she sold the condominium in January 2021. (LR 75-76). HCPSS could not confirm the sale in Maryland land records as SDAT records still showed the property as owned by the Appellant on March 2, 2022. (LR 96).

At the conclusion of the hearing, the Designee requested that Appellant provide copies of her separation agreement, residency verification letter, her lease, and evidence of paid property taxes. Appellant provided these documents at some point thereafter.

The Superintendent's Designee reviewed the information provided. By letter dated December 15, 2021, the Designee advised Appellant that HCPSS had determined her *bona fide* residence to be at the Baltimore County address, which is located in the school attendance area for [REDACTED] Elementary School. The Designee stated that the Howard County address was a superficial residence established for the purpose of attendance in HCPSS, and that per Policy 9000 the Student would be withdrawn from [REDACTED]ES effective December 22, 2021. The Designee further advised that Appellant would be assessed tuition in the amount of \$2,130.12 for that portion of the 2021-2022 school year the Student attended [REDACTED]ES.⁴ (LR 66). Ms. Woodson also stated Restia Whitaker, Coordinator of Pupil Personnel Services, reviewed the case and agreed with the decision of the residency team. *Id.*

After Appellant's son was withdrawn from HCPSS, Appellant enrolled her son at [REDACTED] Elementary/Middle School in Baltimore City, using the address of [REDACTED] Avenue in Baltimore City. Per SDAT records, this property is owned by Appellant's uncle, who also owns the Howard County property. (LR 56).

On or about January 6, 2022, Appellant appealed the decision to the local board. The Appellant and the Superintendent submitted documents and arguments supporting their

³ Appellant also has young children who are not school age, as well as college age stepchildren.

⁴ HCPSS assessed tuition from August 30, 2021 to October 20, 2021, the date of the initial notice of withdrawal. The Multiple Family Affidavit signed by Appellant provided that tuition would be charged from the first day of school entry to the date of withdrawal.

positions. The Superintendent's exhibits included a detailed response from the Superintendent's Designee. The submission deadline for the appeal was March 8, 2022. Appellant sent an email to the local board on March 9, 2022 with additional information in support of her appeal. The local board accepted the information into the record. (Local Bd. Decision).

In addition to all of the documents previously mentioned, the other relevant documents before the local board regarding residency included:

- Standard Lease Agreement executed January 1, 2020 between Appellant's uncle and Appellant for [REDACTED] Lane for lease term dated May 1, 2020 through May 31, 2023 for \$1,200 per month (LR 27-35);
- Tenant Lease Verification Letter notarized August 27, 2021 from Appellant's uncle stating that Appellant was living at the [REDACTED] Lane address as of that date (LR 26);
- Marital Separation Agreement between Appellant and the Student's father from Law Office of Banks & Lewis, P.L.L.C., signed, witnessed, and notarized July 15, 2021, listing the Howard County address as Appellant's residence and the Baltimore County address as the residence of the Student's father, and setting forth a shared custody arrangement (LR 36-42);
- Appellant's driver's license and MVA record with a February 7, 2021 change of address to the Howard County address (LR 80-81);
- SDAT information and deed for the Baltimore County property purchased July 6, 2020 indicating the property as Appellant's principal residence, noting a Homestead Tax Credit approved on February 11, 2022, and identifying Appellant's address at the time as the Baltimore City condominium (87-95);
- SDAT notice and deed for the Baltimore City condominium (LR 96-101);⁵
- Surveillance photos taken at the Baltimore County address between 7:00 and 7:30 am showing vehicles associated with transporting the Student to school (LR 102-104);
- Verizon bills dated November 15, 2021 for \$343.63 and February 13, 2022 for \$63.30 addressed to Appellant at the Howard County address. The bills have different account numbers (LR 115-116);
- Receipts for payments made [REDACTED] [REDACTED] 0329172 on October 27, 2021 and February 23, 2022. Other than the parcel number the receipts do not identify which property the tax payment was applied to and do not have a name listed (LR 14-15);⁶
- Letter dated February 11, 2022 from Roderick S. Durant, Sr., Senior

⁵ We take Judicial Notice of current SDAT record showing that Appellant sold the unit on May 10, 2022.
[REDACTED]

⁶ We take Judicial Notice of current Howard County real estate tax records showing that the Parcel ID for the Howard County address is [REDACTED], which corresponds to the receipts.
[REDACTED]

Pastor at The Harvest Church and Ministries Inc. regarding marital counseling and stating that it is his understanding that the couple does not live together (LR 17);

- Letter from Allison B. dated February 12, 2022 stating that she has delivered produce to Appellant at the Howard County address since the summer of 2021 and that her daughter has had playdates there with Appellant’s children (LR 20); and
- Statement showing late mortgage payments for the Baltimore County property addressed to both Appellant and her husband at the Baltimore County address (LR18).

In a unanimous decision issued on April 1, 2022, the local board upheld the decision of the Superintendent’s Designee finding that Appellant failed to meet her burden of establishing *bona fide* residency in Howard County and that the documents did not support a shared residence under Policy 9000 for a Multiple Family Determination. (Local Board Decision). The local board noted that Appellant owned the Baltimore County home listed as her principal residence; that the authenticity of certain documents were questionable, including the lease for the Howard County address based on the execution date and the lease period; and that the Student was currently enrolled in public school in Baltimore City based on the address of another home owned by Appellant’s uncle. The local board also upheld the tuition assessment determination. The board stated, however, that if Appellant submitted documentation to the Residency Office to demonstrate an extreme financial hardship or that payment of the assessed tuition would impose financial constraints, that appropriate review of that documentation would be conducted. *Id.* There is no evidence that Appellant submitted such documentation.

This appeal to the State Board followed.

STANDARD OF REVIEW

Local board determinations of *bona fide* residency are decisions involving a local policy or a controversy and dispute regarding the rules and regulations of the local board. Such decisions 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 school in its jurisdiction. Md. Code Ann., Educ., §4-109(c). The local board has determined its boundaries and requires students to attend the school serving the attendance area in which their parents have *bona fide* residency, unless one of the enumerated exceptions apply. Policy 9000(IV)(J). “Bona fide residence” is defined as the “person’s principal residence maintained in good faith. It does not include a temporary residence or superficial residence established for the purpose of attendance in the HCPSS.” Policy 9000(III.B). The policy places the burden of proof to establish *bona fide* residency on the parent. Policy 9000(V)(F).

At the time the local board issued its decision it had before it evidence that Appellant owned a home in Baltimore County at the [REDACTED] Road address and that SDAT records listed

the home as Appellant's principal residence. This information contradicted the Multiple Family Affidavit in which Appellant attested to the fact that she did not own another home as a principal residence. Under Policy 9000, if the guest family owns another home as their principal residence, the student is not eligible for enrollment under a Multiple Family Determination. There is no record evidence that Appellant disclosed this fact to the PPW prior to enrollment.

The local board also had before it a separation agreement supplied by Appellant to show that her principal residence is at the Howard County address and not the Baltimore County address. The local board questions the validity of the residency information provided in the separation agreement, explaining that information in agreements like this has been falsified in other cases to support residency in the county. The local board points out that the agreement is not a matter of public record and that it was not signed by a judge or filed in court, which would have lent more credibility to the statement of residency in the document. The local board also questions the timing of the submission of the document to the school system given the document is dated July 15, 2021 and Appellant did not submit it to the school system until December 7, 2021, even though there was an ongoing residency dispute. We agree it makes more sense for the Appellant to have submitted it sooner, but that alone may not be sufficient to negate the statement of residency in the separation agreement. We therefore look to other information in the case to determine if the totality of that information is sufficient to support the local board's determination that Appellant did not meet her burden of establishing *bona fide* residency in Howard County.

The local board points to surveillance of the Baltimore County address, which identified two family vehicles, including the minivan, present in the driveway from 7:00 to 7:30 on four separate occasions. This information without more is not conclusive. The surveillance contains no observation of the Appellant or the Student leaving the residence in the van or any other vehicle going to school. Nor does the record contain evidence that the school system conducted surveillance of the Howard County address.

The local board also finds the lease for the Howard County address to be suspicious because the lease was signed January 2020 with a three-year lease period beginning May 2020, while Appellant and her husband purchased the Baltimore County home on July 6, 2020, just two months after the start of the lease period. Appellant's claim that she was simply assisting her husband as a co-signer on the home is questionable. Further, at the time the Appellant purchased the Baltimore County home, the deed for the property listed Appellant's address as the condominium in Baltimore City, even though Appellant told the Residency Office that she moved out of that address in early 2020 due to a fire.

The local board also found it contradictory that after Appellant's son was withdrawn from HCPSS, Appellant enrolled him in school in Baltimore City based on an address at [REDACTED] Avenue in Baltimore City. SDAT records show that the property is owned by Appellant's uncle, who also owns the Howard County address, although Appellant disputes this fact. We agree that it is perplexing that Appellant would again use an address of a property owned by her uncle to enroll her son in school. It is more logical that Appellant would enroll her son in the school serving the Baltimore County address identified as the residence of the Student's father in the separation agreement.

In addition, the record demonstrates that Appellant provided inconsistent information concerning the Baltimore City condominium during the residency hearing on December 7, 2021.

Appellant claimed that she had sold the unit but failed to provide any documentation to support the claim. The local board discovered that as of March 2, 2022, SDAT records listed Appellant as the owner of the property. Currently, SDAT records reflect that Appellant sold the Baltimore City condominium on May 10, 2022. We take judicial notice of that fact which is in direct conflict with the information provided by Appellant at the hearing.

The issue before us is to determine whether the local board acted arbitrarily, unreasonably or illegally in determining that Appellant does not maintain a bona fide residence in Howard County and that the [REDACTED] Lane address is merely a “temporary” or “superficial” residence established for the sole purpose of school attendance. A local board decision may be arbitrary or unreasonable “if a reasoning mind could not have reasonably reached the conclusion the local board . . . reached” or if the decision “is contrary to sound educational policy.” COMAR 13A.01.05.05B.

We acknowledge that there is some information in the record connecting Appellant to both the Howard County address and the Baltimore County address, and that there are arguments that could support both sides. This is one of those cases where reasoning minds can draw different conclusions from the evidence, including the residency information contained in the separation agreement and the other documents that were provided. Therefore, we cannot find that a reasoning mind could not have reasonably reached the same conclusion as the local board. Given the totality of the evidence before the local board and the discrepancies in the record, the local board’s decision was not arbitrary, unreasonable, or illegal.

Other Allegations

In her appeal, Appellant makes various accusations of racial discrimination, retaliation, bullying, and defamation as the basis for the residency decisions and her son’s withdrawal from school. We find no merit to these arguments as Appellant provides no evidence to support these claims. *See Weeks v. Carroll County Bd. of Educ.*, MSBE Op. No. 13-44 (2013)(Allegations of discrimination must be supported by evidence). The record demonstrates that the residency decision was based on the documentation and information provided by Appellant and discovered through the residency investigation. To the extent that Appellant raises concerns about general treatment of her son by school staff, such concerns should have been raised at the school level and gone through the local review process.

Tuition

Appellant alleges that she has been assessed tuition for days that her child missed due to illness. (Appellant’s Reply at 7). Policy 9000 contemplates the assessment of tuition for non-resident students and further provides in the implementation procedures that assessment of tuition begins from the first date of entry to withdrawal. *See* Policy 9000 IP (III.C.3.b). While the Policy does not address Appellant’s specific point regarding missed days due to illness, Appellant was assessed tuition for fewer days than her child was enrolled in school. Appellant’s son was enrolled in school on August 30, 2021 and was withdrawn on December 15, 2021, but HCPSS assessed tuition only from August 30, 2021 through October 20, 2021, the date of the initial withdrawal letter. Thus, Appellant was charged some 47 days less than the actual enrollment. (LR 66-68).

The State Board has previously upheld the right of local boards to collect tuition for the period of time non-residents attend local school while also urging local board to exercise discretion when an appellant demonstrates financial hardship. *See Ayanna M. v. Howard County Bd. of Educ.*, MSBE Op. No. 12-56 (2012); *Mr. and Mrs. V. v. Howard County Bd. of Educ.*, MSBE Op. No. 11-37 (2011). In this case, Appellant has not provided any documentation of financial hardship to the local board regarding the tuition assessment.

CONCLUSION

For all of these reasons, we affirm the decision of the local board.

Signatures on File:

Clarence C. Crawford
President

Charles R. Dashiell, Jr.
Vice-President

Gail H. Bates

Chuen-Chin Bianca Chang

Susan J. Getty

Vermelle D. Greene

Jean Halle

Rachel McCusker

Joan Mele-McCarthy

Lori Morrow

Holly C. Wilcox

Dissent of Shawn D. Bartley:

I dissent, in part, to the decision. I ask the following:

Do all students in Maryland with home insecurity, disconnected parents, and lack of documents definitively proving their place of residence suffer the same scrutiny? If not, why not?

Is using a free market consumer based valuation to determine the cost of services received by the student the correct method when there is no free market in school choice?

If using a free market valuation is the appropriate method, did the school expend more money educating the subject student and as a result the school district experienced an economic loss? Do school districts receive more money with increased enrollment? If there is no real economic loss (spent more money than required), how can one justify the cost assessed? Would not a pure penalty model based on some reasoned scale be more appropriate herein if there is no ascertainable economic loss by the school district?

Absent:
Warner I. Sumpter

July 26, 2022