

KAREN B.,

Appellant

v.

ANNE ARUNDEL COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 14-10

OPINION

INTRODUCTION

Appellant challenges the decision of the Anne Arundel County Board of Education (local board) upholding the withdrawal of her children from Anne Arundel County Public Schools (AACPS) based on failure to establish bona fide residency in Anne Arundel County. The local board filed a Motion for Summary Affirmance maintaining that its decision should be upheld because it is not arbitrary, unreasonable, or illegal. The Appellant did not respond.¹

FACTUAL BACKGROUND

The Appellant has two daughters who were attending Point Pleasant Elementary School (Point Pleasant) in Anne Arundel County. The children were enrolled based on an address on Ivy Lane in Glen Burnie, Maryland. During the 2012-2013 school year, the children were in the 2nd and 3rd grades. (Superintendent's Position Statement).

In August 2012, Appellant submitted Emergency Notification Cards identifying the home address as 7505 Furnace Branch Road, Apt. F in Glen Burnie. Thereafter, in the fall of 2012, Point Pleasant sent Appellant several letters to the Furnace Branch Road address requesting updated residency documentation. Those letters, sent by both certified and regular mail, were returned to the school.

Joyce Cheatham, a Pupil Personnel Worker for AACPS, began conducting a residency investigation. She found the following:

- Appellant and her husband have a lease for the Furnace Branch Road apartment dated July 14, 2010.

¹ While this appeal was pending, legal counsel for MSDE send a letter to the Appellant at her home address of record (Furnace Branch Road) in an attempt to ascertain from the Appellant where her daughters were enrolled in school. Counsel requested a response but Appellant did not provide one.

- Appellant's parents own a home located at 2501 Banger Street in Baltimore City, Maryland.
- A Maryland Motor Vehicle Administration (MVA) search listed the Banger Street property as the address of record for both Appellant and her husband.
- The MVA search also indicated that a Jeep Body Truck, used by Appellant to pick up the students in the afternoon, is registered to her husband at the Banger Street property.
- According to a White Pages search, the home phone number listed by the Appellant on the students' emergency cards is a cell phone number that is listed as belonging to the Appellant at the Banger Street property.
- School hours at Point Pleasant are from 8:05 a.m. until 2:30 p.m. The morning bus leaves the bus stop at approximately 7:24 a.m.
- On December 5, 2012, Ms. Cheatham observed the Banger Street property from 7:30 a.m. until 7:55 a.m. Appellant's husband's vehicle was parked in the driveway. Ms. Cheatham observed an elderly gentleman arrive in another vehicle and knock on the door. An adult male let him in. At 7:50 a.m., the adult male exited the house with the students, who called back into the house to say goodbye to their grandfather. The adult male and the students entered the vehicle and left. Ms. Cheatham was unable to follow the vehicle. She confirmed with Point Pleasant that the students had arrived at school, but that they were late and had to sign in at the office.
- Staff had reported that Appellant's second grade daughter stated that she lived in Lansdowne, Maryland.

Based on the information discovered during the investigation, by letter dated December 11, 2012, the principal of Point Pleasant advised Appellant that her children were being withdrawn from school because they were not bona fide residents of the Point Pleasant attendance area. (Koennel Letter, 12/11/12).

Appellant appealed the decision to the local Superintendent with a copy of her lease for the Furnace Branch Road apartment, a BGE bill, and a copy of her paystub addressed to her at the Furnace Branch Road apartment. She maintained that she has lived in Anne Arundel County for approximately 16 years and that her father, who resides at the Banger Street property, watches her children before and after school while she is at work. (12/12/11 Letter; 1/16/13 Email).² She explained that the family does not get home until very late as a result of her and her husband's work schedules, after-school activities, and some mental health issues suffered by one of her daughters. She also stated that her son, who is 17 years old, has always attended AACPS, but there is no further discussion in the record about it.

Meanwhile, the school system continued its investigation with the following findings:

² The date on the letter appears to be an error. It should read as 12/12/12.

- In January 2013, the apartment rental office verified that Appellant's lease for the Furnace Branch Road apartment was still in effect.
- On January 14, 2013 at 1:00 p.m., Ms. Cheatham conducted a home visit of the Furnace Branch Road Apartment. Appellant was present and Appellant's sister-in-law and her toddler were seated on the couch. Ms. Cheatham observed that the apartment was scantily furnished and that it appeared to be set up for simple basic living. The Appellant showed Ms. Cheatham a room that she stated was shared by the students. It had a set of bunk beds and a few toys. Ms. Cheatham stated in her report that "the family appears to be living in this setting."
- On January 15, 2013, Robert Moore, Jr., a residency verifier for AACPS, began assisting with the residency investigation. He had previously received information that the students were being picked up from a bus stop at 7400 Furnace Branch Road.
- An MVA search and a LexisNexis check on January 16, 2013, both indicated that the listed address for the Appellant is the Banger Street property.
- On January 16, 2013, Mr. Moore observed the Furnace Branch Road property starting at 8:30 p.m. He was unable to enter the apartment building because it required a code to get in. He dialed the code for Appellant but there was no answer. He called the telephone number listed for Appellant in the LexisNexis search. A male answered and gave the phone to Appellant. Mr. Moore explained that he was at the apartment building and requested that the Appellant come open the door so that he could verify that she lived there. She refused and ended the call. The telephone number at which Mr. Moore had reached the Appellant was the land-line for the Banger Street property.

Appellant's husband later called Mr. Moore and complained that he was harassing his family. Mr. Moore explained that he was assisting with the school system's residency investigation. Appellant's husband used profanity towards Mr. Moore and threatened to physically injure him.

- On January 17, 2013, the administrative secretary in the AACPS Office of Student Services received an anonymous call advising that the Appellant and her family were living at the Banger Street property. The caller stated that the Appellant had made a post to her Facebook account that AACPS could not figure out her real address. The caller also stated that Appellant's husband's Maryland commercial driver's license reflects the Banger Street property as his address.³
- On January 23, 2013, Ms. Cheatham observed the Furnace Branch Road apartment beginning at 7:15 a.m. She did not observe the students at the property. At 8:00 a.m.,

³ The printout of the Facebook page in the record does not state what the caller claimed. Rather, Appellant complains about the school system trying to get in to her home at 8:30 at night without prior notice.

Ms. Cheatham contacted Point Pleasant and was told that the students had already arrived at school.

- On January 25, 2013, Ms. Cheatham and Mr. Moore conducted joint residency observations. Mr. Moore observed the Banger Street house starting at 6:30 a.m. and Ms. Cheatham observed the Furnace Branch Road apartment starting at 7:10 a.m. Mr. Moore observed the students and an adult male get into a black Ford SUV and leave the Banger Street house at approximately 7:31 a.m. Ms. Cheatham did not observe the students at the apartment building. Ms. Cheatham went to Point Pleasant and saw the students arrive with an adult male who entered the office and identified himself as their uncle.
- On January 30, 2013, Mr. Moore observed the Banger Street Property starting at 6:30 a.m. At 7:10 a.m., he observed the students leave in the Ford SUV that was parked at the property. Mr. Moore then observed the same vehicle at the Furnace Branch Road bus stop.

See Superintendent's Statement of Position; Residency Investigation Reports; Affidavits.

On February 7, 2013, Sarah Pelham, Assistant Superintendent for Student Support Services, acting as the Superintendent's designee, denied the Appellant's appeal based on insufficient evidence that the family resided in the attendance area for Point Pleasant. (Pelham Letter, 2/7/13).

On February 25, 2013, the Appellant appealed to the local board maintaining that she and her children lived at the Furnace Branch Road apartment. She submitted the following documents to support her case:

- 7/13/10 lease for Furnace Branch Road apartment;
- 2011 W-2 statement listing address as the Furnace Branch Road apartment;
- 9/14/12 paycheck addressed to Appellant at the Furnace Branch Road apartment;
- 5/1/12 letter from manager of the Furnace Branch Road property addressed to Appellant and her husband at the apartment advising of opportunity to renew lease;
- 8/28/12 BGE notice addressed to Appellant at the Furnace Branch Road apartment
- 11/30/12 paycheck addressed to Appellant at the Furnace Branch Road apartment;
- 12/27/12 BGE notice addressed to Appellant at the Furnace Branch Road apartment;
- 2/12/13 letter from Lakeland School in Baltimore City advising that the school cannot register the Appellant because she does not live there;
- 1/5/11 MVA address correction card listing the Furnace Branch Road apartment for the Appellant;
- 3/13/13 Bank of America statement cover letter addressed to Appellant at the Furnace Branch Road apartment;
- 3/29/13 BGE bill addressed to Appellant at the Furnace Branch Road apartment listing \$120.98 of new charges;

- 4/7/13 debt collection notice from Capital Management Service addressed to Appellant at the Furnace Branch Road apartment;

Meanwhile, the residency investigation continued. Here are the findings:

- On the afternoon of April 8, 2013, one of the Appellant's daughters had missed the bus but the other daughter had made it. When the bus got to the Furnace Branch Road stop, nobody was there to pick the student up. The bus driver returned the student to Point Pleasant where her sister was waiting in the office. The bus driver reported that the students stated they do not live at the Furnace Branch Road property and have to get a ride from the bus stop. The students' uncle picked them up at school and explained to school staff that his truck had broken down.
- On April 9, 2013, Ms. Cheatham observed the Furnace Branch Road property from 7:00 a.m. to 7:45 a.m. She did not observe the students at the property. She called Point Pleasant at 7:40 a.m. and was told that one of the students had just gotten off of the bus and the other was absent. She was also told that the bus driver had reported that the Appellant, her husband, and the students' uncle had recently established a pattern of getting the students to and from the bus stop by having the three adults drive three different vehicles to and from the bus stop on Furnace Branch Road.
- On April 10, 2013, Ms. Cheatham observed the Furnace Branch Road property starting at 7:00 a.m. There were very few parking spaces so it was difficult for her to get a spot with a good vantage point for observing cars coming in from either of the two parking lot entrances. She saw the school bus pull up and a group of students get on, but she was unable to see the vehicle that had entered the lot. She contacted Point Pleasant and was advised that the Appellant's children had arrived at school on the bus.
- On April 11, 2013, Ms. Cheatham and Stephanie Jones, an AACPS Pupil Personnel Worker, conducted a joint residency observation. Ms. Jones was at the Furnace Branch Road apartment. Ms. Cheatham was at the Banger Street property starting at 6:45 a.m. Ms. Cheatham saw the students' uncle back his vehicle into the driveway of the Banger Street property. The students entered the vehicle and he drove away. Ms. Jones observed the uncle drop the students at the Furnace Branch Road bus stop at approximately 7:25 a.m. Point Pleasant confirmed that the students arrived at school on the bus.

See Superintendent's Position Statement; Residency Investigation Reports; Affidavits.

The local board upheld the decision of the superintendent's designee, relying on the results of the residency investigation to conclude that Appellant's children do not reside in Anne Arundel County and are not eligible to attend AACPS. The local board noted that the burden of proof in the case lies with the Appellant.

The Appellant appealed to the State Board. In her appeal to the State Board, the Appellant indicates that her husband lives with Appellant's father at the Banger Street house.

STANDARD OF REVIEW

Because this is an appeal involving local board policy and procedures, 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 its decision is arbitrary, unreasonable or illegal. COMAR 13A.01.05.05A.

LEGAL ANALYSIS

The issue in this case is whether Appellant and her children resided in Anne Arundel County during the time in question in this case.

Maryland law establishes a bona fide residency requirement for public school attendance. Section 7-101(b) of the Education Article 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. . . ." As this Board explained 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. That determination of whether a child is a bona fide resident is a factual one and must be made on an individual basis. (*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-RA.B. The regulation further states:

Bona Fide Residence is the actual place of residence the student maintains in good faith with the student's parents, guardians or caretakers who intend to reside in the actual place of residence permanently. 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, care provider, or parent(s)/guardian(s).

JAB-RA.C.1.d. Thus, the burden of proof to establish bona fide residency is on the student, caretaker, parent or guardian.

A parent can establish residency by providing the school system with documents as specified in the policy. JAB-RA.C.2.e. The first form of documentation must consist of a mortgage document, deed, valid rental agreement, military housing lease, or a Tenant Residence Verification (TRV) . JAB-RA.C.2.e.1. The second form of documentation, issued within 60

days prior to demonstrating residency, must match the address on the mortgage document, deed, rental agreement, military housing lease of TRV and be one of the following:

- Utility bill, cable bill or work order issued by utility or cable company;
- Bank Statement;
- W-2 Form or Form 1099 issued the previous year; Pay stub;
- Valid Commercial Driver's License;
- Any government issued documentation, such as social security check/check stub/remittance advice; domestic relations/child support check; Department of Social Services food stamps or community medical assistance letter; or unemployment award;
- PPW verification letter or form verifying residence after a home visit.

JAB-RA.C.2.e.2. Consistent with the policy to show proof of residency, the Appellant submitted a valid lease for the Furnace Branch Road apartment and supporting documentation addressed to the Appellant at the Furnace Branch Road address. Providing such documentation establishes the presumption of residency. *See Stacey M. v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 10-11 (2010). The school principal and the Office of Pupil Personnel have the discretion, however, to require additional proof of residency. JAB-RA.C.2.e.

The issue is whether the additional information discovered by the school system through its residency investigation is sufficient to rebut the presumption of residency established by the production of the required documentation. It is clear that Appellant rents the Furnace Branch apartment and receives some mail there, but that can be so with a temporary residence established for the purpose of free school attendance in the jurisdiction. It does not necessarily establish that the family actually resides there. It is a fact that the school system investigators observed the Furnace Branch Road property on several occasions and not once observed the Appellant and her daughters there except for times when the girls were being dropped off or picked up from the bus stop and driven away. On the other hand the girls were regularly observed going to and from the bus stop or school from the Banger Street house.

We understand that many people rely on family and friends to assist with child care. Indeed, Appellant maintains that this is the case here, and that her father watches her daughters before and after school at the Banger Street house. Although Appellant states in her letter of appeal that she works Monday through Friday and some Saturdays with one late night per week, as well as fundraisers at various Baltimore City locations on any day at any time, Appellant does not provide any specifics about the start and end times or dates of these endeavors to counter the observations of the school system investigators. She claims that the girls live with her at the Furnace Branch Road apartment, even though their father resides with the Appellant's father at the Banger Street house and that is the only residence investigators ever saw the girls entering or leaving. It is reasonable to believe that the family would have to go to the Furnace Branch Road apartment at some point and would have to leave the apartment in the mornings if they resided there. In addition, the girls told the bus driver that they do not live at the Furnace Branch Road apartment. We also note that the Appellant answered the land-line phone at the Banger Street property at 8:30 p.m. when contacted by Mr. Moore to conduct a home visit. With regard to that request, Appellant maintains that she did not want to let a man she does not know inside her apartment at that time of night. (Appellant's Email to Sup't., 1/17/13). Appellant, however, was

not at the apartment. The observations, along with all of the other information in the record that points to the Banger Street property as the Appellant's address, lend support to the local board's conclusion.⁴

The standard applicable here is whether the local board's decision is arbitrary, unreasonable or illegal. That means that no reasoning mind could have reached the same decision, not whether a reasoning mind could also reach another decision. Based on the facts revealed by the school system's investigation, we believe that there is sufficient evidence in the record to rebut the presumption of residency. The Appellant has not presented evidence sufficient to meet her ultimate burden of proof of residency. Thus, the local board's decision is not arbitrary, unreasonable or illegal.

CONCLUSION

For the reasons stated above, we affirm the local board's decision.

Charlene M. Dukes ^{-mcp}

Charlene M. Dukes
President

Mary Kay Finan

Mary Kay Finan
Vice President

James H. DeGraffenreid, Jr.

James H. DeGraffenreid, Jr.

Linda Eberhart

Linda Eberhart

Absent

S. James Gates, Jr.

Absent

Larry Giammo

⁴ Appellant maintains that she has attempted to enroll her children in Baltimore City but is unable to do so because she cannot provide a lease or mortgage instrument. This is not particularly helpful information given that Appellant seeks to have her children remain in AACPS and would likely not seek to establish that she actually lives in Baltimore City. In addition, Baltimore City, like other Maryland jurisdictions, has a process for enrollment in school when the family is living with other family members or friends in the jurisdiction. Thus, failure to produce a lease or mortgage instrument does not always mean residency cannot be established there.

Absent
Luisa Montero-Diaz

Absent
Sayed M. Naved

Madhu Sidhu
Madhu Sidhu

Donna Hill Staton
Donna Hill Staton

Guffie M. Smith, Jr.
Guffie M. Smith, Jr.

March 25, 2014