

MR. AND MRS. V.,

Appellant

v.

BOARD OF EDUCATION OF
HOWARD COUNTY,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 11-37

OPINION

INTRODUCTION

Mr. & Mrs. V (Appellants) appealed the decision of the Howard County Board of Education (local board) to assess them tuition for 23 school days during the 2010-2011 school year. The local board filed a Motion for Summary Affirmance which the Appellants oppose. The local board responded to the Appellants' Opposition.

FACTUAL BACKGROUND

Appellants contend that they are bona fide residents of Howard County and enrolled their two children, J and JP, at Longfellow Elementary School at the beginning of the 2010-2011 school year. (Board Exhibit 1 at 2, Board of Education Decision). Mrs. V states that her Howard County residence is 5278 Eliots Oak Road, which is a home owned by her mother. Mr. V states that he has two residences, 9051 Flamepool Way, in Howard County and 1626 Apartment A, Bluestone Street, in Anne Arundel County (Board Exhibit 2, at 3, Appeal Information Form). The home at 9051 Flamepool Way, is owned by Mr. V's parents. (Board Exhibit 2, at 24).

Appellants completed Howard County Public School System Emergency Procedure Information Cards on August 30, 2010 for the 2010-2011 school year. The cards state that J and JP's home address is 5278 Eliots Oak Road, in Howard County. Appellants' addresses are left blank but addresses for the children's grandmother and aunt are given, presumably so they can be contacted in case of an emergency. (Board Exhibit 2, at 33 and Board Exhibit 12, 2010-2011 Emergency Procedure Information cards).

In Spring of 2010, one of the children disclosed to a Longfellow Elementary School staff member that he lived near Arundel Mills Mall in Anne Arundel County. The child's statement was consistent with an anonymous tip to the local board alleging that Appellants did not live in

Howard County. Based on this information, the school system initiated a residency investigation to determine if Appellants were bona fide residents of Howard County. (Board Exhibit 2, at 12, Blackwell Memo, January 12, 2011.).

Security Officer, Dan Tufano, conducted the residency investigation from August 27, 2010 through September 29, 2010. The residency investigation focused on the 1626-A Bluestone Street residence in Anne Arundel County and the 5278 Eliots Oak Road residence in Howard County. Mr. Tufano determined that Appellants had two vehicles, a Nissan and a Cadillac.¹ (Board Exhibit 2 at 24).

Mr. Tufano contacted the rental office for 1626-A Bluestone Street and spoke with the leasing consultant and the property manager. They verified that a lease for the apartment at 1626-A Bluestone Street was signed by Mr. V. The lease identified Appellants, J, JP, and a third child as the residents of the apartment. Although Mr. V stated that his sister lived at the apartment, her name was not listed as a resident. (Board Exhibit 2, at 17-18 and 24-26; Board Exhibit 7, Letter to Appellants, October 6, 2010). In fact, the emergency contact card completed on August 30, 2010, shows his sister's address as Benoli Court, Odenton, Maryland in Anne Arundel County.

Mr. Tufano's investigation included 10 residency surveillances of the Howard County and Anne Arundel County residences. The surveillances were conducted during morning, afternoon, and nighttime hours. (Board Exhibit 2, at 24-26, Residency Appeal summary, October 4, 2010). Below is a summary chart of Mr. Tufano's observations.

	Date & Time	Place	Observation
1	August 27, 2010, 1:44 am	9051 Flamepool Way, Columbia, Md	Neither vehicle owned by Appellants was at location.
2	August 27, 2010, 1:57 am	5278 Eliot's Oak Road, Columbia, Md.	Neither vehicle owned by Appellants was at location.
3	August 31, 2010, 3:00pm - 3:29 pm	Longfellow Elementary to Stoney Run Drive and apartment complex in Anne Arundel County.	The Nissan left the school and drove to an apartment complex in Anne Arundel County. Mother and two children left the Nissan and went to third floor of the building.
4	August 31, 2010, 10:20 pm	1626 -A Bluestone Street, Hanover, Md, Anne Arundel County.	Cadillac was parked in front of the building, but the Nissan was not located.

¹ The school system investigation found two vehicles, the Nissan and Cadillac, registered to Appellants. Appellants claim that they have three vehicles that they rotate using. The third vehicle is identified by Appellants as a Lincoln Navigator.

5	September 2, 2010, 12:19 am	1626 -A Bluestone Street, Hanover, Md, Anne Arundel County.	Cadillac was parked in front of the building, but the Nissan was not located.
6	September 2, 2010, 7:45 am- 8:45 am.	1626 -A Bluestone Street, Hanover, Md, Anne Arundel County; 5278 Eliots Oak Road, Columbia, Md, Howard County; Longfellow Elementary School.	Cadillac and Nissan were parked in rear of the Bluestone St. building. Mother and two children entered the Nissan and drove to 5278 Eliots Oak Road, Columbia, Md., Howard County. The children entered the townhouse and appellant remained outside and placed a third child in a stroller. The children and an older woman left the townhouse, met up with the mother, and all walked to Longfellow Elementary School.
7	September 7, 2010, 7:48 am – 8:42 am	1626- A Bluestone Street, Hanover, Md, Anne Arundel County; Longfellow Elementary School.	Cadillac and Nissan were parked in front of the Bluestone St. building. Mother and children left the building, entered the Nissan and drove to Longfellow Elementary School.
8	September 8, 2010, 7:37 am – 8:50 am.	1626- A Bluestone Street, Hanover, Md, Anne Arundel County; Centennial Lane and Route 108.	Cadillac and Nissan were parked in rear of the Bluestone St. building. Mother and children left the building and entered the Nissan and drove away. Children were marked tardy at school at 9:00 am.
9	September 15, 2010, 8:15 am- 8:45 am	5278 Eliots Oak, Road, Howard County.	Neither the Cadillac nor Nissan were parked in the parking lot. At 8:30 am, the Cadillac drove into the parking lot at 5278 Eliots Oak, Drive. Mother and children left the car and entered the townhouse. Mother, children and another woman left the townhouse at 8:45 am, the children took backpacks out of the Cadillac and walked towards Longfellow Elementary School. Mother returned to the Cadillac and exited the parking lot.

10	September 29, 2010, 8:18 am-8:55 am	5278 Eliots Oak, Road, Howard County.	Neither the Cadillac nor Nissan were parked in the parking lot. At 8:55 the Nissan entered the parking lot. Phone call received from Longfellow Elementary School official to advise that children had been dropped off at school in the Nissan. Mother entered the townhouse at 5278 Eliots Oak Drive.
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On September 16, 2010, Cathy Nowak, Principal of Longfellow Elementary School advised Appellants that the school system received information indicating that they were not bona fide residents of Howard County and the children would be withdrawn from school on September 30, 2010. Appellants were advised of their right to appeal the withdrawal decision, and on September 17, 2010, Appellants requested an appeal to Pamela Blackwell, the school system's Director of Student Services. (Board Exhibit 9, Nowack letter to Appellants, September 16, 2010 and Board Exhibit 10, Appellants letter, September 17, 2010).

On October 5, 2010, Ms. Blackwell conducted an appeal conference. Mrs. V stated that she completed a Multiple Family Disclosure form alleging that she and her children resided in Howard County as guests at 5278 Eliots Oak Road, a residence owned by her mother. Mr. V stated that his residence was also in Howard County at 9051 Flame Pool Way. Mr. V explained that the lease for the Anne Arundel County apartment at 1626-A Bluestone Street was in the name of his sister. He acknowledged that he stayed at the apartment occasionally. Mr. V explained that J and JP's names were listed as residents of the Anne Arundel County apartment because his sister babysat for them on occasion. (Board Exhibit 7, Blackwell letter to Appellants, October 6, 2010). The record of the appeal conference does not contain any documents supporting Appellants' residency in Howard County such as: leases, deeds, telephone bill, cable bill, electric bill, gas bill, address change information, credit card statement, tax forms, paycheck stub, or bank statement.

Based on the information presented at the conference, Ms. Blackwell concluded that Appellants and their children were not bona fide residents of Howard County. On October 6, 2010, Ms. Blackwell advised Appellants that J and JP would be withdrawn from Howard County Public Schools on Friday October 8, 2010, and charged \$2,409.94 in tuition for 23 school days from August 30, 2010 to October 5, 2010. Her decision was pursuant to the Board of Education Policy 9000, *Enrollment, Residency, Student Assignment and Admission to Pre-Kindergarten and Kindergarten*. (Board Exhibit 7, Blackwell Letter to Appellants, October 6, 2010 and Board Exhibit 11).

On October 6, 2010, the Principal of Hebron-Harmon Elementary School in Anne Arundel County informed the secretary at Longfellow Elementary School that J and JP had been enrolled in the Anne Arundel County School and requested copies of the children's birth certificates, latest report cards, and immunization information. (Board Exhibit 2, at 19, email to Hatfield and Blackwell, October 6, 2010).

Appellants appealed Ms. Blackwell's decision to assess tuition costs to the local board. (Board Exhibit 2 at 3 and 10). To avoid paying tuition, Appellants argued that they were bona fide residents of Howard County. (Board Exhibit 2 at 5-6). On February 10, 2011, the local board upheld Ms. Blackwell's decision that Appellants and the children were not bona fide residents of Howard County and the tuition charge was justified. The evidence before the local board did not include any documentation identified in Board of Education Policy 9000 to support Appellants' residency in Howard County.

This appeal ensued.

STANDARD OF REVIEW

Because this appeal involves a decision of the local board involving a local policy, 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 the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05A. *Austin G. v. Prince George's County Bd. of Educ.*, MSBE Op. No. 08-43 (2008). The Appellants have the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.05D.

ANALYSIS

Appellants assert in this appeal that they should not be charged tuition retroactively because they were bona fide residents of Howard County from August 30, 2010 to October 5, 2010. In order to determine if the retroactive tuition decision was arbitrary, unreasonable, or illegal it is necessary to review the facts in the record regarding Appellants' residency.

Under State law, students are required to attend school within the jurisdiction in which they reside with their parent or guardian. Md. Code Ann., Educ. § 7-101(b)(1). School systems are permitted to charge tuition to the parent if the student is fraudulently enrolled in a school in a jurisdiction where the child is not domiciled with the child's parent or guardian. Md. Code Ann., Educ., § 7-101(b)(3). The local board's policy allows school-aged students to be admitted to the Howard County Public School System without the payment of tuition if the parents of the students have established bona fide residence in Howard County. Board of Education Policy 9000(C).² Bona fide residency in Howard County can be established by providing

² Board of Education Policy 9000 allows non-tuition admission to Howard County Public Schools for several other reasons that do not apply to this appeal.

documentation of being a homeowner, renter, or sharing housing with a host family. Board of Education Policy 9000-PR, *Enrollment, Residency, Student Assignment and Admission to Pre-Kindergarten and Kindergarten*. The following documents support bona fide residency:

Homeowner:

- Deed or deed of trust along with any of the following:
- Current cable bill
- Current bill for non-cellular phone
- Current gas and electric bill.

Renter:

- Original, current lease with signature along with any one of the following:
- Current cable bill
- Current bill for non-cellular phone
- Current gas and electric bill.

Shared Housing:

- Guest families living with families who own a home:
 - Must complete a Multiple Family Disclosure form at a meeting with the school's Pupil Personnel Worker.
 - One member of both the guest and host family must attend.
 - The host must bring a copy of the deed and one of the following:
 - Recent utility bill
 - Recent non-cellular telephone bill
 - Recent cable bill.
 - Host and guest must bring some form of photo identification for the purpose of notarization.
 - The guest must provide two additional proofs of residency including:
 - Pay stub
 - Post Office change of address label
 - Credit card statement
 - Tax statement
 - Bank statement
- Two recent proofs of residency must be provided to the school at the beginning of each school year as long as the multiple family living situation continues, or the student will be withdrawn.

Board of Education Policy 9000-PR(I)(A)(7) and (C), *Enrollment, Residency, Student Assignment and Admission to Pre-Kindergarten and Kindergarten* (Board Exhibit 11).

The local board record includes Appellants' December 2, 2010, Appeal Information Form and a letter challenging the competency of the school system's investigation. On the form, Appellants state, "Our proof of residency (voters registration, taxes State and local, bills, bank statement, cars registered. The days we were monitored do not determine we are not bona fide residence [sic]." (Board Exhibit 2 at 3-7). No documents in support of residency were attached. On December 20, 2010, the local board asked Appellants to submit any additional documents or information by December 29, 2010, to support their appeal. (Board Ex. 2 at 29). The local board record, however, does not have any documents supporting Appellants' Howard County residency from August 30th until October 5, 2010.

The record reflects statements of Mrs. V from the October 5, 2010 appeal conference that she completed a Multiple Family Disclosure identifying 5278 Eliots Oak Road, as her address to initially enroll J and JP in Howard County Schools. She claimed that her mother was the host family and Mrs. V and the children were the guest family. Even if the statement is correct, the Multiple Family Disclosure and supporting documents are not in the record. Supporting documents would include: the host's deed, a recent utility bill, recent non-cellular telephone bill, or recent cable bill. Additional supporting documents would be Mrs. V's guest documents such as: pay stub, post office change of address label, credit card statement, tax statement, or bank statement. Board of Education Policy 9000-PR(I)(A)(7) and (C). Appellants argue that during the appeal conference they attempted to show Ms. Blackwell supporting documentation of their residence, including paystubs, tax returns, voters registration, driver's license, bills, credit card statements, and vehicle insurance. Appellants claim that Ms. Blackwell refused to review the documents. (Appellants' Appeal Information to State Board, March 22, 2011 at 3). Even if Appellants statement is accurate, the local board specifically asked Appellants to submit documents by December 29, 2011. Apparently, the documents were not submitted because there are no documents in the local board record to support Appellants' claim.

The local board argues that its residency investigation proved that Appellants' children lived with them in Anne Arundel County. Consequently, pursuant to Board Policy 9000, the Appellants are responsible and liable for the payment of retroactive tuition for the children's attendance in Howard County Public Schools. (Local Board memo at 9). The local board's position is supported by the results of the month long residency investigation. The school system investigator contacted the leasing agent and property manager of the Anne Arundel County apartment at 1626-A Bluestone Street. They confirmed that 1626-A, Bluestone Street was leased to Mr. V, and the residents of the apartment are Mr. and Mrs. V, J, JP and a third child. Contrary to Mr. V's statement that the Bluestone Street apartment was in his sister's name, the 2010-2011 emergency contact form completed on August 30, 2010, lists Mr. V's sister's address as Benoli Court in Odenton, Maryland (Anne Arundel County). During two observations conducted

between 1:30 am and 2:00 am, neither of Appellants' registered vehicles were observed by the school system investigator at either listed Howard County residence. Similarly, neither of Appellants' vehicles were observed at the Eliots Oak Road residence in Howard County during an 8:18 am and 8:55 am observation. However, during three observations, between 7:30 am and 9:00 am, both of Appellants' vehicles were observed at the Anne Arundel County apartment.

During the three 7:30 am to 9:00 am observations, Mrs. V and her children were observed leaving the apartment, entering one of the vehicles and driving away. On one occasion, the school system investigator followed Ms. V to the Howard County residence at Eliots Oak Road. From there, they were observed walking to Longfellow Elementary School. On another occasion, Mrs. V and her children were observed leaving the Anne Arundel County apartment at 1626-A Bluestone Street and followed directly to Longfellow Elementary School. On the third occasion, the investigator saw Mrs. V. and the children leave the Anne Arundel County apartment. The investigator was called by staff at Longfellow Elementary School and advised that JP and J had arrived at school. During an observation in the afternoon, between 3:00 pm and 3:30 pm, Mrs. V and the children were observed leaving Longfellow Elementary School and driving to the Anne Arundel County apartment. Finally, evidence in the record demonstrates that Appellants enrolled J and JP in Anne Arundel County Public schools on October 5, 2010, the day of the residency hearing. This further supports the conclusion that Appellants actually resided in Anne Arundel County.

Appellants answer the investigation observations with explanations for each observation. (Appeal Information, March 22, 2011, May 10, 2011 and June 11, 2011). The rebuttal explanations do not demonstrate actual residency in Howard County. For example for September 2, 2010, the school system investigator observed that the Cadillac and Nissan were parked in rear of the Bluestone St. building. Mrs. V and two children entered the Nissan and drove to 5278 Eliots Oak Road, Columbia, Md., Howard County. The children entered the townhouse and appellant remained outside and placed a third child in a stroller. The children and an older woman left the townhouse, met up with the mother, and all walked to Longfellow Elementary School. Appellants' response to this observation of the same date does not demonstrate Appellants' residency in Howard County. "The Nissan Quest was at Mrs. V's home (Eliot's Oak Road) and I drove the Lincoln Navigator (our third vehicle) to work, the children were with their Grandmother. After Mrs. V got off of work, she went home to get JP and J and the Nissan Quest (because that is the vehicle with the infant car seats.) JP and J accompany Mrs. V to get the infants from Bluestone, so their Aunt can go to work. Mrs. V and the children drove back home and Mrs. V and . . . (her mother) walked our children to school, and Mrs. V returned back home for the remainder of the day and evening as usual." (Appeal Information, March 22, 2011 and May 10, 2011).

Appellants included with their appeal to the State Board several documents purporting to be evidence of their bona fide Howard County residence. Those documents were not reviewed by the local board and are not in the local board record.³ The State Board of Education generally does not review evidence that was not before the local board because the State Board of Education acts as a board of appeal of local board decisions involving a local policy on a controversy or dispute regarding its policies or regulations. COMAR 13A.01.05.05A. *K.W. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 07-20 (2007). The State Board reviews the appeal on the record made before the board. COMAR 13A.01.05.06. *Lessie V. v. Caroline County Bd. of Educ.*, Op. No. 11-16 (2011)(State Board would not consider documentary evidence of parent's concerns that were not presented to the local board); *Natalia v. Montgomery County Bd. of Educ.*, Op. No. 11-19 (2011)(State Board would not consider evidence of safety reports that Appellants did not provide to local board to review). Appellants had the opportunity to submit this information to the local board and have it considered. It is not appropriate now for the State Board to consider evidence that was not reviewed by the local board.

The Appellants have not met their burden of proof that their bona fide residence from August 30, 2010 through October 5, 2010 was in Howard County. The local board record does not contain documents required by Local Board of Education policy 9000-PR for home owners, renters, or house sharers to demonstrate residence in Howard County. No deed, deed of trust, current lease, current cable bill, current bill for non-cellular phone, current gas, electric bill, pay stub, post office change of address label, credit card statement, tax statement, or bank statement were included. Appellants' explanations about their residency do not establish residency in Howard County, the time period in question. Accordingly, the local board's determination that charging Appellants retroactive tuition for the time that period that they were not bona fide residents is supported by the facts and the law.

³ Appellants included the following with their filing to the State Board:

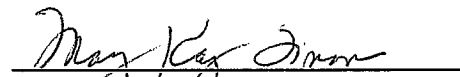
- Letter addressed to Mrs. V. at 5278 Eliots Oak Rd, March 2011;
- Collection agency alert addressed to Mr. V. at 9051 Flame Pool Way, November 2010;
- Part of a statement addressed to Mr. V. at 9051 FlamePool Way, March 2011;
- Check for \$0.00 addressed to Mr. V. at 9051 Flame Pool Way, March 2011;
- Driver's license for Mr. V. addressed to 9051 Flame Pool Way, issued February 2009;
- Two blank and undated checks from two banks for Mrs. V., addressed to 5278 Eliots Oak Road;
- Driver's license for Mrs. V., addressed to 5279 Eliots Oak Road, issued May 2009;
- MVA registration certificate for Mrs. V., addressed to 5278 Eliots Oak Road, expiration date May 2012, but without issuance date; and
- Howard County Voter Identification Card, issued to Mrs. V., addressed to 5278 Eliots Oak Road with issuance date blacked out. (Appeal Information, March 22, 2011).

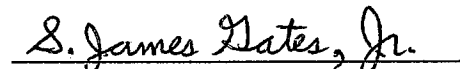
CONCLUSION

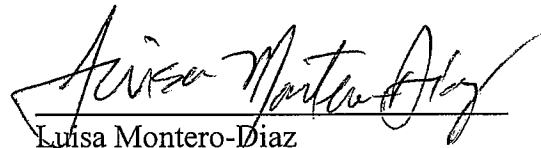
For all the reasons stated herein, we affirm the decision of the Howard County Board of Education.


James H. DeGraffenreid, Jr.
President


ABSENT
Charlene M. Dukes
Vice President


Mary Kay Finan


S. James Gates, Jr.

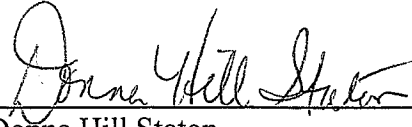

Luisa Montero-Diaz

ABSENT
Sayed M. Naved


Madhu Sidhu

ABSENT

Guffrie M. Smith, Jr.



Donna Hill Staton



Ivan C.A. Walks



Kate Walsh

August 30, 2011