

MR. and MRS. ABU B.

Appellant

v.

HOWARD COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 12-17

OPINION

INTRODUCTION

Appellants challenge the local board's decision that they are not bona fide residents of Howard County and that Appellants are therefore responsible for the payment of tuition for the time their children attended the Howard County Public School System. (HCPSS). The local board filed a motion for summary affirmance. The Appellants opposed the motion and the local board responded to Appellants' opposition.

FACTUAL BACKGROUND

Appellants have two children who attended HCPSS. FB is a pre-K student at Rockburn Elementary School (Rockburn) and SB is a first grade student at Elkridge Elementary School (Elkridge).

During the fall of the 2009-2010 school year, teachers and administrative staff at Elkridge became suspicious that there might be a residency issue because Appellants dropped SB off at school exceedingly early. In October 2009, the Registrar at Elkridge recalled that the Appellants had specifically requested that mail be directed to a post office box outside of the Elkridge attendance area. When the Registrar questioned Mr. B about the use of the out-of-area post office box, he stated that he owned multiple properties and that the box was the most convenient way to receive all mail. The Registrar thereafter referred the case to the school's Pupil Personnel Worker (PPW) to conduct an investigation. (Case record, Tab 2, Blackwell Memo to Local Board (6/2/11) & Tab 4, Case Summary).

The investigation began with a review of the deed originally provided by the Appellants to enroll SB at Elkridge. The deed listed 6150 Hanover Road in Elkridge as the Appellants' residential address. The real property searches failed to identify the existence of a property at this address. An individual at the Howard County Land Records Office inspected the deed and

advised the PPW that the deed was invalid because it was not signed by the title company's attorney, the address did not exist in Howard County, and no Maryland taxes were being collected for the address. The PPW's physical inspection of the area revealed that the address did not exist. (*Id.*).

Review of the Appellants' records on Accurint¹ suggested that the Appellants' probable residence was 519 Brisbane Road, Baltimore, Maryland 21229-4302. (Case record, Tab 4, Accurint Report). The Maryland State Department of Assessments and Taxation (SDAT) records list this address as the Appellants' principal residence. (Case record, Tab 4, MDAT Report). The Maryland Real Property Search also showed that Appellant owned other properties in Maryland which were not listed as principal residences. (Case record, Tab 2, Blackwell Memo to Local Board (6/2/11) & Tab 4, Case Summary). Based on the results of the investigation, the school sent Appellants a letter on October 19, 2009 advising that SB would be withdrawn from Elkridge unless the Appellants submitted valid residency documentation. (*Id.*).

On October 29, 2009, Mr. B produced a deed for 5810 Race Road in Elkridge, which he purchased on October 28, 2009. The PPW verified the veracity of the deed with the title company but was unable to verify through the title company's attorney whether the Appellants intended to use the residence as their primary address. (*Id.*). The PPW contacted the prior owner of the Race Road property who confirmed sale of the property to Mr. B but indicated that the property was uninhabitable at the time of purchase. (PPW Affidavit). On November 2, the PPW conducted a home visit, finding the house in an extreme state of physical disrepair and lacking an electric meter. In a phone conversation that same day, Mrs. B advised the PPW that the electricity was to be activated that day and the family intended to move in over the weekend. She also stated that the Brisbane Road property was rented and no longer their primary residence. (Case record, Tab 2, Blackwell Memo to Local Board (6/2/11) & Tab 4, Case Summary).

Thereafter, the PPW performed three school morning surveillances of the Race Road property – on November 12, November 18, and November 23, 2009. The PPW did not find any occupants at the residence on these days. The lot shares a driveway with a neighboring home. On each of the days, the only vehicle near the homes was a green Plymouth minivan. (*Id.*).

After conducting the home surveillance on November 23, the PPW went to Elkridge and awaited Appellants' arrival. Mr. B arrived at school with SB at 10:30 am, well after school began. Mr. B was driving a Toyota Avalon which was registered in his name at 7629 E. Arbory Court in Laurel. The Arbory Court address was sold by Mr. B earlier in the year. (*Id.*). The PPW then forwarded the case for a residency determination but no decision was issued due to case backlog. SB continued to attend Elkridge into the 2010-2011 school year. (Case record, Tab 2, Blackwell Memo to Local Board (6/2/11)).

¹ Accurint is the residency software tool used by the Howard County Public School System.

The same concerns about SB's residency persisted in the 2010-2011 school year based on the number of times SB was tardy for school and was picked up early from school.² Appellants' younger child, FB, was attending pre-kindergarten at Rockburn Elementary School (Rockburn) and concerns arose regarding him as well. (*Id.*). Additionally, a Child Protective Services worker had told the Principal of Rockburn that CPS had determined during an investigation of the Appellants initiated by the school that the family did not reside at the Race Road address in Howard County. (*Id.*; Bauer Affidavit).

The school system reopened its investigation of Appellants' residency. In this investigation, the SDAT records revealed that the Race Road property in Howard County and the Brisbane Road property in Baltimore were both were listed as the Appellants' primary residence. (Case record, Tab 2, Blackwell Memo to Local Board (6/2/11) & Tab 4, Case Summary; Local Bd. Ex. 8). The Accurint report listed the Brisbane Road address as the probable current residence. It did not list the Race Road address at all. (*Id.*).

Mr. Dan Tufano, Assistant Security Coordinator for HCPSS, conducted several school day morning surveillances of the Brisbane Road residence. Mr. Tufano's observations are as follows:

Date and Time	Place	Observations
January 31, 2011 at 8:29 AM	Brisbane Road Residence in Baltimore City	One adult and two children leaving property
February 3, 2011 at 8:22 AM	Brisbane Road Residence in Baltimore City	One adult and two children leaving property
February 9, 2011 at 8:25 AM	Brisbane Road Residence in Baltimore City	One adult and two children leaving property
February 14, 2011 at 8:11 AM	Brisbane Road Residence in Baltimore City	Two adults who carried several bags; One female adult leaving at 8:30 AM
March 8, 2011 at 8:25 AM	Brisbane Road Residence in Baltimore City	One adult and two children leaving property

He confirmed that SB was present in school on each of these days. (Case record, Tab 3, Blackwell Letter, 4/11/11). Appellants do not deny that they and their children were observed at the property.³

² As of May 25, 2011, SB was enrolled for a total of 135 days. During that time period, she was absent a total of 11 days, with 2 excused and 9 unexcused absences. She also had 4 unexcused tardies and 24 early dismissals, only 2 of which were excused.

³ There are some copies of surveillance photographs in evidence from February 3, February 9 and March 8, 2011. The pictures are not very clear which makes it somewhat difficult to perceive details. Mr. B admits that he is in the photos from at least one of those days. (Appeal Attachment).

On March 8, 2011, the principals of Elkridge and Rockburn sent letters to the Appellants informing them that their children were ineligible to attend school in HCPSS based on lack of residency in the County and that the children would be withdrawn from school on March 23, 2001. (Case record, Tab 3, Bauer and Sumford Letters).

Appellants appealed the residency determination. Ms. Pamela Blackwell, Director of Student Services and Superintendent's Designee, conducted an appeal conference on April 5, 2011. Appellants maintained that they were living at the Race Road property which they had owned for two years, that the children leave from the Race Road residence every morning to go to school, and that the Brisbane property in Baltimore City was an investment property leased to another individual. (Case record, Tab 3, Appellants' Letter to Hanks, 4/11/11). Appellants also presented tax and utility bills for the Race Road property. (Case record, Tab 2, Blackwell Memorandum to Local Board, 6/2/11).

By letter dated April 11, 2011, Ms. Blackwell advised Appellants of her determination that they were not bona fide residents of Howard County and, therefore, their children would be withdrawn from school on April 8, 2011. She also informed them that tuition would be assessed for the time the children had attended the HCPSS during the 2010-2011 school year in the amount of \$7,057.76.⁴ (Case record, Tab 3, Blackwell Letter to Appellants, 4/11/11).

The Appellants appealed Ms. Blackwell's decision to the local board. (Case record, Tab 3, Appeal Letter, 4/11/11). The local board unanimously upheld Ms. Blackwell's decision. (Local Bd. Decision and Order). This appeal followed.

STANDARD OF REVIEW

Because this appeal involves a decision of a local board concerning 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.

LEGAL ANALYSIS

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). The local board's policy allows school-aged students to be admitted to the Howard County Public School System if the parents have established a bona fide residence in Howard County. (Local Bd. Ex. 10, Local Board Policy 9000(IV.C)). The policy defines "bona fide residence" as a person's "actual residence maintained in good faith. It does not include a temporary residence or a superficial residence established for the purpose of attendance in the Howard County Public

⁴SB transferred to Crestwood Elementary School in Richmond, VA. HCPSS has no information where FB is presently enrolled.

Schools.” (*Id.* at III.A.) The State Board has affirmed the bona fide residency requirement on multiple occasions. See *Gustafson v. Board of Educ. of Allegany County*, 7 Op. MSBE 308 (1996); *Armour v. Board of Educ. of Montgomery County*, 2 Op. MSBE 123 (1979).

Bona fide residency in Howard County can be established by providing documentation of being a homeowner, renter, or sharing housing with a host family. (Local Bd. Ex. 10, Local Board Policy 9000-PR(I.A.7)). A homeowner must provide a deed or deed of trust with a required signatures and one of the following documents: a current cable bill, a current bill for non-cellular phone, or a current gas and electric bill. (*Id.*)

Appellants maintain that they reside at the Race Road property in Howard County and not at the Brisbane Road property in Baltimore City. To support this, Appellants supplied the school system with a deed for the Race Road property, and a BG&E bill and Real Property Tax bill covering the period of July 1, 2010 through June 30, 2011, reflecting that address. (Exhibit 5).

The school system’s residency investigation, however, revealed information that led the local board to conclude that the Appellants did not actually reside at the Race Road property. The local board relied on the following information to support its conclusion:

- Appellants originally presented a fraudulent deed for non-existent property on Hanover Road to enroll SB in the HCPSS.
- Appellants requested that the school send their mail to an out-of-area post office box.
- Appellants purchased the Race Road property one day after the school system gave notice that SB would be withdrawn from the HCPSS due to lack of bona fide residency.
- The title company could not confirm that the Race Road property was intended to be used as a primary residence.
- The individual who sold the Race Road property to Mr. B advised the PPW that the property was uninhabitable.
- Physical inspection of the Race Road property in 2009 confirmed that the home was in a state of extreme disrepair and lacked an electric meter.
- Appellants and their children were not observed at the Race Road property during three separate school morning surveillances in November 2009.
- Five surveillances of the Brisbane Road address from January through March 2011 showed an adult and two small children leaving the address on school mornings. SB was confirmed present in school each of those days.

- Surveillance of the Appellants' arrival at Elkridge Elementary showed the Appellants driving a vehicle never seen at the Race Road property.
- A CPS worker advised the Principal at Rockburn that CPS had determined that the Appellants did not live at the Race Road address.
- The Accurant report listed the Brisbane Road address as the probable current residence and did not list the Race Road address at all.

Appellants assert that the Brisbane Road property in Baltimore City is merely an investment property that was being worked on at the time of the PPW's surveillances. They claim that at those times, they were delivering materials and giving instructions to workers and contractors on site. They have not, however, presented any evidence to support this claim. They could have produced receipts and invoices for work and supplies or affidavits of individuals working on the property at the time in question. Appellants also note that the surveillance pictures show a for rent sign displayed at the property. While the copies of the photographs are not very clear, we are able to discern a realtor sign in the window and an unreadable posted sign in the front lawn that we will presume is a rental sign. At best the photos show an intent to rent the property. This does not mean that Appellants were not living at the location in the meantime.

Appellants claim that the school system's statements about the prior owner of Race Road are false. In an attempt to show this they have submitted an affidavit of the prior owner and a copy of a handwritten document that purports to have that individual's signature. In the affidavit, the prior owner replaced the language "I have not spoken" to anyone from the school system about the status of the house being inhabitable or not with "I do not recall speaking" to them. (Milton T. Affidavit). In the undated copy of a statement that appears to have the prior owner's signature, he states that he "never at any time spoke with [school system] staff" about the property being uninhabitable. The sworn affidavit, however, takes precedence over the undated statement.⁵ It does not contradict the PPW's statement in his affidavit that the prior owner spoke to him about the property.

We note that the PPW did not revisit the Race Road property during the 2010-2011 school year. Therefore, we do not know whether the Race Road property still was uninhabitable or whether the Appellants, their children, or their vehicles were actually not in residence at the property. Nevertheless, the burden in this case is on the Appellants to establish residency in Howard County by a preponderance of the evidence. Although Appellants have made a variety of claims about their residency status, they have not sufficiently rebutted the school system's investigative findings. We note that the local board evaluated Appellants' claims against the backdrop of the verified fraudulent enrollment of their daughter in 2009 based on an address that

⁵ Appellants also claim that the school system's statements about the CPS worker are false. Mr. B has submitted his own affidavit stating that the CPS worker told him that he did not speak with anyone from the school system regarding his case. Rockburn's principal submitted an affidavit asserting that the CPS worker told her that the Appellants did not reside at Race Road. Those competing hearsay statements cancel each other out.

did not exist. Given the totality of the evidence in this case, we believe that it was reasonable for the local board to conclude that the Appellants were not bona fide residents of Howard County.

Tuition

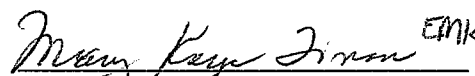
The local board assessed tuition charges against the Appellants because they were found not to be bona fide residents of Howard County while their children were attending HCPSS. School systems are permitted to charge tuition for fraudulent enrollment. Md. Code Ann. Educ., §7-101(b)(3). Consistent with this, the local board's policy states that "[t]uition will be charged retroactively if, upon investigation, it is determined that students were enrolled as resident students but lacked bona fide residency." (Local Bd. Ex. 10, Local Board Policy 9000(IV.G.3)). The school system charged the Appellants tuition for the fraudulent attendance of both children in school in the total amount of \$7,057.76. This amount covers the portion of time they attended school in the 2010-2011 school year. We find that reasonable.

CONCLUSION


For these reasons, we do not find that the local board's decision to be arbitrary, unreasonable or illegal. Accordingly, we affirm the local board's decision denying enrollment in the HCPSS to Appellants' children based on lack of bona fide residency in Howard County and assessing tuition charges against Appellant in the amount of \$7,057.76.



James H. DeGraffenreidt, Jr.
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DISSENT:

We dissent in this case because Appellants provided documentary evidence that they lived on Race Road. We do not believe that the local board's evidence concerning their 2010-2011 residency investigation is sufficient to meet the local board's burden of production. Specifically, as the majority points out, the investigator did not visit the Race Road property at all in 2010-2011.

Donna Hill Staton
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Ivan C.A. Walks
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June 26, 2012