

JEFFREY U.,

Appellant

v.

HOWARD COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 17-15

OPINION

INTRODUCTION

Appellant challenges the decision of the Howard County Board of Education (“local board”) denying his daughter enrollment at Lime Kiln Middle School based on its finding that the Appellant is not a bona fide resident of the Lime Kiln attendance area. The local board filed a motion for summary affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. The Appellant responded to the motion and the local board replied.

FACTUAL BACKGROUND

Appellant’s daughter, A.U. is in the sixth grade. On July 19, 2016, Appellant submitted an enrollment packet for A.U. to attend Lime Kiln Middle School (“Lime Kiln”) based on a home address of 7337 Pindell School Road in Fulton. A.U. previously attended Clemens Crossing Elementary based on a home address of 6551 Walnut Grove in Columbia, which is in the Wilde Lake Middle School attendance area. (R. 83). According to the secretary at Lime Kiln, at the time of enrollment, Appellant stated that he and his wife were divorced and that A.U. came to live with him at the Pindell School Road address during the summer of 2016.¹

Appellant’s attempt to enroll A.U. at Lime Kiln prompted a residency investigation based on prior concerns over fraudulent use of the 7337 Pindell School Road address for school enrollment purposes. In the 2011-2012 school year, a Baltimore County resident alleged that he and his son were living at the property, but the school system found the claim to be fraudulent when surveillance proved otherwise. (See R. 90-92.). In addition, when Appellant’s older daughter registered to attend Lime Kiln in 2013 based on the Pindell School Road address, school officials suspected non-residency. At that time, the school system suspected that Appellant resided at the Walnut Grove address. During that investigation, the Appellant claimed that he and his wife were separated and that his wife lived at the Walnut Grove home with one daughter while he lived in the basement at the Pindell School Road home with the other daughter in a basement apartment. He also claimed that his office was located at the Walnut Grove address, and that he either drove the daughter to Lime Kiln or brought her to the office for his wife to drive her to school. After the residency conference in that case, Maryann Thomas, Specialist for Residency and Student Reassignment, concluded that the Appellant maintained a bona fide residence at the Pindell School Road address. (Appeal, Thomas Letter, 7/23/13).

¹ Appellant maintains that he never stated that he was divorced from his wife, but rather that the two are separated.

Donna Blackwell, Pupil Personnel Worker for Lime Kiln, led the new residency investigation for A.U.'s case. Using Accurint Residency Software,² a search revealed that a business, Parker Paving Company, and several named individuals, other than Appellant, were connected to the Pindell School Road address. Maryland Land Records indicated that the Appellant had conveyed the Pindell School Road property to his business, JPC Associates, LLC, in 2005. Maryland Land Records and Real Property records showed 6551 Walnut Grove as the Appellant's primary residence. During a telephone call on August 22, 2016, Ms. Blackwell informed the Appellant of the school system's decision not to enroll A.U. at Lime Kiln because the residency investigation had revealed that 7337 Pindell School Road was not his bona fide residence. By letter dated that same day, Lucy Lublin, the principal of Lime Kiln, formally advised Appellant of the residency decision. (R. 104).

The Appellant appealed Ms. Lublin's decision in an email dated August 22, 2016. (R. 106). He stated:

If you'll check your records you'll see HCPSS recognizes 7337 Pindell School Rd. as our "bona fide residence" and has made written communication with me and my daughter [A] since 2012 up to and including as recently at 8/18/16 at our home 7337 Pindell School Rd. The HCPSS- CANNOT- simultaneously recognize 7337 Pindell School Rd. as my Bona Fide Residence for one daughter while denying same to the other.

Id. Appellant is referring here to the 2013 residency investigation regarding the enrollment of his older daughter in Lime Kiln.

On August 30, 2016, Ms. Thomas conducted a residency appeal conference in this case.³ The parties presented the following information at the conference:

- Appellant has two children who attend Howard County Public Schools – A.U. and an older daughter. Appellant claimed that A.U. had been living with her mother at the Walnut Grove address until the summer of 2016, when she moved in with the Appellant at the Pindell School Road address. He also stated that his older daughter, who had been living with him at the Pindell School Road address while she was attending Lime Kiln Middle School, moved back to the Walnut Grove address to live with her mother because the sisters do not get along with each other. The older daughter now attends Atholton High School, the assigned high school for both addresses.
- Appellant owns 12 homes in Howard County and has had various addresses over the years. Appellant explained that he and his wife purchased the house at 6551 Walnut Grove several years ago. He claimed that they are separated and he no longer lives there. He also claimed that the Pindell School Road address has been

² Accurint is Lexis/Nexis software used by many federal and state agencies, including law enforcement agencies, to determine where an individual lives.

³ In addition to the Appellant, the following individuals were present at the conference: Restia Whitaker, Coordinator of Pupil Support Services; Donna Blackwell, Pupil Personnel Worker; Maryann Thomas, Specialist for Residency and Student Reassignment; Kevin Burnett, Coordinator for School Security; and Susan Mohr, Secretary.

his primary residence since 2007.

- Appellant does not have any court filed separation or custody papers. He submitted a notarized “Custody Agreement” dated July 6, 2016, stating that he had custody of A.U.
- Appellant’s business, JPC Associates, LLC, owns the Pindell School Road property. Appellant maintained that he has sole control over the LLC. Appellant claimed that he leases the basement of the home from his company and he submitted a lease to that effect. John Parker Paving Company occupies the upstairs and grounds. Because the LLC owns the property, it cannot be listed as owner-occupied.
- Appellant claimed that he has an office for his real estate consulting business at the Walnut Grove address, which was the former sales model for the neighborhood.
- Appellant submitted the following items containing the Pindell School Road address: NRA registration card, voter registration card, letter from an attorney stating Pindell School Road is Appellant’s current address.
- The Accurint report showed several people associated with the 7337 Pindell School Road, but not the Appellant.
- The State Department of Assessment and Taxation (SDAT) Maryland Real Property Search showed 6551 Walnut Grove as Appellant’s primary address.
- Maryland Judiciary case search showed that the Appellant listed the Walnut Grove address as his contact information in a 2013 lawsuit against J.P. Morgan Chase.
- Appellant listed the Walnut Grove address as his primary residence for home occupancy permits.
- School system personnel requested that Appellant share a redacted copy of his 2015 Federal Income Tax Return showing proof of the Pindell School property as his primary residence, but he did not do so.
- According to school personnel, Appellant initially offered a home visit, but when Ms. Blackwell inquired further Appellant declined to allow it unless the school system had a court order or agreed to allow A.U. attend Lime Kiln.
- School personnel reported that the Appellant became belligerent at the end of the conference and was asked to leave the meeting. Appellant maintained that Mr. Whitaker assaulted him and he reported the alleged assault to the police. School personnel deny that there was an assault.

(R. 108-113).

By letter dated September 6, 2016, Ms. Thomas advised Appellant that A.U. was not eligible to attend Lime Kiln because Appellant was not a bona fide resident of the Pindell School Road address. (R.111-113). Ms. Thomas summarized the information that was presented at the conference, and pointed out that the Appellant had not provided any formal government documents to verify the Pindell School Road address as his bona fide residence, in particular, a redacted copy of his tax return. *Id.*

By letter dated September 23, 2016, the Appellant appealed Ms. Thomas' decision to the local board. (R. Ex. 1). He maintained that he had complied with the residency policy and had provided sufficient documentation that he and A.U. were residing at the Pindell School Road address. He clarified the following relevant items:

- Appellant purchased the Pindell School Road home in 2004 and transferred ownership to JPC Associates, LLC in June 2005 for liability purposes. The property is a 2 unit dwelling with an owner's suite on the lower level. Appellant claimed to have had occupancy of the lower level since 2007.
- Appellant does not have a separation agreement filed with the court because his separation has been amicable and there is no need. He provided a notarized statement regarding the separation in lieu of a formal agreement.
- SDAT records showed that Appellant owns the Walnut Grove home with his wife because they bought it together as tenants by the entireties in 2002. He claimed that the designation as primary residence has not changed because he still owns the home with his wife and she still lives there even though he does not.
- Appellant stated that he receives personal mail at the Pindell School Road address and that his office is located at the Walnut Grove home.
- Appellant argued that the Pindell School Road address on his driver's license, utility bills, credit card statements, lease with J.P.C. Associates, and voter registration card all demonstrate his residency there (attached to his appeal).
- Appellant claimed that there was no evidence disproving his residency at Pindell School Road and that he was being arbitrarily and capriciously discriminated against based on his lifestyle. He alleged that he was mistreated at the hearing, having been threatened and assaulted by Mr. Whitaker, and that he was considering filing criminal charges.
- Appellant explained that the J.P. Morgan Chase lawsuit contact information is for his Walnut Grove office address, and that the court documentation does not state that it is his residential address. He pointed to a more recent lawsuit from 2015 that references the Pindell School Road address in the contact information.

- Appellant claimed that he provided the school system with his business tax return that shows the Walnut Grove address as his business address. He claimed that he has no individual tax return because he files only a small business tax return.⁴

Appellant attached the following documents to his appeal:

- Appellant's Maryland driver's license with Pindell School Road address issued September 9, 2015;
- Three MVA vehicle registration certificates in Appellant's name at the Pindell School Road address;
- Credit card statements addressed to Appellant at the Pindell School Road address – NRA Visa dated 8/8/16 and Amazon Chase Visa dated 8/22/16;
- BGE utility bills addressed to Appellant at Pindell School Road address
 - Billed to Appellant (11/7/07, 5/8/08, 12/8/8, 6/8/10, 7/8/11, 6/6/13
 - Billed to JPC Associates, LLC (5/9/16, 6/6/16, 7/8/16)
- Deed conveying Pindell School Road property to Appellant (12/28/04) and Deed of Trust;
- Attorney letter dated August 16, 2016 stating that Appellant had transferred the Pindell School Road property to JPC Associates, LLC (Appellant sole member) several years ago and that the Appellant has resided at that address with family members for many years (Articles of Incorporation provided);
- Lease Agreement between the Appellant and JPC Associates, LLC for the Pindell School Road property, dated August 25, 2016 and expiring June 30, 2020;⁵
- State Farm Homeowners policy reinstatement notice for Pindell School Road address dated June 20, 2016;
- Judiciary Case search printout from 2015 using Pindell School Road as contact address;
- Online voter registration record for the Appellant at the Pindell School Road address printed September 23, 2016;

(R. Ex. 1).

Mr. Restia Whitaker, Coordinator of Pupil Support Services and Ms. Thomas submitted a report to the local board in response to the appeal. (R. Ex. 2). They stated that the Appellant had demonstrated a pattern of providing false information regarding his residency. They maintained that the following information contradicted Appellant's claim that he resided at the Pindell School Road property:

- At the time of middle school registration, the home addresses for each daughter have changed to the Pindell School Road address, placing them in the Lime Kiln attendance area.
- In April 2006, Appellant unsuccessfully ran for Howard County Council, claiming residency in a condominium on Majors Lane in Columbia that he owns but does not occupy. He later filed to run for a different seat using the Walnut Grove address.

⁴ There is no tax return in the record for the case.

⁵ The lease states that it is between JPC LLC/Pindell & Associates and Jeff U. There is no information in the record concerning Pindell & Associates. (R. 17-20).

- According to the Maryland Judiciary case search, Appellant has used various addresses in different cases including the Walnut Grove address, the Pindell School Road address, and a P.O. Box.
- Appellant claims to have lived at the Pindell School Road address since 2007, however residency at that address has been associated with other individuals. Accurint shows John Parker and Miriam Parker at that address from November 2008-October 2016. It also shows Roger Schmincke from October 2007-October 2016. In addition, the school system found that the family of another student had a fraudulent lease on the property signed by Pindell/Hopkins & Associates. (*See* R. 94-97).
- On September 6, 2008, Appellant and his wife applied for and were approved for a Homestead Tax Credit for the Walnut Grove home. Applicants for the Homestead Tax Credit must submit a statement under oath that the property is the owner's primary residence.
- In October 2012, Appellant listed the Walnut Grove address as his primary residence to obtain a Home Occupancy permit from the Department of Planning and Zoning (DPZ) for his business of selling firearms over the internet. On December 6, 2013, the DPZ granted the Home Occupation application.
- When following up on the Appellant's assault allegations, the police officer reported that he knocked on the door at the Walnut Grove address at 8:30am on September 3, 2016, and that the Appellant opened the door, appearing to have just woken up. Appellant stated that he was up until 3:00 a.m. (R. 102).

Mr. Whitaker and Ms. Thomas maintained that the preponderance of the evidence gathered in the residency investigation confirmed that the Appellant is a bona fide resident of 6551 Walnut Grove, not 7337 Pindell School Road. They explained that, given the circumstances, the documents submitted by the Appellant showing the Pindell School Road address were not conclusive because Appellant owns the home there through the LLC and could, therefore, use that address on official documents and receive mail there. (R. Ex. 1).

The local board upheld the determination, finding that the Pindell School Road address was being used by the Appellant as a superficial residence for school enrollment purposes. (Motion, Ex. 1). The local board noted that the Appellant claimed to be residing at the Pindell School Road address while also claiming the Walnut Grove address as his primary residence. The local board pointed to the Accurint report, the SDAT real property data, and the other information discovered in the course of the investigation as evidence of Appellant's residency. The local board indicated that a home visit or redacted tax returns could have been helpful to resolve the issue, but the Appellant would not allow it. *Id.*

This appeal followed.

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.01.05.05A.

LEGAL ANALYSIS

State law invests local boards 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 their parents have bona fide residency, unless one of the enumerated exceptions apply. (R. 114, Policy 900(I)). “Bona fide residence” is defined as the “person’s actual residence maintained in good faith. It does not include a temporary residence or superficial residence established for the purpose of attendance in the Howard County Public School System.” (*Id.*, Policy 9000(III.B)). The policy places the burden of proof to establish bona fide residency on the parent. (R. 123, Policy 9000(V)(F)). The determination of a person’s bona fide residence is a factual one to be made on an individual basis. (R. 114, Policy 9000(III.B)).

In order to establish residency, an individual must submit documentation as proof. For homeowners and renters, HCPSS policy requires the following documentation:⁶

- Homeowners must provide a deed or deed of trust that has all required signatures, along with any one of the following issued within the previous 45 days of registration; a television service bill, bill for land line telephone, gas and electric bill, or current water and sewer bill. If a home was just purchased and no deed is available, signed settlement papers may be submitted. Within 30 days of enrollment, the parent must submit a deed or a deed of trust with all required signatures.
- Renters must provide an original, current lease with all required signatures, along with a gas and electric bill, or water and sewer bill issued within the previous 45 days of registration. If utilities are included in the rent payments, as stipulated in the rental agreement, a telephone service bill or bill for a landline issued within the previous 45 days of registration may be substituted.

(R. 126-127, Policy 9000-IP(I)(A)(8)).

We turn to the documentation submitted by the Appellant to determine if he has established residency in Howard County at the Pindell School Road address. With regard to the required documents, the Appellant provided a lease for the property between himself and JPC Associates, LLC., as well as gas and electric bills issued within 45 days prior to registration addressed to him at the Pindell School Road address. While the Appellant met the initial burden under the policy, the local board questioned whether the documents were sufficient proof of residency given that the Appellant controls the LLC. The lease is essentially a lease between himself and himself. It is notable that the lease begins August 25, 2016 and expires June 30, 2020. These dates coincide with the time it will take for A.U. to complete middle school.⁷ In

⁶ Other provisions apply for families in shared housing situations.

⁷ We note that the Appellant’s initials on the current lease for the Pindell School Road property closely resemble the initials of the landlord in the fraudulent residency case for the same address from the 2011-2012 school year. (R. 95-96, 17-20). The 2011-2012 lease identified the landlord as Pindell/Hopkins & Associates, but stated rent was to be paid to JPC Associates, LLC. (R.95-96).

addition, while the most recent BGE bills are addressed to the Appellant at Pindell School Road, they are bills for the LLC's account, which again is essentially the Appellant. There is a blurring of lines here between the personal and the business that makes it difficult to ascertain if these documents, on their face, legitimately prove residency.

The school system had information pointing to the Walnut Grove address as Appellant's primary residence. The Accurint data connected Parker Paving Company and several individuals, other than the Appellant, to the Pindell School Road address. The Maryland Real Property search showed the Walnut Grove address as Appellant's primary residence. Appellant also listed the Walnut Grove address as his primary residence when he applied for a Home Occupation permit for his firearms business, and also when he applied for a Homestead Tax credit. In addition, the police report suggests that Appellant stayed overnight at the Walnut Grove address. The judiciary case search information further demonstrates that the Appellant easily switches between the Walnut Grove address and the Pindell School Road address. Finally, the fact that the Appellant would not allow a home visit created a negative inference for the school system. Although the Appellant disputes much of this evidence, credibility has become an issue in the case. The local board believes that the totality of all of this information tips the scales in favor of residency at the Walnut Grove address.

Appellant resides in Howard County at either the Walnut Grove address or the Pindell School Road address. While the Appellant met his initial burden of demonstrating residency under the policy, given the contradicting information the local board presented in this case, we find that there is a dispute of material fact regarding the Appellant's residency. When such a dispute of fact exists in the record, the State Board is authorized to refer the case to the Office of Administrative Hearings for a review. COMAR 13A.01.05.07(A)(3). We shall do so here.

In addition, the Appellant alleges that Mr. Whitaker assaulted him at the residency appeal conference on August 30, 2016, stating that Mr. Whitaker "touched me (assault) and forced me from the hearing room. . . ." (11/27/16 Letter). The police interviewed school system personnel who attended the meeting and they all confirmed that this did not occur. Whatever transpired in this regard at the conference is not an issue that is before this Board. To the extent that the Appellant seeks to have this Board impose disciplinary action against Mr. Whitaker, or any other personnel present at the conference, the State Board has held that parents lack standing to initiate personnel action against school system employees in a State Board appeal. *See Thompson v. Montgomery County Bd. of Educ.*, MSBE Op. No. 12-43 (2012); *Rafael Y. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 07-40 (2007); *Schlamp v. Howard County Bd. of Educ.*, MSBE Op. No. 04-04 (2004).

CONCLUSION

For the reasons stated above, we find that there is a dispute of material fact regarding the Appellant's residency. We, therefore, transfer this matter to the Office of Administrative Hearings for a determination regarding Appellant's residency.

Signatures on File:

Andrew R. Smarick
President

Chester E. Finn, Jr.
Vice-President

Michele Jenkins Guyton

Laurie Halverson

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March 28, 2017