

J [REDACTED] AND J [REDACTED] G.,

Appellant

v.

HOWARD COUNTY  
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 17-34

## OPINION

### INTRODUCTION

The Appellants are parents of two students who attend Howard County Public Schools (HCPSS). They have appealed a decision of the Howard County Board of Education (local board) finding that Appellants were not *bona fide* residents of Howard County during the 2015-2016 and 2016-2017 school years. The local board filed a Motion for Summary Affirmance. The Appellants filed a copy of their deed in response to the local board's Motion for Summary Affirmance. The local board replied.

### FACTUAL BACKGROUND

The Appellants assert that since June 2015 they and their children have lived at [REDACTED] Ellicott City; that they are *bona fide* residents of Howard County; and, thus, that they are entitled to send their children to Howard County Public Schools tuition free. The local board decided, however, that at the relevant time period the Appellants were residents of Baltimore County living at [REDACTED] Owings Mills, and, thus, were liable to pay tuition to send their two children to Howard County Public Schools. The undisputed facts are set forth below.

The Appellants purchased the Baltimore County property on or about June 2003. Twelve years later, in June 2015, they signed a lease agreement with Mr. G.'s parents to become tenants in the parent's Howard County home. Rent was limited to a 40/60 split payment for utilities. (Appeal, Ex. B). Around that same time, the Appellants changed their address to [REDACTED] Ellicott City on various official documents, including driver's license, car insurance, pay stubs, tax filings, and bank statements. (Appeal, Ex. A).

The Appellants enrolled their children in [REDACTED] Elementary School in Howard County for the 2015-2016 school year. On or about November 15, 2015, Mr. James Fowlkes, Pupil Personnel Worker, noticed that the Department of Assessment and Taxation (SDAT) records listed the Baltimore County home as the Appellants' "primary residence." He notified the Appellants who proceeded quickly to correct the SDAT record. (Appeal, Ex. C).

The students returned to [REDACTED] Elementary School for the 2016-2017 school year. In the fall of 2016, the administration received an anonymous call that the Appellants did not reside in Howard County. Mr. Fowlkes was assigned to investigate. Mr. Fowlkes, along with

Kevin Burnett, Coordinator for School Security, conducted surveillance at both homes. On September 21, 22, 23, and 26, surveillance occurred at the Howard County home in the morning. According to Mr. Fowlkes' notes, "the family was never observed leaving the residence, but [the students] made it to school that day." (Motion, Ex. 3 at 69). Surveillance then occurred at the Baltimore County home on the mornings of September 27, 28, 29, and 30. Mr. Fowlkes reported that "both mom and dad's vehicles were outside and the children exited the house and proceeded to Manor Wood Elementary School." *Id.*

On October 7, 2016, the principal of [REDACTED] Elementary School sent the Appellants notice that they were not considered to be *bona fide* residents of Howard County. Surveillance at the Baltimore County home continued intermittently through October (5 times) and November (2 times). Each time either the family was seen at the Baltimore County home or their cars were present.

On November 15, 2016, HCPSS conducted a residency appeal conference at which time both sides presented their evidence. On November 19, 2016 Mr. Fowlkes and other HCPSS personnel visited both homes. Mr. Fowlkes reported that in his opinion the Howard County home "looked staged" but the Baltimore County home looked "lived-in." The children had beds there and the dogs were in residence. (Motion, Ex. 3 at 70).

On December 13, 2016, the Superintendent's designee informed the Appellants that she had determined they were not *bona fide* residents of Howard County and that the students would be withdrawn from school on December 22, 2016. To prevent removal from school, the Appellants obtained a temporary injunction from the Howard County Circuit Court.

The Appellants, thereafter, appealed the Superintendent's residency decision to the local board. In May 2017, the local board concluded that the Appellants were not *bona fide* residents of the county based on the evidence presented by the Superintendent related to the surveillance of both houses. (Appeal, Ex. 8). Since that decision was issued the Appellants have sold their Baltimore County property.

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. The State Board will not substitute its judgment for that of the local board in this case unless the decision was arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05A.

#### LEGAL ANALYSIS

##### *Mootness*

Although the Appellants contend that, with the sale of the Baltimore County property, this appeal is moot, such is not the case. The issue of tuition remains live. If the Appellants were not *bona fide* residents during the 2015-2016 and 2016-2017 school years, they would be liable to pay tuition for some or all of that time period.

### *Residency*

With Policy 9000, the local board has established procedures for determining the eligibility of students to attend public schools in Howard County. The policy is based on the concept of *bona fide* residency. It defines a “*bona fide* residence” as “[t]he 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.” Policy 9000 (III.B). Determination of a person’s *bona fide* residence is a factual one and must be made on an individual basis. *Id.* At the request of a school administrator, the Office of Pupil Personnel investigates residency status when there is cause to suspect that the residency is not a *bona fide* one.

Here an investigation occurred. We have set forth the facts revealed by the investigation at some length in the Factual Background. That evidence tends to support the conclusion that the Appellants were not *bona fide* residents of Howard County, but rather lived mostly in their Baltimore County home. The Appellants challenge the thoroughness of the investigation, but they do not challenge the facts that it revealed about their living arrangements. They do take issue with the conclusion that the Howard County home looked “staged.” Even if we discount that observation, the facts are that during the investigation, which we conclude was thorough, the Appellants were shown to be leaving the Baltimore County home in the morning to take their children to school in Howard County leading to the conclusion that they are not *bona fide* residents of Howard County.

### *Tuition*


Section 7-101(b) of the Education Article, Annotated Code of Maryland, requires a child to attend a public school in a county where the child is domiciled with the child’s parent. If a child attends school outside the county where the child is domiciled, the parent incurs liability for tuition. Section 7-101(b)(3) provides:

If a child fraudulently attends a public school in a county where the child is not domiciled with the child’s parent or guardian, the child’s parent or guardian shall be subject to a penalty payable to the county for the *pro rata* share of tuition for the time the child fraudulently attends public school in the county.

Because the Appellants were not *bona fide* residents of Howard County, they are liable for tuition. It may be a significant amount of money. We urge the local board to consider the Appellants’ ability to pay if or when it seeks to collect tuition payments.

### CONCLUSION

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

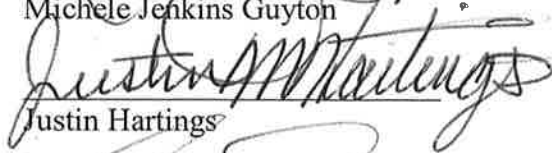
  
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Andrew R. Smarick  
President



Chester E. Finn, Jr.  
Vice-President



Michele Jenkins Guyton



Justin Hartings



Stephanie R. Iszard



Rose Maria Li



Michael Phillips

Absent

Irene M. Zoppi Rodriguez



David Steiner

September 19, 2017