

TOM AND M.W.,

Appellant,

v.

CARROLL COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 21-50

OPINION

INTRODUCTION

Appellants appeal the decision of the Carroll County Board of Education (“local board”) denying enrollment of their daughter at ██████ High School (“█HS”) under the school system’s policy and regulations for admission of non-resident out-of-county students. The local board filed a memorandum in response to the appeal maintaining that its decision was not arbitrary, unreasonable or illegal. The Appellants chose not to submit a reply.

FACTUAL BACKGROUND

The Appellants previously lived in Westminster, Maryland in Carroll County and received permission for their daughter to attend █HS as out-of-district student.¹ At some point during the 2020-2021 school year, while their daughter was in the 11th grade at █HS, Appellants moved the family to Woodstock, Maryland in Howard County.

In March of 2021, school personnel learned of the family’s move out of Carroll County. Pupil Personnel Worker, Rose Pentz, reviewed the residency issue and granted permission for Appellant’s daughter to finish the 2020-2021 school year at █HS tuition-free as a non-resident student.² She advised Appellants that they needed to enroll their daughter in the appropriate Howard County Public School for the 2021-2022 school year. (Memorandum, Ex. 3)

In June 2021, Appellant, Mrs. W., contacted the █HS counselor to discuss her daughter’s schedule for the 2021-2022 school year, and to discuss an internship and community college courses. The counselor was aware of the residency issue and referred Appellant back to Ms. Pentz. Appellant asked for “provisional approval” for her daughter to attend █HS for her senior year and to graduate with her peers. She highlighted her daughter’s many accomplishments including class president, National Honor Society and National Art Honor Society memberships, academic achievement, and active school involvement. Appellant stated that she intended to be

¹ Although the local board decision states that the family lived in Westminster and then lived in the █HS attendance area before moving to Howard County, we found no support in the record regarding living in the █HS attendance area. This fact is not relevant, however, and has no impact on the decision in this case.

² Administrative Regulations (“AR”) JECB: Admission of Non-Resident Out-of-County Pupils I.2 contain a provision for tuition-free continuation of enrollment for students moving out of Carroll County close to the end of the school year. (Memorandum, Ex. 3).

employed at some point by the Carroll County Government as the Volunteer Community Coordinator for Carroll County.³ Ms. Pentz explained that the school system does not provide provisional approval for non-residency enrollment requests and that all required documentation (proof of employment) must be provided at time of application. She stated that Appellant could resubmit her application with documentation for consideration before the start of school. *Id.* The Director of Student Services, Karl Streaker, reviewed the matter and concurred with Ms. Pentz's course of action because the student did not satisfy the requirements for non-resident enrollment. *Id.*

Appellants appealed the denial of their request to allow their daughter to continue attending ■HS for the 2021-2022 school year. Chief of Schools, Cynthia McCabe, acting as the Superintendent's Designee reviewed the matter. Mrs. W. explained that Appellants had unsuccessfully attempted to sell their home for many years, and had finally been able to sell due to a favorable seller's market during the pandemic. They moved to a home closer to ■HS but located in Howard County. Appellants maintained that they did not realize that the location of the new home outside of Carroll County would reclassify their daughter as a non-resident out-of-county student subject to different enrollment policies and negate the prior approval for their daughter to attend ■HS as an out-of-district student. *Id.*

Ms. McCabe reviewed the evidence and applicable policy and regulations. She determined that Appellants failed to meet the threshold for allowing enrollment at ■HS under non-resident status. She found no evidence that either parent was employed in Carroll County, and that the situation did not satisfy the hardship or other eligibility provisions of AR JECB.

Appellants appealed Ms. McCabe's decision to the local board. They stated their understanding that they did not meet the residency or employment criteria for non-resident enrollment. They stated that they were "asking for an exception due to the exceptional circumstances over the past year brought on by the pandemic" which disrupted their daughter's academic career and social interactions with students, combined with their daughter's involvement in the school and the school community.

On July 30, 2021, the local board unanimously affirmed Ms. McCabe's decision and denied the Appellants' request that their daughter be allowed to attend ■HS for the 2021-2022 school year. The local board found the decision to be consistent with State law and local policy and regulation. The local board noted that Appellants' argument regarding the pandemic did not rise to the level of hardship that would justify non-resident enrollment in this case.

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.01.05.06A. The Appellant has the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.06D.

³ AR JECB II.3 contain a provision for enrollment with tuition payment for students with a parent employed in Carroll County provided that certain conditions are met.

LEGAL ANALYSIS

State law requires “bona fide residency” as a condition of free attendance at Maryland’s public schools. *See* Md. Code Ann., Educ. §7-101(a) and (b). Except in certain circumstances, children who attend a Maryland public school “shall attend a public school in the county where the child is domiciled with the child’s parent, guardian” *Id.* The local board has established Policy JECB and Implementing Regulations for determining eligibility of non-resident out-of-county students who wish to attend school in Carroll County, which contain provisions that require payment of tuition and provisions that do not. The school system makes determinations of non-resident eligibility on a case-by-case basis. (Memorandum, Ex. 3).

Based on the record, the Appellants concede that their daughter does not qualify for attendance at ■HS based on residency in Carroll County. Nor do they dispute that Policy and AR JECB concerning the enrollment of non-resident out-of-county students is applicable to this matter. In addition, Appellants dropped their argument that their daughter qualifies for enrollment under the non-resident provision related to a parent working in Carroll County. Rather, in their appeal before the State Board, Appellants solely argue that their daughter should be permitted to attend ■HS based on the pandemic and her involvement in ■HS and ties to school community.

Given the Appellants’ argument on appeal to this Board, the only relevant provision of the administrative regulations is JECB.II.C which states that “[a]n exception to the non-resident regulations may be made by the Supervisor of Pupil Personnel & Student Support Services/Designee in rare and unusual circumstances when a significant, documented hardship is deemed to exist by Student Services staff.” No such hardship was found at any level of appeal in this case based on the pandemic and the student’s academic achievement and involvement with the school. The Appellants chose to move when they did to take advantage of the seller’s market, and to rent a home in Howard County. For whatever reason, it did not occur to them that moving out of Carroll County would affect school attendance there. The school system allowed Appellants’ daughter to finish her 11th grade year at ■HS, but advised Appellants in March 2021 that they needed to enroll their daughter in school in Howard County. Appellants’ daughter is similarly situated to other students who attended school virtually during the pandemic and who may be attending new schools for various reasons after missing in-person instruction for the school year, even as a senior and with her level of involvement at school. We are sympathetic to Appellants’ circumstance, however, we cannot find that the local board’s determination was arbitrary, unreasonable or illegal, and we may not substitute our judgment of that of the local board. *See* COMAR 13A.01.05.06.

CONCLUSION

For the reasons stated above, we affirm the local board’s decision to deny the student’s enrollment at ■HS.

Signatures on File:

Clarence C. Crawford
President

Gail H. Bates

Chuen-Chin Bianca Chang

Charles R. Dashiell, Jr.

Susan J. Getty

Vermelle Greene

Jean C. Halle

Rachel McCusker

Joan Mele-McCarthy

Lori Morrow

Warner I. Sumpter

Holly C. Wilcox

DISSENT

I dissent as the local board should have considered the student's social-emotional needs and the importance of connection to her classmates and school community given the unique impact of the pandemic on all student's social-emotional wellbeing.

Shawn Bartley

September 28, 2021