

S.E.,

Appellant

v.

BALTIMORE COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 23-01

OPINION

INTRODUCTION

Appellant challenges the decision of the Baltimore County Board of Education (“local board”) withdrawing her children from Baltimore County Public Schools (“BCPS”) based on fraudulent enrollment and lack of *bona fide* residency in Baltimore County. The local board responded to the appeal maintaining that its decision was not arbitrary, unreasonable, or illegal. The Appellant responded and the local board replied to the response.

FACTUAL BACKGROUND

During the 2021-2022 school year, Appellant’s three children were enrolled in BCPS based on a shared domicile application which indicates that the Appellant and the students reside with the Appellant’s mother, L [REDACTED] G [REDACTED], at 8 G [REDACTED] L [REDACTED], Baltimore, Maryland 21208 (the “Baltimore County address”). Student A was in [REDACTED] grade at Pikesville High School. Student B was in grade [REDACTED] at Milbrook Elementary School, and Student C was in [REDACTED] at Campfield Early Learning Center.

BCPS refers residency matters to the Office of Pupil Services for investigation if questions arise regarding residency to determine whether or not there has been fraudulent enrollment. Superintendent’s Rule 5150(II.I) defines “fraudulent enrollment” as “the intentional misrepresentation of documentation or material fact regarding domicile, providing false information or documentation or applications and/or the failure to notify BCPS of a change in domicile or change in hardship conditions for which enrollment was approved.” (Local Bd. Response, Ex. 4, Supt. Ex. 1b).

On November 11, 2021, Assistant Principal Monika Dillard requested the Pupil Personnel Worker for Pikesville High School (the “PPW”) to conduct a residency investigation of Student A. The PPW’s report states that the request for the investigation was based on multiple factors including:

- Student A is transported to and from school daily, despite the fact that BCPS provides bus service to the Baltimore County address.

- Student A arrived to school late 44 days out of 72 days missing on average, 50 minutes or more of school when she was tardy.
- Student A was absent from school for 15 days.
- Student A shared a text message with another student listing her home address as [REDACTED], Baltimore, MD 21229-[REDACTED] which is located in Baltimore City.

(Local Bd. Response, Ex. 4, Supt. Ex. 2).

The PPW discovered through a SDAT real property search that Appellant's mother is the owner of the home at the Baltimore County address. A search of records of the Maryland Department of Motor Vehicles ("MVA") revealed that the Appellant changed her address on September 24, 2021, to the Baltimore County address and that the Appellant's car was registered with the MVA at the Baltimore County address. Maryland Judiciary Case Search records revealed that the Appellant was associated with another address at [REDACTED], Baltimore, MD 21229 (the "Baltimore City address").

Based on this information, the PPW conducted home observations at four addresses including the Baltimore County address and the Baltimore City address. The PPW's report indicates that early morning surveillance occurred at the Baltimore County address on November 12, 15, 16, 17, 18, 19, and 21, 2021. During these seven observations, the Appellant's car was not located at the Baltimore County address and there was no reported activity. Early morning observations were conducted at the Baltimore City address on November 22, 23, 28, 30, and December 1, 2, 3, 6 and 7, 2021. The Appellant's car was located near the Baltimore City residence on each of these dates and the PPW saw one or more of the students leaving the residence with the Appellant on three of these observation dates. On those three occasions, the children were present in school. The PPW discovered through a Maryland Judiciary Case Search, that the Baltimore City address is the home address of D [REDACTED] D [REDACTED] S [REDACTED], the father of Students B and C.

On December 8, 2021, the principals of the respective schools issued withdrawal letters for the three students because they do not reside in Baltimore County. (Local Bd. Response, Ex. 4, Supt. Exs. 4 and 5).¹ The letters advised the Appellant that she was responsible under BCPS Policy and Superintendent's Rule 5150 to notify the schools of any change in domicile or hardship condition as soon as the change occurs. The letters also encouraged the Appellant to contact the PPW if the change in residency status is due to the result of eviction, foreclosure, or loss of housing.

The Appellant timely appealed the withdrawals to Erica Hamlet, BCPS Residency Liaison. By letter dated January 10, 2022, Ms. Hamlet upheld the withdrawals based on the results of the investigations. (Local Bd. Response, Ex. 4, Supt. Ex. 6). Appellant failed to timely appeal Ms. Hamlet's decision to Allyson Huey, Superintendent's designee. Because of the late appeal, the students were temporarily withdrawn from their respective schools. (Local Bd. Response, Ex. 4, Supt. Ex. 8).

Shortly thereafter, the Appellant advised Ms. Huey that she was homeless. Ms. Huey referred the matter to the BCPS Homeless liaison, Laurie Rijo Delarosa, for review and

¹ The withdrawal letter for Student C is not part of the record.

determination as to homeless status. The students were promptly reenrolled² in their respective schools in accordance with the McKinney-Vento Homeless Education Act and COMAR 13A.05.09.07C(1)(a). Ms. Huey accepted the late appeal on the residency issue and held an expedited hearing on February 3, 2022 while the homeless issue was still pending.

By letter dated February 4, 2022, Ms. Delarosa concluded that the family was not homeless and consistently resided at the Baltimore City address. (Local Bd. Response, Ex. 4, Supt. Ex. 8). On February 7, 2022, the Appellant timely filed an appeal of the homeless decision. Ms. Huey conducted a hearing on the homeless issue on February 25, 2022.

Ms. Huey consolidated both matters and issued a decision on March 15, 2022. (Local Bd. Response, Ex. 4, Supt. Ex. 8). Ms. Huey upheld the finding that the family's *bona fide* domicile was at the Baltimore City address and therefore, upheld the finding that the students were fraudulently enrolled in BCPS. Ms Huey also concluded that the residency investigation established that the Appellant and her children had an "adequate, stable and fixed" nighttime residence at the Baltimore City address. *Id.*

The Appellant filed a timely appeal with the local board. In her appeal letter, the Appellant acknowledged that she had been staying with her children's father at the Baltimore City address but argued that her living there was only temporary because they are not together as a couple and she is waiting for her mother to let her return to her house. The Appellant acknowledged that her mother has not permitted her to return to the Baltimore County address.

On May 26, 2022, the parties appeared before the local board's hearing examiner, Gregory Szoka, who heard testimony and reviewed documentary evidence. The Appellant testified that her housing situation is unstable because her mother kicked her out of the Baltimore County home around October of 2021 and since that time she has been staying with her aunt, her boyfriend, and her cousin at various houses. The PPW testified that he had continued to visit the Baltimore City address twenty-seven additional times from March 2022 through May 2022 and every time the Appellant's vehicle was parked at the Baltimore City address location.

The hearing examiner issued his report and recommendation on June 28, 2022. He concluded that the Appellant failed to satisfy her burden that the Superintendent's designee's decision was arbitrary, unreasonable, or illegal and did not introduce any evidence to contradict the results of the thorough investigation that established the Appellant was not homeless and had an "adequate, stable and fixed" residence at the Baltimore City address. (Local Bd. Response, Ex. 3). Appellant timely requested oral argument before the local board. The parties appeared virtually and presented oral argument on August 31, 2022. The local board adopted the recommendation of its hearing examiner upholding the designee's decision regarding the student's residency and homeless status. (Local Bd. Response, Ex. 8).

Appellant filed this appeal to the State Board on September 30, 2022.

² In accordance with Local Board Rule 5150, the students are presently enrolled in in BCPS during the appeal process. (Local Bd. Response at 5).

STANDARD OF REVIEW

Local board decisions of *bona fide* residency are decisions involving a local policy or a controversy and dispute regarding the rules and regulations of the local board. Such decisions 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. A local board decision is arbitrary or unreasonable if “it is contrary to sound educational policy” or if “a reasoning mind could not have reasonably reached the conclusion the local board or local superintendent reached.” COMAR 13A.01.05.06B.

LEGAL ANALYSIS

Residency

State law invests local boards with 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 its boundaries and requires students to attend the school designated to serve the attendance area in which they reside with their parent or guardian. BCPS Rule 5140 (III)A. In cases in which the parent does not own or lease the residential dwelling unit in which they live, the parent can establish residency through a “shared domicile arrangement.” The Appellant’s children were admitted to attend BCPS in accordance with the “shared domicile” provisions of local board policy. BCPS Rule 5140 (III)D. Local Board policy defines “fraudulent enrollment” to include “the failure to notify BCPS of a change in domicile or change in hardship conditions for which enrollment was approved.” BCPS Rule 5140(II)I. Local Board policy defines “*Bona Fide Domicile*” as the “place in which an individual has a settled connection for legal purposes and the place where a person has his/her true, fixed permanent home, habitation, and principle [sic] establishment, without any present intention of leaving.” BCPS Rule 5140(II)A.

The Appellant asserted she lived at the Baltimore County address with her mother. The extensive school system investigation cast doubt about this assertion. Moreover, the Appellant testified to the local board hearing officer that she and the children were no longer residing at the Baltimore County address and that her mother has not let her return. The record before us does not support a finding that the Appellant has a *bona fide* residence in Baltimore County.

Homelessness

After the students were temporarily removed from BCPS, the Appellant claimed to be homeless. COMAR 13A.05.09.02B.4(a) defines a homeless student as “a child or youth who lacks fixed, regular, or adequate nighttime place of residence.” The Appellant argues that she is living at the Baltimore City address with her children’s father, or possibly her aunt, only on a temporary basis until her mother lets her return to the Baltimore County address. The record is replete with over 30 observations starting in November of 2021 through May of 2022 establishing that the Appellant and her children regularly reside at the Baltimore City address. Appellant’s assertion that this is only a temporary residence is not supported by the evidence in the record.

We find that that the Appellant has failed to meet her burden to demonstrate that the local board's decision on *bona fide* domicile and homelessness was arbitrary, unreasonable, or illegal.

CONCLUSION

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

Signatures on File:

Clarence C. Crawford
President

Susan J. Getty
Vice-President

Gail H. Bates

Chuen-Chin Bianca Chang

Charles R. Dashiell, Jr.

Lori Morrow

Warner I. Sumpter

Dissent: Shawn D. Bartley

Out of concern for the social and emotional health of the children who legally reside in the State of Maryland, I dissent.

Absent:

Vermelle D. Greene

Jean Halle

Rachel McCusker

Joan Mele-McCarthy

Holly Wilcox

January 24, 2023