

S■■■■■■ L■■■■■■,

Appellant

v.

ANNE ARUDEL COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 22-24

OPINION

INTRODUCTION

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

FACTUAL BACKGROUND

During the 2021-2022 school year, Appellant’s five children were enrolled in AACPS based on a Tenant Resident Verification Form (“TRV”)¹ which indicates that the Appellant and the students reside with the Appellant’s mother, M■■■■■■ J■■■■■■, and step father, T■■■■■■ E■■■■■■, at ■■■■■■■, Glen Burnie, MD 21060 (“Anne Arundel County address”). The Anne Arundel County address is located within the attendance area for ■■■■■■■ Elementary School (“■■■■■■ ES”), ■■■■■■■ Middle School (“■■■■■■ MS”), and ■■■■■■■ High School. The students were enrolled in the following schools and grades:

Student A - grade 9 (AACPS Home Instruction),²
Student B - grade 8 (Marley MS),
Student C - grade 6 (Marley MS),
Student D - grade 5 (Marley ES), and
Student E - grade 4 (Marley ES).

¹ According to AACPS Regulation 900.01 JAB-RA - *Assignment and Transfer of Students to a School*, a TRV is the form used to verify residency for purposes of enrollment when a family does not own or rent their residence and lives with another individual or family by choice. This form must be completed annually. (Regulation 900.01(C)(17)).

² Appellant’s appeal does not include Student A. However, the record contains transfer information for Student A. (R. 21).

Mr. T■■■■ E■■■■ owns the residence located at the Anne Arundel County address. At the time of enrollment, the Appellant provided the school system with the following residency documentation:

- TRV, dated January 24, 2017, listing the Appellant as the parent/guardian stating that the Appellant and her children reside at the Anne Arundel County address;
- Mortgage notice, dated August 30, 2016, from Navy Federal Credit Union addressed to T■■■■ E■■■■ at the Anne Arundel County address;
- Anne Arundel County Department of Social Services Notice of Change in Benefits for the Food Supplement Program, dated July 24, 2017, addressed to the Appellant at the Anne Arundel County address; and
- Copy of the Deed dated January 13, 2016, reflecting that T■■■■ E■■■■ purchased the property at the Anne Arundel County address on December 23, 2015.

On November 9, 2021, Student D was administratively transferred to ■■■■■ Elementary (“■■■■■ ES”), after a series of disciplinary incidents at ■■■■■ ES. (R.26, 29-30).³ Sometime before the administrative transfer and during a meeting at ■■■■■ ES, the Appellant told T■■■■, ■■■■■ M■■■■, Principal of ■■■■■ ES, that she had a home in Baltimore County. Principal ■■■■■ M■■■■ requested K■■■■ R■■■■ the Pupil Personnel Worker (“PPW”) for ■■■■■ ES to conduct a residency investigation. As discussed *infra*, another PPW, and not Mr. Randolph, conducted the investigation. Upon the transfer, B■■■■ R■■■■, Registrar and Enrollment Secretary at O■■■■■ ES, requested Appellant to provide a copy of Student D's birth certificate and updated residency information to enroll Student D at ■■■■■ ES. The Appellant did not provide the requested information.

On February 24, 2022, K■■■■ B■■■■, Principal of ■■■■■ ES, received a report that Student D told his math teacher that he is always tired because his mom drives him from her place (Baltimore County address) to his grandparents (Anne Arundel County address) every day ■■■■■ ■■■■■ ES, conducted the residency investigation on February 24, 2022. As part of her investigation, she reviewed the Maryland Judiciary Case Search records. The search revealed that the Appellant and her co-tenant had been sued in the District Court for Baltimore County in June of 2021, for failure to pay rent for an apartment located at ■■■■■, Halethorpe, MD 21227 (“Baltimore County address”). (R. 61-62). That same day, Ms. T■■■■ went to the leasing office for the Baltimore County address and the receptionist in the leasing office confirmed that the Appellant is a tenant on a lease at the Baltimore County address. (R.57).

By email and letter dated February 24, 2022, Principal B■■■■ advised Appellant that Student D was subject to being withdrawn from school because Appellant and Student D are not *bona fide* residents of the Anne Arundel County. He stated that the school system determined that the family lived at the Baltimore County address and that she should contact the Baltimore

³ Citations are to pages of the local board record.

County Public Schools to enroll her children. (R.63). Appellant received similar withdrawal letters from the principals of ██████ MS and ██████ ES for students B, C, and E. (R.64-66).

The Appellant contacted Ms. T█████ after receipt of the email and advised that she was living at the Baltimore County address and said that it was a two bedroom apartment and was not big enough for herself and her children. Ms. T█████ explained the residency requirements and advised the Appellant that she was required to reside with her children at the Anne Arundel County address for her children to attend AACPS.

On February 25, 2022, Appellant appealed the residency decision for Students B, C, D, and E to the local superintendent. In support of her appeal, the Appellant submitted a Residency Appeal Form indicating that she lives at the Anne Arundel County address. However, on February 28, 2022, Mr. E█████ acknowledged in his email that the Appellant moved to the Baltimore County address “because she was trying to better herself” and that the two-bedroom apartment was not big enough for the children. (R.68). He further explained that his grandchildren have been attending AACPS since they started school and that the school has been aware that his grandchildren reside with their grandparents at the Anne Arundel County address. *Id.*

On March 1, 2022, Principal B█████ advised Ms. T█████ that Student D again told school staff that he lives with Appellant and she drives him to his grandparents in the morning. He also reported to school staff that only Student E lives with the grandparents. (R.60). On March 7, 2022, Mr. E█████ and Ms. J█████ sent a letter stating that the Appellant lives in Baltimore County but the apartment does not have enough room for the children. He also explained that he specifically bought the Anne Arundel County address home so that his grandchildren could attend AACPS. (R.36).

By letter dated March 9, 2022, Sarah S. Eagan, Assistant Superintendent acting as the Superintendent’s Designee, advised the Appellant that her children were being withdrawn from AACPS based on lack of *bona fide* residency. She stated as follows:

The Board of Education Policy JAB (900.01) follows Maryland education law, which provides that a public school student “shall attend a public school in the jurisdiction where the child is domiciled with the child’s parent or guardian.” At this time, your letter provides insufficient evidence that the family resides in the attendance area for ██████ Elementary School, ██████ Middle School and ██████ Elementary School; therefore I am denying your appeal.

(R.69).

By letter dated March 9, 2002,⁴ the Appellant appealed the decision for Students B, C, D and E to the local board. (R.2). In Appellant’s appeal letter she stated that she struggles as a single mother to provide support, clothing, food and housing for her five children. She also explained that she lives at the two-bedroom apartment in Baltimore County because of her job at

⁴ The Appellant’s letter is dated March 8, 2022 but the decision was not rendered until March 9, 2022 and we believe the date of March 9, 2022 is the actual date.

a nursing home and that the living conditions are not appropriate for five children. In support of her appeal, the Appellant submitted the following documents:

- Email correspondence dated March 11, 2021, from Mr. E■■■■ explaining that he purchased his home with the specific purpose that his grandchildren could attend AACPS (R.4);
- Letter dated March 7, 2022, from Mr. E■■■■ reiterating that the grandchildren live at his home (R.8);
- A chart titled “Best Interest of the Child Standards” (R.9);
- The February 28, 2022, email Mr. E■■■■ submitted in the appeal at the lower level (R.10); and
- Copies of the children’s health insurance cards listing Anne Arundel County address for students B, C, D, and E. (R.11).

Counsel for the Superintendent submitted a Statement of Position with exhibits. (R.12-69). Included in the exhibits were the initial residency documents provided by the Appellant for enrollment as well as an additional residency document:

- SDAT record, dated March 1, 2022, indicating the Anne Arundel County address as Mr. E■■■■ principal residence. (R.35);

The Local Board conducted a hearing on the record. By Opinion and Order issued on June 24, 2022, the local board affirmed the decision of the Superintendent finding that the Appellant and her children were not *bona fide* residents of Anne Arundel County. The local board stated that the Appellant acknowledged that she lives in Baltimore County but that her residence is not suitable to maintain five children due to its size and condition. The local board also expressed doubt as to whether the children reside at the Anne Arundel County address. Nonetheless, the local board stated that in order for the Anne Arundel County address to be considered the *bona fide* residence, the Appellant must reside there with her children, unless the students reside with a care provider, who acts as the parent because of family hardship. Local board policy recognizes two forms of family hardship – kinship care and hardship care. The local board found that the Appellant failed to show that she met the criteria for either kinship care or hardship care under board policy and accordingly the grandparents do not qualify as care providers. The local board also noted that there was no evidence that Appellant initiated formal court proceedings to designate the grandparents as guardians for the children. The local board concluded that because the Appellant does not live with the children at the Anne Arundel County address her children are not entitled to attend AACPS for the 2022-2023 school year.⁵

This appeal to the State Board followed. In her State Board appeal, the Appellant submitted additional documents that were not submitted to the local board. (Appeal Attachments A-1-17). Included in those documents is a sworn affidavit and a TRV, in which the grandparents attest to be the legal guardians of the children. (Appeal, Attachments A-11-12). In response, the local board acknowledged that if a court ordered the grandparents to be the legal guardians of the children, then the children might be entitled to enroll in AACPS for the 2022-2023 school year. The record, however, contains no court documentation of legal guardianship by the grandparents.

⁵ The students were allowed to remain in their AACPS schools until the end of the 2021-2022 school year. Counsel for the local board has confirmed that the students are now enrolled in Baltimore County Public Schools.

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

Introduction of Additional Evidence

The Appellant has included documents in her appeal that were not before the local board. The local board has identified those documents as Attachments A-1 through A-17. The applicable regulation provides that the State Board may receive additional evidence if it is “material and that there were good reasons for the failure to offer the additional evidence in the proceedings before the local board.” COMAR 13A.01.05.04C. We find that the Residency Affidavit (Attachment A-11) and the TRV form completed by Mr. E■■■■ (Attachment A-12) are relevant to the appeal and we will receive them as additional evidence. We find that the remaining documents are either duplicative of the information included in the record before the local board or not relevant to this appeal. Accordingly, we will not consider the remaining documents for this appeal.

Bona Fide Residence

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 serving the attendance area in which their parents or guardians have *bona fide* residency, unless one of the enumerated exceptions apply. Policy 900.01(C). “*Bona fide* residence” is defined as “the actual place of residence the student maintains in good faith with the student’s parent(s)/guardian(s) or care takers who intend to reside in the actual place of residency permanently.” Regulation 900.01(C)(3). The policy places the burden of proof to establish residency on “the child’s parent(s)/guardian(s) or court appointed guardian.” *Id.*

The Appellant concedes that she lives in Baltimore County and does not live with the children at the Anne Arundel County address so she is unable to demonstrate that she satisfies the first part of the *bona fide* residency requirement that the children reside with her. Instead, she argues that because the children live with the grandparents, who reside in Anne Arundel County, the children should be able to attend AACPS.

The question then turns to whether the grandparents are considered the guardians or care takers of the children within the meaning of the policy. The policy requires that proof of the guardian relationship must include “court order, divorce decree, or other legal documentation.” Regulation 900.01(D)(1)(c). The local board has advised the grandparents to seek legal

guardianship of the children in court if they want to act as the children's guardians as required by the policy. Specifically, in its response, the local board states, "the Appellant did not provide any copies of any court orders or official documentation of legal guardianship." *See* Local Board Response at 9. The local board acknowledges that if the grandparents were deemed by a court to be the legal guardians of the children, then the children might be entitled to attend AACPS. *Id.* The record is devoid of any such required guardianship documentation.

The final question is whether the grandparents are caretakers within the meaning of the policy. The policy does not define the term "caretaker" but it does define the term "care provider" and we find that these terms are used interchangeably in the policy. The policy defines "Care Provider" as "an individual who is 18 years old and is allowed to act as parent(s)/guardian(s) to a child by the child's natural parent(s)/guardian(s) due to a family hardship. These situations may qualify as Kinship Care or Hardship Care." Regulation 900.01(C)(4). The policy provides that the designation of kinship care or hardship care "shall be determined by the Division of Student Support Services in accordance with the provisions of [Md. Code Ann, Educ.,] 7-101 and must be approved prior to enrollment." Regulation 900.01(C)(4)(c). The policy further provides that documentation must be provided to support the family hardship. Regulation 900.01(C)(6), *see also* Md. Code Ann., Educ. 7-101(c).

The policy defines Kinship Care as:

a living arrangement in which a relative of a child provides for the care and custody of the child due to a serious family hardship. A serious family hardship means one of the following has occurred to the parent or legal guardian of the child: death, serious illness, drug addiction, incarceration, abandonment of the child, or assignment to active military duty.

Regulation 900.01 (C)(4)(a), *see also* Md. Code Ann., Educ. §7-101(c)(iv)(defining "serious family hardship" as the death, serious illness, drug addiction, incarceration, abandonment of the child, or assignment of the "parent or legal guardian of a child." There is no evidence in the record that any of these issues apply to the Appellant.

Hardship Care is defined in the policy as "a determination made by the Office of Pupil Personnel regarding the living arrangement of a child when Kinship Care does not apply". Regulation 900.01(C)(4)(b). The Appellant argues that the size and condition of the apartment she lives in is not suitable for the children. She also argues that she moved to the apartment due to a promotion at her job and to better herself. She also argues that she relies on the grandparents to provide support because as a single mother she struggles to provide support, clothing, food and housing for her five children. The local board concluded that these reasons are insufficient to establish any sort of family hardship within the meaning of the policy.

We are sympathetic to the Appellant’s plight. However, the record supports the conclusion that the school system followed its policy and procedures and provided the Appellant “with a fundamentally fair process to determine whether residency has been misrepresented prior to depriving that student of their right to attend school” within its jurisdiction as required by our precedent. *See Autumn S. v. Anne Arundel County Public Schools*, MSBE Op. No. 09-24 (2009). We find that the local board decision was not 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

Shawn D. Bartley

Gail H. Bates

Chuen-Chin Bianca Chang

Charles R. Dashiell, Jr.

Vermelle D. Greene

Jean Halle

Rachel McCusker

Joan Mele-McCarthy

Lori Morrow

Warner I. Sumpter

Holly Wilcox

October 25, 2022