

MANDY V.,

Appellant

v.

ANNE ARUNDEL COUNTY  
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 18-18

## OPINION

### INTRODUCTION

Appellant challenges the decision of the Anne Arundel County Board of Education (“local board”) denying her children enrollment at Belle Grove Elementary School (“Belle Grove”) and Brooklyn Park Middle School (“Brooklyn Park”) based on lack of bona fide residency in the County. The local board filed a motion for summary affirmance 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

Appellant’s daughters are in grades 4 and 8, and had been attending Belle Grove Elementary and Brooklyn Park Middle, respectively, since the beginning of the 2015-2016 school year. Appellant enrolled them in school providing an address at 316 6<sup>th</sup> Ave. in Brooklyn Park in Anne Arundel County (“Anne Arundel County address”). At the time of enrollment, the Appellant provided the school system with the following residency documentation:

- Tenant Residence Verification Disclosure Form, dated July 30, 2015, stating that the Appellant and her children were residing at the Anne Arundel County address with Miguelina Peña, the homeowner;
- Mortgage notice from Select Portfolio Servicing, Inc., dated July 2, 2015, addressed to Miguelina Peña at the Anne Arundel County address;
- BGE bill, dated July 30, 2015, addressed to Miguelina Peña at the Anne Arundel County address, and;
- Paystub from American College Health Association, dated July 15, 2015, addressed to the Appellant at the Anne Arundel County address.

During October 2017, Helen Shaken, Principal of Brooklyn Park, became aware of a possible residency issue while investigating a physical attack on the Appellant’s daughter by another student. During the investigation, the parent of the aggressor told Principal Shaken that the incident might not have occurred if the Appellant’s daughter attended school where she lives in Baltimore City.

Stephanie Jones, Pupil Personnel Worker (“PPW”), conducted the residency investigation. Maryland State Department of Assessments and Taxation (“SDAT”) records showed that the Appellant and her husband have owned a residence at 3908 3<sup>rd</sup> St. in Baltimore City since 2006 (“Baltimore City address”). (Record, Ex. 6). The SDAT records also showed that Miguelina Peña<sup>1</sup> is the owner of the Anne Arundel County property. *Id.* Ms. Jones verified those residences through a United States Postal Service (“USPS”) search. (Record, Ex. 18). Ms. Jones also confirmed, through a Maryland Judiciary case search, that the Appellant listed the Baltimore City address in a 2012 court case and that her husband used the same Baltimore City address in a 2015 court case. (Record, Exs. 4 & 11). The school system also had in its possession the following documents: (1) an emergency card for Appellant’s daughter at Bell Grove Elementary in which Appellant listed the Anne Arundel County address as her and her husband’s contact address for the 2017-2018 school year (Record, Ex. 10); (2) a Maryland Motor Vehicle Administration (“MVA”) motor vehicle record information, dated October 26, 2017, listing an Audi registered to the Appellant at the Baltimore City address (Record, Ex. 12), and; (3) a Maryland Driver License, updated July 30, 2015, listing Appellant’s address as the Anne Arundel County address.

Ms. Jones conducted surveillance of the Baltimore City address, visiting on 4 occasions. On October 25, 2017, Ms. Jones observed that address from 3:30-4:00 p.m., but there was no activity. On October 26, 2017, Ms. Jones observed a silver Audi parked outside of the Baltimore City address at 8:15 a.m., but there was no activity over the course of 45 minutes. On October 27, 2017, Ms. Jones observed the Baltimore City address from 8:30-9:10 a.m. and observed an adult male and one of the girls get into the car, apparently to drive to Belle Grove Elementary. The school principal and school counselor both verified that Appellant’s daughter was in school and was wearing the same clothes Ms. Jones had seen her wearing when she left the Baltimore City address. On November 10, 2017 at 8:45 a.m., Ms. Jones observed one of the girls leave the Baltimore City address and enter a silver Audi with an adult male who she presumed was the father.<sup>2</sup> Ms. Jones followed them to Belle Grove Elementary. (Record, Exs. 4 & 5).

The school system also had the results of a prior residency investigation of the Appellant during the 2014-2015 school year. In May 2015, the PPW, Michele Walters, discovered on the Maryland Judiciary case search system that Appellant and her husband lived at the same Baltimore City address at issue in this case. On May 18, 2015, she observed the girls and their brother, who was school age at that time, leave the Baltimore City address with Appellant, get into a car, and drive to the various schools they attended in Anne Arundel County. On May 20, 2015, Ms. Walters observed the address listed by Appellant as her residence at the time, 7770 Monaghan Rd. in Glen Burnie, while another PPW observed the Baltimore City address. Ms. Walters did not see the family at the Glen Burnie address, but the PPW at the Baltimore City address observed the Appellant driving the girls to school and dropping them off there. (Record, Ex. 4). As a result of the 2015 investigation, the school system determined that the family lived at the Baltimore City address and thus, that they were not bona fide residents of Anne Arundel County. The school system withdrew the children from Anne Arundel County Schools at the end of the 2014-2015 school year. (Record, Exs. 5 & 16).<sup>3</sup>

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<sup>1</sup> It is unclear in the record if this individual is related to the Appellant.

<sup>2</sup> The adult male whom the PPW assumed was Appellant’s husband during the surveillances was actually the Appellant’s son.

<sup>3</sup>Over the summer, however, the Appellant re-enrolled the children in new schools in Anne Arundel County based on the Anne Arundel County address at 316 6<sup>th</sup> Ave. in Brooklyn Park.

By letter dated October 27, 2017, Tamara Kelly, Principal of Belle Grove Elementary, advised the Appellant that her daughter was subject to being withdrawn from school because Appellant and her daughter are not bona fide residents of the County. She stated that the school system had determined that the family lived at the Baltimore City address and that her daughter should be enrolled in Baltimore City Public Schools. (Record, Ex. 8). Appellant received a similar letter from Principal Shaken at Brooklyn Park Middle. (Record, Ex. 7).

Appellant appealed to the local superintendent. Although we know that the Appellant submitted some type of documentation with her appeal, we are unable to discern from the record what that documentation included. (Record, Ex. 13). At a minimum, we know that it included a Tenant Residence Verification Disclosure Form, dated October 31, 2017, stating that the Appellant and her children were residing at the Anne Arundel County address with Miguelina Peña.

By letter dated November 17, 2017, Sarah S. Eagan, Assistant Superintendent and Superintendent's Designee, advised the Appellant that her children were being withdrawn from Anne Arundel County Public Schools 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 appeal provided a Tenant Residency Verification form with the address of 316 6<sup>th</sup> Avenue, [the Anne Arundel County address,] and you stated that's "where my children and I reside." However, we have several observations contradicting that your children reside at [the Anne Arundel County address]. Additionally, there was a previous decision on a residency case [listing] 3908 3<sup>rd</sup> Street, [Baltimore City] as your primary residence.

(Record, Ex. 14).

On December 13, 2017, Appellant stated her intent to appeal the decision to the local board and requested information on the appeal process. (Record, Ex. 15). She followed up with additional information on February 16, 2018, explaining that she and her husband have separated multiple times over the years, which led her to leave the house in Baltimore City with her children. She also attached to that submission the documents she had previously submitted in the residency dispute and additional updated documents as proof of residency, but did not indicate which documents were previously filed and which were new. The documents included the following:

- Tenant Residence Verification Disclosure Form dated October 31, 2017, stating that Appellant and her children reside at the Anne Arundel County address with Miguelina Peña;
- Anne Arundel County water and wastewater service bill dated October 27, 2017, addressed to Miguelina Peña at the Anne Arundel County address;
- Mortgage statement from Select Portfolio Servicing, Inc., dated September 22, 2017, addressed to Miguelina Peña at the Anne Arundel County address;

- University of Maryland, Community Medical Group paystub, dated November 3, 2017, addressed to Appellant at the Anne Arundel County address;
- Maryland Driver License, updated July 30, 2015, listing Appellant's address as the Anne Arundel County address;
- Maryland Department of Juvenile Services letter, dated November 28, 2017, addressed to Appellant at the Anne Arundel County address;
- Bank of America statement, dated February 7, 2018, addressed to Appellant at the Anne Arundel County address;
- MVA vehicle registration certificate, expiring December 29, 2020, addressed to Appellant and Fernando V., Jr. at the Anne Arundel County address;
- Anne Arundel County Department of Recreation and Parks 2017 tax statement for child care services addressed to Appellant at the Anne Arundel County address;
- 2017 W-2 tax form addressed to Appellant at the Anne Arundel County address;
- Petition for Protective Order against her husband for domestic violence and child support, signed by the Appellant listing her address as the Anne Arundel County address and her husband's address as the Baltimore City address, and;
- Temporary Protective Order from the District Court of Maryland for Anne Arundel County, effective January 25, 2018 to February 5, 2018, listing the Baltimore City address as Appellant's husband's address.

There are also additional documents that were before the local board at the time it made its decision, but we are not sure at what point the Appellant submitted them to the board. They include a letter from the District Court for Anne Arundel County, dated January 25, 2018, addressed to the Appellant at the Anne Arundel County address; Circuit Court Domestic Violence case docket entries, dated February 2018, showing Appellant's husband's address as the Baltimore City address; and Appellant's son's college bill addressed to him at the Anne Arundel County address.

In an Opinion and Order issued on March 7, 2018, the local board affirmed the decision of the Superintendent finding that the Appellant and her daughters were not bona fide residents of Anne Arundel County, but instead reside in Baltimore City.<sup>4</sup> The local board stated that, although the Appellant had submitted a statement offering documents to support her position that she resides in Anne Arundel County, "there are multiple documents which demonstrate that [she] resides at the Baltimore address." In particular, the local board referenced documents from the SDAT, the USPS, and the MVA, as well as documentation of the staff observations and the results of the 2015 residency investigation.

This appeal to the State Board followed. In her appeal, Appellant explains that she and her husband have been experiencing marriage difficulties for many years and were trying to work out their issues. She claims that for a period of time she lived with the children in Glen Burnie before moving to 316 6<sup>th</sup> Ave. address in Anne Arundel County, while her husband lived at the 3908 3<sup>rd</sup> St. residence in Baltimore City. Appellant further explains that she had a temporary order of protection against her husband in February 2013, and her husband later had some other legal problems in 2015. She claims that during the 2015 period when he was experiencing legal problems, she and her children temporarily moved back to the Baltimore City

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<sup>4</sup> The school system permitted the Appellant's daughters to remain in school until the local board rendered its decision.

home and that was when the school system began questioning their residency. She maintains, however, that once her husband's legal issues were resolved, she and the children moved back to the Anne Arundel County address and that her husband has remained at the Baltimore City address with extended family. She also states that her children visit her husband and extended family members at the Baltimore City address and that her son sometimes stays there. Her son also helps drive his sisters to and from school and was the adult male pictured in the surveillance photographs.

## 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. A local board decision may be arbitrary or unreasonable "if a reasoning mind could not have reasonably reached the conclusion the local board . . . reached" or if the decision "is contrary to sound educational policy." COMAR 13A.01.05.05B.

## LEGAL ANALYSIS

State law requires "bona fide residency" as a condition of free attendance at Maryland's public schools. *See* Md. Code, Educ. Art §7-101. 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.* §7-101(b).

The local board's residency policy requires students to attend the school designated to serve the attendance area of their bona fide residence, unless one of the enumerated exceptions apply. (JAB, C). "Bona fide residence" is defined as "the actual place of residence the student maintains in good faith. It does not include a temporary residence established for the purpose of free school attendance in the public schools." (JAB-RA, C.4). The policy places the burden of proof to establish bona fide residency on the parent, guardian, care provider or student. *Id.*

A parent can establish residency by providing the school system with the following documentation:

- A mortgage document issued within 60 calendar days, deed, valid rental agreement, military housing lease, or the tenant residence verification disclosure form ("TRV") with supporting documentation.
- When the tenant residence verification disclosure form is used, the owner or leasee of the residence must provide:
  - Notarized TRV form;
  - Copy of mortgage document, deed, or rental agreement, and;
  - A second form of documentation issued within the past 60 days, and may include any of the following provided that the address on the document matches the mortgage document, deed, rental agreement, military housing lease, or TRV:

- Utility bill, cable bill or work order issued by the utility or cable company;
- Bank statement;
- W-2 Form or Form 1099 issued the previous year;
- Pay stub;
- Valid Commercial Driver’s License;
- Any government issued documentation such as:
  - Social Security check/check stub/remittance advice;
  - Domestic relations/child support check;
  - Department of Social Services-Food Stamps or Community Medical Assistance letter;
  - Unemployment award;
  - PPW verification letter or form verifying residence after a home visit.

(JAB-RA, D.1.e).

Consistent with the school system’s residency policy, the Appellant has submitted to the school system a valid TRV for 316 6<sup>th</sup> Ave. in Anne Arundel County, the mortgage statement for the residence, and a utility bill for the residence. She also submitted her paystub, driver license, Department of Juvenile Services letter, bank statement, MVA car registration, W-2 form, and court documents, all of which reflected her address as 316 6<sup>th</sup> Ave. The Appellant’s provision of such documentation established the presumption of bona fide residency. *See Stacey M. v. Anne Arundel Count Bd. of Educ.*, MSBE Op. No. 10-11 (2010).

The burden of proof then shifts to the local board to rebut the presumption of residency with contradictory evidence. *See David and Nino K. v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 11-32 (2011). Here the local board relies on several facts to support its conclusion that the Appellant resides with her children in Baltimore City – that the Appellant has owned the property in Baltimore City with her husband since 2006, that the SDAT records report is as the Appellant’s residence, and that it is Appellant’s address of record for the USPS. The Appellant, however, does not dispute that she owns the property and sometimes receives mail there as a result. She claims instead that she and her husband have had marriage difficulties for many years and that she currently resides at the Anne Arundel County address with her daughters while he lives in the Baltimore City residence with some extended family members. There is no discussion of the family situation in the local board’s decision, even though Appellant raised it in her appeal materials filed with the local board. In addition, the local board also relies on the Appellant’s use of the Baltimore City address in a 2012 court case. The information from a 2012 court case is not conclusive of where Appellant currently resides.

The local board also relies on the school system’s surveillance of the Baltimore City address in October and November 2017, which consisted of four visits total. On two of the visits, the mornings of October 27 and November 10, 2017, the PPW observed Appellant’s son leave the house with Appellant’s younger daughter and drive her to Belle Grove Elementary. While this is suggestive of their living at that address, two visits are hardly conclusive of residency, especially when there is no sighting of the Appellant or her other daughter. The local board believes that when you combine all of this information with the results of the 2015 residency investigation it tips the scales against the Appellant’s claim that she lives at the Anne

Arundel County address. The Appellant has explained that she and the children moved back into the family home temporarily while her husband had legal troubles and that she and the children no longer reside there.

This family appears to have some serious issues given that there were at least two temporary protective orders against Appellant’s husband regarding child abuse and domestic violence over the years. Sometimes families have complicated living situations. Unfortunately, the local board’s decision, as well as its briefs in this appeal, do not address this issue. It does not help that there was little surveillance done in 2017, including no observation of the Anne Arundel County address, and no attempts to do a home visit at either address. We wonder whether on the two days that the PPW found no activity at the Baltimore City address if there was activity at the Anne Arundel County address. In addition, the fact that the Appellant owns a home in Baltimore City is not conclusive of where she lives because an individual can own property in one location and reside in another. While it is the Appellant’s burden to prove residency, once the Appellant established the presumption of residency, it is up to the local board to rebut that presumption. The local board has not done so here.

A local board decision may be arbitrary or unreasonable “if a reasoning mind could not have reasonably reached the conclusion the local board . . . reached” or if the decision “is contrary to sound educational policy.” COMAR 13A.01.05.05B. The local board has not provided sufficient evidence to rebut the presumption that the Appellant and her daughters live at the Anne Arundel County address. If no sufficient evidence supports a decision, we must conclude that no reasoning mind could have found that the Appellant and her daughters were bona fide residents of the Baltimore City address. Thus, we find the local board’s decision to be arbitrary and unreasonable.

CONCLUSION

For the reasons stated above, we reverse the decision of the local board and find that the Appellant and her daughters are bona fide residents of the Anne Arundel County address. We direct the local board to enroll Appellant’s daughters in school at Belle Grove Elementary School and Brooklyn Park Middle School.

Signatures on File:

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Andrew R. Smarick  
President

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Chester E. Finn, Jr.  
Vice-President

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Michele Jenkins Guyton

\_\_\_\_\_  
Jean C. Halle

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Justin M. Hartings

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Stephanie R. Iszard

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Rose Maria Li

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Joan Mele-McCarthy

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Michael Phillips

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David Steiner

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Warner I. Sumpter

May 22, 2018