

TERRI L. CARNEY,

Appellant

v.

HOWARD COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 00-19

OPINION

This is an appeal of the local board's denial of Appellant's request for a tuition waiver for her nephew to attend public school in Howard County. The local board has filed a Motion to Dismiss the appeal based on untimeliness. Appellant has submitted an opposition to the Motion.

BACKGROUND

Appellant's nephew is in the ninth grade at Hammond High School in Howard County.¹ On February 16, 1999, Appellant submitted an "Application for Request to Enroll Nonresident Student" with the Howard County Public Schools stating the following:

My nephew came to live with me after being dropped from school for low performance. He went to Patuxent Valley Middle School [in Howard County, MD] for half of the seventh and all of the eighth grade. His mother wanted him to come home and live with her [in Louisiana]. He did. Unfortunately, he was not happy and it was reflected in his academic performance. Because he needs the close attention that I am able to provide and because he was happiest with me, he is back. He will be living with me until he is of age to move out.

Appellant spoke with Pat O'Brien, Pupil Personnel Worker, to discuss registering her nephew in high school. Ms. O'Brien explained the local board's residency policy and advised Appellant that guardianship had to be court ordered and hardship had to be documented. Appellant advised Ms. O'Brien that she was seeking court ordered custody. In correspondence to Appellant dated February 22, 1999, Ms. O'Brien explained, in part:

In order to register your nephew, you would need to obtain court

¹Appellant's nephew is from Baton Rouge, Louisiana where his mother resides.

ordered custody or guardianship. Unless we have documented proof that a hardship condition exists, tuition would be charged. When you filled out the 'Application for Request to Enroll Nonresident Student,' you wrote that the reason [your nephew] is living with you is because he was not doing well academically and he would be happier residing with you. This is not considered a hardship so tuition would be charged.

Ms. O'Brien further stated her understanding that Appellant would be seeking court ordered custody and paying tuition.

Appellant challenged Ms. O'Brien's decision requiring the payment of tuition for the 1999-2000 school year. At some point prior to the beginning of the school year and before review of Ms. O'Brien's decision, Appellant had obtained court ordered guardianship of her nephew. The matter was reviewed by Dr. Estes Lockhart, Director of Student Services, who met with Appellant.² During their meeting, Appellant indicated that the nephew's mother could not parent the child very well at this point in his life, and that she believed Appellant's parenting would make all the difference in his remaining in school and graduating. Dr. Lockhart denied the request for tuition waiver on the grounds that the student's "situation is that of a non-resident without circumstances that could meet the tuition waiver criteria of the Howard County Enrollment, Residency and Tuition Policy 3201-R." *See* Letter to Carney from Lockhart dated July 7, 1999.

Appellant appealed Dr. Lockhart's decision to the local board. In response to the appeal, Dr. Lockhart submitted a memorandum to the local board stating:

[The nephew] is not a bona fide resident because he is living with a guardian in Howard County for the purpose of attending a Howard County Public School. He dropped out of school doing poorly in Louisiana.³ Our policy states that students must be bona fide residents to attend school tuition-free. Our policy is consistent with the Maryland State Board's ruling in *Armour v. Montgomery County*, that school systems can require students to be bona fide residents to enroll tuition-free, and that 'a child who has established a superficial residence in a school district for the

²Cathy Henry, the new Pupil Personnel Worker handling Appellant's case, was also present at the meeting.

³Appellant clarifies in her appeal to the State Board that her nephew did not drop out of school in Louisiana. Rather, he had to withdraw from school in Louisiana when he left to live with Appellant in Howard County.

sole purpose of attending its schools is not a bona fide resident.’

On December 1, 1999, the local board issued a unanimous decision upholding the superintendent’s denial of Appellant’s request for a tuition waiver.

ANALYSIS

As a preliminary matter, the local board argues that this appeal should be dismissed because it was untimely filed. State law and regulation require appeals of local board decisions to be filed with the State Board within thirty days of the local board decision. *See* Md. Code Ann. Educ. § 4-205 (c) and COMAR 13A.01.01.03B (3). An appeal is deemed transmitted within the limitations period if it has been delivered to the State Board or deposited in the United States mail, as registered or certified, before the expiration of the time period. COMAR 13A.01.01.03B (3).

The local board’s decision was issued on December 1, 1999. Therefore, the local board asserts that the appeal should have been filed or sent by certified mail on or before December 31, 1999. The appeal was filed by certified mail postmarked January 3, 2000. The board maintains that the appeal was three days late. However, December 31, 1999, was a State and federal holiday and the State Board offices as well as the U.S. Post Office were closed. Because the next regular work day was January 3, 2000, we find that the appeal was timely filed.

On the merits, however, we believe that the local board acted arbitrarily and illegally in this matter. The board indicated in its decision that “within our policy legal guardianship of a minor entitles that student to attend Howard County public schools; but only in documented cases of hardship, which does not apply here, is the student granted a waiver of tuition.” Thus the local board’s position is that a student living with a court ordered guardian in Howard County is permitted to attend public school in the County, but is not considered a bona fide resident under local board policy and will be required to pay tuition unless a hardship condition exists. We think this is a violation of State law and a misapplication of local policy.

A bona fide residency requirement is a condition of free attendance at Maryland’s public schools. *See* Md. Code Ann., Educ. 7-101, 7-301, 8-404(a), COMAR 13A.08.01.01A. Section 7-101 includes language concerning domicile, stating in pertinent part:

(a) Admissions. – All individuals who are 5 years old or older and under 21 shall be admitted free of charge to the public schools of this State.

(b) Location. – (1) Except as provided in § 7-301 of this title and in paragraph (2) of this subsection, each child shall attend a

public school in the county where the child is domiciled with the child's parent or guardian.⁴

(2) Upon request and in accordance with a county board's policies concerning residency, a county superintendent may allow a child to attend school in the county even if the child is not domiciled in that county with the child's parent or guardian.

(3) 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 a public school in the county.

Additionally, the Maryland Student Records System Manual incorporated by reference in COMAR 13A.08.01.01A explains which students may be considered bona fide residents. See IV-5 - IV-6 (Supp. 1) provided with the background information. The bona fide residency requirement has been affirmed by the State Board on multiple occasions. See *John P. Gustafson v. Board of Education of Allegany County*, 7 Op. MSBE 308 (1996); *Armour v. Board of Education of Montgomery County*, 2 Op. MSBE 123 (1979). In essence, a student living with a legal guardian is a bona fide resident of the jurisdiction where the legal guardian resides.

Local school systems are required to establish written policies and procedures to be followed for the purpose of determining whether a student is a bona fide resident. See Maryland Student Records System Manual at IV-5 - IV-6 (Supp. 1). Accordingly, the Howard County Board of Education has developed Policy 3201-R - "Enrollment, Residency, and Tuition." Policy 3201-R (I.F) states that "[a]ll qualified school-age minor persons whose parents have an established **bona fide residence in Howard County** . . . shall be considered resident students and shall be admitted tuition-free to Howard County public schools." (Emphasis added). We think this provision must be read in conjunction with 3201-R (I.G) which provides as follows:

Bona fide residence is the person's actual residence maintained in good faith and does not include a temporary or a superficial residence established for the purpose of free school attendance in the Howard County public school. Determination of a person's bona fide residence is a factual one and must be made on an individual basis. **Although an intent to reside indefinitely or**

⁴The terms domicile and guardian are not statutorily defined in Title 7 of the Education Article.

permanently at the present place of residence is not necessarily required, the following factors are pertinent in determining one's bona fide residence: the parent/guardian must occupy an owned or rented domicile in Howard County.

As proof, the parent/guardian must provide the following with his/her name on it.

1. Current lease/deed.
2. One of the following: current utility bill, current telephone bill; current cable bill.
3. Other factors as determined by the Office of Pupil Personnel. (Emphasis added).

Based on our review of the policy and applicable law, we believe that the Howard County Board provisions governing resident students are applicable to Appellant's nephew.⁵ Although the definition for resident students does not include the term "guardian," the definition of a bona fide residence does include the term. Moreover, a contrary interpretation would fail to classify Appellant's nephew and similarly situated students into any student category, and would be inconsistent with the governing policy statement.⁶ We also believe

⁵Appellant's nephew does not meet the definition for a nonresident student or a foreign student. As to nonresident students, Policy 3201-R (I.H) states that "[a]ll qualified school-age minor persons whose parents/guardians do not have an established bona fide residence in Howard County or those majority-aged students who themselves have not established bona fide residence in Howard County shall be considered nonresident students. Such students may be admitted to the Howard County public schools; however, tuition shall be charged and paid unless waived." The definition for foreign students pertains to immigrants and non-immigrants who are admitted temporarily to the United States. See Policy at I.I.

⁶The Policy Statement for Howard County Board of Education policy 3201 states, in pertinent part:

The Board has established a system of public schools which promote the general welfare of Howard County citizens and which are maintained for the education of the students whose parents or **legal guardians are bona fide residents of the county.**

Students of nonresident parent(s) or nonresident legal guardian(s) or who, themselves, are nonresidents, may be admitted to the Howard County public schools under special circumstances, in accordance with administrative regulations and subject to compliance with the procedures established by the Superintendent of Schools. (Emphasis added).

that any other construction would violate State law which provides for a free public education for children age five to age 21 in this State, and requires children to attend public school in the county where the children are domiciled with their parent or guardian. The local board has acknowledged that Appellant has court ordered guardianship and that she is a Howard County resident. In our view Appellant and her nephew are bona fide residents of the County. Once full legal guardianship was awarded by the court, we believe the nephew's reason for living with Appellant becomes irrelevant to the determination.

In support of its decision to charge Appellant tuition, the school system relies on *Armour v. Board of Education of Montgomery County*, in which the State Board indicated that "a child who has established a superficial residence in a school district for the sole purpose of attending its schools is not a bona fide resident." However, there is no superficial residence here because Appellant's legal guardianship of her nephew has been established. Furthermore, in the very next paragraph of the *Armour* opinion, the State Board explained that "a child is a bona fide resident if at a minimum that child **actually lives within the school district with a parent, guardian, or other individual who has legal custody of that child.**" 2 Op. MSBE at 130 (emphasis added). Thus, *Armour* supports Appellant's position in this appeal. For these reasons, we believe that the local board has acted arbitrarily and illegally by denying a bona fide resident of Howard County a free public education.

CONCLUSION

For these reasons, we reverse the decision made by the Board of Education of Howard County and direct the Board to reimburse Appellant for the tuition she has paid from the date Appellant obtained legal guardianship of her nephew.

Edward Andrews
President

Philip S. Benzil
Vice President

Raymond V. Bartlett

JoAnn T. Bell

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Judith McHale

Edward Root

Walter Sondheim, Jr.

John Wisthoff

April 19, 2000