

MARY E.,

Appellant

v.

ANNE ARUNDEL COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 14-06

OPINION

INTRODUCTION

This case involves an appeal of the decision of the Anne Arundel County Board of Education (local board) finding that Appellant's child is not entitled to attend Anne Arundel County Public Schools because Appellant and her child are not bona fide residents of Anne Arundel County.

On February 26, 2013, this Board issued Opinion No. 13-13 in which we determined that there existed a material factual dispute with regard to the issue of Appellant's residency.¹ We referred this case to the Office of Administrative Hearings (OAH) as required by COMAR 13A.01.05.07A(3) for a determination regarding Appellant's residency. On October 7, 2013, the Administrative Law Judge (ALJ) issued a Proposed Decision finding that the Appellant had shown by a preponderance of the evidence that she and her child are bona fide residents of Anne Arundel County in the school attendance area for Mills-Parole Elementary School. The ALJ recommended, therefore, that the State Board reverse the decision of the local board.

The local board did not file any exceptions to the ALJ's Proposed Decision.

FACTUAL BACKGROUND

The factual background in this case is set forth in the Proposed Decision, Findings of Fact, pp. 4 — 10.

STANDARD OF REVIEW

Because this appeal involves a local policy or a controversy and dispute regarding the rules and regulations of the local board, the decision of the local board is considered *prima facie* correct and 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.

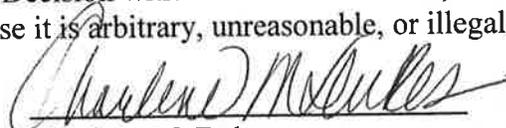
¹ Meanwhile, on February 4, 2013, the State Superintendent of Schools issued Order No. 13-1 granting Appellant a stay of the local board's decision pending a final decision in the State Board appeal. The child was re-enrolled at Mills-Parole Elementary School.

The State Board referred this case to OAH for proposed findings of fact and conclusions of law by an ALJ. In such cases, the State Board may affirm, reverse, modify or remand the ALJ's proposed decision. The State Board's final decision, however, must identify and state reasons for any changes, modifications or amendments to the proposed decision. See Md. Code Ann., State Gov't §10-216. In reviewing the ALJ's proposed decision, the State Board must give deference to the ALJ's demeanor based credibility findings unless there are strong reasons present that support rejecting such assessments. See *Dept. of Health & Mental Hygiene v. Anderson*, 100 Md. App. 283, 302-303 (1994).

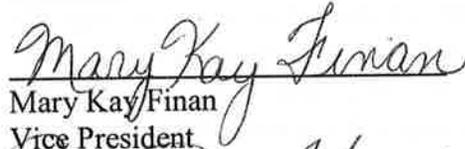
CONCLUSION

The local board offers no exceptions to the ALJ's proposed decision. We note one correction to the decision on p.27, paragraph 2, which should read "Appellant's father suffers from significant dementia" rather than "Appellant suffers from significant dementia." This appears to be a typographical error and does not impact the analysis of the case in any way.

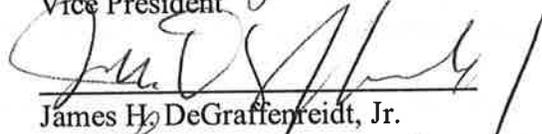
We concur with the ALJ that the Appellant has demonstrated that she and her child are bona fide residents of Anne Arundel County in the attendance area for Mills-Parole Elementary School. We, therefore, adopt the ALJ's Proposed Decision with the above correction, and reverse the local board's residency decision because it is arbitrary, unreasonable, or illegal.



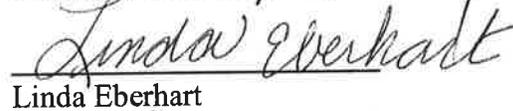
Charlene M. Dukes
President



Mary Kay Finan
Vice President



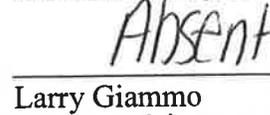
James H. DeGraffenreidt, Jr.



Linda Eberhart



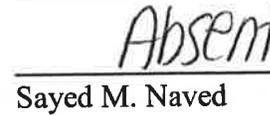
S. James Gates, Jr.



Larry Giammo



Luisa Montero-Diaz



Sayed M. Naved

Madhu Sidhu

Madhu Sidhu
Donna Hill Staton

Donna Hill Staton
Guffie M. Smith, Jr.

Guffie M. Smith, Jr.

February 25, 2014

MARY ELLIOTT,
APPELLANT

v.

BOARD OF EDUCATION
OF ANNE ARUNDEL COUNTY

* BEFORE DOUGLAS E. KOTEEN,
* ADMINISTRATIVE LAW JUDGE,
* MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH No. MSDE-BE-11-13-09618

* * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSIONS OF LAW
PROPOSED ORDER

STATEMENT OF THE CASE

On October 24, 2012, the Board of Education of Anne Arundel County (County Board) issued a Memorandum Opinion and Order in which it determined that Mary Elliott (Appellant) had not met her burden of proof to establish that she and her daughter (Student) live within the attendance area of Mills-Parole Elementary School in Anne Arundel County, Maryland, where the Student had been attending school. The County Board concluded that the Appellant and the Student live in Prince George's County, Maryland. On November 20, 2012, the Appellant appealed the County Board's October 24, 2012 Order to the Maryland State Board of Education (State Board).

On February 26, 2013, the State Board issued Opinion No. 13-13 in which it determined that there exists a genuine dispute of material fact with regard to the issue of the Appellant's residency and, therefore, transferred the case to the Office of Administrative Hearings (OAH) for a review of this issue. Code of Maryland Regulations (COMAR) 13A.01.05.07A(3). On March 4, 2013, the State Board forwarded the case to the OAH for a contested case hearing to be conducted before an

Administrative Law Judge to determine the issue of the Appellant's residency.¹ Md. Code Ann., Educ. § 7-101 (Supp. 2013); COMAR 13A.01.05.05; 13A.01.05.07; County Board Policy JAB; County Board Regulation JAB-RA.

I conducted a hearing on July 9, 2013 at the County Board's offices in Annapolis, Maryland. The Appellant was present and represented herself. B. Darren Burns, Esquire, of Carney, Kelehan, Bresler, Bennett & Scherr, LLP, represented the County Board.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the procedural regulations for appeals to the State Board of Education, and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2013); COMAR 13A.01.05; COMAR 28.02.01.

ISSUE

The issue is whether the Appellant has proven that she and the Student reside in Anne Arundel County in the designated attendance area for Mills-Parole Elementary School and, therefore, whether the decision of the County Board that they reside in Prince George's County is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.07A(3); 13A.01.05.05A.

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the Appellant:

- App. Ex. 1. Tenant Residence Verification Disclosure Form, dated December 3, 2012;
- App. Ex. 2. Deed, dated February 16, 1965;
- App. Ex. 3. Anne Arundel County, Maryland Voter Identification Card for Appellant, dated June 28, 2012;
- App. Ex. 4. Maryland Driver's License for Appellant, issued June 22, 2012;
- App. Ex. 5. Navy Federal Credit Union Statement of Account, for April 15 through May 14, 2013;

¹ The October 24, 2012 decision of the County Board states that the issue in this appeal involves whether the Student resides in the attendance area of the Mills-Parole Elementary School (in Anne Arundel County). In contrast, the February 26, 2013 decision of the State Board stated that it was transferring this matter to the OAH for a determination regarding the Appellant's residency. (Bd. Ex. 8).

- App. Ex. 6. Johns Hopkins Community Physicians, Inc., Invoice for Appellant, dated June 1, 2013;
- App. Ex. 6A. Letter from Mark Phillips, M.D., Johns Hopkins Community Physicians, dated June 22, 2012;
- App. Ex. 6B. Letter from GEICO Indemnity Company to Appellant, dated March 9, 2013;
- App. Ex. 7. U.S. Individual Tax Return, Form 1040, for 2008 for Appellant, with attachments, dated January 21, 2009 (6 pages);
- App. Ex. 7A. Maryland Resident Income Tax Return, Form 502, for 2008 for Appellant, with attachments, dated January 21, 2009 (8 pages);
- App. Ex. 8. Department of Defense Civilian Leave and Earnings Statement, dated April 12, 2013 (2 pages);
- App. Ex. 9. Letter from Midshipmen Food Service Division, United States Naval Academy, to Maryland State Department of Education (MSDE), undated (2 pages); and
- App. Ex. 10. Certificate of Release or Discharge from Active Duty, dated May 18, 1986 (2 pages).

I admitted the following exhibits on behalf of the County Board:

- Board Ex. 1. Maryland Department of Assessments and Taxation Real Property Data Search, dated April 2, 2013 (1 page);
- Board Ex. 2. Tenant Residence Verification Disclosure Form, dated April 16, 2009 (1 page);
- Board Ex. 3. Tenant Residence Verification Disclosure Form, dated June 29, 2010 (1 page);
- Board Ex. 4. BGE Account Statement, dated July 20, 2009 (1 page);
- Board Ex. 5, 5A, 5B. Three photographs, undated (3 pages);
- Board Ex. 6. County Board Policy JAB/900.01, Assignment and/or Transfer of Students to a School, Adopted February 6, 2008 (2 pages);
- Board Ex. 6A. County Board Regulation JAB-RA, Assignment and/or Transfer of Students to a School, Revised March 1, 2013 (13 pages);
- Board Ex. 7. Order of State Superintendent of Schools, No. 13-1, dated February 4, 2013 (4 pages);
- Board Ex. 8. State Board Opinion No. 13-13, dated February 26, 2013 (6 pages);
- Board Ex. 9. Affidavit of Susan Altman Farrell, Pupil Personnel Worker, dated October 3, 2012, with attached Residency Investigation, dated June 25, 2012 (9 pages);
- Board Ex. 10. Maryland Motor Vehicle Record Information, dated August 17, 2012, with attachments (3 pages);
- Board Ex. 11. Motor Vehicle Administration (MVA) Driver's Record Search by Name, dated October 3, 2012 (2 pages);
- Board Ex. 12. MVA Driving Record Information, dated August 17, 2012, with attachments (3 pages);
- Board Ex. 13. Letter from County Board to U.S. Post Office, dated May 30, 2012 (1 page);
- Board Ex. 13A. Letter from County Board to U.S. Post Office, dated June 3, 2012 (1 page); and
- Board Ex. 14. Advanced Person Search Results, dated March 20, 2013 (2 pages).

Testimony

The Appellant testified on her own behalf. The County Board presented Susan Altman Farrell, Pupil Personnel Worker (PPW) for the County Board.

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. The Student attends Mills-Parole Elementary School (MPES) in Anne Arundel County, Maryland. The Student has attended MPES since on or about the 2009-2010 school year when she was in kindergarten. During the 2012-2013 school year, the Student was eight years old and was in the third grade. Her date of birth is June 27, 2004. (Bd. Ex. 8; App. Ex. 1; TR 158).
2. On October 24, 2012, the County Board issued a decision finding that the Appellant and Student live in Prince George's County, Maryland. As a result of that decision, the County Board disenrolled the Student from MPES on December 6, 2012. (Bd. Ex. 7, 8).
3. When the Appellant attempted to enroll the Student in a public school in Prince George's County, Maryland, she was unable to do so because she could not provide proof of residency in Prince George's County. (Bd. Ex. 7). Subsequently, the Student attended Odenton Elementary School in Anne Arundel County for several weeks, a public school near the residence of her natural father, B.W. (TR 37, 222).
4. On February 4, 2013, the State Superintendent of Schools issued Order No. 13-1, which granted the Appellant's request for a stay and ordered the County Board to allow the Student to attend MPES until the State Board renders a decision on the Appellant's residency appeal. (Bd. Ex. 7). Following that decision, the Student was reenrolled at MPES.
5. In accordance with the County Board's school assignment policy, students must attend the school designated to serve the attendance area of their bona fide residence. (Bd. Ex. 6, Policy JAB, Assignment or Transfer of Students to a School, p. 1; Bd. Ex. 6A, Regulation JAB-RA; TR 216).
6. The Appellant's father, Johnnie McKinney, Jr., resides at 137 Dorsey Drive in Edgewater, Maryland (Dorsey Drive property). He has owned and resided at the Dorsey Drive property

since 1965. (App. Ex. 1, 2). When the Appellant was growing up, she lived at the Dorsey Drive property.

7. The Appellant's father is eighty-nine years old, suffers from dementia, and requires assistance with his activities of daily living (ADLs).² (App. Ex. 9; TR 124). The Appellant resides with her father at the Dorsey Drive property and assists her father with his care. (TR 103-104). The Appellant's brother, Johnnie McKinney, also lives at the Dorsey Drive property and also assists in providing care for their father. (TR 105, 153).
8. The Appellant's father began to show early symptoms of dementia in about 2008. (TR 153, 160). The Appellant's father has also been treated for colon cancer. (TR 124).
9. The Appellant has registered to vote, obtained a driver's license, maintained a bank account, obtained medical care, obtained automobile insurance, filed tax returns, received employment pay stubs, and was discharged from active duty in the military using the address at the Dorsey Drive property in Edgewater, Maryland. (App. Ex. 3, 4, 5, 6, 6B, 7, 7A, 8, 10). The Appellant obtained a new driver's license in June 2012 after losing her last one. (TR 116-117).
10. The Appellant was living at the Dorsey Drive property when she entered the military in 1980. After her honorable discharge from the military in 1983, she returned to live at the Dorsey Drive property. (TR 71-72; App. Ex. 10).
11. B.W. is the Student's natural father. He currently resides in Odenton, Maryland. When the Appellant was married to B.W., the Appellant and B.W. lived at 414 Captain's Circle in Annapolis, Maryland. The Appellant and B.W. were divorced in or about 2005. As a result of the dissolution of that marriage, the Appellant moved back to her father's residence at the

² Most of the documents in this record refer to the Appellant's father as "Johnnie McKinney, Jr.," although some do not. The Appellant's brother is also named "Johnny McKinney." The Appellant explained that, although her father is technically Johnnie McKinney, Sr., he regularly uses the name, "Johnnie McKinney, Jr." (TR 167-168). For example, the Deed for the Dorsey Drive property indicates that the property was granted to "Johnnie McKinney, Jr." and his wife in 1965. (App. Ex. 2). Based on the father's date of birth in 1924, it is clear that the name "Johnnie McKinney, Jr." generally refers to the Appellant's father, who is the elder "Johnnie McKinney" in this record.

Dorsey Drive property. (TR 75, 105, 196). The Appellant lived at Captain's Circle in Annapolis when the Student was born in 2004. (TR 75).

12. The Appellant registered to vote in September 2000 from her address at Captain's Circle. The Appellant obtained a new voter notification card on June 28, 2012, which listed her address at the Dorsey Drive property. (App. Ex. 3; TR 195-196).
13. The Appellant married her current husband, E.E., in 2008. E.E. lives in a one-bedroom rental apartment at 2208 Alice Avenue, Apt. 4, Oxon Hill, Maryland 20745 in Prince George's County (Oxon Hill property). (TR 199). Neither the Appellant nor the Student are listed on E.E.'s lease at the Oxon Hill property. (Bd. Ex. 8; TR 199).
14. The Appellant continued to reside at her father's residence at the Dorsey Drive property after her marriage to E.E. The Appellant and the Student do not live at the Oxon Hill property on a regular basis, although they spend the night at the Oxon Hill property with the Appellant's husband once in a while. (Tr. 33, 105, 183, 197, 200).
15. The Appellant receives mail at both the Oxon Hill and Dorsey Drive addresses. (TR 173, 238-239). The U.S. Post Office acknowledged to the County Board that the Appellant receives mail at both the Oxon Hill and Dorsey Drive property addresses. (Bd. Ex. 13, 13A; TR 239-241).
16. The Appellant co-owns a white 2003 Cadillac Escalade with her husband. The Appellant and E.E. share use of the vehicle. (TR 176). The vehicle was previously registered for insurance purposes in the husband's name at the Oxon Hill property. The vehicle is now registered for insurance purposes in the name of the Appellant and E.E. at the Dorsey Drive property address. (TR 112, 132, 172; Bd. Ex. 5, 5A, 5B, 8; App. Ex. 6B). The Appellant changed the location with GEICO because the insurance premium is less expensive with the vehicle based at the Dorsey Drive address. (TR 115-116). E.E. does not own another vehicle. The Appellant also

owns a Monte Carlo, but does not use that vehicle because it broke down and is in the shop.

(112-113, 203).

17. The Appellant and E.E. are employed at the Naval Academy in Annapolis, Maryland. They work on different days and different shifts. (App. Ex. 9). The Appellant works from Thursday through Sunday and is off work Monday through Wednesday. (TR 107; App. Ex. 9). E.E. works from Tuesday through Friday and is off work Saturday through Monday. (App. Ex. 9).
18. The Appellant takes the Student to school or to the bus stop and picks her up on days she does not work. (TR 107, 175). On days that E.E. works and the Appellant is off, E.E. comes to the Dorsey Drive property at 5:00 a.m. or 6:30 a.m., the Appellant drives her husband to work, and then she uses the vehicle to drive the Student to school or to the bus stop, for errands, or to take her father to the doctor. (TR 176, 178-180). On Thursdays, when they both work early shifts, they drive to work together. On those days, the Appellant's brother, Johnnie, takes the Student to school or to the bus stop. (TR 34). The Student uses the bus stop near the Dorsey Drive property to go to school and return from school. (TR 107).
19. During the 2011-2012 school year, when the Student was in second grade and seven years old, it was reported that she told a school counselor that she lives in Oxon Hill and has lived there since she was a baby. (TR 215). It was also reported that the Student told her teacher she lives in Oxon Hill and claimed she was late because she drove in from Oxon Hill. (Bd. Ex. 8, 9; TR 169-170). The Student also told her teacher that sometimes she stays in Oxon Hill and sometimes stays on Dorsey Drive. (TR 154-155, 202).
20. The MPES principal, Ms. Adams, spoke to the Appellant about the Student's comments. (TR 170-171).
21. On or about May 24, 2012, Susan Altman Farrell (Farrell), a PPW for the County Board, began an investigation into the Student's residency. (Bd. Ex. 8, 9).

22. Farrell reported that, on June 8, 2012 when the Student was seven years old and in second grade, she told Farrell that she stays in Oxon Hill, wakes up at about 3:00 a.m., and goes with her mother to her grandfather's house, and that she has lived in Oxon Hill since she was a baby. Farrell also reported that the Student claimed that on days when the Appellant does not work, they wake up early to drop her stepfather off at work at the Naval Academy. The Student also reportedly told Farrell that after school she usually takes the bus to her grandfather's house, but sometimes goes to her mother's work. (TR 230-231; Bd. Ex. 8, 9).
23. Farrell never interviewed the Appellant, the Appellant's father, or the Appellant's brother during the investigation. Farrell spoke briefly with the Appellant only once when she was taking pictures of the Cadillac in the parking lot at the Oxon Hill property. The Appellant approached Farrell and became angry. (TR 231; Bd. Ex. 5, 5A, 5B).
24. Farrell visited the outside of the Dorsey Drive property five times between May 25 and June 18, 2012. She visited four times between 7:20 a.m. and 8:40 p.m. and another time at 4:20 p.m. She did not see the Appellant's Cadillac parked at the Dorsey Drive property during those outside visits. (Bd. Ex. 8, 9).
25. On June 18, 2012, Ms. Farrell visited the outside of Oxon Hill property between 11:45 a.m. and 12:10 p.m. She saw the Cadillac Escalade parked in a parking lot at the Oxon Hill property, took pictures of the vehicle, and saw the Appellant in the parking lot. (Bd. Ex. 5, 5A, 5B, 8, 9). The Appellant delivered the vehicle to E.E. on that occasion so he could take it in for repairs. (TR 194-195).
26. Ms. Farrell also visited the Dorsey Drive property on five occasions during the summer after the 2011-2012 school year between July 23, 2012 and September 10, 2012. She visited twice between 9:03 p.m. and 9:22 p.m., one time between 7:10 a.m. and 7:15 a.m., and once between

2:45 p.m. and 2:48 p.m. She did not observe the Appellant's Cadillac at the Dorsey Drive property during those visits. (Bd. Ex. 8, 9).

27. Ms. Farrell also visited the Dorsey Drive property at 7:50 a.m. on September 10, 2012. She did not see the Appellant's vehicle at the Dorsey Drive property during that visit. Ms. Farrell then drove to the bus stop on Old Solomon's Road near the Dorsey Drive property. At 8:05 a.m., she observed the Appellant arrive at the bus stop in the Cadillac Escalade. The Student exited the vehicle and boarded the school bus at about 8:15 a.m. (Bd. Ex. 8, 9).

28. During the 2012-2013 school year, in May or June 2013; Ms. Farrell visited the Dorsey Drive property on a school day between 3:30 a.m. and 4:00 a.m. and observed no cars at that location. She then drove to the Oxon Hill property and saw the Appellant, her husband, and the Student leave the Oxon Hill property and enter the Appellant's Cadillac. Ms. Farrell observed the Cadillac drive away from the Oxon Hill property at about 4:30 a.m. Ms. Farrell then drove back to the Dorsey Drive property and parked and waited in a torrential rain storm. At approximately 5:30 a.m., she observed the Appellant's Cadillac drive into the driveway at the Dorsey Drive property. She saw the Student exit the car with the Appellant and E.E. and enter the home at the Dorsey Drive property. (TR 226-228, 248-250).

29. Ms. Farrell visited the Dorsey Drive property at about 9:00 or 9:30 p.m. on several more occasions and never saw the Appellant's vehicle at that location at that time. (TR 228). She also visited in the mornings and afternoons. On several occasions at about 8:00 a.m., Ms. Farrell observed the Appellant's vehicle at the Dorsey Drive property and saw the Student exit the house. (TR 229-230). One afternoon, the Appellant saw the Student playing with another child outside the Dorsey Drive property. (TR 230). Farrell never attempted home visits to enter the Dorsey Drive or Oxon Hill properties to investigate the sleeping or living arrangements at those locations.

30. The Student lives with the Appellant in Anne Arundel County, Maryland in the attendance area for MPES. The Appellant resides with her father at the Dorsey Drive property in Anne Arundel County primarily so she can assist her brother in providing care for her father who suffers from dementia and colon cancer. On occasion, the Appellant and the Student stay overnight at the Oxon Hill property with the Appellant's husband.

DISCUSSION

Legal Background

In a residency appeal, the burden of establishing bona fide residency is placed on the student, caretaker, parent, or legal guardian. (County Board Policy JAB.C.1). The issue to be decided in this appeal is whether the Appellant has proven that the decision of the County Board finding that the Appellant and Student do not reside in Anne Arundel County in the designated attendance area for Mills-Parole Elementary School is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05A. (Bd. Ex. 8). On February 26, 2013, the State Board transferred this matter to the OAH by its Opinion No. 13-13 for a determination regarding the Appellant's residency. (Bd. Ex. 8).

On October 24, 2012, the County Board issued a Memorandum Opinion and Order in the Appellant's residency appeal. The County Board identified the issue in that Opinion as whether the Student resides in the Mills-Parole attendance area. The County Board determined that the Appellant and Student live in Prince George's County. The Appellant filed an appeal of that determination with the State Board on November 20, 2012.

On February 26, 2013, the State Board issued Opinion No. 13-13 referring the case to the OAH for a contested case hearing to determine the issue of the Appellant's residency.³ In this Opinion, the State Board found, in pertinent part, the following:

³ The County Board characterized the issue in its October 24, 2012 decision as "whether or not [the Student] resides in the Mills-Parole attendance area." However, in Opinion No. 13-13, the State Board transferred the matter to the OAH "for a determination regarding Appellant's residency." (Bd. Ex. 8).

Appellant resides either in Anne Arundel County or Prince George's County. Based on the evidence before us we believe it is a close call. We have considered the options available to decide this matter and have concluded that this may be one of those few cases in which there is a genuine dispute of material fact to resolve. When such a dispute exists in the record, the State Board is authorized to refer the case to the Office of Administrative Hearings for a review. COMAR 13A.01.05.07A(3).

CONCLUSION

For all these reasons, we transfer this matter to the Office of Administrative Hearings for a determination regarding Appellant's residency.

(Bd. Ex. 8, pp. 5-6).

The regulations governing the review of local board decisions provide, in pertinent part:

.05 Standard of Review.

A. General. Decisions of a local board involving a local policy or a controversy and dispute regarding the rules and regulations of the local board shall be considered prima facie correct, and the State may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal.

B. A decision may be arbitrary or unreasonable if it is one or more of the following:
(1) It is contrary to sound educational policy; or
(2) A reasoning mind could not have reasonably reached the conclusion the local board or local superintendent reached.

C. A decision is illegal if it is one or more of the following:
(1) Unconstitutional;
(2) Exceeds the statutory authority or jurisdiction of the local board;
(3) Misconstrues the law;
(4) Results from an unlawful procedure;
(5) Is an abuse of discretionary powers; or
(6) Is affected by any other error of law.

D. The appellant shall have the burden of proof by a preponderance of the evidence.

COMAR 13A.01.05.05.

The regulations governing the hearing procedures in those cases in which the State Board has transferred the matter to the OAH provide, in pertinent part, as follows:

.07 Hearing Procedures.

A. The State Board shall transfer an appeal to the Office of Administrative Hearings for review by an administrative law judge [ALJ] under the following circumstances:

...

(3) An appeal upon review in which the State Board finds there exists a genuine dispute of material fact.

...

C. Additional testimony.

(1) Additional testimony or documentary evidence may be introduced by either party but evidence that is unduly repetitious of that already contained in the record may be excluded by an [ALJ].

(2) Notwithstanding § C(1) of this regulation, the [ALJ] may permit repetitious testimony if credibility is an issue.

D. Except as otherwise provided in this chapter, hearing procedures shall be in accordance with the Administrative Procedure Act, State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland, and COMAR 28.02.

E. The [ALJ] shall submit in writing to the State Board a proposed decision containing findings of fact, conclusions of law, and recommendations, and distribute a copy of the proposed decision to the parties.

...

COMAR 13A.01.05.07.

The statute governing school residency provides, in pertinent part, as follows:

(b)(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, guardian, or relative providing informal kinship care, as defined in subsection (c) of this section.

Md. Code Ann., Educ. § 7-101(b) (Supp. 2013). The statute includes certain exceptions but the Appellant has not argued that she is relying on any of the listed exceptions.

The County Board has also adopted certain policies and regulations governing student residence and school assignment. The County Board Policy for Assignment and/or Transfer of Students to a School provides, in pertinent part, as follows:

B. Issue

Anne Arundel County Public Schools is responsible for the assignment and/or transfer of students to a designated school. This policy establishes the authority and responsibility governing those assignments.

C. Position

The Board of Education delegates authority to the Superintendent to develop clear lines of authority and regulations for assignment of students to a school. Students must attend the school designated to serve the attendance area of their bona fide residence.

(Bd. Ex. 6, Policy JAB, Assignment and/or Transfer of Students to a School, p. 1, February 6, 2008).

The County Board has also adopted regulations governing student residence and school assignment. The regulations for Assignment and/or Transfer of Students to a School provide, in pertinent part, as follows:

D. Procedures

1. Definitions for Clarification

...

- d. *Bona fide Residence* is the actual place of residence the student maintains in good faith with the student's parents, guardians or caretakers who intend to reside in the actual place of residence permanently. It does not include a temporary residence established for the purpose of free school attendance in the public schools. The burden of establishing bona fide residency to the satisfaction of the school principal and Division of Student Services is that of the student, care provider, or parent(s)/guardian(s). The determination of bona fide residency for school purposes will be made by the principal or designee when a child resides with the child's parent(s)/guardian(s) or court-appointed guardian. The determination of bona fide residency for school purposes will be made by the Division of Student Services when the child resides with a care provider.
- e. *Tenant Residence Verification Disclosure Form (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.

(Bd. Ex. 6A, Regulation JAB-RA.C.1.).

The Regulation also addresses the documentation needed for proof of residency. The Regulation provides that when a TRV is used to establish proof of residency, it must be supplemented with supporting documentation. When a TRV is used, the owner of the residence must provide the notarized TRV form, a mortgage document, deed, or rental agreement, and a

second form of documentation from the list set forth in the Regulation. In addition, the individual enrolling the student must also provide two additional forms of documentation from the list. The list of appropriate documents set forth in the Regulation includes a utility bill or cable bill, bank statement, W-2 or Form 1099, Pay Stub, Valid Commercial Driver's License (CDL), any government issued documentation, or a PPW verification letter or form verifying residence after a home visit. (Bd. Ex. 6A, Reg. JAB-RA, C.2.e., pp. 4-5). The Regulation also provides that the Office of Pupil Personnel or the principal have the discretion to require additional proof of residency. (Bd. Ex. 6A, Reg. JAB-RA, C.2.e., p. 4).

With regard to parents who live apart, the Regulation also includes the following provisions:

- (4) If the parents live apart, the child's bona fide residence is the bona fide residence of the parent who has primary physical custody or the parent with whom the child lives the majority of the school week, if a custody order is not in place.
- (5) If the parents share physical custody, the student may attend the school assigned to either parent's bona fide residence, unless one parent has educational decision-making rights in which the child shall attend the school assigned to the parent's bona fide residence....

(Bd. Ex. 6A, Reg. JAB-RA, C.2.e., p. 5).

Documents

The Appellant contends that she resides at the Dorsey Drive property in Anne Arundel County. The evidence establishes that the Appellant's eighty-nine-year-old father is the owner of that property. The record demonstrates that the Appellant produced the required documentation under the County Board Regulation to establish proof of residency. Because the Appellant does not own the Dorsey Drive property, she provided a TRV form from her father for several years in which the Student has attended MPES. The record includes notarized TRV forms signed by the Appellant's father, dated April 16, 2009, June 29, 2010, and December 3, 2012. (App. 1; Bd. Ex. 2, 3). These forms reflect that Johnnie McKinney is the owner of the Dorsey Drive property and that the Appellant and Student have resided at this property since at least April 2009. The forms are also

signed by a notary. The Appellant also produced a copy of the Deed to the property, dated February 16, 1965, that lists “Johnnie McKinney, Jr. and Elsie Mae McKinney, his wife” as the grantees on the Deed. Although the Deed does not list the complete street address, it does indicate that the property is “fronting on the southwesternmost [sic] side of Dorsey Drive.” (App. Ex. 2, p. 1). A preponderance of the evidence in this record supports the conclusion that this Deed applies to the Dorsey Drive property. The record also includes a utility bill from BGE in the name of John McKinney, Jr. that sets forth the address of the Dorsey Drive property (137 Dorsey Drive, Edgewater, MD 21037-1019). (Bd. Ex. 4).

These documents, the TRV, the Deed, and a utility bill, meet the regulatory requirements for documentation from the property owner when a student’s parents do not own the property where a student lives. (Bd. Ex. 6A, Reg. JAB-RA, pp. 2, 4). The Regulation also requires the parent or other individual enrolling the student to provide two additional forms of documentation in his/her name at their current residence. (Bd. Ex. 6A, Reg. JAB-RA, C.2.e(1), (2), pp. 4-5). The Appellant produced several additional documents that include her name and the Dorsey Drive property address. The documents the Appellant provided include a 2012 Voter Notification Card, 2012 Driver’s License, 2013 bank statement, 2013 medical bill, 2013 letter verifying car insurance, 2008 and 2010 tax returns, 2013 pay stub, and a military discharge certificate from 1986. Each of these documents list the Appellant’s name together with the address for the Dorsey Drive property. (App. Ex. 3, 4, 5, 6, 6B, 7, 7A, 8, 10). Farrell noted in her investigative report that the Appellant also produced a birth certificate for the Student that lists both parents, and that the Appellant is listed as the Student’s custodial parent. (Bd. Ex. 9).

These documents are consistent with the Appellant’s testimony that her father owns and has lived at the Dorsey Drive property since 1965, that the Appellant grew up living at this property, and that she has lived at the Dorsey Drive property for many years, except for the period when she

was married to B.W., the Student's natural father. (TR 70-72). The Appellant testified that she lived at the Dorsey Drive property both before and after she served in the military. (TR 70-72). The Appellant's military discharge document from 1986 includes the Dorsey Drive property address. (App. Ex. 10). The Appellant has also produced tax returns for 2008 and 2010. (App. Ex. 7, 7A). These documents demonstrate that the Appellant was residing at the Dorsey Drive property with the Student and with her older daughter when the Student first began attending school at MPES, and thereafter. (App. Ex. 7, 7A). The TRV forms for 2009, 2010, and 2012 also demonstrate that the Appellant has resided at the Dorsey Drive property with the Student since 2009, and that her father owns the property. (App. Ex. 1; Bd. Ex. 2, 3).

The County Board questions how the Appellant's father, who suffers from dementia, could sign the TRV forms certifying that he owns the property and that the Appellant and Student continue to live there. The Appellant stated that when the Appellant first exhibited symptoms of dementia in 2008, they were slight at that time. (TR 153, 160). A June 2012 letter from the father's physician states that the father suffers from significant dementia and needs assistance with his ADLs, including taking his medication and preparing meals. (App. 6A). There is no evidence in this record to establish that the Appellant's father has a legal guardian or that his cognitive skills have deteriorated so extensively that he was incapable of signing a document representing that he owns his house on Dorsey Drive and that his daughter and granddaughter live with him. Furthermore, the Appellant has openly acknowledged her father's medical condition of dementia. In fact, she asserts that she lives with her father so that she, along with her brother, can assist with their father's care. (App. Ex. 6A; TR 34, 53, 104).⁴

⁴ In closing argument, the Appellant stated that she came to live with her father to assist with his care after her mother died. (TR 269-270). Although the Appellant's comment about her mother's death was made in closing argument, the Appellant was placed under oath at the beginning of the hearing, and the County Board did not object to this or any of the Appellant's statements made during closing argument.

The Appellant submitted numerous other documents at the hearing from 2012 and 2013 that include her name and the Dorsey Drive address, including her voter notification card, driver's license, bank statement from the Navy Federal Credit Union, pay stub from the Department of Defense, medical bill from Johns Hopkins Community Physicians, and a letter from her automobile insurance carrier, GEICO. (App. Ex. 3, 4, 5, 6, 6B, 8). Most of these exhibits are the type of documents that the Regulation requires to establish proof of residency. The County Board questions the validity of the voter identification card and driver's license to establish residency because they were both issued close together in June 2012, and after the Student's residency had become an issue. The Appellant testified that she obtained a new driver's license after she lost hers, and that her previous driver's license also set forth the Dorsey Drive address. (TR 115-116). The Appellant stated that she obtained a new voter card in 2012 because President Obama renewed her interest in voting. (TR 110-111). The Appellant acknowledged that when she registered to vote in 2000, as the voter card reflects, she was living on Captain's Circle in Annapolis. (TR 196; App. Ex. 3).

The time frame in which the Appellant obtained a new voter's card and driver's license in June 2012 does not invalidate her residency claim. The Dorsey Drive address on the Appellant's voter's card and driver's license is consistent with the address listed on numerous other valid documents, including those included on the Regulation's list of proper proof of residency documents such as a bank statement, pay stub, and Department of Defense and other military documentation. The 2008 and 2010 tax returns also include the Dorsey Drive address and list the Student as the Appellant's dependent. (App. Ex. 7, 7A). The tax returns support the Appellant's claim on the TRV forms that she and the Student were living at the Dorsey Drive property when the Appellant enrolled the Student at MPES and that they continued to live there over time. The County Board questioned but did not refute the Appellant's claim that she obtained the driver's license to replace a lost license and that her previous driver's license also included the Dorsey Drive

address. Moreover, the County Board did not refute the evidence that the Appellant obtained a new voter card at the Dorsey Drive address due to her renewed interest in voting to replace one that included her earlier address from her previous marriage. All of this evidence supports the Appellant's claim that she resides at the Dorsey Drive property with the Student.

Even assuming that the Appellant changed her address on certain documents when the issue of residency was raised, I still find that a preponderance of the evidence in this record, including the testimony and documents addressed above, supports the conclusion that the Appellant and Student reside at the Dorsey Drive property. The County Board argues that based on State Board Opinion No. 13-13, which referred this matter to OAH, the issue that I must decide is not whether the County Board's October 24, 2012 decision is correct, but rather where the Appellant and Student currently reside. (TR 86-101). The evidence supports that the Appellant and Student have lived at the Dorsey Drive property and continue to reside there. For all the reasons addressed, the driver's license and voter card, together with the weight of the other evidence in this record, support the Appellant's claim that she and the Student reside at the Dorsey Drive property with her father.

Investigation

On or about May 24, 2012, County Board PPW Susan Altman Farrell was assigned to conduct an investigation into the residency of the Appellant and Student. Farrell acknowledged that she did not interview the Appellant, the Appellant's father, or the Appellant's brother Johnnie. (TR 231). Farrell also never interviewed the Appellant's husband E.E., who is the Student's stepfather and resides at the Oxon Hill property, or the Student's natural father. Farrell stated that the Appellant was angry at her when she observed Farrell taking photographs of the Cadillac so she never contacted her further. (TR 231). That is not adequate justification for Farrell's failure to interview the Appellant. In addition, there is no evidence that Farrell ever conducted a home visit (in which she attempted to enter the homes) at the Oxon Hill or Dorsey Drive properties. A PPW has the authority, under

Regulation JAB-RA, to conduct a home visit. The Regulation provides that one of the documents which may be used to support proof of residency is a “PPW verification letter or form verifying residence *after a home visit.*” (Bd. Ex. 6A, Reg. JAB-RA, C.2.e.2.g, p. 5) (Emphasis supplied). Although Farrell observed both homes from the outside, searching primarily for vehicles, she never attempted to enter either residence to observe the living and sleeping arrangements at those locations. The Appellant confirmed that Farrell never knocked on the door to ask the Appellant where she lived. (TR 33).

The Appellant stated that E.E. lives in a one bedroom rental apartment in Oxon Hill and that neither the Appellant nor the Student are listed on E.E.’s lease. (TR 199, 202). Farrell confirmed this in her report and it was never refuted. (Bd. Ex. 9). In contrast, the Appellant explained that the Dorsey Drive property where her father lives is a single family home with three bedrooms and a basement. She noted it was the family home where she has lived for lengthy periods throughout her life. (TR 171, 205). The County Board did not refute this evidence or explain why it believed it was more likely that the Appellant and Student would reside on a regular basis in E.E.’s small Oxon Hill apartment rather than in the father’s more spacious home on Dorsey Drive near the Appellant’s employment. In addition, the Appellant expressed her frustration at her husband’s decision to refuse to move to a two bedroom apartment, providing further support for the Appellant’s contention that she and the Student do not regularly reside with E.E. in Oxon Hill. (TR 270).⁵

Farrell’s visits to the outside of both homes were inconclusive to establish residency. Farrell indicated in her report that during many of her visits to the Dorsey Drive property in the morning, afternoon, and evening, she did not see the Appellant’s Cadillac Escalade at that location. (Bd. Ex. 9). However, Farrell also explained that on several mornings at about 8:00 a.m., she observed the Cadillac

⁵ Although the Appellant also made this statement in her closing argument, she was still under oath and the County Board did not object to this statement.

at the Dorsey Drive property and saw the Student exit the house. (TR 229-230). In her report, Farrell also stated that she observed the Appellant drive up to the bus stop near the Dorsey Drive property, drop the Student off, and wait while the Student boarded the bus at about 8:15 a.m. (Bd. Ex. 9). Although Farrell did not see the Appellant's vehicle at the Dorsey Drive property before this sighting at the bus stop, the Appellant explained that she often went out to breakfast with the Student at McDonald's before school. (TR 34, 177). In addition, Farrell acknowledged that she observed the Student playing with another child outside the Dorsey Drive property one afternoon. (TR 230).

Farrell also stated that she observed the Appellant's Cadillac in the Oxon Hill parking lot one time at about noon and on another occasion at about 4:30 a.m. Farrell took pictures of the Cadillac while it was parked in the Oxon Hill parking lot around noon and the County Board submitted those photographs into evidence. (Bd. Ex. 5, 5A, 5B). Farrell also stated that on one occasion she observed the Appellant, E.E., and the Student enter the Appellant's vehicle, saw the vehicle drive away from the Oxon Hill property at about 4:30 a.m., and arrive at the Dorsey Drive property at about 5:30 a.m. in a torrential rain storm. She then saw the Appellant, E.E., and the Student exit the vehicle and enter the Dorsey Drive property. (TR 226-228, 248-250).

The Appellant explained that she and her husband share the Cadillac Escalade. She also explained that E.E. regularly drives the vehicle to Oxon Hill in the evening and returns to Dorsey Drive in the morning so the Appellant can drive her husband to work. She would then keep the car so she can go to work on a different shift, take the Student to school, run errands, or take her father to doctor's appointments. (TR 175-183). On some days, if the Appellant and E.E. worked the same or similar shift, they would go to work together and the Appellant's brother would take the Student to school. (TR 181). The Appellant noted that when Farrell saw the vehicle in the Oxon Hill parking lot around noon, she had delivered the vehicle to her husband so he could take it in for repairs. (TR 194-195). On the occasion that Farrell saw the Appellant and her family in the Cadillac in Oxon Hill at about 4:30 a.m., she explained that the family had

just returned from a trip to Atlanta to visit her grandson who was in the hospital. She explained further that they parked the vehicle in Oxon Hill and the family drove a rental car to Atlanta. (TR 268).⁶

In a more general sense, the Appellant explained that she and her husband shared use of the Cadillac so it was not unusual for the vehicle be parked in Oxon Hill rather than at the Dorsey Drive property. (TR 34, 176, 195). Furthermore, the Appellant acknowledged that she and the Student stayed over in Oxon Hill at her husband's apartment once in a while, so it was not unusual and was inconclusive regarding the residency issue for them to be seen leaving the Oxon Hill property in daytime or at night. (TR 200). Farrell made this early morning observation in Oxon Hill only one time. Farrell could not identify the specific date or day of the week of this incident, but she believed it was a weekday. (TR 227). If the Appellant and her family stayed in Oxon Hill on the night that Farrell observed them, it would be necessary for them to drive back to Anne Arundel County so the Appellant and her husband could go to work, and the Student could attend school. In addition, on several mornings, Farrell observed the Appellant's vehicle at the Dorsey Drive property, saw the Student exiting the Dorsey Drive home, and saw the Appellant drop the Student off at the bus stop near the Dorsey Drive property. Accordingly, Farrell's observations are inconclusive at best, and certainly do not demonstrate that the Appellant resides in Prince George's County. Instead, they are consistent with the Appellant and Student residing with the Appellant's father at the Dorsey Drive property, the Appellant sharing the vehicle with her husband, and the Appellant and Student sleeping at E.E.'s apartment in Oxon Hill once in a while.

The County Board claimed that the Student told her counselor, her teacher, and PPW Farrell that she has lived in Oxon Hill since she was born. The evidence indicates that these statements were allegedly made during the 2011-2012 school year when the Student was in second grade and

⁶ Although the Appellant also provided this explanation during her closing argument, she had already been placed under oath at the beginning of the hearing and the County Board again did not object to these statements.

only seven years old. I am reluctant to rely on the purported hearsay statements of a seven-year old to establish that she and her mother live in Prince George's County, when a preponderance of all the other evidence in this record establishes that the Appellant and the Student reside at the Dorsey Drive property in Anne Arundel County. For the reasons addressed below, I do not find the Student's alleged hearsay statements regarding her place of residence to be sufficiently reliable and trustworthy to prove residence in Prince George's County.

The Student purportedly told a school counselor that she lives in Oxon Hill and has lived there since she was a baby. The Student also purportedly told her teacher that she lives in Oxon Hill and was late to class because she drives in from Oxon Hill. (TR 215, 169-170; Bd. Ex. 8, 9). In contrast, the Appellant stated that based on her discussions with the Student, her teacher, and the principal, the Student told her teacher that sometimes she stays in Oxon Hill and sometimes she stays at the Dorsey Drive property. (TR 154-155, 202). The Student's comments were allegedly made while the Student was in second grade during the 2011-2012 school year when she was only seven years old.⁷ The County Board also alleged that the Student told Farrell during her investigation that she stays in Oxon Hill every night and has to wake up at 3:00 a.m. to go to her grandfather's house. (Bd. Ex. 9). Farrell's testimony was a little different, claiming that the Student told her she lives in Oxon Hill, that she and her mother go to her grandfather's in the morning, and that she has lived there since she was a baby. Farrell also testified that the Student said she either goes to her mother's work or to her grandfather's house in the afternoon. (TR 230-231).

The County Board's position is based primarily on the hearsay statements of the Student. Hearsay is admissible in administrative hearings if it is reliable. *Kade v. Charles H. Hickey Sch.*, 80 Md. App. 721, 725-726 (1989); Md. Code Ann. State Gov't § 10-213(c) (2009). Certain factors are

⁷ Based on her date of birth of June 27, 2004, the Student would not have turned eight until after she completed second grade.

useful in assessing the reliability of the Student's hearsay statements. The following factors, though not mandatory in this type of proceeding, are helpful in assessing the reliability of the Student's out of court statements:

- 1) the child[']s] ... personal knowledge of the event;
- 2) the certainty that the statement was made;
- 3) any apparent motive to fabricate or exhibit partiality by the child ..., including interest, bias, corruption, or coercion;
- 4) whether the statement was spontaneous or directly responsive to questions;
- 5) the timing of the statement;
- 6) whether the child[']s] ... young age make it unlikely that the child ... fabricated the statement that represents a graphic, detailed account beyond the child[']s] ... expected knowledge and experience;
- 7) the appropriateness of the terminology of the statement to the child[']s] ... age;
- 8) the nature and duration of the abuse or neglect;
- 9) the inner consistency and coherence of the statement;
- 10) whether the child ... was suffering pain or distress when making the statement;
- 11) whether extrinsic evidence exists to show the defendant ... had an opportunity to commit the act complained of in the child[']s] ... statement;
- 12) whether the statement was suggested by the use of leading questions; and
- 13) the credibility of the person testifying about the statement.

Md. Code Ann., Crim. Proc. § 11-304(e) (Supp. 2013); *Montgomery Cnty. Dep't of Health & Human Servs. v. P.F.*, 137 Md. App. 243, 272-273 (2001); *B.H. v. Anne Arundel Cnty. Dep't of Social Servs.*, 209 Md. App. 206 (2012). Although these factors were developed to determine the reliability and trustworthiness of out of court hearsay statements made by child victims of abuse or neglect in a criminal proceeding, they still provide useful guidance to determine the reliability and trustworthiness of any hearsay statement made by a child who is not present to testify in court or in an administrative proceeding. "Although the factors of Section 11-304(e) do not apply strictly, they have been cited with approval for assisting an ALJ in determining what testimony to credit and in sifting through contradictory evidence." *B.H.*, 209 Md. App. at 221-222; *P.F.*, 137 Md. App. at 271. "While administrative agencies are not bound to observe the technical common law rules of evidence, they are not prevented from doing so as long as the evidentiary rules are not applied in an

arbitrary or oppressive manner that deprives a party of his right to a fair hearing.” *B.H.*, 209 Md. App. at 221-222; *Commission on Medical Discipline v. Stillman*, 291 Md. 390, 422 (1981).

In the instant case, although the Student’s purported statements were somewhat detailed, seemingly coherent, the child presumably had knowledge of the event, and the Appellant had an opportunity to live in Oxon Hill and travel to Anne Arundel County, others critical factors outweigh these criteria and demonstrate the unreliability of the statements. It is not logical that the Student would wake up at 3:00 a.m. on a daily basis and travel from Prince George’s County to Anne Arundel County to attend school. If that were true, the Student would likely appear tired and unhealthy to her teachers and other school personnel. There is no evidence that the Student’s teachers or other school personnel observed her to be tired, falling asleep in class, or otherwise unhealthy. It is also not realistic that the Appellant and Student would reside on a regular basis with E.E. in his small one bedroom apartment, rather than in the father’s more spacious three bedroom home closer to the Appellant’s employment.

Furthermore, the Appellant purportedly told a school counselor and Farrell that she had lived in Oxon Hill since she was a baby. This alleged statement is inaccurate and does not comport with the facts. The Appellant explained that when the Student was born in 2004, the Appellant lived with B.W., her ex-husband who is the Student’s father, on Captain’s Circle in Annapolis. (TR 75). When the Appellant divorced B.W. in about 2005, she moved back to the Dorsey Drive property with the Student. (TR 105, 199). Young children are frequently poor historians who cannot accurately evaluate time considerations.

Furthermore, the most glaring omission concerns the circumstances and context in which the Student’s statements were allegedly made to Farrell during her investigation. There is no transcript of the questions that were asked by Farrell or the statements made by the Student. Nor are there any notes concerning Farrell’s conversation with the Student. There is also no evidence that

Farrell questioned the young Student to determine her capacity to observe, understand, recall, relate events, and speak the truth. *B.H.*, 209 Md. App. at 219. There is also no indication of who else was present when Farrell questioned the Student. The record does not demonstrate whether Farrell asked leading questions or whether the Student's statements were spontaneous. Farrell prepared a written report of her investigation but it is not clear on this record whether the report merely paraphrases the Student's statements or purports to be a verbatim restatement of her responses. (Bd. Ex. 9). The Appellant acknowledged that she and the Student stay with her husband in Oxon Hill once in a while, and sometimes on Saturdays. (TR 183, 197, 199-200). In addition, the Appellant stated that she spoke with the Student, her teacher, and the principal about the Student's statements. The Appellant stated that the Student told her teacher that she sometimes stays in Oxon Hill and sometimes stays at the Dorsey Drive address. (TR 154-155, 202). In the absence of any transcript or notes of the interview, Farrell's report may well be incomplete and it is likely that the Student told Farrell, her teacher, or other school personnel that sometimes she stays on Dorsey Drive and sometimes she stays in Oxon Hill. Farrell's conclusions in her report also appear to be inconsistent. Although Farrell concludes in her report that the Student resides in Oxon Hill with her mother and stepfather, she also stated that "[h]er mother stays at her father's home often on the days when she isn't working and may take care of her niece there on these days." (Bd. Ex. 9, p.7). It appears from this statement that Farrell actually concluded that the Appellant lives both at her husband's apartment and her father's home. Farrell never explained this discrepancy at the hearing. Moreover, there is no reference anywhere else in this record to a niece to which Farrell refers.

In any event, even if the Student told Farrell, her teacher, or other school personnel that she lives in Oxon Hill and has since she was a baby, I do not find this statement to be reliable hearsay. Although Farrell testified regarding this purported statement, it was not corroborated by any other witness with first-hand knowledge. As noted above, Farrell never interviewed the Appellant, the

Appellant's father, her brother, her husband, or the Student's natural father, and never attempted to enter either residence for a revealing home visit. The County Board did not present testimony from the Student's teacher or school counselor who allegedly heard the statements. On the other hand, the Appellant testified consistently that she and the Student reside with the Appellant's father at the Dorsey Drive property and have since she divorced the Student's father. All of the documents the Appellant submitted at the hearing support the conclusion that she resides at the Dorsey Drive property. The Appellant was also consistent in her explanation of how she and her husband share use of the Cadillac and why the vehicle is frequently parked in Oxon Hill overnight. Furthermore, the Appellant acknowledged that she and the Student occasionally stay with her husband in Oxon Hill. This demonstrates that on some occasions the Student would drive to school from Oxon Hill, but not on a regular basis. The Appellant also noted that her husband has a small one-bedroom apartment and has not decided to move to a more manageable two-bedroom apartment, further supporting the Appellant's decision to live with the Student in her father's home on Dorsey Drive. Although the Appellant did not present testimony from her father, brother, husband, or the Student's father, she noted in testimony and/or opening and closing statements that at the time of this hearing her father was hospitalized, her brother was assisting her father in the hospital, her husband was in New York with his son, and she was unable to contact the Student's father. (TR 11, 106, 166, 264-265).

The Appellant also stated that the Student was mad or upset at the Appellant when she made the alleged statements to Farrell. She also explained that the Student was upset because she was not able to spend time in Oxon Hill with E.E.'s son, who failed to arrive as planned. The Appellant also asserted that the Student is a dreamer and loves to tell stories, particularly when she is upset. (TR 201-203).

For all these reasons, I conclude that the statements purportedly made by the Student regarding her residency are unreliable, untrustworthy, inaccurate, and/or incomplete. Aside from

the testimony of the investigator, they were not corroborated by any other evidence in this record. Despite minor inconsistencies in her testimony, the Appellant's testimony was substantially consistent that she has lived at the Dorsey Drive property since before the Student began attending MPES. In fact, the evidence establishes that the Appellant has had a life long connection to the Dorsey Drive property. The Appellant's father has lived there since 1965, the Appellant grew up there, she returned there after being honorably discharged from the Army, and she returned again after divorcing the Student's father. The Appellant also testified in a straightforward and consistent manner regarding her daily routine, her work schedule and that of her husband at the Naval Academy, the Student's school schedule, the manner in which she shares the Cadillac with her husband, and the family's living arrangements.⁸

In addition, the Appellant explained that she currently lives with her father to help care for him, along with her brother, because of his medical condition. He suffers from dementia, requires assistance with his ADLs, and has more recently developed colon cancer. The Appellant also explained that after her mother died, she and her brother have assisted with their father's care. The Appellant supported her claim about her father's medical condition with a written statement from her father's primary care physician. This medical documentation, dated June 22, 2012, confirms that the Appellant suffers from significant dementia and requires assistance with his ADLs, including with medication and meal preparation. (App. Ex. 6A). She also noted that her father was hospitalized at the time of the hearing with dehydration and dizziness. (TR 106).

⁸ Even if I had found the Student's statements regarding residency to be accurate when made, they date back to the 2011-2012 school year. The County Board argued, pursuant to the State Board's February 26, 2013 Order referring this matter to the OAH, that the issue to be decided in this proceeding is where the Appellant and Student currently reside. For all the reasons addressed, I find that the Appellant and Student reside at the Dorsey Drive property in Anne Arundel County.

Bona Fide Residence

The statute governing student residency provides that "...each child shall attend a public school in the county where the child is domiciled with the child's parent..." Md. Code Ann., Educ. § 7-101(b)(1) (Supp. 2013). The County Board Policy provides that, "[s]tudents must attend the school designated to serve the attendance area of their bona fide residence." (Bd. Ex. 6, Policy JAB.C., p. 1). The Policy includes exceptions that have not been shown, or argued, to apply here.

The County Board Regulation defines bona fide residence, in pertinent part, as follows:

Bona fide Residence is the actual place of residence the student maintains in good faith with the student's parents, guardians or caretakers who intend to reside in the actual place of residence permanently. It does not include a temporary residence established for the purpose of free school attendance in the public schools.

(Bd. Ex. 6A, Reg. JAB-RA.C.1.d., p. 1). The Regulation also places the burden of establishing bona fide residency on the student or parent.

A domicile is generally defined as a permanent legal home. In *Jones v. Anne Arundel County, Maryland, et al.*, 432 Md. 386 (2013), a case addressed by the County Board, the Court of Appeals held that a "residence" under section 202(c) of the Anne Arundel County Charter means domicile or an individual's permanent legal home. The *Jones* case decided that when a member of the Anne Arundel County Council was sentenced to five months incarceration in a federal correctional facility in South Carolina, his residence, domicile, or permanent legal home, remained in his councilmanic district in Anne Arundel County. Therefore, the Court held that he did not move his residence and did not vacate his councilmember's seat while incarcerated. Although the decision noted that a domicile serves as an individual's residence for numerous purposes including school attendance, the *Jones* case did not otherwise address the issue of residency for purposes of school attendance. In *Blount v. Boston*, 351 Md. 360, 367-368 (1998), the Court of Appeals found that a domicile serves as an individual's residence for "voting, income tax returns, driver's license, motor vehicle registration, school attendance, receipt of mail, banking, contracts and legal

documents, the keeping of personal belongings, [and] membership in organizations[.]” It also found that intent is the controlling factor in determining domicile and that numerous objective factors can be considered to show a person’s bona fide intent. *Blount*, 351 at 368-370.

In the instant case, the County Board argues that the Appellant does not reside in Anne Arundel County. The Appellant contends that she and the Student reside on Dorsey Drive in Anne Arundel County in the attendance area for the school she currently attends, MPES.

For the reasons addressed above, I have concluded that the Appellant and Student reside at the Dorsey Drive property in Anne Arundel County. I also conclude that the Dorsey Drive property is the Appellant and Student’s bona fide residence. As discussed above, I find that the Dorsey Drive property is the actual place of residence that the Student maintains in good faith with her parent. I also find that the Dorsey Drive property is not a temporary residence established for the purpose of free school attendance in the public schools. (Bd. Ex. 6A, Reg. JAB-RA.C.1.d., p.1).

The Appellant has established that she has lived at the Dorsey Drive property throughout much of her life, except for the period when she was married to the Student’s father and lived on Captain’s Circle in Annapolis. The evidence established that after she divorced B.W., she and the Student moved back to the Dorsey Drive property to live with her father. Although the Appellant subsequently married E.E. in 2008, E.E. has lived in a small one bedroom apartment in Oxon Hill and the Appellant and Student are not on the lease. Although the evidence demonstrates that the Appellant and Student occasionally stay with E.E. in Oxon Hill, a preponderance of the evidence establishes that the Appellant and Student have continued to reside at the Dorsey Drive property with the Appellant’s father and brother. A substantial reason for the Appellant’s residency at the Dorsey Drive property is to assist with the care of her father who suffers from dementia. Perhaps the Appellant is also waiting for her husband to move to larger residence before they might subsequently live together as a family. In any event, a preponderance of the evidence in this record

does not establish that the Dorsey Drive property is the temporary residence of the Appellant and Student that was established for the purpose of free public attendance in the public schools.

Accordingly, based on the evidence in this record, I conclude that the Dorsey Drive property is the Appellant and Student's bona fide residence.

The State Board found in opinion No. 13-13 that there was a genuine dispute of material fact and transferred this matter to the OAH for a determination regarding the Appellant's residency in accordance with COMAR 13A.01.05.07A(3). The State Board also found that the issue of where the Appellant and Student reside is a close call and directed that the OAH determine the issue of residency. (Bd. Ex. 8). COMAR 13A.01.05.05A provides that the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. In accordance with the COMAR regulations and the State Board's directive in Opinion No. 13-13, I conclude that a preponderance of the evidence in this record establishes that the Appellant and Student reside at the Dorsey Drive property in Anne Arundel County. Therefore, for all the reasons addressed, I conclude that the decision of the County Board that the Appellant and Student reside in Prince George's County was unreasonable and shall be reversed. However, the Appellant has not proven that the County Board's actions were unconstitutional as she claimed in her Prehearing Statement.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Appellant has established by a preponderance of the evidence that the bona fide residence for the Appellant and Student is in Anne Arundel County, Maryland in the school attendance area for MPES. COMAR 13A.01.05.07A(3); Md. Code Ann., Educ. § 7-101 (Supp. 2013); County Board Policy JAB; County Board Regulation JAB-RA. As a result, I further find that the decision of the County Board that the Appellant and Student reside in Prince George's County, Maryland is unreasonable and shall be reversed. COMAR 13A.01.05.05A.

PROPOSED ORDER

I **PROPOSE** that the decision of the Board of Education of Anne Arundel County finding that the Appellant and Student reside in Prince George's County be **DENIED**. I further **PROPOSE** that the State Board find that the Appellant and Student reside in Anne Arundel County in the school attendance area for MPES.

October 7, 2013
Date Decision Mailed

Douglas E. Koteen
Administrative Law Judge

DEK/ac
145233

NOTICE OF RIGHT TO FILE EXCEPTIONS

Any party adversely affected by this Proposed Decision has the right to file written exceptions within fifteen days of receipt of the decision; parties may file written responses to the exceptions within fifteen days of receipt of the exceptions. Both the exceptions and the responses shall be filed with the Maryland State Department of Education, c/o Sheila Cox, Maryland State Board of Education, 200 West Baltimore Street, Baltimore, Maryland 21201-2595, with a copy to the other party or parties. COMAR 13A.01.05.07F. The Office of Administrative Hearings is not a party to any review process.

Copies Mailed to:

Mary Elliott
137 Dorsey Drive
Edgewater, MD 21037

B. Darren Burns, Esquire
Carney, Kelehan, Bresler, Bennett & Scherr, LLP
888 Bestgate Road, Suite 316
Annapolis, MD 21401

MARY ELLIOTT,
APPELLANT

v.

BOARD OF EDUCATION
OF ANNE ARUNDEL COUNTY

* BEFORE DOUGLAS E. KOTEEN,
* ADMINISTRATIVE LAW JUDGE,
* MARYLAND OFFICE OF
* ADMINISTRATIVE HEARINGS
* OAH No. MSDE-BE-11-13-09618

* * * * *

FILE EXHIBIT LIST

I admitted the following exhibits on behalf of the Appellant:

- App. Ex. 1. Tenant Residence Verification Disclosure Form, dated December 3, 2012;
- App. Ex. 2. Deed, dated February 16, 1965;
- App. Ex. 3. Anne Arundel County, Maryland Voter Identification Card for Appellant, dated June 28, 2012;
- App. Ex. 4. Maryland Driver's License for Appellant, issued June 22, 2012;
- App. Ex. 5. Navy Federal Credit Union Statement of Account, for April 15 through May 14, 2013;
- App. Ex. 6. Johns Hopkins Community Physicians, Inc., Invoice for Appellant, dated June 1, 2013;
- App. Ex. 6A. Letter from Mark Phillips, M.D., Johns Hopkins Community Physicians, dated June 22, 2012;
- App. Ex. 6B. Letter from GEICO Indemnity Company to Appellant, dated March 9, 2013;
- App. Ex. 7. U.S. Individual Tax Return, Form 1040, for 2008 for Appellant, with attachments, dated January 21, 2009 (6 pages);
- App. Ex. 7A. Maryland Resident Income Tax Return, Form 502, for 2008 for Appellant, with attachments, dated January 21, 2009 (8 pages);
- App. Ex. 8. Department of Defense Civilian Leave and Earnings Statement, dated April 12, 2013 (2 pages);
- App. Ex. 9. Letter from Midshipmen Food Service Division, United States Naval Academy, to Maryland State Department of Education (MSDE), undated (2 pages); and
- App. Ex. 10. Certificate of Release or Discharge from Active Duty, dated May 18, 1986 (2 pages).

I admitted the following exhibits on behalf of the County Board:

- Board Ex. 1. Maryland Department of Assessments and Taxation Real Property Data Search, dated April 2, 2013 (1 page);
- Board Ex. 2. Tenant Residence Verification Disclosure Form, dated April 16, 2009 (1 page);
- Board Ex. 3. Tenant Residence Verification Disclosure Form, dated June 29, 2010 (1 page);
- Board Ex. 4. BGE Account Statement, dated July 20, 2009 (1 page);

- Board Ex. 5, 5A, 5B. Three photographs, undated (3 pages);
- Board Ex. 6. County Board Policy JAB/900.01, Assignment and/or Transfer of Students to a School, Adopted February 6, 2008 (2 pages);
- Board Ex. 6A. County Board Regulation JAB-RA, Assignment and/or Transfer of Students to a School, Revised March 1, 2013 (13 pages);
- Board Ex. 7. Order of State Superintendent of Schools, No. 13-1, dated February 4, 2013 (4 pages);
- Board Ex. 8. State Board Opinion No. 13-13, dated February 26, 2013 (6 pages);
- Board Ex. 9. Affidavit of Susan Altman Farrell, Pupil Personnel Worker, dated October 3, 2012, with attached Residency Investigation, dated June 25, 2012 (9 pages);
- Board Ex. 10. Maryland Motor Vehicle Record Information, dated August 17, 2012, with attachments (3 pages);
- Board Ex. 11. Motor Vehicle Administration (MVA) Driver's Record Search by Name, dated October 3, 2012 (2 pages);
- Board Ex. 12. MVA Driving Record Information, dated August 17, 2012, with attachments (3 pages);
- Board Ex. 13. Letter from County Board to U.S. Post Office, dated May 30, 2012 (1 page);
- Board Ex. 13A. Letter from County Board to U.S. Post Office, dated June 3, 2012 (1 page); and
- Board Ex. 14. Advanced Person Search Results, dated March 20, 2013 (2 pages).