

IN THE MATTER OF

* BEFORE THE
*
* BOARD OF EDUCATION
*
* OF CARROLL COUNTY
*

* * * * *

DECISION OF THE BOARD
OF EDUCATION OF CARROLL COUNTY

This is an appeal before the Board of Education of Carroll County (the "Board") pursuant to Section 4-205(c) of the Education Article of the Annotated Code of Maryland regarding a request for nonresident enrollment in Liberty High School.

(the "Parents"), on behalf of their daughter _____),

have appealed the June 30, 2021, decision of the Superintendent's Designee, Cynthia McCabe, Chief of Schools, in this matter. In her decision, Ms. McCabe upheld an earlier decision by Rose Pentz, Pupil Personnel Worker, and Karl Streaker, Director of Student Services, denying the Parents' request that _____ be allowed to attend Liberty High School for the 2021-2022 school year as _____ and her parents reside in Howard County, Maryland.

The Board has reviewed all of the written materials submitted by the Parents on behalf of _____, as well as the documentation submitted on behalf of the Superintendent in response to the appeal. Pursuant to its review, the Board has determined that this appeal may be decided under its rules of procedure without an evidentiary hearing or oral argument. For the reasons set forth below, the Board has determined that the denial of the requested nonresident placement was not arbitrary,

unreasonable or illegal. Accordingly, for the reasons set forth in detail below we shall affirm the decision of the Superintendent's Designee.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The family most recently lived in the Liberty High School district. Prior to that, they lived in Westminster, Maryland, and while living in Westminster, received permission for their children to attend Liberty High School as out-of-district students. During the 2020-2021 school year, the family moved to Maryland, which is in County. At the time, was an 11th grade student at Liberty High School. Their move was discovered by a Liberty High School secretary in March 2021, when : asked that her refund for AP testing for be sent to her new address in . The residency matter was reviewed by Pupil Personnel Worker Rose Pentz, who by letter dated March 31, 2021, granted permission for to finish out her year tuition-free at Liberty High School through June 16, 2021, and stated that, "You will need to enroll them (the children) in the appropriate / Public Schools for the 2021-2022 school year."

In the beginning of June 2021, : contacted the Liberty High School counselor regarding schedule for the 2021-2022 school year, and to discuss an internship and community college courses. When questioned about residency by the counselor who was aware of the residency issue, : stated, " will be graduating from LHS and attending as a senior in the fall 2021." The counselor referred the matter back to Ms. Pentz who communicated with . : asked Ms. Pentz for permission for to complete her final year at

Liberty High School and advised of her intent to be employed as the Volunteer Community Coordinator for Carroll County during the 2021-2022 school year. Ms. Pentz again denied the request for [redacted] to attend Liberty High School and advised that there were no "provisional approvals." Ms. Pentz also notified Director of Student Services Karl Streaker, who reviewed the facts and applicable regulations and concurred with Ms. Pentz.

A request for review of the decision was made to Chief of Schools Cynthia McCabe by a former Board member, Virginia Harrison, and Ms. McCabe reviewed the matter. [redacted] explained the family had been trying to sell their home for many years, and had just been able to sell it due to the pandemic. She said she thought that since their children were previously provided with an out-of-district placement to attend Liberty High School at their request when they were living in Westminster, they assumed they would still be covered by the prior authorization. She claimed they did not realize their new home was in [redacted] County. [redacted] also spoke of [redacted] academic achievements while attending Liberty High School.

Ms. McCabe considered [redacted] request as well as the applicable regulations explained below and noted the following:

1. Neither parent is employed in Carroll County.
2. The situation does not meet the hardship threshold.
3. [redacted] is currently not living with a person other than a parent or legal guardian due to a serious family hardship.

4. would be traveling to Carroll County daily for the sole purpose of attending school.
5. Student grades and the level of school involvement are not considered when making non-resident enrollment decisions.
6. Ignorance of the county in which one's residence is located is not a consideration.
7. Ignorance that out-of-district approval does not apply to non-residents is not a consideration.
8. The real estate market is not a consideration.

Ms. McCabe concluded that the decision of Ms. Pentz and Mr. Streaker to deny the request to allow to continue her education at Liberty High School for the 2021-2022 school year was fair and justified and affirmed the decision on June 13, 2021. The instant appeal followed on July 5, 2021. The Parents acknowledged that they "do not satisfy the county residency or county employment criteria" but asked for an exception due to the pandemic as their children's "academic careers and social interaction with fellow students in a learning environment" were disrupted.

STANDARD OF REVIEW

The decision of the Superintendent should be upheld unless it is arbitrary, unreasonable, or illegal. A decision is arbitrary or unreasonable if it is contrary to sound educational policy or a reasoning mind could not have reasonably reached the same conclusion. COMAR 13A.01.05.05B. Further, a decision is illegal if it is (1) unconstitutional, (2) exceeds statutory authority or jurisdiction, (3) misconstrues the

law, (4) results from an unlawful procedure, (5) constitutes an abuse of discretionary powers, (6) or is otherwise affected by an error of law. COMAR 13A.01.05.05C. This is a deferential standard of review in which an appellant has the burden to do more than demonstrate that the result sought is preferable; instead an appellant must demonstrate that the decision taken was "arbitrary, capricious or illegal." *Bernstein v. Bd. of Educ. of Prince George's County*, 245 Md. 464, 479 (1967).

APPLICABLE POLICY AND REGULATIONS

Board Policy JECB governs the "admission of Non-Resident Out-of-County Pupils. The implementing regulations state,

"The Board of Education recognizes as its first responsibility the education of school aged children who are bona fide residents of Carroll County. Only such bona fide residents are eligible to enroll in Carroll County Public Schools tuition free.

A bona fide resident is a child that actually lives within Carroll County with a parent or other person who has legal custody or legal guardianship of the child documented by a signed court order.

Under certain conditions, a non-resident child may be eligible to attend school in Carroll County with or without tuition based on the guidelines established in these regulations. A determination of non-resident eligibility will be made by the student services staff on a case-by-case basis."

ANALYSIS

Examining the applicable regulations, it is evident that the only two exceptions to the requirement that a student be a bona fide resident in order to attend school tuition free in Carroll County that relate in any way to this matter are (1) the allegation that the pandemic was a hardship and (2) [redacted] claim that she might be getting a job in Carroll County. Neither argument succeeds. The pandemic is not the sort of hardship envisioned by the regulations. The regulations give as an example of a hardship, "The conditions in the child's previous school district such as racial imbalance or overcrowding." Having to attend school virtually, like every other student, is not a hardship. As to the issue involving employment, to date [redacted] has not shown any evidence of employment in Carroll County.

State law supports the regulations. In Maryland, children have the right to attend public school only in the county in which they are domiciled with their parent or guardian. "[E]ach 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." Md. Code Ann., Educ. Section 7-101(b)(1). Furthermore, the right of a school system to restrict access to its public schools to bona fide residents is supported by Section 7-101(b)(3): "[i]f 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." *See Mr.*

and Mrs. Abu B. v. Howard County Bd. of Educ., MSBE Op. No. 12-17 (2012) (holding that a school system could charge tuition for students found not be bona fide residents).

There is no evidence that the decision was arbitrary, unreasonable, or illegal. The decision is clearly supported by State law, the CCPS Guidelines, and the parents' admission that their case is not supported by the CCPS residency or employment criteria.

CONCLUSION

For the reasons set forth above, the decision of Cynthia McCabe, acting as the Superintendent's designee, that [redacted] not be allowed to attend Liberty High School for the 2021-2022 school year as she is a resident of [redacted] County is not arbitrary, unreasonable, or illegal.

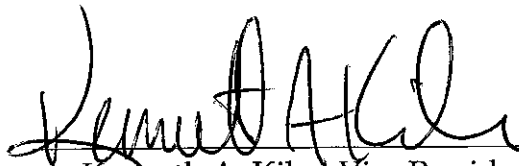
DECISION

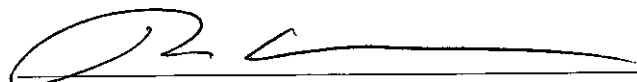
This Board affirms the decision upholding the denial of the Out-of-County placement request. Should they choose to do so, [redacted] may appeal this decision to the Maryland State Board of Education, 200 West Baltimore Street, Baltimore, Maryland 21201, in writing, within thirty (30) days of the date of this decision.

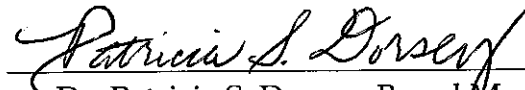
CARROLL COUNTY BOARD OF EDUCATION

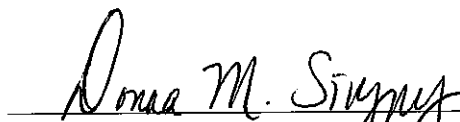
July 30, 2021
Dated

Marsha B. Herbert
Marsha B. Herbert, President


Kenneth A. Kiler, Vice President


Tara A. Battaglia, Board Member


Dr. Patricia S. Dorsey, Board Member


Donna M. Sivigny, Board Member