

IN THE MATTER OF

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BEFORE THE
BOARD OF EDUCATION OF
CARROLL COUNTY

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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 to the Annotated Code of Maryland concerning the denial of a non-resident student application for _____ (' '), a four-year old who resides with his mother, _____ in Frederick County.¹ _____ sought to enroll in the Carroll County Public Schools prekindergarten program for the 2008-2009 school year. On August 4, 2008, Mr. Dana Falls, Director of Student Services, denied _____ request that _____ be allowed to enroll as a non-resident student. _____ appealed to the Superintendent, Dr. Charles I. Ecker. On August 14, 2008, the Superintendent's designee, Mrs. Barbara Guthrie, issued a decision affirming the denial of admission.

_____ filed an appeal of Mrs. Guthrie's decision to this Board. Because this is an appeal that does not involve the alleged deprivation of a constitutionally protected interest,² we have determined that the appeal may be decided under this Board's *Rules of Procedure* without an evidentiary hearing or oral argument.³ For the reasons set forth more fully below, this Board

1 _____ home attendance area school would be Twin Ridge Elementary School in Frederick County. It is unknown whether _____ sought to enroll _____ in the prekindergarten program in Frederick County.
2 In Bernstein v. Board of Education of Prince George's County, 245 Md. 464, 472 (1967), the Court of Appeals of Maryland held that families do not have a protected "right or privilege to attend a particular school."
3 The Maryland State Board of Education has long held that there is no need for an evidentiary hearing or oral argument when, as in this case, the appeal does not involve an alleged liberty or property interest deprivation thereby invoking the protections of the Fourteenth Amendment Due Process Clause. See Bricker v. Frederick County Board of Education, 3 Op. MSBE 99 (1982); Anderson and Blake v. Board of Education of Prince George's County, 5 Op. MSBE 415, 417 (1989). For this reason, and because we do not believe that a hearing would aid us in the decision-making process, we decline to conduct an evidentiary hearing or oral argument on this appeal.

finds that the decisions below were neither arbitrary, unreasonable, nor illegal, and we shall accordingly affirm Mrs. Guthrie's decision.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Section 7-101(b) of the Education Article to the Annotated Code of Maryland commands that, except in situations not applicable to this appeal,⁴ "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."⁵ To that end, this Board has previously established Board Policy JECB governing the admission of non-resident out-of-county pupils, and the Superintendent has promulgated Administrative Regulations for the purpose of implementing Board Policy JECB. Pursuant to Md. Code Ann., Educ. § 7-101(b), Board Policy JECB, and the Administrative Regulations implementing Board Policy JECB, with the few exceptions already noted that are not applicable to this case, only "bona fide residents" of Carroll County (*i.e.*, those children who are domiciled in Carroll County with a parent or legal guardian) are permitted to attend the Carroll County Public Schools.

This Board has consistently upheld and enforced its Policy JECB and the Superintendent's Administrative Regulations implementing Board Policy JECB by denying admission -- or continued attendance -- to children who do not actually reside in Carroll County with a parent or guardian *unless* they qualify for an informal kinship care arrangement. Moreover, the Maryland State Board of Education has ruled that when a child comes to a county

⁴ The exceptions to Md. Code Ann., Educ. § 7-101(b) are those situations where a child is exempted from the compulsory attendance provisions set forth in Md. Code Ann., Educ. § 7-301.

⁵ Informal kinship care under Md. Code Ann., Educ. § 7-101(c) is applicable only if there is a "serious family hardship" due to the death, serious illness, drug addiction, incarceration, or active military duty of a parent or guardian or due to the parent or guardian's abandonment of a child. None of these conditions are present in this appeal. When students are admitted to the Carroll County Public Schools pursuant to an "informal kinship care" arrangement, the county where the parent resides reimburses the Board for 100% of the county share of the average per pupil expenditure and 300% of the county share if the student is eligible for special education.

“primarily for educational purposes” the child is *not* a bona fide resident. See Sinan Erk v. Montgomery County Board of Education, 6 Op. MSBE 612 (1993); Armour v. Board of Education of Montgomery County, 2 Op. MSBE 123 (1979).

In this appeal, it is undisputed that [redacted] and [redacted] reside in Frederick County. As a result, even though [redacted] works in Carroll County, has family in Carroll County, previously resided in Carroll County, and graduated from Carroll County Public Schools, and [redacted] children do not meet the definition of “bona fide residents” of Carroll County. The fact that [redacted] mother provides day care services to [redacted] in Carroll County also does not change the fact that [redacted] is not a Carroll County resident eligible for attendance in the Carroll County Public Schools. Having a child in daycare in Carroll County or under the supervision of a family member is not grounds for allowing a non-resident student to attend the Carroll County Public Schools and does not meet the requirements set forth in Md. Code Ann., Educ. §7-101(b) or this Board’s Policy JECB.

In her conference with Mrs. Guthrie, [redacted] made it clear that [redacted] desire to enroll in the Carroll County Public Schools was based upon [redacted] familiarity with Carroll County and the school system and due to the fact that [redacted] mother provides daycare services for [redacted] children while [redacted] works. [redacted] admitted that [redacted] is not homeless.⁶ [redacted] also admitted that [redacted] is not familiar with the Frederick County Public Schools and the services that could be provided there for [redacted]. Moreover, it was discussed that although the Carroll County Public Schools maintains a limited amount of seats for “eligible” students in its prekindergarten program, it does not open this program to non-residents.


⁶ The issue of homelessness was fully explored by student services department staff.


Accordingly, the decisions rendered by Mrs. Guthrie and by Mr. Falls were not arbitrary, unreasonable, or illegal but were, rather, in accordance with State law, State Board precedent, this Board's Policy JECB, and the Administrative Regulations implementing Policy JECB. There are only a limited amount of prekindergarten seats available to "eligible" Carroll County residents, and there is no justification for extending these spaces to non-residents unless a kinship care arrangement exists. That option is not available to _____ since he actually resides with his mother in Frederick County.

DECISION

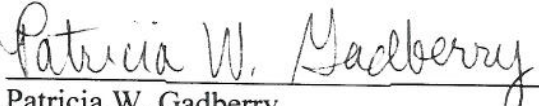
For the reasons discussed above, this Board affirms the decisions below rendered by Mrs. Guthrie and by Mr. Falls. Should she choose to do so, _____ may appeal this Decision to the Maryland State Board of Education, 200 W. Baltimore Street, Baltimore, Maryland 21201, if taken in writing within thirty days of the date of this Decision.


12/3/08
Date


Cynthia L. Foley, President


Barbara Shreeve, Vice President


Gary W. Bauer


Patricia W. Gadberry


Virginia R. Harrison