

BEFORE THE BOARD OF EDUCATION OF CARROLL COUNTY

IN THE MATTER OF

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DECISION AND ORDER

Appellant _____ has appealed the September 16, 2019, decision of the Superintendent's Designee, Chief Operating Officer Jonathan D. O'Neal, denying his request to create a bus stop at the intersection of Baker Road and Abell Drive in Westminster, Maryland, pursuant to Section 4-205(c) of the Education Article of the Annotated Code of Maryland.¹ The Board has reviewed all of the written material submitted by _____ as well as the documentation submitted by the Superintendent's Designee in response to _____ appeal. The Board has determined this appeal may be decided under its rules of procedure without an evidentiary hearing or oral argument.² For the reasons set forth below, the Board has determined that the Superintendent's Designee's decision denying _____ request

¹ In his completed Appeal Information Form _____ identifies several other individuals as joining in his appeal, all of whom live near the proposed bus stop and, although unclear, presumably have children who use the current bus stop at _____. For ease of reference, we refer only to _____ as the appellant in this case.

² The Maryland State Board of Education (the "State Board") has previously held that evidentiary hearings are not required for appeals involving claims which do not allege a deprivation of liberty or property interests which would violate the 14th Amendment's due process requirements, such as appeals involving the denial of requested changes in school bus transportation services. *See, e.g., Barbeito, et al. v. Frederick County Board of Education*, Op. No. 09-32 (September 21, 2009); *see also, Benoit v. Carroll County Board of Education*, MSBE Op. No. 04-24 (June 16, 2004); *Holten v. Montgomery County Board of Education*, MSBE Op. No. 04-08 (February 25, 2004).

to create a bus stop at Baker Road and Abell Drive was not arbitrary, unreasonable, or illegal. Accordingly, the Board shall affirm the Superintendent's Designee's decision.

FACTUAL BACKGROUND

lives on in Westminster, Maryland. The current bus stop serving that area is located at the intersection of Salem Bottom Road and Baker Road, a short distance away. On August 9, 2019, emailed Michael J. Hardesty, Director of the Transportation Department, requesting the current bus stop be relocated to the nearby intersection of Baker Road and Abell Drive. As support for his request, stated that the intersection where the current stop exists is "extremely dangerous," which has led to numerous auto accidents; "parents must park on the street to wait for their children getting on and off the bus," which "creates an additional issue with traffic"; and the current bus stop is located on a bend of Salem Bottom Road where a "blind spot" exists such that, "once the bus stops . . . , sometimes traffic gets back up to the point drivers coming from either direction have a hard time seeing the stopped traffic." further stated that although the new stop "may be a little more inconvenient for the bus driver to turn around at this spot, it is convenient and easily done with plenty of room."

On August 29, 2019, Keith B. Shorter, Supervisor of the Transportation Department, sent a letter to in response to his August 9th email. Mr. Shorter indicated that Transportation Department staff had investigated request, which included an on-site visit on August 27, 2019. Mr. Shorter noted that the existing stop is located 575 feet from the intersection of Baker Road and Abell Drive; that Salem

Bottom Road is a collector roadway with a speed limit of 35 miles per hour; and that the average daily traffic count is 1,214 vehicles, which is considered light. Mr. Shorter indicated that, based upon his staff's investigation and an application of the relevant Board policies and procedures, he was denying ¹ request for the following reasons:

- (1) Pursuant to Administrative Procedure ("AR") EEAC,³ pupils are expected to walk up to one mile to bus stops although a closer stop may be established if it can be done without backing the bus to turn around;⁴
- (2) "There are no hazardous or unusual conditions which would prevent a supervised child from walking to or waiting at the existing bus stop";
- (3) "Baker Road is 18 feet wide in many locations," and "Carroll County Public Schools Transportation Services Department policy requires that a roadway should be at least 20 feet wide to have a bus routed onto it",⁵ and
- (4) "The bus driver who has driven the route for many years reports no incidents occurring at the current bus stop and feels the current location is adequate."

³ Mr. Shorter references "Board of Education policy EEC" in his letter. This appears to be a typographical error.

⁴ Specifically, Section B.1 of AR EEAC provides: "Pupils shall be expected to walk up to one (1) mile to the established school vehicle stop, the same distance as students residing in non-transported areas are expected to walk to their respective schools." Section A.5 of AR EEAC provides: "A bus route may be extended if a student resides greater than one half (1/2) mile from an existing stop and the bus does not have to use a backing procedure."

⁵ Section A.2 of AR EEAC provides in relevant part: "Buses will be assigned to operate on paved roads only. Paved roads shall be considered those roads that are a minimum of twenty feet wide."

On September 4, 2019, [redacted] emailed Mr. Shorter, expressing his disappointment and disagreement with Mr. Shorter's decision and inquiring how he could appeal it. As support for his disagreement with Mr. Shorter's decision,

[redacted] noted that another bus travels on another portion of Baker Road that is not 20 feet wide and backs up onto a private driveway; cars speed on the stretch of road where the bus stop is currently located; and motorists "treat the stop sign [at the intersection of Baker Road and Salem Bottom Road] as a yield sign" as students and parents wait for the bus.

On September 9, 2019, Transportation Director Hardesty sent [redacted] a letter in response to his September 4th email. Mr. Hardesty indicated that he had personally visited the location on two occasions, which involved him examining the walking path along Baker Road to the existing stop, and examining the sight distance approaching the stop from both directions along Salem Bottom Road. Mr. Hardesty also indicated that he reviewed [redacted] rationale in his August 29th letter and had reviewed the relevant Board policies and administration regulations, as well as the regulations in COMAR 13A.06.07.14. Mr. Hardesty concluded that the current stop was in compliance with all of those state and local policies, procedures, and regulations, and he was therefore upholding Mr. Shorter's decision.

That same day [redacted] : emailed Superintendent Steven A. Lockard, indicating his intent to appeal Mr. Hardesty's decision. On September 16, 2019, Mr. O'Neal, acting as the Superintendent's Designee, issued a final decision affirming Mr. Shorter's and Mr. Hardesty's prior rulings. Mr. O'Neal indicated that, prior to issuing

his decision, he personally visited the location at issue, followed the bus at issue through the stop on multiple occasions, and examined the walking path and measurements for sight distance at the stop. He then reviewed the relevant Board policy and administrative regulation at issue. He concluded that Board Policy EEA and AR EEAC were appropriately applied and concurred that it would not be appropriate to route the bus down Baker Road. He informed of his right to appeal his decision to the Board.

On September 20, 2019, wrote to Board President Sivigny, expressing his intent to appeal Mr. O'Neal's decision. As support for his appeal, included "all correspondences since [his] initial request on August 9th, 2019," and he argued that he had "proven the Department of Transportation of Carroll County has contradicted themselves when it comes to 'backing school buses' to accommodate a bus stop" insofar as he had "filmed school buses backing at different bus stops to accommodate other children." On October 7, 2019, submitted a completed Appeal Information Form, which included copies of the aforementioned correspondence.

On October 21, 2019, Mr. O'Neal submitted a letter to the Board in response to September 20th appeal. In that letter, Mr. O'Neal stated among other things that "[w]e do not deny that there are situations where buses must back up," but he indicated that "[t]hese instances where a bus must turn around in order to complete a route or meet another condition for students in that location[] are not reason to simply make an exception to policy and procedure in another case where it is not warranted."

Mr. O'Neal cited to the Maryland State Board of Education's ("State Board") recent decision in *Shane and Kimberly G. v. Carroll County Bd. of Educ.*, MSBE Op. No. 19-22 (2019), where, according to Mr. O'Neal, "the State Board clarified that there is no arbitrariness to decision-making in which each situation is evaluated independently relative to pertinent policies, regulations, and procedures[.]" Mr. O'Neal argued that, despite characterization of the intersection at issue as "extremely dangerous," the current driver has been driving the route for over a decade and has never had any safety concerns about the stop. Lastly, Mr. O'Neal argued that if the stop were moved to the intersection of Baker Road and Abell Drive, the bus, after making a three-point turn (which should be avoided pursuant to AR EEAC unless necessary) and proceeding back to Salem Bottom Road would have to turn left onto Salem Bottom Road, which would be less safe than "proceeding to accelerate from the stop on Salem Bottom Road under the protection of its lights."

STANDARD OF REVIEW

In reviewing decision of the Superintendent, the Board applies the standard set forth in COMAR 13A.01.05.05A. Pursuant to this standard the Board will not substitute its judgment for that of the Superintendent unless the decision reached by the Superintendent is arbitrary, unreasonable, or illegal. A decision may be 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 may be 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. Finally, appellants challenging a policy decision of the Superintendent or his designee bear the burden of proving a decision arbitrary, unreasonable, or illegal by a preponderance of the evidence. COMAR 13A.01.05.05D.

ANALYSIS

We conclude that _____ has not met his burden of proving by a preponderance of the evidence that the Superintendent's Designee's decision was arbitrary, unreasonable, or illegal as those terms are defined. _____ points to various instances where the Transportation Department has allowed buses to back up at other stops as evidence that the Transportation Department has "contradicted themselves." _____, however, does not offer any evidence as to the reasoning behind allowing those buses to back up.

We agree with Mr. O'Neal that it is not arbitrary or unreasonable to evaluate each situation individually, taking into consideration the totality of the circumstances, even if the end result is that some buses are permitted to take certain actions that others are not. As Mr. O'Neal notes, the State Board in *Shane and Kimberly G. v. Carroll County Bd. of Educ.*, MSBE Op. No. 19-22 (2019), at 4, recently instructed:

[T]he Appellants maintain that the school system applied its policy and regulations arbitrarily. The school system evaluates each bus stop request on its own merit, independently of other bus stop requests. There are a variety of criteria that guide the decision making process and various exceptions to those criteria that can affect the decision. Exceptions include factors such as sight distance, traffic volume, traffic speed, road width, road composition, walkways, and more. (See A.R. EEAC). Thus, for each bus stop, there are specific reasons why certain criteria or exceptions may apply, consistent with flexibility of the administrative regulation. For

example, the local board explained that CCPS routing practice attempts to avoid bus backing-up maneuvers whenever practical and possible, but there are times when backing-up must be utilized for efficiency and student ride time.

In our view, engaging in decision making in this manner does not result in arbitrary decisions, rather it results in individualized decisions made within the confines of the policy and regulation. Here, the local board has provided reasonable explanations for the denial of the Appellants' request. We do not find that the local board engaged in arbitrary application of the policy and regulation.

We conclude that the State Board's reasoning applies equally in this appeal.

Indeed, the State Board has affirmed decisions not to relocate bus stops in cases just like this one. For example, in *James and Joanie Herron v. Harford County Bd. of Educ.*, MSBE Op. No. 12-10 (2012), the appellants, as here, sought the relocation of a bus station a short distance from the intersection at which it was located (*i.e.*, at the intersection of Chestnut Hill Road and Flora Meadows Drive) to a perpendicular residential road (*i.e.*, Flora Meadows Drive, which was "approximately .2 miles long and ends in a cul-de-sac") for safety reasons. There, like here, the appellants argued that the current stop was unsafe because "the distance between the bus stop and the intersection of Route 24 [*i.e.*, a nearby State road located perpendicular to Chestnut Hill Road] and Chestnut Hill Road is too short to give drivers turning onto Chestnut Hill Road sufficient sight distance to stop safely when the bus stops at the intersection of Flora Meadows Drive," and that cars speeded on Chestnut Hill Road. *Id.* at 1. The State Board affirmed the denial of the appellants' request for the relocated stop, noting that, pursuant to COMAR 13A.06.07.13, "school systems have wide discretion in determining the location of bus stops." *Id.* at 3. The State Board further reasoned:

The school system's transportation safety professionals have reviewed the conditions at the bus stop numerous times. It is the judgment of the transportation professionals that the bus stop satisfies safety standards. This conclusion is based on their review of the location taking into consideration the concerns raised by the Appellants. These concerns included sight distance, vehicle speeds, and lack of sidewalks. While the Appellants have presented their own opinions that the bus stop location is unsafe, they have not presented any evidence that would counter the opinions of the school system's transportation safety professionals that the current location conformed to applicable safety standards and provided a safe location for students.

In an attempt to demonstrate arbitrary application of the school system's standards for establishing bus stops, the Appellants also dispute the local board's assertion that the bus stop is consistent with other stops in the County. . . .

The fact that Appellants can point to three stops on their route for which the school bus pulls onto cul-de-sac streets of similar distance to Flora Meadows Drive does not mean that their stop is inconsistent with the multitude of other bus stops in the County. There can be any number of reasons why the specified bus stops are different from theirs including road conditions, road dimensions, topography, site distances, and traffic flow. There are also legal requirements with which the school system must comply concerning the transportation of students with disabilities. Whether a bus stop may be located at different places for children living on a cul-de-sac road of similar length is an administrative and operational decision within the discretion of the school system.

Id. at 4-5. We think the State Board's reasoning is equally applicable here.

In the end, Mr. Shorter, Mr. Hardesty, and Mr. O'Neal each conducted a review of request and ultimately concluded that the relocated bus stop and resultant change in the bus route would be less safe than the current route based upon the relevant regulations and their collective professional expertise. We conclude that Mr. O'Neal's decision was in compliance with Board policy and the corresponding administrative regulations, and thus it was not contrary to sound educational policy.

We likewise find that a reasoning mind could have come to the same conclusion that Mr. O'Neal reached since numerous individuals indeed came to the same conclusion.

CONCLUSION

Having thoroughly reviewed the entire record, the Board has determined there is no basis in the record upon which the Board might determine by a preponderance of the evidence that Mr. O'Neal's September 16, 2019, decision denying request for a new bus stop is either arbitrary, unreasonable, or illegal. For the foregoing reasons, the Board shall affirm his decision. _____ 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.

12-11-19
Date

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