

BEFORE THE BOARD OF EDUCATION OF CARROLL COUNTY

IN THE MATTER OF

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DECISION AND ORDER

Appellants _____ have appealed the August 30, 2019, decision of Superintendent Steven A. Lockard denying their request to create a bus stop at their residence on _____ in Manchester, Maryland pursuant to Section 4-205(c) of the Education Article of the Annotated Code of Maryland. The Board has reviewed all of the written material submitted by the _____ as well as the documentation submitted by Dr. Lockard in response to the _____ appeal. The Board has determined this appeal may be decided under its rules of procedure without an evidentiary hearing or oral argument.¹ For the reasons set forth below, the Board has determined that Dr. Lockard's decision denying the _____ request to create a bus stop at their residence was not arbitrary, unreasonable, or illegal. Accordingly, the Board shall affirm Dr. Lockard's decision.

¹The 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).

FACTUAL BACKGROUND

This is the second time this matter has come before us. The [redacted] previously appealed the October 1, 2018, decision of the Superintendent's Designee, Assistant Superintendent of Administration Jonathan D. O'Neal, denying their request to create a bus stop at their residence on [redacted]. We upheld that decision in a Decision and Order dated January 9, 2019. Of note, in our Decision we noted that one of the reasons supporting the Superintendent Designee's decision was that "[n]o alternative could be established that did not create an unsafe turn-around for the bus." See January 9, 2019, Decision at pp. 6-7. We further noted that the [redacted] had offered to develop a loop area on their property so that the bus would not have to make a three-point turn if the requested stop were created, and we stated that, "[s]hould the [redacted] develop a loop, the Transportation Department would need to consider the existence of a loop in deciding whether to grant a new stop." *Id.* at p. 8.

The [redacted] appealed our decision to the Maryland State Board of Education ("State Board"), which affirmed. See [redacted] *G. v. Carroll County Bd. of Educ.*, [redacted]. In affirming, the State Board noted that the [redacted] had installed a loop on their property while their appeal was pending before the State Board. *Id.* at 3. Consequently, the State Board stated that, "[i]f the Appellants so choose, they may submit a new bus stop request to CCPS," and in such event "the CCPS Transportation Department would have to evaluate any such change because no turnaround existed when the local board rendered its decision." *Id.* at 3.

During the public comment portion of our July 10, 2019, meeting, [redacted] indicated that her concerns about the bus stop had not been resolved. On August 10, 2019, [redacted] sent an email to the Board members, Dr. Lockard, and County Commissioner Richard Weaver formally requesting another review of the request for a new bus stop. Dr. Lockard acknowledged that request by email dated August 12, 2019, wherein he indicated that his staff would review the entire route and contact the [redacted] when that review was completed.

Dr. Lockard thereafter directed Bus Driver Trainers, the Area Supervisor of Transportation, the Director of Transportation, and CCPS' Chief Operating Officer to review the matter, and all of them unanimously concluded that the [redacted] proposed bus stop and the resultant change in the bus route would be less safe than the current route. Dr. Lockard informed [redacted] of this consensus by way of an email dated August 27, 2019. In that same email Dr. Lockard indicated that despite his staff's conclusion he had nevertheless decided to engage a representative of the National Association of State Directors of Pupil Transportation, H. Leon Langley, to conduct an independent review, and he (Dr. Lockard) indicated that he would share the results of that independent review with the [redacted] upon his receipt of it from Mr. Langley.

On August 30, 2019, Mr. Langley sent Dr. Lockard a letter summarizing the results of his independent review. In that letter, Mr. Langley stated in relevant part that:

(1) The current stop is located less than one mile from the residence and was therefore compliant with Section B.1 of Administrative Regulation ("AR") EEAC;²

(2) The proposed stop on _____ is problematic because that road is narrow (measuring 12 ½ feet wide at one point), which causes "concern as there are stretches of road where two vehicles, especially with one a school bus, could not pass without one vehicle having to back up," thus not meeting the safety policy set forth in Section A.2 of AR EEAC;³

(3) The proposed stop on _____ would be problematic because "[a]t certain points . . . , with no shoulders for pull-overs, it would create an unsafe situation for the bus and other motorists to have to back up on a winding road with limited sight line" in light of Section A.3 of AR EEAC;⁴ and

(4) The proposed stop on _____ would ultimately require the bus to take a right-hand turn onto Maryland Route 30 (also known as the Hanover Pike) which would be unsafe because "there is limited sight distance from the north and no apron forcing a school bus to take a more perpendicular angle to Hanover Pike and would not allow sufficient time to safely accelerate."

² 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."

³ 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."

⁴ Section A.3 of AR EEAC provides in relevant part: "Routes shall be planned to minimize or eliminate the need for backing the school bus. If the bus must back, a safe and adequate turning place must be available."

Based on the foregoing reasons, Mr. Langley concluded that the current route “is the safest route and meets all Carroll County Public Schools established policies, procedures and regulations.”

Dr. Lockard emailed Mr. Langley’s report to [redacted] that same day. Dr. Lockard concluded his August 30th email to [redacted] by stating, “Based on Mr. Langley’s independent assessment, unless the referenced section of [redacted] were widened, or the reference intersection of [redacted] and Rt. 30 were modified to improve line of sight and an acceleration lane, I am unable to safely alter the existing bus route.”

On September 12, 2019, [redacted] responded to Dr. Lockard via email. [redacted] expressed her disagreement with Dr. Lockard’s decision with respect to the safety of turning right onto Hanover Pike, and although she acknowledged the narrow section of [redacted], she proposed that this issue could be resolved if the bus turned right onto Ha [redacted] from Hanover Pike, come to her home, turned around via the recently installed loop, and then turned right back onto Hanover Pike. On September 16, 2019, Dr. Lockard responded via email, indicating that he could not support her request for the new stop because it would require the bus to take a right-hand turn onto Hanover Pike from a dead stop without adequate space to safely merge onto Hanover Pike given its 50 mile-per-hour speed limit.⁵ [redacted] responded that

⁵ This right turn onto Hanover Pike from a dead stop is materially different than the current situation. At the current stop at the intersection of [redacted] and Hanover Pike, the bus stops in the deceleration lane on Hanover Pike and accelerates and merges back into traffic on Hanover Pike with the benefit of all traffic behind the bus also starting from a standstill due to the deployment of the bus’s traffic-stopping red flashing lights. By

day via email expressing her disappointment with Dr. Lockard's decision and requesting an appeal packet, which was provided to her. The returned their appeal packet on October 4, 2019, in which they made many of the same arguments that had made in her email correspondence to Dr. Lockard.

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.

contrast, the proposed route would require the bus to take a right-hand turn onto Hanover Pike and merge into traffic moving at full speed.

ANALYSIS

The argue that Dr. Lockard's decision "is based on opinion not fact and is thus arbitrary and capricious."⁶ In support of their argument they point to various instances where the Transportation Department has made exceptions to its policies with respect to things such as buses traveling on narrow roads and/or making right turns onto State roads. We agree with the Superintendent that the State Board rejected this line of argument in the first appeal. There, the State Board stated:

[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.

See *S v. Carroll County Bd. of Educ.*, MSBE Op.

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

⁶ The do not contend that Dr. Lockard's decision is illegal.

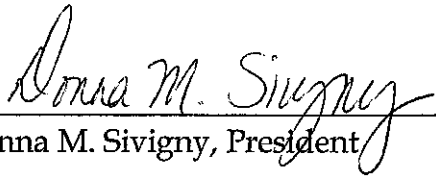
As noted above, upon receiving the appeal, Dr. Lockard directed Bus Driver Trainers, the Area Supervisor of Transportation, the Director of Transportation, and the Chief Operating Officer to review the proposed stop and resultant route change. They unanimously concluded that the proposed route would be less safe than the current route based upon the parameters of AR EEAC and their collective professional expertise. Mr. Langley conducted an independent evaluation and came to the same conclusion. We conclude that it was not contrary to sound educational policy for Dr. Lockard to defer to those professionals' expertise and conclusion, nor do we find that a reasoning mind could not have come to the same conclusion that Dr. Lockard reached since numerous individuals indeed came to the same conclusion. Moreover, the fact that the Transportation Department permits other buses to make right turns onto State roads does not mean it is safe or advisable to do so at the location in question. *See Ashley Towle v. Carroll County Bd. of Educ.*, MSBE Op. No. 17-31 (2017), at 7 ("Appellant attempts to undercut the local board's claim that it does not want to have buses turn left onto [Maryland] Route 97 by arguing that other buses make turns onto Route 97 at other locations. . . . [E]ven if CCPS allows for buses to make left turns in some instances, it does not necessarily mean it is safe or advisable to do so at this location.").

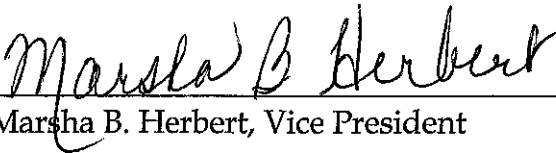
CONCLUSION

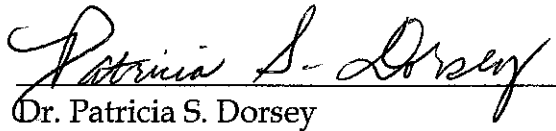
Having thoroughly reviewed the entire record, the Board has determined there is no basis in the record upon which the Board might determine by a preponderance of the evidence that Dr. Lockard's August 30, 2019, decision denying the request for

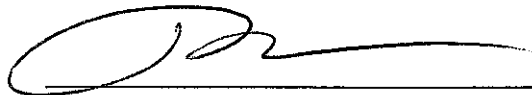
a new bus stop is either arbitrary, unreasonable, or illegal. For the foregoing reasons, the Board shall affirm the decision of the Superintendent. The () may appeal this decision to the Maryland State Board of Education, 200 West Baltimore Street, Baltimore, Maryland 21201, in writing, within thirty (30) days of the date of this decision.

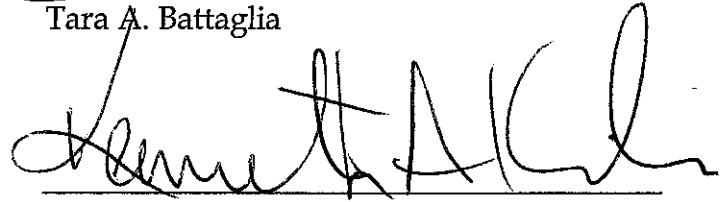
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Date


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