

IN THE MATTER OF

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

* * * * *

DECISION AND ORDER

Appellants and (the) have appealed the November 21, 2019, decision of the Superintendent's Designee, Chief Operating Officer Jonathan D. O'Neal, denying their request to create a bus stop at in Eldersburg, Maryland. The appeal is filed 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 the Superintendent's designee 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 the decision of the Superintendent's Designee to deny the request to create a bus stop at and was not arbitrary, unreasonable, or illegal. Accordingly, the Board shall affirm the Superintendent's Designee's decision.

¹ 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).

FACTUAL BACKGROUND

The live on in Eldersburg, Maryland, in the Freedom Elementary School district. Ms. submitted a bus survey prior to the start of the 2019-2020 school year, asking the Carroll County Public Schools ("CCPS") to add a bus stop at the top of her street at Her request was denied following an investigation by Keith Shorter, Supervisor, Transportation Services Department. In a letter dated September 6, 2019, Mr. Shorter explained that the existing stop serving the area is located at Conon Doyle Way and Mycroft Street, a distance of 2,450 feet from the end of that Mycroft Street is a local roadway with a posted speed limit of 25 miles per hour; that the traffic on Mycroft Street is considered light; and that the road segment provides required visibility for a stopped school bus with adequate walking and standing areas along Conon Doyle Way for students to walk to and wait at the bus stop. He found no hazardous or unusual conditions which would prevent a supervised child from walking to or waiting at the existing bus stop. Based on these facts, along with Board policies and administrative regulations, he denied the request for a new bus stop.

appealed Mr. Shorter's decision to Michael Hardesty, Director, Transportation Services Department. He too personally visited the location including the bus stop and the walking path. Mr. Hardesty found there was an adequate walking path on Bandy Avenue and Mycroft Street with a paved roadway and very light traffic. He explained in his letter of September 24, 2019, that the existing

path and bus stop were not only safe, but met CCPS policies. Mr. Hardesty denied the request to establish a new bus stop.

In an email to the Superintendent sent on October 28, 2019, Ms. explained she and her family are new residents, her daughter was in Kindergarten, and she had to take her 2-year old and infant daughter with her on her walk to the bus stop. She said the road does not have sidewalks and one side of the road has a guardrail. She also said there are construction vehicles that travel on the road. Dr. Lockard replied on October 29, 2019, advising that he would refer the matter to Mr. O'Neal to investigate.

Mr. O'Neal investigated the matter. He visited the bus stop, reviewed the path from the home to the bus stop and the surrounding area, and followed the bus to observe the bus route and road conditions. On the day Mr. O'Neal observed, he saw only two cars near the bus stop. He did not see any construction vehicles, but acknowledged that as there is new home construction in the area, there probably are times when there are construction vehicles in the vicinity. He reported his findings to Mrs. Mrs. responded that when Mr. O'Neal, observed, there were fewer persons at the bus stop due to the weather and school events, but agreed that the number of construction vehicles varies. She also said people speed in the area and she was disputing the distance between her home and the bus stop. She asked that her email be considered an appeal.

Mr. O'Neal went back and measured the distance, using a wheel and a GIS system for comparison purposes. Both systems of measurement showed the distance between the home and the bus stop at under one-half mile. Mr.

O'Neal reported his findings to [redacted], denied the request to establish a new bus stop, and advised [redacted] of her right to appeal his decision.

The [redacted] timely appealed this decision by submitting an Appeal Information Form on December 9, 2019. In their appeal, the [redacted] note that there are approximately 30 children and parents standing at the bus stop and that the number of children expected to use the existing bus stop will likely increase due to new construction. She said parents have to park their cars on the road which makes it more difficult for other cars to traverse the road, that it can be difficult for two cars to pass side by side, and that some people speed. The [redacted] submitted maps and photos of the area, along with a document with the signatures of persons who live in the impacted area. They also sent an addendum on November 20, 2019.

STANDARD OF REVIEW

In reviewing decisions 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 the _____ have not met their burden of providing by a preponderance of the evidence that the decision of the Superintendent's Designee's decision was arbitrary, unreasonable, or illegal as those terms are defined. The decision complies with Board of Education Policies and CCPS regulations. Board Policy EEC provides, in pertinent part,

"Pupils shall be expected to walk up to the same distance to the school vehicle stop as pupils residing in non-transported areas are required to walk to their respective schools (1.0 miles)."

Here, the walk is less than one-half mile between the _____ home and the existing bus stop.

CCPS Board Policy EEAC defines an "Adequate Walking Area as

"A level walking area of sufficient width to allow student to walk to the assigned bus stop."

The in-person review of the walk to the bus confirmed that there was adequate room for students to walk to the bus stop.

An appropriate bus stop is defined in Board Policy EEAC as

"A location determined by the Transportation Services Department that is deemed to be an adequate area for students to wait for, board and depart the school bus."

The in-person review of the bus stop confirmed that the bus stop was large enough for students to wait for, board, and depart the bus.

Further, Board Policy EEAC states,

"It is the responsibility of the parent or guardian to provide supervision for their child(ren) while walking to, from, or waiting at the designated stop."

Carroll County is a largely rural county and there are few sidewalks so most students who are bussed must walk alongside the road. In many cases, particularly with young children, parents accompany them to assure their safety and to provide the necessary supervision.

The Administrative Regulations for Board Policy EEAC provide the criteria for approving exceptions. Approval requires a bus stop evaluation from a Transportation supervisor, who examines numerous criteria:

- a. Traffic pattern
- b. Traffic volume
- c. Traffic control devices
- d. Speed limit
- e. Alignment of road
- f. Road width and composition
- g. Road shoulders (width & composition)
- h. Walkways (sidewalk, pathways, walkways)
- i. Sight distance
- j. Type of community (residential, industrial, commercial, agricultural)
- k. School level of students (elementary, middle, high)

The instant appeal did not prove that any of these criteria impacted the safety of the current stop or the walkway to the stop. Bandy Avenue is a paved road newly connecting Monroe Avenue with Mycroft Street. The daughter walks less than ½ mile from home to her bus stop. The walking path is adequate, with parent supervision, with a paved roadway, very light traffic, and in a residential neighborhood. There are no unusual or hazardous walking conditions for an elementary age child with parent supervision. There have been no school bus stop issues recorded for the current stop. The speed limit is 25 miles per hour.

The decision to reject the request for the new bus stop was not arbitrary or capricious. In *Shane and Kimberly G. v. Carroll County Bd. of Educ.* MSBE Op. No. 19-22 (2019), the State Board explained:

“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.”

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

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 the decision of the Superintendent’s designee denying the request for a new bus stop is either arbitrary, unreasonable, or illegal. As with every bus stop, should there be such growth in the number of students waiting at the bus stop in future years that safety would become a concern, the Transportation Services Department would conduct a new review. But such a situation does not presently exist.

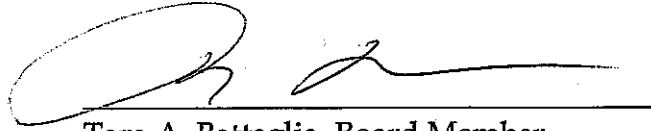
For the foregoing reasons, the Board shall affirm the decision of the Superintendent’s designee. The may appeal this decision to the Maryland State Board of Education, 200 West Baltimore Street, Baltimore, Maryland 21201, in writing, within thirty (30) days of the date of this decision.

CARROLL COUNTY BOARD OF
EDUCATION MEMBERS

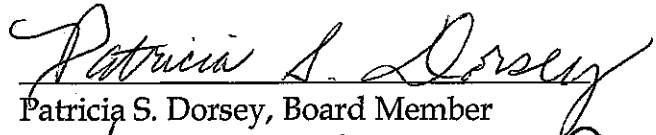
Dated: March 5, 2020

Donna M. Sivigny
Donna M. Sivigny, President

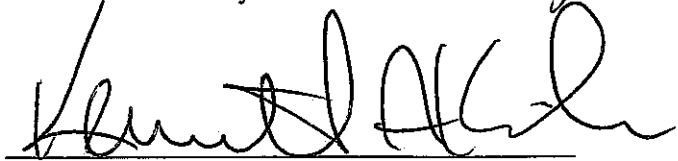
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