

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)(3) of the Education Article of the Annotated Code of Maryland, brought by (" " or the "), the parents of appeal the decision of the Superintendent's Designee, Jon O'Neal, Assistant Superintendent of Administration, denying their request to move a bus stop because of traffic and because a registered sex offender resides near the bus stop. For the reasons set forth below, the Board has determined that the decision denying request is not arbitrary, unreasonable or illegal. Accordingly, for the reasons set forth more fully below the Board shall affirm.

The Board has reviewed all of the written materials submitted by well as documentation submitted by Mr. O'Neal in response to the appeal. Pursuant to its review of this documentation, the Board has determined that this appeal may be decided under its Rules of Procedure without an evidentiary hearing or oral argument.¹

¹ The State Board has long held that there is no need for an evidentiary hearing or oral argument when 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). The State Board applied this standard to a student transportation appeal in *Benoit v. Carroll County Board of Education*, MSBE Op. 04-24 (2004) and *Williams v. Howard County Board of Education*, MSBE Op. 99-24, at 3 (1999), wherein the State Board reasoned that "an appeal of a walking route is not generally entitled to an oral evidentiary hearing."

FACTUAL BACKGROUND

The [redacted] live at [redacted] Street, Manchester, Maryland 21102. In March 2011, the [redacted] filled out a Carroll County Bus Stop Survey. They articulated concerns that the bus stop at [redacted] Street and Route [redacted] ([redacted]) in Manchester is on a very busy road. It was their contention that many vehicles exceed the speed limit and there have been accidents at the intersection of [redacted] Street and [redacted] Street warranting a new school bus stop and route extension on [redacted] Street. Staff from Transportation Services visited the bus stop and the neighborhood. According to a letter from John P. O'Meally, Area Supervisor, Transportation Services, to the [redacted] dated May 9, 2011, [redacted] Street "is a local roadway with a posted speed limit of 20 miles per hour. There is a sidewalk along [redacted] Street, as well as the road surface, for students to walk" and students do not need to cross the street. He also determined the distance from the [redacted] home to the bus stop is less than one mile. Mr. O'Meally concluded the walking distance between the [redacted] home to the bus stop was consistent with Board Policy and a route extension was not justified. Referring to *Board Policy EEAC*, Mr. O'Meally also advised, "it is the responsibility of the parent or guardian to provide supervision for their children while walking to, from, or waiting at the designated bus stop or while walking to and from school if they reside in the designated non-transported area." The [redacted] request was therefore denied.

The [redacted] appealed Mr. O'Meally's decision to Michael Hardesty, Director of Transportation, by letter dated July 27, 2011, stating they believe it unsafe to stand at the bus stop and asking that the bus stop to be relocated to [redacted] Street or [redacted] Alleyway. Mr. Hardesty reviewed their letter, visited the bus stop and surrounding neighborhood, as well as Board policies and transportation procedures related to bus stops. He determined the bus stop was safely located at the northwest corner of [redacted] Street and [redacted] Street. There was no record of

bus accidents or bus stop incidents at the bus stop at issue. He noted that same side service is provided for the morning and afternoon bus runs. He told the [redacted] they could appeal his decision to the Superintendent.

On September 28, 2011, the [redacted] wrote to Superintendent Steve Guthrie, explaining that a registered sex offender lives near the bus stop on [redacted] Street and asking that the bus stop be moved to [redacted] Street. Mr. Guthrie advised on September 30, 2011, that he would treat their communication as an appeal, and assigned the case to Mr. O'Neal to serve as his Designee.

On October 11, 2011, Mr. O'Neal wrote to the [redacted] advising he was upholding the earlier decision not to move the bus stop. He explained he reviewed the file, including the location and map of the area, the process used to decide the placement of the bus stop, and the pertinent policies, regulations and all correspondence on the matter. He also visited the bus stop and walked the neighborhood streets. Mr. O'Neal noted that while the original appeal appeared to be based on the physical location and safety of the stop vis-à-vis the traffic, the appeal to the Superintendent was based on a new issue that a registered sex offender lives near the bus stop. He explained even if a decision was going to be made to move the bus stop, it would not be moved into the [redacted] neighborhood as the streets were too narrow for a full-length bus to traverse. Also, Mr. O'Neal explained the [redacted] could take advantage of two additional nearby bus stops and so they would not have to use the existing stop at [redacted] Street and [redacted] Street. Addressing the concern about the location of the residence of a registered sex offender, Mr. O'Neal said the CCPS was not dismissive of the parents' concerns, but said it is up to parents to determine how much supervision to provide to their children at the bus stop.

The [redacted] responded by writing to Superintendent Guthrie on October 11, 2011, stating even if they were to take advantage of one of the other available stops, they would still have to go by the home of the sex offender. More correspondence between the [redacted] and Superintendent Guthrie followed. Mr. Guthrie explained he had personally visited the bus stops in the area and reviewed all of the information in the case. The [redacted] responded on October 13, 2011, advising of their intent to appeal. The instant appeal was filed on October 17, 2011.

ANALYSIS

The [redacted], bear the burden in this matter of demonstrating that the decision of the Superintendent's Designee denying their request to move the bus stop was arbitrary, unreasonable, or illegal. A decision may be arbitrary or unreasonable if: a) it is contrary to sound educational policy; or b) a reasoning mind could not have reasonably reached the conclusion the Superintendent or his Designee reached. A decision may be illegal if it is one or more of the following: a) unconstitutional; b) exceeds the statutory authority or jurisdiction of the Superintendent; c) misconstrues the law; d) results from an unlawful procedure; e) is an abuse of discretionary powers; or f) is affected by any other error of law. See COMAR 13A.01.05.05.

The [redacted] have advanced two reasons why the denial of their request to move their bus stop is arbitrary or unreasonable.: (1) The existence of dangerous traffic conditions at the current location of the bus stop at [redacted] Street and [redacted] Street and (2) the proximity of the bus stop at [redacted] Street and [redacted] Street to the residence of a registered sex offender. The [redacted] have not advanced an argument that the decision of the Superintendent's Designee is illegal within the meaning of COMAR 13A.01.05.05.

I. The Current Bus Stop is Not Dangerous Based on Traffic Conditions

As noted above, the first contended that the bus stop should be moved to Street and Lane due to dangerous traffic and the possibility of accidents on Street and Street. They said they have seen vehicle collisions at or near the bus stop. The bus stop and the surrounding neighborhood were inspected by John O'Meally, Michael Hardesty, and Jon O'Neal at each stage of this appeal. Each determined the current stop was not dangerous. There is a sidewalk from the ' home to the bus stop, which is 499 feet from their home and no hazardous walking conditions, in compliance with *Administrative Regulation EEAC B.1. and D.2.* The sight distance along Street at Street is adequate for traffic going in both directions. There is an adequate waiting area with a curbed sidewalk at the current stop consistent with *Administrative Regulation EEAC B.2.* Same side service is provided for the morning and afternoon bus runs so children do not have to cross the road. Responding to the contention that there have been vehicle collisions at or near the bus stop, there has never been a bus accident or a child injured at the bus stop, which stop has been in existence for many years. The speed limit on Street is 20 miles per hour and on Street is 30 miles per hour.

Based on the information above, it is the opinion of this Board that the bus stop is not dangerous based on hazardous road and traffic conditions. See *Angela Brown v. Howard County Board of Education*, MSBE Op. No. 99-14 (March 30, 1999) (denying parents' request for bus stop change where parents failed to prove that the local school board acted arbitrarily, unreasonably or illegally in its decision to deny a requested bus stop relocation); *Doreen Robinson v. Board of Education of Howard County*, MSBE Op. No. 98-44 (July 29, 1993) (rejecting parent's contention that the location of the bus stop jeopardized student safety); *Judy Hanson v. Board of Education of Howard County*, 7 Op. MSBE 709 (1997) (finding bus stop

along State highway to meet the acceptable level of safety); *Lane v. Howard County Board of Education*, 6 Op. MSBE 587, 588 (1993)(rejecting allegations of unsafe walking route); *see also Deborah Holten v. Montgomery County Board of Education*, MSBE Op. No. 04-08 (February 25, 2004) (upholding elimination of bus transportation for students residing within the approved walking distances from community to and from local middle and high schools); *Michael P. Callahan v. Howard County Board of Education*, MSBE Opinion No. 03-15 (March 25, 2003) (upholding elimination of bus transportation to St. John’s Elementary School for children residing within the one mile walking zone).

II. The Nearby Residence of a Registered Sex Offender Does Not Make the Bus Stop Unsafe

The revised their appeal when they learned a registered sex offender lives near the bus stop at Street and Street. Their amended appeal seeks a bus stop location change due to the location of a sex offender’s residence. While this is of course important to parents and all community members, it does not make the bus stop unsafe. Consider that one of the purposes of having a sex offender register his current address is so the public will know where he lives and parents can be vigilant in supervising their children. Additionally, registered sex offenders are free to walk and drive around their neighborhoods. So, to move a bus stop down a street in reality does not make a child safer. Situations like this confirm the appropriateness of the Board’s policy: “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 bus stop or while walking to, from, or waiting at the designated bus stop.” *Board Policy EEAC*.

This very issue was the subject of an Opinion issued by the Maryland State Board of Education in *Benoit v. Carroll County Board of Education*, MSBE Op. No. 04-24 (2004). There,

the parents were concerned about their safety as there were five registered sex offenders within a 5-mile radius from their home. (Also, there were no sidewalks between home and the bus stop and had to walk 712 feet on the graveled shoulders or on other people's lawns.) Referring to the five nearby registered sex offenders, the State Board explained "it is the parents' responsibility to provide supervision when a child walks to and from the bus stop." (As to the physical walk, the State Board explained there was an adequate walking area to and from the existing bus stop on gravel shoulders or lawns.)

Based on the information above, it is the opinion of this Board that the existing bus stop does not present dangers warranting a movement of the bus stop.

The were advised there are two other established, nearby bus stops that their may use. The Board reiterates this option for the


STANDARD OF REVIEW

This Board examined whether the decision of the Superintendent, through his designee, was arbitrary, unreasonable, or illegal. As there has been compliance with Board Policy, the Administrative Regulations, and there is no evidence or arbitrariness, unreasonableness, or illegality, it is the opinion of this Board that the Superintendent's decision should be affirmed.

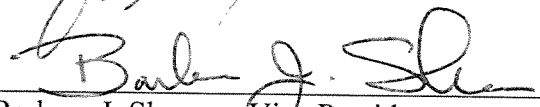
DECISION

For the reasons discussed above, this Board affirms the decision of the Superintendent's Designee upholding the decision not to create a new bus stop. Should they choose to do so, Mr. and Mrs. _____ 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.

01/11/2012
Date




Jennifer A. Seidel, President



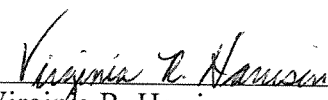
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