

BEFORE THE MARYLAND STATE BOARD OF EDUCATION

v.

CARROLL COUNTY BOARD OF
EDUCATION

*
*
*
*
*
*
*

* * * * *

REPLY TO APPELLANT'S RESPONSE TO THE RESPONSE TO APPEAL

Appellee, Board of Education of Carroll County (the "Local Board", "Carroll County Public Schools", or "CCPS"), by its attorneys Rochelle S. Eisenberg and Pessin Katz, Law, P.A., files this Reply to Appellant's Response to the Response to Appeal. To aid in the understanding of the Reply, the Local Board will repeat each of the Responses.

- Memorandum in Response to Appeal Page 2: Ms. Eisenberg stated that "The width of our roadway in places is less than 14 feet wide and some areas less than 12 feet wide".
 - **This is untrue. Our roadway is 24 feet wide at the intersection of Route 30. The roadway narrows to 13 feet wide past our home and would not be traveled by the bus if the proposed turnaround area on our property was utilized.**

CCPS REPLY: *The CCPS Transportation Services Department ("Transportation") will only consider existing roadways and turnarounds in interpreting transportation eligibility for a bus stop. Only Carroll County and State - maintained roadways and turnarounds are acceptable for school bus travel. The assertion by the that they would create their own*

turnaround on their property cannot be relied upon by CCPS. The turnaround does not presently exist and there is no guarantee that the turnaround, if created, would be maintained by the County.

- **Page 3-4:** Ms. Eisenberg lists the Administrative Regulations ("AR") and Board Policies EEA and EEAC that are used to determine a bus stop. ...

- **We continue to claim that these regulations are being applied arbitrarily. They are breaking these regulations currently at the bus stops and bus routes listed below.**

- Bus 186 and 163 (buses our children ride) travel Garrett Rd which narrows to 13-15 feet in several locations and Mt Ventus Rd which narrows to 15-16 feet. On Mt. Ventus Rd the farthest bus stop where a child is picked up or dropped off is only 0.9 mile from the intersection of Hanover Pike and Mount Ventus Rd (2684 Mt Ventus). To accomplish this a BACKING TURNAROUND is performed by the bus. See attached printout of Bus 186 route from CCPS and photographs. (arbitrary application of regulations-a, b, c, e, & f)

CCPS REPLY: *Schools buses have been routed on Garrett Road out of necessity to avoid buses having to travel into Pennsylvania and then turnaround in an unsafe location. While the width of Garrett Road is less than the preferred travel width of 20 feet, Transportation must make occasional exceptions to its 20 foot wide road preference when necessary for student and bus safety. With regards to the Mt. Ventus Road bus route and turnaround, this bus route has*

been established to service students who reside along Mt. Ventus Road, a length of 1.3 miles from Md. Rt. 30 to the turnaround location near the Pennsylvania line. CCPS buses travel Mt. Ventus Road for all three grade levels (elementary, middle and high). While there may not currently be students riding buses 186 and 163 that reside more than 1.0 mile from Md. Rt. 30, CCPS traditionally has had students needing transportation on the portion of Mt. Ventus Road #1 living greater than 1.0 mile from Md. Rt. 30. Transportation does not routinely change bus routes based on current ridership when it is likely that future ridership will require school bus service.

- Bus 196 travels onto Young Rd only 0.3 mile to a BACKING TURNAROUND.
- Mr. O'Neal claims, "This bus turn-around was created so the elementary student would not have to cross the railroad tracks located on Miller Station Road, which are viewable in the image above but not provided by the in their documentation." (Page 4 Superintendent's Response in Appeal-November 19, 2018)
- This statement is false. Bus 196 starts at 3611 Young Rd with a backing turn around, then continues to the intersection of Young Rd and Miller Station Rd, and makes a right turn to continue to 3895 Miller Station Rd. In order for the bus to cross the railroad tracks it would have to make a left turn out of Young Rd. The bus never crosses the railroad tracks, thus the students would never have to cross the railroad tracks to get on or off

the school bus. See attached printout of Bus 196 route from CCPS and photographs. (arbitrary application of regulations-b, d, e, & f)

CCPS REPLY: *The elementary bus (196) begins its route on Young Road at a turnaround created for the beginning boundary of the Ebb Valley Elementary School district. This turnaround location serves the purpose of eliminating the need for the elementary bus to cross the railroad tracks at Millers Station Road, saves time and miles, and the need to create another turnaround outside of the Ebb Valley Elementary School boundary. Both the middle and high school buses use the Young Road turnaround to prevent a potentially dangerous bus stop that would be adjacent to the railroad crossing at Millers Station Road.*

- Bus 103 travels to 5203 N Church St to a **BACKING TURNAROUND** that is only 0.6 mile from intersection of Lineboro Rd and N Church St. Based on the CCPS published routes this would be a same side pick-up for Bus 103 in the AM. If a same side drop-off could not be executed by Bus 103 the students could use Bus 91 which passes this intersection and could accommodate same side service in the AM & PM. See attached CCPS Bus 103 route and photos. (arbitrary application of regulations -b, d, e, & f)

CCPS REPLY: *Similar to CCPS' response to the Mt. Ventus Road #1 bus route, bus 103 has been routed along N. Church St. in Lineboro to accommodate residences that are a distance of 1.0 mile or more from Lineboro Road.*

- Bus 44 travels Black Rock Rd which is only 1 mile long and narrows to 11' 3" in six locations. All three bus stops are located 0.3 mile in from Traceys Mill Rd intersection.
 - Mr. O'Neal claims, "The bus does cross Black Rock Road. While the road is not ideal for passage, in this case, the transportation Services Department chose this alternative to avoid having the bus make multiple turn-arounds involving backing maneuvers, both on Traceys Mill and on Wentz Rd. In maintaining the balance between student safety and efficiency, the Transportation Services Department determined that crossing Black Rock Road is the better alternative to having the bus make two backing maneuvers." (Page 3 Superintendent's Response in Appeal- November 19, 2018) The Transportation Services Department is arbitrarily deviating from the regulations and allow backing maneuvers in some situations, while stating backing maneuvers must be avoided in others. Every backing maneuver listed above is against regulations.
 - A backing maneuver is only to be used when a student is greater than one mile from a bus stop. None of the stops listed above meets that requirement, yet a backing turnaround has been approved by the Transportation Services Department.
 - Regulations would only permit a non-backing turnaround if a student must walk a half mile or more. Again the Transportation Services

Department is arbitrarily applying the regulations and performing backing turnarounds. (arbitrary application of regulations a, b, e, &f)

CCPS RESPONSE: *CCPS routing practice attempts to avoid bus backing maneuvers whenever possible and practical. However, in many instances for both efficiency and student ride time, backing must be utilized. CCPS Board Policy/ Administrative Regulation EEAC - Bus Routes and Stops, states that "a turnaround may be established if a student resides greater than 1.0 mile from the nearest bus stop..." This policy should not be interpreted as preventing CCPS Transportation from creating a bus backing location less than 1.0 mile from an established bus stop for the previously stated rationale.*

- Bus 91 picks up students on Swiper Drive 0.1 mile from the entrance to Ebb Valley Elementary School. Bus 91 also travels off Lineboro Rd to loop around Valley Vista Court and Viewridge Circle. No student who lives in this court would be required to walk more than 0.4 mile to a bus stop located at Lineboro Rd and Valley Vista Court. Bus 91 established route would permit same side pick-up and drop-off at intersection of Lineboro Rd & Valley Vista Court. Why is the Transportation Services Department arbitrarily breaking the walking distance requirements for these students? See attached CCPS Bus 91 route and photographs. (arbitrary application of regulations-d, e-&f)

CCPS RESPONSE: *Transportation established a bus stop on Swiper Drive to avoid having students walk through parent and school bus traffic approaching Ebb Valley Elementary Students. Currently nine Ebb Valley Elementary School students board the bus at Swiper*

Drive. The Valley Vista Court and Viewridge Circle bus route and stops were created many years ago. While not meeting current policy, these bus stops do avoid having students gather and wait along Lineboro Road. There are currently eleven Ebb Valley Elementary School students using the Valley Vista Court and Viewridge Circle bus stops.

- "There are no recorded school bus incidents or accidents at the current bus stop location which has existed for a long period of time." This quote is regarding the bus stop at Harvey Yingling and Route 30 (Mr. Hardesty's denial of our Appeal August 21, 2018)
- This is not true. The stop sign at Harvey Yingling and Route 30 has been run over at least two times in the last three years we have lived here. The stop sign area is exactly where our children are being asked to stand while waiting for the bus.
- Our neighbors Mr. & Mrs. LeMay submitted a bus stop survey in January 2017. Their survey contained photographic evidence of a car seat that flew off of a passing vehicle and was then hit by a vehicle going in the opposite direction along Route 30. This car seat almost hit them and their child while waiting at the bus stop. What kind of injury could that have caused to a child? The car seat was hit by a vehicle going 50-60 mph. See attached photos.
- The bus has been passed by all types of vehicles while it was stopped with red lights flashing. The bus driver herself voiced concern to us over the safety of the bus stop location.

- The bus stop had no choice but to be located at Route 30 until the road was paved in the summer of 2017. Now the road is paved. Why can't it be used?

CCPS REPLY: *There have been no recorded accidents involving a school bus and school children at the Harvey Yingling Rd. and Md. Route 30 bus stop. After meeting with and other parents at the Harvey Yingling Rd./Md. Rt. 30 bus stop, and hearing their concerns about the perceived unsafe bus stop at Harvey Yingling Rd and Md. Rt. 30, Transportation agreed to create an alternative bus stop location at a bus turnaround off of Rt. 30 (Harvey Yingling Rd. and Kridlers Schoolhouse Rd.). The bus stop at Harvey Yingling Rd./Md. Rt. 30 remains for parents wishing to continue using this bus stop.*

- The highlighted sections above point out the arbitrary and unreasonable excuses we have been given to deny our requested route extension. And the arbitrary and unreasonable excuses they later used to grant a very similar extension to our neighbor.

- Mr. Hardesty stated on August 30th that he could not have a bus pick up the five children that live on Harvey Yingling Rd due to time and financial limitations. Yet on October 12th he was able to accomplish a similar extension for our neighbors 2 children. The reasons he used to deny us a bus extension in August suddenly didn't exist in October?

- Mr. O'Neal stated on October 1st that he tried to locate a stop for us that would not be on Route 30, but was unable to do so.

- Amazingly, On October 12th we were notified by Mr. O'Meally, a new turnaround location was found that was not located on Route 30. This new location was only developed for another resident who brought up our neighborhood concerns at the public school board meeting.
 - COMAR 13A.01.05.05- "b) a reasoning mind could not have reasonably reached the conclusion the superintendent or his Designee reached."
 - Mr. O'Meally clearly found a solution on October 12, 2018 that Mr. O'Neal was unable to "reason" on October 1, 2018.
 - Why was this new turnaround not an option for us when we requested a safer bus stop in August? Why was our children's safety not a priority? This new bus stop was created to protect the safety of our neighbors children, and only by default we are allowed to use it.

CCPS REPLY: *Transportation has the responsibility to create adequate, timely, cost efficient, and safe bus routes for all transportation-eligible students within the guidelines of existing CCPS Board policies, administrative regulations, and state and federal pupil transportation guidelines and regulations. First, a bus turnaround could not be established for the : at a turnaround location at their residence that does not exist. Secondly, the provision of bus service along Harvey Yingling Road would require either a bus doing two loops through the Harvey Yingling Road/ Kridler's Schoolhouse Rd./ Garrett Rd./ Md. Route 30 (north and southbound between Harvey Yingling Road and the Md./ Pa. line. (Same -side service is required for both the north and southbound sides of Md. Route 30) Or, a second*

option would require a second school bus to service these areas. Both options increase transportation costs and travel time to/from school.

Prior to the 2018-2019 school year, Harvey Yingling Road was an unpaved gravel roadway with the school bus stop for elementary, middle and high school students living on Harvey Yingling Road established at the intersection of Harvey Yingling Road and Md. Rt. 30. This stop was successfully utilized by residents of Harvey Yingling Road for many years.

- This new stop at Kridler's Schoolhouse Rd and Harvey Yingling Rd was deemed necessary by the Transportation Department based on "safety considerations" and that it eliminated the backing maneuver previously accomplished along Garrett Rd.
 - What "safety considerations" and AR's did they use to determine that our neighbors deserved a new bus extension and we did not?
 - Our neighbors were only walking 0.5 mile to the established bus stop and we continue to be required to walk 0.7 mile. The walking conditions are exactly the same for both families-no sidewalks, low visibility, and requires walking in the roadway.
 - Eliminating the backing maneuver on Garrett Rd was used as a reason for the new extension, but why? This turnaround has been used for a long period of time with no recorded school bus incidents or accidents. (This is the same reason Mr. Hardesty used above as his reason for not changing our bus stop away from Route 30.)

- My examples above show that backing maneuvers are already used frequently, usually by breaking the distance requirements from bus stops stated in the regulations. The Garrett Rd turnaround was within the regulations, as it was used so children residing on Garrett Rd did not have to walk over a mile to Route 30.

CCPS REPLY: *Transportation evaluates each bus stop request independently from other bus stop requests received. The bus stop request for the Kridler's Schoolhouse Road address met Transportation Board Policy EEAC and provided an opportunity for CCPS Transportation to create a bus turnaround at the intersection of Harvey Yingling Road and Kridler's Schoolhouse Road; thereby, providing both the resident of Kridler's Schoolhouse Road and the and other residents along Harvey Yingling Road an alternative bus stop. (The maintained that the bus stop at Harvey Yingling Road and Md. Route 30 was unsafe).*

GENERAL COMMENTS: The contend that Transportation has been arbitrary and unreasonable in addressing their request for a bus stop at their residence. The opposite is true. They offer to build a turnaround at their expense on their personal property so that they meet Local Board policy allowing for a bus route extension. Board policy states that a bus extension may be created if a student resides .5 mile from an existing bus stop if the bus does not have to use a backing procedure. CCPS' interpretation of this policy is that Transportation does not have to establish a bus stop/ route extension in circumstances where the new bus stop/ route extension would create a potentially dangerous stop, require the bus to travel non-maintained roadways, or creates an inefficiency or unreasonable routing issue when looking at the

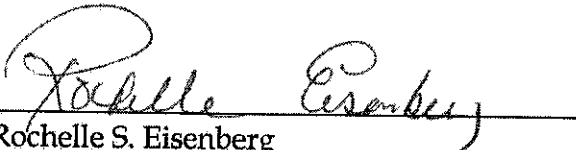
entire student transportation plan for a specific school or area of the county. In the case, a second bus or a bus that would be required to make multiple passes through the same neighborhood would be required to provide service along Harvey Yingling Road. In addition, the do not presently have an existing turnaround for Transportation to examine as to its appropriateness and suitability for a bus turnaround location. The residence without an approved turnaround location does not meet current Local Board policy necessary for a bus route extension.

Finally, prior to the paving of Harvey Yingling Road in 2018, the residents living along Harvey Yingling Road successfully used the existing bus stop at the intersection of Harvey Yingling Road and Md. Route 30. The currently utilize the bus stop created at the triangle intersection of Harvey Yingling Road and Kridler's Schoolhouse Road as created by Transportation earlier this school year. The walking distance for the student from the residence is approximately the same distance to the new bus stop at Kridler's Schoolhouse Road as it is to the previously established bus stop at Harvey Yingling Road and Md. Route 30. Transportation provides bus stops for eligible students in accordance with CCPS Board policies and procedures. Bus stops are not created/provided for all students at their residences. In addition to general Board policy, Transportation considers many factors in establishing school bus stop locations. These factors include road conditions, site distance, adequate walking paths, adequate student waiting area, and overall transportation routing efficiency. One can always find exceptions to the literal interpretation of Local Board policy as written. However, in the case of the

appeal, the absence of an existing bus turnaround, the inefficiency created by requiring an additional bus or bus run through the same neighborhood, and the creation of a new bus stop that eliminated the safety concern for the existing bus stop at Md. Route 30, provides adequate justification for Transportation to deny the request for a bus stop at their residence.

CONCLUSION

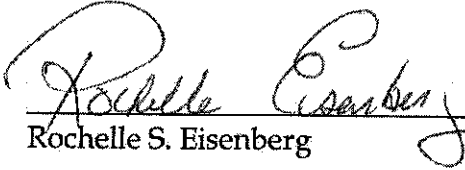
The Local Board seeks a decision from the Maryland State Board of Education that there is no basis in the record upon which the State Board might determine by a preponderance of the evidence that the decision denying the request for a new bus stop is either arbitrary, unreasonable, or illegal. For the foregoing reasons, the Local Board seeks affirmation of its decision.


Rochelle S. Eisenberg
Pessin Katz Law, P.A.
10500 Little Patuxent Parkway, Suite 650
Columbia, MD 21044
(410) 339-6773-direct dial
(301) 980-0715-mobile
reisenberg@pklaw.com

Counsel to the Carroll County Public Schools

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, on the 5th day of April, 2019, that a copy of the foregoing Reply to Appellant's Response to the Response to Appeal was mailed first-class, postage prepaid to:


Rochelle S. Eisenberg

2491146