

BEFORE THE BOARD OF EDUCATION OF CARROLL COUNTY

IN THE MATTER OF

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DECISION AND ORDER

Appellant _____ has appealed the January 13, 2017, decision of the Superintendent’s Designee, Assistant Superintendent of Administration Jonathan D. O’Neal, denying _____ request that the bus stop located at the intersection of Route 97 and Plankwood Drive be relocated to the cul-de-sac at the end of Plankwood Drive. In denying _____ request, Mr. O’Neal upheld the previous decisions by the Transportation Services Department Area Supervisor, John D. O’Meally, on September 28, 2016, and, subsequently, by Michael J. Hardesty, Director of Transportation on November 29, 2016. The appeal now comes before the Board of Education of Carroll County (the “Board”) 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 _____ as well as the documentation submitted by Mr. O’Neal in response to _____ appeal. Pursuant to its review, the Board has determined that 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

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); *See also, Holten v. Montgomery County Board of Education*, MSBE Op. No. 04-08 (February 25, 2004).

determined that the decision of the Superintendent's Designee denying [redacted] request to have the bus stop for her child moved to the cul-de-sac on Plankwood Drive was neither arbitrary, unreasonable nor illegal.² Accordingly, the Board shall affirm the decision of the Superintendent's Designee.

FACTUAL BACKGROUND

On September 21, 2016, [redacted] submitted to the Department of Transportation Services a Bus Stop Survey which, in pertinent part, indicated the current bus stop for Bus #11 located at the intersection of Plankwood Drive and Route 97 was dangerous due to (1) the lack of a shoulder or a sidewalk, (2) its position at the bottom of two hills, and (3) due to the traffic volume and speed on Route 97. [redacted] proposed that the bus stop be moved to the cul-de-sac at the end of Plankwood Drive near her home. On September 28, 2016, John P. O'Meally, Supervisor of the Transportation Services Department responded by letter to [redacted] Bus Stop Survey. In his letter, Mr. O'Meally advised that CCPS had reviewed [redacted] request and conducted an investigation including an on-site visit on September 28, 2016. Mr. O'Meally noted that the existing bus stop for Bus #11 servicing Runnymede Elementary School is located in the deceleration lane for Plankwood Drive on southbound Route 97 nearly 1/3 of a mile from the location [redacted] had requested. In determining that [redacted] request should be denied, Mr. O'Meally noted, (1) as long as walking conditions were safe, students may be required to walk up

² 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.

to one mile to a bus stop and (2) there were no hazardous conditions precluding child from walking to, and waiting at, the currently established bus stop.³

On October 6, 2016, [redacted] sent Michael J. Hardesty, Director of the Transportation Services Department, an e-mail indicating she wished to appeal Mr. O’Meally’s decision. On October 11, 2016, Mr. Hardesty responded by e-mail and advised [redacted] to call him by telephone to explain her concerns. On October 17, 2016, [redacted] contacted Mr. Hardesty again by e-mail and inquired how she might file an appeal. On October 17, 2016, Mr. Hardesty responded by e-mail indicating that the first level of appeal would be directed to him and that [redacted] may submit her appeal in writing or by e-mail if she wished. On November 17, 2016, [redacted] sent Mr. Hardesty an e-mail which attached a letter and several photographs. In her letter, [redacted] expressed concern about (1) the speed and volume of the traffic passing the current stop on Route 97 and (2) the location in which Bus #11 currently turns around on John Owings Road at the intersection of Belvedere Road. [redacted] included with her letter several photographs which depict Bus #11 turning around on Belvedere Road and the curve in John Owings Road prior to the area on Belvedere Road where Bus #11 turns around. On November 22, 2016, Mr. Hardesty confirmed receipt of [redacted] appeal and advised he would respond as soon as he completed his investigation.

On November 29, 2016, Mr. Hardesty sent [redacted] a letter denying her appeal. In evaluating [redacted] appeal, Mr. Hardesty advised that he had visited the location of the bus stop on two separate occasions, evaluating the existing bus route and [redacted] request relative to Board policies and administrative regulations. Mr. Hardesty noted that Board Policy EEAC and

³ See Board Policies EEA and EEAC.

Administrative Regulation (A)(5) provide that a bus route may be extended if a student resides greater than one-half mile from an existing stop and the bus does not have to use a backing procedure. Further, Mr. Hardesty noted that that under Policy EEAC it is the responsibility of the parent and/or guardian to provide supervision for their children while walking to or from the bus stop. Mr. Hardesty noted that the bus stop extension of .29 miles requested by [redacted] did not satisfy the foregoing criteria.

In his letter, Mr. Hardesty further noted that [redacted] had (1) alleged that the location of the current stop on Route 97 is unsafe and (2) that school bus turnaround on John Owings Road was unsafe and in violation of Board policy in that Belvedere Road was a private road. In reference to the location of the existing stop on Route 97, Mr. Hardesty stated that CCPS' Transportation Department has determined over the course of many years that a school bus traveling southbound on Route 97 can safely pickup students by activating its amber lights at the crest of the hill approximately two hundred yards prior to the intersection of Plankwood Drive, moving to the right into the deceleration lane and activating its red lights as the bus stops in the deceleration lane. Mr. Hardesty further noted that the volume of southbound traffic on Route 97 (15,083 daily traffic count as of March 2015) coupled with the 50 MPH speed limit on this portion of Route 97 supported the conclusion that the current stop was appropriately and safely situated. In reference to the issue raised by [redacted] regarding the turn around on Belvedere Road, Mr. Hardesty indicated that he had concluded that the current turn around location was the safest available given the low traffic volume on John Owings Road and CCPS' positive experience using this turn around location over the course of many years.

Ultimately, Mr. Hardesty determined that the current bus stop on Route 97 was in accord with applicable Board policy and, based on his professional experience and CCPS's history of

using the stop, was in accord with the interests of student safety. For the foregoing reasons, Mr. Hardesty denied _____ appeal.

On December 23, 2016, _____ : sent a letter to Superintendent Stephen H. Guthrie appealing Mr. Hardesty's determination. On January 3, 2017, the Superintendent designated Assistant Superintendent of Administration, Jonathan D. O'Neal, to investigate the matter and render a decision.

On January 13, 2017, Mr. O'Neal issued a decision denying _____ appeal to the Superintendent. In his letter, Mr. O'Neal indicated that he (1) had reviewed the entire file including pertinent Board policies and administrative regulations, (2) had visited the site on two occasions to examine the streets, walking area, distance, and assigned stop location, and (3) had followed the bus on its route and observed its turnaround on John Owings Road at Belvedere Road. In determining that the current bus stop on Route 97 was appropriate, Mr. O'Neal noted that the stop was situated in accord with Board policy and that stops of this type are common throughout the county. Mr. O'Neal also noted that there was appropriate road signage on Route 97 which gave southbound motorists notice of the upcoming bus stop. In reference to the turnaround on John Owings Road, Mr. O'Neal noted that the bus had ample space to turn around and the traffic volume on John Owings Road was low. Finally, Mr. O'Neal noted that, if the stop were relocated as _____

has requested, Bus #11 would have to make a left turn across both lanes of Route 97 to return northbound along Route 97, whereas Bus #11 currently only had to make a right turn on to

northbound Route 97 when exiting John Owings Road. Based on the foregoing, Mr. O'Neal determined that existing stop was appropriately situated and denied [redacted] appeal.

On January 19, 2017, [redacted] appealed the decision of the Superintendent's Designee to the Board of Education for Carroll County. On February 3, 2017, [redacted] submitted an Appeal Information Form. In her Appeal Information Form, [redacted] contends that the turnaround at Belvedere Road requires the bus to unlawfully cross the double yellow lines on John Owings Road. For this reason, [redacted] requests that the stop be moved to the cul-de-sac at the end of Plankwood Drive where the bus can turn around without having to execute a three-point turn. In support of her appeal, [redacted] submitted several annotated photographs, as well as, copies of the documentation and correspondence previously submitted to Mr. O'Meally, Mr. Hardesty, and Mr. O'Neal.

On February 23, 2017, Mr. O'Neal, on behalf of the Superintendent, submitted a letter responding to [redacted] appeal to the Board. In reference to [redacted] argument that the current bus route is illegal because Bus #11 crosses the double yellow lines where it turns around on John Owings Road, Mr. O'Neal, citing to the Maryland Motor Vehicle Administration's *Maryland Driver's Manual*, notes that double yellow lines prohibit passing but do not prohibit a motorist from making a left turn. In support of the Superintendent's findings regarding the existing bus stop on Route 97, Mr. O'Neal cited the rationale advanced in [redacted] previous appeals, as well as, the fact that the current stop has been in place for over a decade without issue.

On February 27, 2017, [redacted] was sent a letter by the Board's Executive Assistant which forwarded copies of the information submitted by the Superintendent's Designee and advised [redacted] that she had five days to submit any additional documentation she wished to

be considered in rebuttal. On March 2, 2017, [redacted] sent by e-mail a letter attaching Sections 21-602 and 21-307 of the Transportation Article of Annotated Code of Maryland as well as pp. 463-482 of the *Maryland Driver's Manual* (December 2011).⁴

STANDARD OF REVIEW

In reviewing decisions of Superintendent, the Board of Education of Carroll County 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, an appellant challenging a policy decision of the Superintendent or their designee bears the burden of proving a decision arbitrary, unreasonable, or illegal by a preponderance of the evidence. COMAR 13A.01.05.05D.

ANALYSIS

[redacted] has advanced two discrete challenges to the decision of the Superintendent's Designee. First, that the decision to keep the bus stop for Bus #11 situated at the intersection of Plankwood Drive and Route 97 is arbitrary and unreasonable due to safety concerns. Second, that the current route assigned to Bus #11 is unlawful and unsafe because Bus #11 has to cross the

⁴ The edition of the *Maryland Driver's Manual* cited by [redacted] in this decision has been superseded by August 2016 edition of the *Maryland Driver's Manual*.

[redacted] has been superseded by August 2016 edition of

double yellow lines on John Owings Road when it turns around by pulling into, and then backing out of, Belvedere Road. Each of the foregoing issues is addressed in detail below.

The current bus stop at Route 97 and Plankwood Drive allows the bus to stop off the main roadway in the deceleration lane. The stop is accompanied by signage warning southbound motorists of the approaching stop. Bus #11 is able to turn on its amber lights at the crest of hill and warn approaching motorists that the bus is stopping prior to moving to the right into the deceleration lane. Bus #11 then turns on its red flashing lights and stops to execute a pickup or dropoff. The current stop allows Bus #11 to rejoin traffic on Route 97 after its stop by accelerating and merging with southbound traffic. Because Bus #11 currently turns around on John Owings Road, a road with a low traffic volume, prior to turning right to return northbound on Route 97, a left turn across two lanes of traffic on Route 97 is avoided. Were the stop to be moved as

has requested to the cul-de-sac at the end of Plankwood Drive, the new route for Bus #11 would require the bus to turn left across two lanes of traffic on Route 97 when exiting Plankwood Drive. To be sure, the current route necessitates a turnaround on John Owings Road which involves a backing maneuver. However, administrators in the Transportation Department have determined that turning around on John Owings Road at Belvedere Road is safer and preferable to turning left out of Plankwood Drive across two lanes of traffic on Route 97. Despite arguments to the contrary, based on the record before us, we are unable to reach the conclusion that the route and safety analysis undertaken by the Department of Transportation Services has yielded an unreasonable and/or arbitrary result.

The administrative regulations for Board Policy EEAC vest area supervisors with authority to establish bus routes and stops. Although routes are to be planned to “minimize or eliminate the need for backing,” buses that need to back up, may do so at a safe location with adequate turning

space. The administrative regulation implementing Policy EEAC states that if a student resides more than one mile from the nearest bus stop a turnaround may be established. Further, a bus route may be extended if a student resides more than one-half mile from an existing stop and no backing procedure will be needed to turn around.

Here, [redacted] lives only a one-third of a mile from the existing stop and there is no dispute that the walking route to the current stop is safe. Further, the existing stop which is off the roadway in the deceleration lane is consistent with other stops in the county, and has been used for many years without incident. Based on these facts, we can discern no basis for disturbing the decision of the Superintendent's Designee. At best, [redacted] has demonstrated the existence of a potential alternative reasonable transportation route for Bus #11. However, the existence of a reasonable alternative route, absent a showing that the current route is unreasonable and/or arbitrary because of safety concerns, is insufficient to merit reversal of the decision of the Superintendent's Designee. *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 Op. 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); *Resalee C. v. Harford County Bd. of Education*, Op. No. 09-14 (April 28, 2009)(upholding the denial of a request to move a bus stop closer to student's home because parents were unable to see children at current bus stop from their residence).

_____ also contends that the turnaround location for Bus #11 on John Owings Road at the intersection of Belvedere Road is unlawful because Bus #11 crosses the double yellow lines when backing out into John Owings Road. In support of this proposition, _____ cites Sections 2-602 and 21-307 of the Transportation Article of the Annotated Code of Maryland. Section 2-602 prohibits motorists making u-turns or turning around if the motorist cannot see approaching traffic for at least 500 feet in either direction. Section 21-307(d), in pertinent part, indicates "[t]he driver of a vehicle may drive across the left side of the roadway in a no passing zone while making a left turn, but only if it is safe to do so." The proposition that motorists may cross double yellow lines in order to make turns is further supported by the statement in the *Maryland Driver's Manual* at p.17 which states "[l]eft turn maneuvers across [double solid yellow lines] are permitted."

Based on the foregoing, it is clear that vehicles may lawfully cross double yellow lines in order to turn around or make left turns; however, a motorist turning around must do so in (1) a safe location and (2) a location with visibility of at least 500 feet in each direction. _____ has submitted pictures of the location in which Bus #11 turns around at the intersection of John Owings Road and Belvedere Road; however there is no evidence of a measurement of the site distance each way on John Owings Road upon which we might conclude that visibility is inadequate. Based

on the record before us, we are unable to determine by a preponderance of the evidence that the location where Bus #11 turns around on John Owings Road is either illegal or unsafe.

CONCLUSION

Having thoroughly reviewed the entire record, including the documentation submitted in reference to [redacted] previous appeals, the Board has determined that there is no basis in the record upon which the Board might determine by a preponderance of the evidence that the January 13, 2017, decision of the Superintendent's Designee, Assistant Superintendent of Administration Jonathan D. O'Neal, denying [redacted] request that the bus stop located at the intersection of Route 97 and Plankwood Drive be relocated to the cul-de-sac at the end of Plankwood Drive is either arbitrary, unreasonable, or illegal. For the foregoing reasons, the Board shall affirm the decision of the Superintendent's Designee. Should she choose to do so, [redacted] 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.

April 26, 2017
Date

Devon M. Rothschild
Devon M. Rothschild, President

[Signature]
Bob E. Lord, Vice President

Virginia R. Harrison
Virginia R. Harrison

Marsha B. Herbert
Marsha B. Herbert

Donna M. Sivigny
Donna M. Sivigny