

BEFORE THE BOARD OF EDUCATION OF CARROLL COUNTY

IN THE MATTER OF

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DECISION AND ORDER

Appellants (the ") have 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 in Manchester, Maryland. In denying their request, Mr. O'Neal upheld the previous decisions by the Transportation Services Department Area Supervisor, John P. O'Meally, on August 8, 2018, and Michael J. Hardesty, Director of Transportation, on August 30, 2018. 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 the as well as the documentation submitted by Mr. O'Neal in response to the appeal. Pursuant to its review, 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

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).

set forth below, the Board has determined that the decision of the Superintendent's Designee denying the _____ request to create a bus stop at their residence was neither arbitrary, unreasonable, nor illegal.² Accordingly, the Board shall affirm the decision of the Superintendent's Designee.

FACTUAL BACKGROUND

The _____ submitted a bus stop survey requesting a school bus route extension and bus stop at _____ for Bus No. 186 and Bus No. 163 servicing Ebb Valley Elementary School and North Carroll Middle School respectively. Staff visited the neighborhood on August 9, 2018. The approved stop serving that area is located along Route 30 at the intersection of Harvey Yingling Road, which is 3,699 feet or .7 miles from the _____ the requested stop. The width of the roadway in places is less than 14 feet wide with some areas less than 12 feet wide. Traffic counts were taken on Harvey Yingling Road, showing an average of fewer than 150 vehicles per day. The posted speed limit on Harvey Yingling Road is 25 miles per hour. The bus stop along Route 30 utilizes a deceleration lane for loading and unloading students with a same side service designation. After the on-site visit, Mr. O'Meally rejected the request for the school bus route extension and new bus stop. He examined the applicable Board Policies and Administrative Regulations ("AR"). Board Policies EEA and EEAC, and ARs EEA and EEAC state, in pertinent part,

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.

AR EEAC:

A. BUS ROUTES

1. Bus routes and stops are established by the area supervisor assigned to the area. The transportation AR supervisor shall design each route to maximize safety, adequacy, efficiency and economy.
2. 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. However, because of established walking distances, not all paved roads will be served by bus transportation.
3. 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. Buses should not back in a heavily populated area.
4. A turnaround may be established if a student resides greater than one (1) mile from the nearest bus stop and on a paved road that is maintained by the state, county, or municipality.
5. A bus route may be extended if a student resides greater than one-half mile (1/2) mile from an existing stop and the bus does not have to use a backing procedure. . . ."

B. BUS STOPS

1. 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.
2. Bus stops shall be located, when possible, at points where vision is unobstructed in both directions for at least 300 feet and where room is available for children to stand off of the traveled portion of the road while waiting for the bus. . . ."

Board Policy EEA, III. D. :

" . . . 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 and from school if they reside in the designated non-transported area."

AR EEA

C. EXCEPTIONS - CRITERIA FOR APPROVING EXCEPTIONS:

1. The transportation area supervisor does a stop evaluation form and looks for conditions such as:
 - a. Traffic patterns
 - b. Traffic volume
 - c. Traffic control devise/speed limit
 - d. Alignment of road
 - e. Road width and composition

- f. Road shoulders (width and composition)
- g. Walk ways (sidewalks, pathways, walkways)
- h. Sight distance
- i. Type of community (residential, industrial, commercial, agricultural)
- j. School level of students (middle, high)

Mr. O'Meally explained there were portions of the Harvey Yingling Road which were not a minimum of twenty feet wide and that a route extension exception could not be granted as the students did not have to walk more than one mile to an approved bus stop. He noted it is the responsibility of the parents to supervise their children to and from the bus stop and while waiting at the bus stop.

The _____ appealed Mr. O'Meally's decision by email, on August 21, 2018, citing concerns with traffic along southbound Maryland Route 30 and the visibility of the bus stop. The appeal was reviewed by Michael Hardesty, Director of Transportation, who visited the current bus stop location and reviewed Mr. O'Meally's rationale, Maryland regulations, Board policies and administrative regulations, and Carroll County Public School ("CCPS") procedures. He concurred with Mr. O'Meally's decision, noting that the walking path from the residence to the bus stop requires walking on Harvey Yingling Road. The posted speed limit on Maryland Route 30 is 50 miles per hour, with site visibility approaching the bus stop from the north at 643 feet and unlimited site visibility from the south. CCPS Transportation protocol calls for 100 feet of site distance for every 10 miles per hour of roadway speed limit. Therefore, Mr.

Hardesty determined that the 643 feet of site distance is adequate for a roadway with a posted speed limit of 50 miles per hour. There are no recorded school bus incidents or accidents at the current bus stop location which stop has existed for a long period of time. In a follow-up communication to the [redacted] Mr. Hardesty also explained that in addition to all of the above, granting the [redacted] request to have a bus travel through Harvey Yingling Road would require either an additional bus or having the current bus loop through the area a second time, adding time and miles to student ride times.

The [redacted] appealed Mr. Hardesty's decision to the Superintendent, Dr. Steven Lockard, who assigned the appeal to his Designee, Assistant Superintendent of Administration Jonathan D. O'Neal. Like Mr. O'Meally and Mr. Hardesty, Mr. O'Neal visited the area of the [redacted] residence. He traveled the different bus routes that transverse the general area and met with [redacted] in the family's driveway. [redacted] raised the issue of visibility. Mr. O'Neal explained that visibility was determined by CCPS using a device that replicates the height of the driver in the bus seat and therefore the view of the driver to a bus stop or a motorist to the front of the bus so that an accurate determination of visibility can be made. He noted that the Maryland State Police had been notified of the [redacted] traffic concerns and had visited the stop.

Mr. O'Neal further explained that CCPS explored other options, including rerouting the existing route, blending the routes of two buses that serve the general area, and locating alternative bus turn-around locations to create a stop within the prescribed Policy distance to the [redacted] home but that would not be located on Route 30. No alternative could be established that did not create an unsafe turn-around for the

bus or that would have met CCPS' requirement of same-side service on both the east and west lanes of Route 30.

On October 12, 2018, the [redacted] were advised that a bus loop with a new bus stop had been created at the bottom of Harvey Yingling Road and Kridlers Schoolhouse Road which stop could be used by the [redacted] children. The new bus stop eliminated the backing maneuver previously accomplished along Garrett Road by using the triangle intersection of Kridler's Schoolhouse and Harvey Yingling roads for the bus turnaround. The bus stop was created following a request by another family for a new bus stop based on safety considerations. The request was evaluated by the Transportation Department which determined that another stop should be created consistent with the AR.

The [redacted] filed the instant appeal. They explained their road was just paved and that the walking route on the road is without sidewalks or a shoulder. They claim the decision denying their request was "discriminatory" because as explained above, at a meeting of the Board of Education another family asked for a bus stop change and it was ultimately granted. The [redacted] also stated they were willing to provide a portion of their property as a turnaround area at their own cost. To date, there is no turnaround area on the [redacted] property.

STANDARD OF REVIEW

In reviewing decision of the Superintendent's Designee, 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

The _____ contend the decision not to create a bus stop at their residence on _____ is discriminatory because a different bus stop was created at the request of another family. CCPS staff clearly did not make this decision for invidious discriminatory reasons. Instead, it was determined that the request for the new Kridler's Schoolhouse Road bus stop met the eligibility criteria of Board policies and administrative regulations EEA-Eligibility for Transportation and EEAC-School Bus Routes and Stop. The effect of the new bus stop has the benefit of eliminating the backing maneuver previously accomplished along Garrett Road by using the triangle intersection of Kridler's Schoolhouse and Harvey Yingling Roads for the bus turnaround (looping). The new stop at the triangle is approximately the same distance (.7 miles) from the _____ residence as is the Maryland Route 30 stop. The _____ have the

option of using the new stop or the existing stop at Harvey Yingling Road and Maryland Route 30.

The Board notes the offer to develop a loop area on their property. At present, such a loop does not exist. Should the develop a loop, then the Transportation Department would need to consider the existence of the loop in deciding whether to grant a new stop.

It is evident to the Board that the Superintendent complied with Board policies and administrative regulations in denying the request for a new bus stop. Just because another family's request for a new bus stop was granted does not make the decision of the Transportation Department discriminatory. It also does not make the decision unreasonable and/or arbitrary because of safety concerns. The Board takes judicial notice that many families in Carroll County supervise the walks of their children to the bus stop and stand with them at the stops. Carroll County still has many rural areas that call for such parental supervision. *See Ashley Towle v. Carroll County Board of Education*, MSBE Op. No. 17-31 (August 23, 2017) (finding that the local board analyzed the safety of the existing bus stop); *Herron v. Harford County Bd. of Educ.*, MSBE Op. No. 12-10 (2012) (upholding the local board decision where the local board analyzed whether there was sufficient site distance to see the bus, speeding traffic on a road, and the lack of a sidewalk); *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 their current bus stop from their residence.)

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 October 1, 2018, decision of the Superintendent's Designee, Assistant Superintendent of Administration Jonathan D. O'Neal, 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'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.

January 9, 2019
Date

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