

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) of the Education Article of the Annotated Code of Maryland regarding a request for the addition of a bus stop at . The Appellants,

, on behalf of their school-aged children, have appealed the December 15, 2023, decision of Jonathan D. O’Neal, Assistant Superintendent of Operations, who served as the Superintendent’s Designee in this matter. In his decision, Mr. O’Neal upheld the prior decisions by Michael J. Hardesty, Director of Transportation, and Kimberly M. Gold, Supervisor in Transportation Services which denied Appellants’ request that a bus stop be added at

The Board has reviewed all the written material submitted by Appellants as well as the documentation submitted by Mr. O’Neal on behalf of the Superintendent in response to their 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 determined that the decision denying Appellants’ request for the addition

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 14th Amendment due process requirements such as appeals involving the denial of requested changes in the level of 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).

of a bus stop at _____ was neither arbitrary, unreasonable nor illegal. Accordingly, the Board shall affirm the decision of the Superintendent's Designee.

FACTUAL BACKGROUND

Appellants initially raised the issue of the addition of a bus stop at _____ in 2021 when _____ submitted a Bus Stop Survey on April 9, 2021.² The survey was reviewed and responded to by Scott C. Parsons, then Area Supervisor in Transportation. Mr. Parsons denied the request on April 20, 2021.³ In doing so Mr. Parsons noted that Board Policy EEAC required that buses only be operated on paved road that are minimum of 20 feet wide and noted that _____ is less than 15 feet wide in locations.

_____ appealed Mr. Parsons' determination and, on May 11, 2021, Mr. Hardesty sent a letter to _____ denying his appeal.⁴ In doing so Mr. Hardesty specifically noted (1) that _____ narrowed to between 13-15 wide in areas which would make it difficult for a bus to safely pass opposing traffic, (2) the posted speed limited on the road is 25 mph and traffic is light, (3) the distance between the current stop and the entrance to the shared drive connecting to the _____ residence is 5,086 feet (less than a mile), (4) an adequate walking path exists to the current stop, and (5) the addition of a bus turn around and 2 miles to the route would be required to establish the requested bus stop. _____ did not appeal Mr. Hardesty's May 11, 2021, determination to deny his request for the addition of a bus stop.

In summer 2023, _____ contacted County Commissioner Kenneth Kiler regarding his request that a bus stop be added at _____ request

² See Response of Superintendent's Designee (Attachment 8)

³ See Response of Superintendent's Designee (Attachment 9)

⁴ See Response of Superintendent's Designee (Attachment 10)

was forwarded to Mr. Hardesty for response.⁵ On August 29, 2023, Mr. Hardesty sent an e-mail indicating that his request had been evaluated and denied in 2021 and had more recently been investigated by Ms. Gold and denied based on Board policy and issues related to the safe passage of the roadway by a school bus.

On October 9, 2023, filed another Bus Stop Survey request.⁶ In his request, alleged (1) that the current bus stop was more than 1 mile from the entrance to his private driveway, (2) the route along to the existing bus stop was not safe to walk, and that (3) a bus could safely travel because saw one pass on every day. On October 13, 2023, Ms. Gold denied

request and advised (1) that she had personally visited the location of the requested stop and (2) had verified that the road conditions had not changed since the prior review in 2021.⁷

Via e-mail on October 13, 2023, appealed Ms. Gold's determination to Mr. Hardesty.⁸ On October 23, 2023, Mr. Hardesty sent an e-mail advising that he had revisited the location of the proposed bus stop and reexamined the walking path and roadway conditions. Mr. Hardesty advised that the circumstances and justifications for denying the request remained the same as they were in 2021. Citing Board Policy and Administrative Regulations EEAC, Mr. Hardesty explained that narrowed in several locations, has encroaching telephone poles, and has low hanging trees and wires which made the road unsafe to traverse with a school bus. Mr. Hardesty further noted that the walk from driveway entrance to the current bus stop is less than a mile which is in accordance

⁵ See Response of Superintendent's Designee (Attachment 11)

⁶ See Response of Superintendent's Designee (Attachment 1)

⁷ See Response of Superintendent's Designee (Attachment 2)

⁸ See Response of Superintendent's Designee (Attachment 3)

with Board policy. Finally, Mr. Hardesty noted that the addition of the bus stop requested by [REDACTED] would necessitate the school bus employ a backing procedure to turn around.

On October 26, 2023, [REDACTED] sent an e-mail to the Superintendent advising that he was appealing Mr. Hardesty's denial of his request for the establishment of the new bus stop.⁹ On November 16, 2023, Mr. O'Neal advised [REDACTED] via e-mail that he had been assigned to serve as the Superintendent's Designee and to investigate the matter.¹⁰ On November 17, 2023, [REDACTED] responded to Mr. O'Neal via e-mail and indicated, in pertinent part, that (1) the current stop was 1.5 miles from his home, (2) the route was unsafe to walk due to the lack of a shoulder or sidewalk, (3) a bus could safely traverse [REDACTED] because one has done so for the last two years to pick up a special needs student, and (4) it is over a mile from the current stop to his driveway.¹¹

Having investigated, Mr. O'Neal sent [REDACTED] a letter on December 4, 2023, advising that he was denying [REDACTED] as the Superintendent's Designee.¹² In his letter, Mr. O'Neal explained that he had reviewed the entire file including the prior requests and associated documentation from 2021. He further advised that he had visited [REDACTED] residence and traveled the different bus routes in the area including [REDACTED] from [REDACTED] to observe the road conditions. He also indicated that he measured the distance from [REDACTED] driveway entrance to the current stop and confirmed the Transportation Department's measurements. Mr. O'Neal advised he had been able to locate the bus [REDACTED] had seen traveling [REDACTED] and explained that the bus was not routed down [REDACTED] but had been taking a short cut when a student did not attend school. Mr.

⁹ See Response of Superintendent's Designee (Attachment 4).

¹⁰ *Id.*

¹¹ *Id.*

¹² See Response of Superintendent's Designee (Attachment 5).

O'Neal advised that the bus driver had been instructed to strictly follow his assigned route in the future. Finally, Mr. O'Neal indicated that the decision made by Mr. Hardesty was in accordance with Board policy and therefore was being upheld.

On December 4, 2023, _____ sent an e-mail to Mr. O'Neal and Ms. Lucido, Executive Assistant to the Board of Education, advising of his request to appeal the matter to the Board.¹³ On December 14, 2023, Appellants submitted an Appeal Information Form.¹⁴

ANALYSIS

The Appellants bear the burden in this matter of demonstrating that the decision of the Superintendent's Designee denying their request to move their child's 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 their 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.¹⁵

The Maryland State Board of Education has long recognized that the transportation of students is a matter traditionally within the domain of the local school systems and school systems have discretion in addressing transportation issues. *Scott T. v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 14-05 (citing *Lucas v. Bd. of Educ. of Garrett County*, 5 Ops. MSBE 421 (1989)). The Board of Education of Carroll County has adopted Board Policy EEAC: Bus

¹³ See Response of Superintendent's Designee (Attachment 6).

¹⁴ See Response of Superintendent's Designee (Attachment 7). It should be noted that the Appeal Information Form was signed by a _____ and well as _____. Because _____ were not parties to the underlying appeals they may not join as Appellants in this proceeding.

¹⁵ See COMAR 13A.01.05.05.

Route and Stops along with Administrative Regulations EEAC which set out Board procedures relating to the assignment of bus stops and bus routes for Carroll County Public Schools.

1. Distance to Existing Bus Stop.

Appellants assert in the attachment to their Appeal Information Form that the distance from the mailbox at the end of their driveway to the existing bus stop is 1 mile.¹⁶ However, as Mr. O'Neal indicated in the Superintendent's response to the appeal, the distance from the Appellant's driveway entrance to the current bus stop has been measured both via GPS and manually and the distance is under a mile. For instance, the distance was measured at 5,111.51 feet by Mr. Parsons in 2021.¹⁷ Similarly, Mr. Hardesty measured the distance and determined it to be 5,086 feet in 2021.¹⁸ A statute mile is 5,280 feet. Given, the repeated measurement of the distance both manually and via GPS by both Transportation Department staff as well as the Superintendent's Designee, the Board can discern no basis for disturbing this determination in the record.

2. Establishment of a Closer Stop Because Distance is Over ½ Mile.

Appellants assert that because the current stop is more than one-half mile from the entrance to their driveway, Board Policy EEAC requires that establishment of a closer bus stop so long as the bus doesn't need to backup to turn around. Appellants are correct that Administrative Regulation EEAC (A)(5) states "[a] bus route **may** be extended if a student resides greater than one half (1/2) mile from the existing stop and the bus does not have to use a backing procedure." (emphasis added). However, the provision is not mandatory, indicating that a bus route "may" be extended if the distance to the exiting stop is more than one half mile and no backing procedure is required. Here, there is no dispute the distance to the existing bus stop is

¹⁶ See Response of Superintendent's Designee (Attachment 7).

¹⁷ See map of measured distance included in Response of Superintendent's Designee (Attachment 8).

¹⁸ See Response of Superintendent's Designee (Attachment 10).

more than one half mile. However, Appellant's argument ignores the mandatory restriction set out in Administrative Regulation EEAC (A)(2) which expressly limits operation of buses to paved roads only. The term "paved roads" is defined in EEAC (A)(2) as "roads that are minimum of twenty feet wide." Here, as far back as April 2021, Mr. Parsons determined that

 narrowed to less than 15 feet in locations.¹⁹ Similarly, Mr. Hardesty in reviewing Mr. Parsons' determination in May 2021, determined that the "narrows to a width of 13-15 feet in several places."²⁰ He further noted the road is "tree-lined with overhanging trees and telephone poles located on the side of the roadway making it difficult for a school bus and approaching vehicle from the opposite direction to safely pass each other."²¹ Appellants in their appeal do not dispute the determination that _____ narrows in places to between 13-15 feet. Instead, they simply argue that it is safer to add the requested stop then it would be to continue to have their child walk the route to the current bus stop. In making this argument, Appellants ignore the clear mandatory language in Administrative Regulation EEAC (A)(2) which prohibits the operation of school buses on roads that are less than twenty feet wide.

Similarly, the extension of a bus route for students whose current stop is more than one-half mile under the provisions in Administrative Regulation EEAC (A)(5) is conditioned on the bus not having to employ a backing procedure. While, as explained above, the width of _____ under Board policy precludes adding the bus stop the Appellants have requested, the Board also notes that Mr. Hardesty also determined that extension of the bus route

¹⁹ See Response of Superintendent's Designee (Attachment 9).

²⁰ See Response of Superintendent's Designee (Attachment 10).

²¹ *Id.*

as Appellants have requested would, for routing efficiency, require the use of a backing procedure.²²

3. The Safety of the Walking Path to the Existing Bus Stop.

Appellants contend the walking path along _____ between Appellants' mailbox and the current bus stop is not safe and therefore the requested change in bus stop should be granted.²³ In support of this argument, Appellants assert (1) no sidewalk or shoulder exists on the route to the current stop along _____ thus forcing children to walk in the roadway, (2) no street lights exist along the walking path forcing students, at times, to walk in the dark, and (3) the distance from the Appellants' residence to their mailbox adds approximately ½ mile to the distance their child must walk to the bus stop.²⁴ When the issue of the safety of the walking route along _____ to the bus stop was initially raised by Appellants in 2021, Mr. Parsons investigated and determined that _____ was safe for pedestrian travel because the speed limit is 25 mph and less than 150 vehicles per day traversed the road.²⁵ Similarly, Ms. Gold when she reevaluated the Appellants' request in October 2023 reached the same conclusions as Mr. Parsons.²⁶ In addition in May 2021, Mr. Hardesty reviewed the determination and in making his determination to uphold Ms. Gold's determination visited the location and observed the walking path, reviewed the rationale for both Mr. Parsons and Ms. Gold's determinations, and reviewed the request in light of applicable State regulations and Board policy.²⁷ Mr. Hardesty, similarly concluded (1) the vehicle speed limit along the walking route is 25 mph, (2) there is very light traffic volume along the walking route, and (3) the walking route

²² See e-mail of Mr. Hardest dated October 23, 2023 attached to Response of Superintendent's Designee (Attachment 3).

²³ See Response of Superintendent's Designee (Attachment 7).

²⁴ *Id.*

²⁵ See Response of Superintendent's Designee (Attachment 9).

²⁶ See Response of Superintendent's Designee (Attachment 2).

²⁷ See Response of Superintendent's Designee (Attachment 10).

provides an adequate walking path with parental supervision.²⁸ When the Board juxtaposes these determinations against the identified safety issues which would arise if Appellants' request for a new bus stop were approved, including traveling a roadway under the minimum width of 20 feet with overhanging trees, telephone poles located on the side of the roadway, and the addition of a bus backing procedure, the Board can discern no basis for determining the condition of the walking route to the current bus stop renders the decision of Superintendent's Designee either arbitrary, unreasonable, or illegal.

4. The Unauthorized Use of _____ by Another Bus Driver.

Appellants contend in their appeal that the fact that another school bus has been observed in the past traversing _____ is conclusive evidence that it is safe and appropriate for a school bus to do so. Mr. O'Neal in the Superintendent's response addresses this issue indicating that it had been determined that another bus driver had been using _____ as a short cut on days in which a special needs student was not attending school.²⁹ While this evidence certainly leads a reasonable person to conclude a school bus can traverse _____, it does conclusively demonstrate that having a school bus do so on a regular basis would either be safe or in accord with Board Policy. As discussed in Section 2 above, _____ narrows to between 13-15 feet in places and as such does not meet the requirement under Administrative Regulation EEAC (A)(2) that buses only travel on roads that are a minimum of 20 feet wide. Similarly, the overhanging trees and telephone poles on the roadway further support the determination that a bus should not be routed to traverse _____. The Board further notes that once it was determined that a bus driver had taken a shortcut that involved traveling _____ the driver was admonished not to do so in the future and was told to follow _____

²⁸ *Id.*

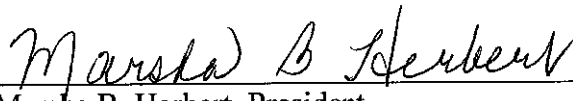
²⁹ Response of the Superintendent's Designee at p. 3.

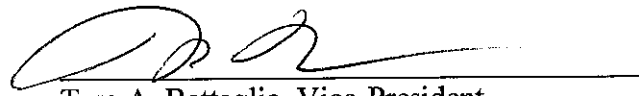
their assigned route in the future. The fact that a bus driver, without permission, has previously deviated from their assigned route and traversed _____ is not sufficient for the Board to conclude that the decision of the Superintendent's Designee in this matter was either arbitrary, unreasonable, or illegal.

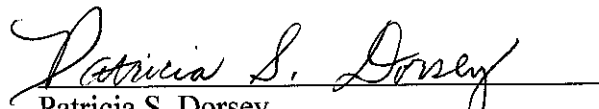
DECISION

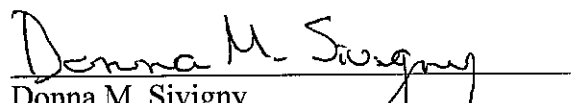
For the reasons discussed above, this Board affirms the decisions upholding the denial of Appellants' request for the addition of a bus stop at _____. Should they choose to do so, Appellants may appeal this decision to the Maryland State Board of Education, 200 West Baltimore Street, Baltimore, Maryland 21201, in writing, within thirty (30) days of the date of this decision.

Date 3-13-24


Marsha B. Herbert, President


Tara A. Battaglia, Vice-President


Patricia S. Dorsey


Donna M. Sivigny


Stephen D. Whisler