

ASHLEY TOWLE,

Appellant

v.

CARROLL COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 17-31

OPINION

INTRODUCTION

Ashley Towle (Appellant) appeals the decision of the Carroll County Board of Education (local board) denying her request to relocate a bus stop and change a bus route. The local board filed a Motion for Summary Decision. Appellant responded to the Motion and the local board replied.

FACTUAL BACKGROUND

During the 2016-17 school year, Appellant's daughter was a third grade student at Runnymede Elementary School, part of Carroll County Public Schools (CCPS). On September 21, 2016, CCPS received a request from Appellant asking that her daughter's current bus stop location be moved from the intersection of Plankwood Drive and Route 97 to another location on Plankwood Drive, where Appellant suggested the bus could pick up her daughter in a cul-de-sac at the end of the road. In support of her request, Appellant stated that the speed limit is 50 mph on Route 97, that her daughter must stand on a curb with no shoulder or sidewalk on the road, and that too many cars speed by the location or ignore the flashing bus lights. She described the stop as being located "at the bottom of 2 hills in both directions" and argued that, even with an adult present, the stop is still unsafe. (Motion, Ex. 1).

On September 28, 2016, CCPS denied her request to move the bus stop. Prior to doing so, transportation staff investigated the request and made a visit to the site. John O'Meally, supervisor of the transportation services department, described the current bus stop location as follows:

Currently, the existing stop serving your area is located at the deceleration lane for Plankwood Drive along southbound Route 97 a distance of 1550 feet or just under 1/3 mile from your requested stop location. Plankwood Drive is a residential roadway with a posted speed limit of 25 mph, which ends in a cul-de-sac with a diameter of 90 feet. Traffic along Plankwood Drive is considered very light including the golf course traffic. There is a wide shoulder along Plankwood Drive for students to walk as well as the road surface.

(Motion, Ex. 2).

Mr. O'Meally denied the request because county policy states that students may be required to walk up to one mile along publicly maintained roadways to an approved bus stop; there are "no hazardous or unusual conditions which would prevent a supervised child from walking to or waiting at the existing bus stop" and it is the responsibility of parents or guardians to provide supervision for children while walking to, from, or waiting at a bus stop. (Motion, Ex. 2; CCPS Board of Education Policy EEA, EEAC).

Appellant appealed the decision to Michael Hardesty, Director of the CCPS Transportation Services Department. In her appeal, she provided several pictures of the intersection and raised an additional objection to the bus stop route. She argued that the bus currently must stop on John Owings Road at Belvedere Drive¹, back into Belvedere Drive, and turn around, crossing over a double yellow line in the process. She argued that the bus, in making this turn, has a limited view of oncoming traffic. Appellant acknowledged that moving the bus stop would require the bus to turn left onto Route 97, which "is not ideal," but she maintained that another school bus turns left on Route 97 at a different location without any problem. (Motion, Ex. 3).

On November 29, 2016, Mr. Hardesty denied the appeal. As part of his decision, Mr. Hardesty explained that he twice visited the location, evaluated the existing bus route, and considered her request in light of CCPS board policies and regulations. He observed that Appellant's requested stop would be .29 miles from the current bus stop location. To get to the current stop, Mr. Hardesty stated that students would have to walk along Plankwood Drive, which has a wide shoulder, low traffic volume, and a posted speed limit of 25 mph, none of which are "unusual or hazardous walking conditions." (Motion, Ex. 5).

Mr. Hardesty also cited to CCPS Local Board Policy EEAC, which states that a "bus route may be extended if a student resides greater than one-half (1/2) mile from an existing stop and the bus does not have to use a backing procedure." Based on this policy, he found that the request to extend the stop by .29 miles did not meet the policy. He added that years of experience had shown that a school bus can safely pick up students along Route 97 by activating its flashing warning lights as it clears the crest of the hill approximately 200 feet away from Plankwood Drive, moving to the deceleration lane, and then activating the red flashing warning lights. That same procedure also allows a bus to reenter traffic safely on southbound Route 97. Based on the volume of traffic and the speed limit, Mr. Hardesty concluded the stop remained an appropriate one for the Plankwood Drive community. The requested stop at the cul-de-sac would require a left turn onto northbound Route 97, creating a safety concern by forcing the bus to cross both lanes of traffic.

As for the turn-around at John Owings Road and Belvedere Drive, Mr. Hardesty explained that the location was the best location to accomplish the turn-around given the low traffic volume and past positive experience with the location. Although CCPS generally avoids bus routes on private, non-county roads or having buses back up, it sometimes has to occur by necessity and CCPS had encountered no problems with that particular turn-around location. (Motion, Ex. 5).

On December 23, 2016, Appellant appealed to the superintendent of schools who

¹ The record also refers to "Belvedere Road," but a street sign at that location identifies it as "Belvedere Drive."

appointed Jonathan O’Neal, the Assistant Superintendent of Administration, as his designee. In her appeal, Appellant argued that the bus turn-around violated board policy, and required the bus to cross a double yellow line in an unsafe location. In addition, she argued that her requested stop at the cul-de-sac would allow the bus to pick up students without turning around and that other buses turn left onto Route 97 without incident. Appellant stated that other parents have expressed similar concerns to her about the safety of the bus stop. (Motion, Ex. 6).

On January 13, 2017, Mr. O’Neal upheld the decision not to relocate the bus stop. As part of his decision, he twice visited the bus stop location, including watching the bus pick up students at the Route 97 stop. He also watched the bus make a left turn onto John Owings Road, complete a three-point turn around on John Owings Road at Belvedere Drive and make a right turn back onto Route 97. Mr. O’Neal concluded that the current stop complied with school system policies and he disagreed with Appellant that the current stop posed a safety risk. He found that similar stops are common throughout the county and that there are appropriate road signs announcing the bus stop. He also found that making a three-point turn on John Owings Road did not constitute a safety issue given that the bus had plenty of room to maneuver and the traffic volume was light. Mr. O’Neal further determined that the requested new stop would “create a greater safety concern.” He explained that:

Presently the bus accelerates back into ongoing Route 97 traffic from the safety of its flashing lights. It turns left onto John Owings Road across only one lane of traffic, which is the opposite of the rush hour volume. Finally, the bus makes a right turn back onto Route 97 North. The stop you propose would require the bus to make a left turn from Plankwood Drive, across both travel lanes including the rush hour traffic, onto Route 97 North. I believe this creates a safety concern that does not exist with the established stop and route.

(Motion, Ex. 7).

Appellant appealed to the local board. In addition to the issues raised earlier, Appellant argued that the current bus procedure violated state law because it required the school bus to cross a double yellow line. Appellant also maintained that a previous bus route that stopped at the same location had the bus make a left turn onto Route 97 into even heavier traffic. She also questioned where her daughter was supposed to stand during inclement weather, given that there is no shoulder or sidewalk on the road, only a grassy area. (Motion, Ex. 9).

On April 26, 2017, the local board upheld the decision not to move the bus stop or alter the bus route. The board concluded that the requested stop would require the bus to turn left across two lanes of traffic on Route 97, whereas the current stop requires a turn around on John Owings Road, which has a low traffic volume. The board acknowledged that the turn-around on John Owings Road requires a backing maneuver, but found that turning around there is “safer and preferable” to turning across two lanes of traffic on Route 97 at Plankwood Drive. The board concluded that the school system’s analysis did not lead to an unreasonable or arbitrary result. The board observed that although routes are planned to minimize backing up, buses may do so at a safe location with adequate turning space. The board found that Appellant lives only 1/3 of a mile from the current stop and that it is safe to walk there. At best, the board concluded that Appellant had offered an alternative route, but that merely having a reasonable alternative

route does not make the current route unreasonable or unsafe. (Motion, Ex. 13).

The board also addressed whether the turnaround location on John Owings Road at the intersection of Belvedere Drive was illegal. The board concluded from its review of applicable statutes that the bus could cross a double yellow line to turn around or make left turns so long as it is safe to do so and the bus has visibility of at least 500 feet in each direction. The board found there was no indication that visibility was inadequate. (Motion, Ex. 13).

This appeal followed.

STANDARD OF REVIEW

Because this appeal involves a decision of the local board involving a local policy, the local board's decision is considered *prima facie* correct and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05A; *see Herron v. Harford County Bd. of Educ.*, MSBE Op. No. 12-10 (2012).

LEGAL ANALYSIS

Transportation of students has traditionally been within the domain of local school systems and the State Board has generally given school systems wide discretion in handling transportation issues. *See Scott T. v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 14-05 (2014). Because of this view, the State Board has been reluctant to intrude in such cases. *Id.* (citing cases). The few specific requirements for bus stops for public schools can be found at COMAR 13A.06.07.13. The regulation states, in pertinent part:

A. The prime consideration is the safety of riders.

B. Requirement for Stops.

(1) Stops should be approximately 1/4 mile apart. This does not apply to routes exclusively designated for students with disabilities.

(2) On-roadway stops shall be on the travel portion of the highway, not to include the shoulder, using the eight-light safety system.

(3) Stops shall be located, if possible, to maximize the visibility of the stopped school vehicle for approaching traffic.

C. On four-lane highways, students shall be picked up and discharged on the side of the roadway where they reside.

Appellant raises several arguments against the local board's decision denying her request to relocate a bus stop or to alter the bus route, which we shall address in turn.

Violation of state law

Appellant argues that CCPS is violating the Md. Code, Transportation Article §21-602 because the current bus route requires the bus to make a three-point turn in the middle of a two lane road without proper visibility. The text of the law states:

(a) The driver of a vehicle on any curve may not turn to go in the opposite direction if the vehicle cannot be seen by the driver of any other vehicle that is within 500 feet and approaching from either direction.

(b) The driver of a vehicle on or approaching the crest of any grade may not turn to go in the opposite direction if the vehicle cannot be seen by the driver of any other vehicle that is within 500 feet and approaching from either direction.

In support of this argument, Appellant submitted two new pieces of evidence. The first is a print out from Google Maps in which it states that it is 144 feet from 73 John Owings Road, at the intersection with Belvedere Drive, to another point further down the road. (Appeal). The second piece of new evidence is an unsigned letter that Appellant states was prepared by Matthew Kirks, a licensed land surveyor. The letter states:

Due to the sight distance of vehicles traveling southwest on John Owings Road towards the intersection where bus 11 blocks the road while turning around, there is a need to have a professional engineer perform a formal "Site Distance Survey" to ensure the safety of the children on the bus and the public driving on John Owings Road. The formal "Site Distance Survey" will also ensure that county sight guideline[s] have been met.

(Attachment, Response to Motion).

The local board in its Motion also submitted new evidence in the form of an affidavit and photographs from Mr. Hardesty, the director of transportation services. On June 9, 2017, Mr. Hardesty returned to the intersection and measured visibility along John Owings Road, concluding that motorists would be able to see the bus turning around approximately 1,070 feet from the intersection and that the bus remained visible even at the steepest dip in the road at a distance of more than 500 feet, therefore complying with state law. (Motion, Ex. 1).

Before addressing the question of illegality, we must consider whether to accept this new evidence from the parties. The State Board may admit additional evidence when the evidence is material and there were good reasons for the failure of the appellant to offer the evidence in the proceedings before the local board. COMAR 13A.01.05.04(C); *see Robin H. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 16-44 (2016). Appellant has failed to offer any reason for not presenting this material earlier; the local board's new evidence was offered entirely in response to Appellant's new evidence. Because this new evidence could have been presented earlier, Appellant has failed to offer a reason for not presenting it, and the local board did not have the chance to consider it, we decline to consider any of the new evidence offered by the parties as part of this appeal.²

² Even were we to consider the new evidence from Appellant, it does not clearly support her argument. The Google Maps evidence, which allegedly shows visibility of only 144 feet, is in conflict with the evidence apparently offered by Mr. Kirks, the land surveyor, who found visibility of at least 400 feet from the intersection in question, but did not specifically address whether there is visibility at 500 feet.

In its decision, the local board agreed with CCPS that the bus turn-around is safe, observing that “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.” (Local Board Decision). Based on the record before the local board, there is no indication that the bus route was illegal.³

Other arguments

Appellant argues that the current bus stop location is unsafe because her daughter has to stand near the intersection of Plankwood Drive and Route 97, where the posted speed limit is 50 mph. Appellant acknowledges that her daughter can stand in the grass while waiting for the bus, but argues that she has to stand in the roadway when it rains or snows. The local board counters that the stop location is not directly adjacent to the main traffic lanes on Route 97, but rather borders a deceleration lane. Additionally, the board argues that moving the stop to the location requested by Appellant would require the bus make a left turn across two lanes of traffic onto Route 97, which the board describes as a “dangerous prospect.”

We considered a very similar set of facts in *Herron v. Harford County Bd. of Educ.*, MSBE Op. No. 12-10 (2012). In *Herron*, we also considered a bus stop relocation request based on safety concerns, specifically a lack of sufficient site distance to see the bus, speeding traffic on a road, and a lack of a sidewalk requiring students to stand in a road during inclement weather. We deferred to the local board’s decision, which relied on an analysis performed by the school system’s transportation staff, that there was sufficient stopping time for vehicles, and that the other road conditions did not require moving the stop for safety reasons. *Id.*

In this case, the local board based its decision on a similar analysis conducted by school transportation staff. The board determined the following facts about the bus stop: (1) the current stop allows the bus to stop off the main roadway in the deceleration lane; (2) there are signs posted warning motorists about the approaching bus stop; (3) the bus is able to turn on its amber lights at the crest of the hill and warn motorists that the bus is stopping prior to making the stop; (4) the bus turns on its red flashing lights at the stop before rejoining traffic on Route 97 by merging back onto the road; (5) the bus later turns around on John Owings Road, which has a low traffic volume; (6) moving the stop to Appellant’s requested location at the end of a cul-de-sac would require an unsafe left turn across two lanes of traffic on Route 97; and (7) having the bus turn around on John Owings Road is safer than having to turn left across Route 97. Given the deference we provide local school systems in determining transportation issues, we cannot conclude that the board’s decision, based on the substantial evidence gathered by transportation staff, was arbitrary, unreasonable, or illegal.

The remaining arguments made by Appellant do not alter our conclusion. Appellant argues that, contrary to the local board’s claim, the particular bus route has not been in use for a long period of time and is, in fact, new. Specifically, Appellant claims that buses have not previously turned around at Belvedere Drive from John Owings Road. In our view, the length of

³ Before the local board, Appellant argued that the bus also made an illegal turn across double-yellow lines. She has not advanced that argument in this appeal.

time that the route was in place does not alter the local board's analysis that the current route is safer and preferable to the alternative route suggested by Appellant.

Finally, Appellant attempts to undercut the local board's claim that it does not want to have buses turn left onto Route 97 by arguing that other buses make turns onto Route 97 at other locations. There is scant information in the record about where, and under what conditions, other buses might make left turns onto Route 97. Regardless, even if CCPS allows for buses to make left turns in some instances, it does not necessarily mean it is safe or advisable to do so at this location.

CONCLUSION

For all of these reasons, we affirm the decision of the local board because it is not arbitrary, unreasonable, or illegal.

Signatures on File:

Andrew R. Smarick
President

Chester E. Finn, Jr.
Vice-President

Michele Jenkins Guyton

Justin Hartings

Stephanie R. Iszard

Rose Maria Li

Michael Phillips

Irene M. Zoppi Rodriguez

David Steiner

August 22, 2017