

MICHAEL P. CALLAHAN,

Appellant

v.

HOWARD COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 03-15

OPINION

This is an appeal of the denial of bus transportation to St. John's Lane Elementary School for children who live in the St. John's neighborhood within the one mile walking zone of the school. The local board has filed a Motion for Summary Affirmance maintaining that the local board's decision is not arbitrary, unreasonable, or illegal. Appellant has submitted a response and a supplemental response opposing the local board's motion.

FACTUAL BACKGROUND

After the completion of the installation of sidewalks along St. John's Lane from Country Lane to Ramblewood Drive, the Pupil Transportation Office of the Howard County Public School System ("HCPS") reviewed whether any schools or bus stops were affected by the construction of the new sidewalk.¹ Based on the installation of the sidewalk along this particular portion of St. John's Lane, the walking area for students attending St. John's Lane Elementary School was expanded beginning with the 2002-03 school year. Thus, bus service that had previously been provided for students living in certain areas was eliminated.² The school administration notified all affected families of the change in transportation services prior to the last day of the 2001-02 school year. Thereafter, Appellant and other parents expressed concerns about the elimination of bus service and requested that the bus service be reinstated.

Mr. Glenn Johnson, Director of Pupil Transportation for HCPS, reviewed the requests of the parents and submitted them to the Student Walking Route Committee ("Committee") for evaluation in accordance with established guidelines. The Committee has traditionally been composed of parent members, a representative from the Howard County Government Traffic Engineer's Office, and a representative from the Traffic Enforcement Section of the Howard County Police Department. In this instance, the two parent members who had served for 12 and

¹The Pupil Transportation Office conducts such a review with all new sidewalk construction projects. The sidewalk project was a response to a request from the St. John's Lane and Mt. Hebron PTA Executive Committee for Special Projects and the President of the North St. John's Lane Community Association.

²For the 2002-03 school year, 46 students were affected by this decision.

13 years respectively, concluded their service on the Committee in the middle of July and had not yet been replaced at the time the requests for bus service were received. Because the findings and recommendations from Committee members are non-binding, and because of the desire to render a prompt decision prior to the start of the school year, the decision was made to go forward with the review process despite the absence of parent members. Thus, the Committee consisted of Sgt. Frederick von Briesen, Traffic Enforcement Section, Howard County Police Department, and Mr. George Frangos, Howard County Traffic Engineer.

Sergeant von Briesen reviewed the information concerning the proposed walking route and made several visits to the area. He concluded that all routes were acceptable except for a portion of Greenway Drive and Michaels Way. He stated, in part:

Based upon my review of the area I would recommend that students not walk along the northern section of Greenway Drive, north of Michaels Way, nor would I recommend that students walk along the section of Michaels Way from Greenway Drive to Ramblewood Drive.³ I feel comfortable with students inside the area bordered by Greenway Drive, Michaels Way, Ramblewood Drive and St. John's Lane walking to school, but those outside that area should not.

Students living in the area of Country Lane with access to the sidewalks along Country Lane and St. John's Lane should use that route to walk to school. As indicated above, the raised curbing, sidewalk, and lower vehicle speeds due to increased volume during walking times, provides a degree of safety that was not available prior to the sidewalks being present.

Mr. Frangos submitted an extensive report analyzing the walking routes in which he ultimately concluded that all walking routes were acceptable. He stated, in part:

³With regard to the intersection of Michaels Way and Ramblewood Drive, Mr. Frangos had previously advised the Howard County School System transportation office that students should not be required to cross through the intersection. Accordingly, the recommended walking routes within the neighborhood reflect that stipulation as referenced in a June 3, 2002 memorandum from the Transportation Department, intended to convey the opinion of the Howard County Traffic Engineering Division that students should not cross through the intersection, but may cross the intersection in another manner. The County Traffic Engineering Division concurs that students walking to and from St. John's Lane Elementary may use the intersection and that the intersection meets an acceptable level of safety. *See* Affidavit of Glenn Johnson.

Based upon the existing traffic parameters for the community adjacent to the west side of St. John's Lane, the extended walking routes proposed for the elementary school appear to be acceptable. The relatively moderate levels of traffic flow during the walking periods along the local streets in concert with the community-wide traffic calming that was implemented well over five years ago appear to serve to present an acceptable walking environment. There are some enhancements that should be implemented both in the near term and on a long range basis.

The near term enhancements suggested by Mr. Frangos included providing a marked crosswalk on Greenway Drive at St. John's Lane; removing roadside vegetation in the northeast quadrant of the Ramblewood Road/Michaels Way intersection; and refurbishing the pavement markings for the existing traffic calming devices. Prior to the start of the 2002-03 school year, steps had already been taken to implement these suggested enhancements.

Based upon his review of the findings and conclusions of Sgt. von Briesen and Mr. Frangos, Glenn J. Johnson, Director of Pupil Transportation, advised the parents that the superintendent denied their request for transportation services. Mr. Johnson noted the difference in opinion between Mr. Frangos and Sgt. von Briesen regarding certain portions of Greenway Drive and Michaels Way. He stated,

It was concluded that if students should not be allowed to walk along these portions of roadways as suggested by Sgt. von Briesen, then they would also not be allowed to walk to bus stops should transportation services be provided. Since Mr. Frangos has conducted a comprehensive evaluation of the walking routes and pedestrian/traffic safety for the county is the responsibility of the Traffic Engineering Division, his conclusions and recommendations were given priority.

See Letter to Miller from Johnson dated 8/14/02.

Subsequently, on September 19, 2002, a meeting was held at which the difference of opinion was discussed among Sgt. von Briesen, Mr. Frangos, Mr. William Malone, Chief (Howard County Traffic Engineering Division), Mr. Glenn Johnson (Director of Pupil Transportation), and Mr. Dwight Stall (Assistant in Transportation). Because of the difference in opinion between Sgt. von Briesen and Mr. Frangos, Mr. William Malone, Chief of the Howard County Traffic Engineering Division, became personally involved and conducted an on-site evaluation of the streets in question and reviewed Mr. Frangos' report. Mr. Malone concurred with the findings and recommendations made by Mr. Frangos, based on his independent review. During the September 19, 2002 meeting it was also learned that Sgt. von Briesen's observation of parked cars along Greenway Drive may have been the result of construction activity at a

resident's home. Sgt. von Briesen also shared at that meeting that the Police Department has instituted radar enforcement at Greenway Drive and St. John's Lane. After due consideration to all the information, Mr. Johnson determined that the walking route met an acceptable level of safety. *See* 10/8/02 memorandum from local board.

Appellant appealed the decision to the local board. The local board members reviewed the entire record. They personally visited the neighborhood at various dates and times, and examined the surrounding streets and the walking route. In a unanimous decision upholding the denial of transportation service, the local board cited the following reasons:

- Students who are required to walk are well within the one mile walking distance as prescribed for elementary school students in the Pupil Transportation Policy, #5111 (II.A.1.c, d, and e). Policy #5111 (II.C.2.a) states, "Detached homes-Measurement will be from the residence property line to the front door of the school." Although parents in the community questioned the distance from their homes to the school, staff has remeasured and assured the Board that every affected home is within the walking distance.
- The designated walking route meets the acceptable level of safety of other elementary school student walking routes which the Board has reviewed in previous appeals.
- The neighborhood streets that must be crossed or walked along are in a neighborhood where the neighbors driving should be on alert for children walking to and from school. The Board Members found that these roads had sufficient walking area, were in good condition, had speed humps to slow traffic, stop signs at intersections, good open areas allowing for good lines of sight and obstructions from brush had been cleared. Board members are parents and even grandparents, and all Board members walked and reviewed the recommended pathway on more than one occasion.
- Parents expressed concern that the sidewalk along St. Johns Lane is not separated from the roadway by a grass strip. Board members observed that the sidewalk is raised several inches above the roadbed, separating the sidewalk from the road. The Board did not consider the mailboxes along St. Johns Lane to be a hazard, as students will walk on the sidewalk behind the mailboxes.
- The parents expressed the fact that they were denied due process because there were no parents on the Student Walking Route Committee. The hearing that was heard by the Board Members removed any lack of due process as they were allowed to present all their concerns to us at the hearing.

- Board Members agree that small children -- kindergarten, first and second grades - should not walk to school by themselves. Therefore, it is the responsibility of the parents to see that they accompany their child or that their child is walking with older, responsible children.
- The Department of Education has constructed a student drop - off area that the staff has found to be very successful and has relieved the traffic problems that had existed. The day of this hearing we had the first rainy day in a long time, and parents before the hearing stated that the drop - off area was very busy. Drop - off areas are crowded at all schools on a rainy day, and St. John's Lane was no different from any other school that day.
- The Board Members agree that no school age children should cross the intersection of Michaels Way/Chatham Rd. North/Ramblewood Rd. without an adult accompanying them. The Board would like for staff to request that four - way stop signs be placed at this intersection to make it safer for students to cross at this intersection.
- Concern was also expressed that the elementary school students would be walking home after school at a time when the students from Mount Hebron High School would be driving home, and this could be dangerous for the elementary students. These high school drivers are your older children or neighbors and, if they are not driving carefully, it is the responsibility of the neighborhood to advise them to slow down or report them to the police department.
- The Board Members, like the parents, are concerned about the incidents of indecent exposure, the sexual offender that lives in the area, and the attempted abduction at the school; but these are not situations that deem the route to be unsafe for the children to walk to and from school.
- The board must make its decision based on Policy #5111 as it stands. If parents or any individual believes strongly that a policy needs to be changed or brought up to date, they need to contact the Superintendent of Schools and request that the policy be brought forth for review.

ANALYSIS

Because this case involves a local policy or dispute regarding the rules and regulations of a local board, the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.01.03E(1)(a).

Due Process Issues

Appellant maintains that he was denied due process because the local board failed to hold an oral evidentiary hearing on the appeal. However, it is well settled that there is no right to an oral evidentiary hearing before the local board on this type of issue. *See Williams v. Howard County Board of Education*, MSBE Opinion No. 99-24 (“An appeal of a walking route is not generally entitled to an oral evidentiary hearing.”). Based upon our review of the record, we believe the local board considered this matter in accordance with its policies and procedures governing pupil transportation.

Appellant also maintains that he was denied due process because the Walking Route Committee did not have parent representatives. As stated above, the two parent members of the Committee resigned in July 2002 after 12 and 13 years of service, respectively. Staff considered delaying the appeal process in order to appoint replacements, however the decision was made to go forward with the appeal in order to render a prompt decision prior to the beginning of the school year.⁴

The local board’s Pupil Transportation regulation does not specifically state that parent members must serve on the Committee. Rather, it states that the Committee is “[c]omposed of citizens of Howard County” and that the members who are appointed by the local superintendent “shall be representative of the entire county.” *See* 5111-R (J). The Committee serves in an advisory capacity and the reports submitted by the members are not binding. Rather, each report serves as a different perspective to be considered. Here, despite the absence of parent members on the Committee, there was significant input from parents in the form of letters, pictures, surveys, photographs, diagrams, and argument. Parent concerns representing the different views of Howard County citizens were well documented and were considered during the review of the appeal by transportation staff and by the local board. Thus, we find no illegalities in the procedures used by the local school system.

Merits of Appeal

1. Difference of Opinion Between Sgt. von Briesen and Mr. Frangos

Appellant claims that no consideration was given to the opinion of Sgt. von Briesen concerning the safety of the walking route. Contrary to this assertion, we find that the matters raised in Sgt. von Briesen’s report were very seriously considered. On July 26, 2002, transportation staff discussed the reports with Sgt. von Briesen and Mr. Frangos. Due to the difference of opinion in the reports, Mr. William Malone, Chief of the Howard County Traffic Engineering Division, conducted his own on-site evaluation of the streets in question. Based on his investigation, he concurred with the findings and recommendations of Mr. Frangos. Another meeting was held on September 19, 2002 at which Sgt. von Briesen, Mr. Frangos, Mr. Malone,

⁴Mr. Johnson’s decision was issued on August 14, 2002.

Mr. Dwight Stall, Transportation Assistant, and Mr. Johnson discussed the issues regarding the walking routes in question. At the meeting it was learned that the Howard County Police Department had instituted radar enforcement of Greenway Drive and St. John's Lane. It was also learned that Sgt. von Briesen's observation of parked cars along Greenway Drive at the time of his report may have been caused by construction activity at a resident's home.

The local board has indicated that although the school system considers the opinions of other sources when reaching decisions regarding the acceptability of walking routes, HCPS generally relies most heavily on the opinions of the Howard County Traffic Engineer's Office. The basis for this reliance is that the Traffic Engineering Division is responsible for pedestrian safety throughout the County. While there was a difference of opinion in this case between the Traffic Engineering Office and the Police Department, reliance on one opinion over another when there is a basis for doing so does not render the local board's decision arbitrary, unreasonable, or illegal. Based on the record in this case, we believe that reliance on the opinion of the Chief of the Traffic Engineering Division was reasonable.

2. One Mile Walking Standard

Appellant alleges that the children who live south of the 3100 block of Greenway Drive and the children who live west of Brookmede Road live more than one mile from St. John's Lane Elementary, and thus outside the one mile walking standard set forth in local board policy 5111 (R.II.A) for elementary school students. Appellant further alleges that school staff improperly measured the route using the intersection of Michaels Way and Ramblewood Road, an intersection which local board transportation staff had indicated students should not be required to cross.

The record in this case discloses that the local board transportation staff measured the walking distance from the front door of St. John's Lane Elementary throughout the entire affected walking neighborhood using acceptable walking routes. The method of measurement was by use of the walking wheel which is highly accurate. All walking routes were found to be within the one mile walking distance for every home affected by the decision.⁵ See 10/8/02 local board memorandum. Contrary to Appellant's assertions, the staff did not use the intersection of Michaels Way and Ramblewood Road as part of any measured walking route. See superintendent's memorandum dated 10/8/02 to local board, p. 7.

3. Cost

Appellant also alleges that bus service could be restored at no additional cost to the county and that the elimination of the service did not save the county much money. To the

⁵The Pupil Transportation Implementation Procedures indicate that "the most direct route meeting an acceptable level of safety will be utilized in measuring walking distances to and from school" See 5111-PR (C).

contrary, there is a significant cost to the school system if it provides bus service to the 46 affected students. The HCPS Pupil Transportation Office has estimated this cost to be \$12,200 per year, excluding any yearly cost increases. Although Appellant believes that other costs for the county will likely increase, such as legal fees from civil suits if a student is injured along a walking route; increased phone calls, meetings, and appeals at several levels; increased staff costs to monitor drop off and pick up for 46 new car riders; increased risk of accidents on school property; and construction of a turning loop at the school; such costs are speculative at best.

Appellant believes that the transportation issue can be solved by allowing the affected students to ride buses on other routes that pass through the neighborhood with empty seats. It is true that some buses pass through the walking route in order to reach their ridership zones outside the one mile walking radius. The buses may have empty seats at different times based on a variety of factors including student absences, school activities, students using alternative transportation due to appointments or other matters. Furthermore, many buses have empty seats, in part, to accommodate population growth throughout the school year. The local board has indicated that Appellant's suggestion is not feasible and in order to provide bus transportation to the affected students, a new bus route would have to be established.

4. Safety

Appellant raises a variety of safety concerns about the walking routes which include allegations of trees and brush impairing visibility and impeding sidewalk traffic, trash cans left in the street; unleashed dogs; mailboxes creating hazards; and sidewalks not being separated from the road by grass strips. Some of these alleged hazards are typical of other neighborhood conditions and are the responsibility of homeowners. With regard to obstructions from vegetation, the local board indicated in its decision that such obstructions had been cleared. As for the sidewalks, while the sidewalks referred to by Appellant are not separated from the roadway by grass strips, they are raised with a standard concrete curb and provide pedestrians a place to walk which is separated from vehicle traffic. *See* Memorandum from local superintendent to local board; Reports of Mr. Frangos and Sgt. von Briesen. In any event, all of these issues were reviewed by the Traffic Engineer's Office, Mr. Johnson, and the local board, and determined not to present unsafe walking routes. Additionally, we concur with the observation that these alleged obstacles would exist whether students were walking along the route to school or walking along the route to get to a designated bus stop.

5. Equity of Service

Appellant also argues that there is a lack of equity because some students living within the one mile walking radius who attend St. John's Elementary benefit from the provision of bus transportation. The implementation procedures for the local board's pupil transportation policy allow for the provision of transportation to students residing within the walking area under certain circumstances. *See* 5111-PR (B.4) and (D). The local board noted in its decision that equity of service in providing bus transportation across the county was a central consideration.

In comparing Appellant's neighborhood with other locations in the county, the local board found that the existing walking routes provided an acceptable level of service and safety. Thus, we find that the fact that students under certain circumstances residing within a one mile radius of the school receive bus transportation is consistent with local board policy and is not inequitable.

In accordance with the Howard County Transportation Policy, the following factors must be considered when determining the need for and/or implementing school bus services: (1) acceptable level of safety; (2) program efficiency; (3) economy of operations; and (4) equity of service. Our review of the record reveals that the local board members walked the routes in question on more than one occasion, viewed site conditions, considered all of the information presented in the appeal, including the judgments of school transportation staff, the County's traffic engineer and the Police Department. We believe that the local board thoughtfully and carefully considered all of the relevant factors in making its determination regarding the request for bus transportation, and that the board's denial of the request was reasonable.

Because the transportation of students is a matter traditionally within the domain of the local school system, the State Board has been reluctant to intrude in such cases. *See Gary and Melissa Lucas v. Board of Education of Garrett County*, 5 Ops. MSBE 421 (1989)(denial of bus transportation upheld despite claims of dangerous route with no sidewalks, barriers or guardrails); *Doreen Robinson v. Board of Education of Howard County*, 7 Op. MSBE 1296 (1998)(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).

CONCLUSION

Based on our review of the record in this matter and for the reasons noted above, we do not find the local board's decision to be arbitrary, unreasonable, or illegal. Accordingly, we affirm the decision of the Board of Education of Howard County.

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March 25, 2003