

VALERIE BARBEITO &
REBECCA GRIFFIN,

Appellants

v.

FREDERICK COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 09-32

OPINION

INTRODUCTION

This is a consolidated appeal disputing the decision of the Frederick County Board of Education (local board) upholding the elimination of a bus stop at 10551 Rum Springs Road. The local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal.

FACTUAL BACKGROUND

At the beginning of the 2007-2008 school year, the school system administration agreed to establish a bus stop on private property, at 10551 Rum Springs Road, to serve Appellants' children. The school system established the bus stop on the condition that the residents (Ms. Griffin) would keep the driveway clear of vehicles and other obstructions that would hinder the bus from backing into the driveway to turn around. This caveat was necessary due to the design of the road at that location. (Local Board Decision at 1). Appellants state that the driveway is 25 feet wide and 80 feet long, and the street is 22 feet wide. (Appeal Letter). The school system uses buses that vary in length, with the longest measuring 39 feet. (Lowe Letter, 7/27/08). Students attending elementary, middle, and high school receive bus service at this location. (Barbeito Letter, 1/15/09).

On June 25, 2008, Teresa Meem, the Assistant Transportation Manager for Frederick County Public Schools (FCPS), notified one of the Appellants, Ms. Griffin that the school system was eliminating the bus stop as of July 1, 2008. Ms. Meem stated that there had been vehicles parked in the driveway that made it difficult for the bus driver to maneuver and turn the bus around safely.¹ (Meem Letter, 6/25/08). She noted that a truck was parked on a grassy area near the entrance to the driveway several times and that there were some days when trash cans were lying in the middle of the driveway. Ms. Meem also stated her belief that turning buses around on Rum Springs Road is not safe. *Id.*

¹Ms. Meem attached several photographs of the driveway and surrounding area to her letter.

Ms. Barbeito, another Appellant, received a similar letter from Veronica Lowe, Director of Transportation. (Lowe Letter, 7/27/08). Ms. Lowe explained that there was minimal room for maneuvering a bus at the turnaround location without vehicles or objects present in the driveway in the first place, that school bus drivers were sometimes "in the ditch" while exiting the driveway,² and that the addition of vehicles and objects in the driveway presented a hazard to drivers causing them to have to pull up and back up numerous times in order to exit the driveway once they had entered. She stated that Appellant had not upheld the agreement to keep the driveway clear of obstructions that would prevent the bus from turning around. (*Id.*).

Appellants appealed to Harold K. Keller, Executive Director of Fiscal Services, to review the decision to remove the bus stop. By letter dated August 6, 2008, Mr. Keller denied the Appellants' request to reestablish the bus stop. He stated that the bus driver and the Assistant Transportation Manager had informed him that the driveway was not always clear of impediments and that he would not put the bus driver in a "potential unnecessary difficult operating situation for another school year." (Keller Letter, 8/6/08).

On further appeal, the local superintendent upheld Mr. Keller's decision citing liability concerns over having the bus stop on private property and "operational impediments" imposed on the bus driver who had to turn the bus around in a challenging and difficult area. (Local Board Decision at 2).

Appellants appealed to the local board. In a unanimous decision, issued in December 2008, the local board affirmed the Superintendent's decision finding that it was neither arbitrary nor capricious, and that it was supported by substantial evidence. (*Id.*).

The students are currently receiving bus services from a bus stop at Rum Springs Road and Highland Springs Road.

STANDARD OF REVIEW

This is a student transportation case. It involves a local policy or dispute regarding the rules or regulations of a local board. The applicable standard of review is that 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. The State Board has been reluctant to intrude in student transportation cases because the area is a matter traditionally within the domain of the local school system. See *Benoit v. Carroll County Bd. of Educ.*, MSBE Op. No. 04-24 (2004); *Lane v. Howard County Bd. of Educ.*, 6 Ops. MSBE 587 (1993); *Gary and Melissa Lucas v. Bd. of Educ. of Garrett County*, 5 Ops. MSBE 421 (1989).

²As shown in the pictures attached to Ms. Meem's letter, the ditch is near the bottom of the driveway where it meets Rum Springs Road, not opposite the driveway as mistakenly stated by Ms. Lowe.

ANALYSIS

Evidentiary Hearing

The Appellants contend that the local board erred by failing to provide them with an evidentiary hearing in this case. However, there is no right to an evidentiary hearing when there is no constitutional or statutory basis to provide one. See *Teegardin v. Carroll County Bd. of Educ.*, MSBE Op. No. 02-52 (2002); *Williams v. Howard County Bd. of Educ.*, MSBE Op. No. 99-24 (1999). Nor does due process require an evidentiary hearing on matters such as this. See *Hethman v. Prince George's County Board of Education*, 6 Op. MSBE 646, 648-649 (1993). It is our view that there is no law or fact that would trigger an evidentiary hearing in this matter.

Bus Stop Removal

The FCPS administration established the bus stop on the condition that Ms. Griffin would keep the driveway free and clear of obstructions that would prevent the driver from maneuvering the turn around. The record contains pictures, however, that show that there were vehicles parked in the driveway and surrounding area that created obstructions.

Appellants take issue with some of these pictures. With regard to the pictures of the white truck, Appellants argue that the truck is on the grassy area next to the driveway and not on the driveway itself. They also claim that Ms. Meem approved parking in this location at the time the bus stop was established. Based on our review, we believe the picture shows the white truck partially parked on the driveway. With regard to the picture of the three trucks (one on driveway and 2 on grassy area), Appellants maintain that Ms. Meem also approved parking in these areas. Appellants have presented no evidence by way of affidavit or otherwise to prove that Ms. Meem agreed to these parking locations. Even if we were to discount the pictures that Appellants challenge, two of the pictures clearly show a grey/silver car at the bottom of the driveway obstructing access for the bus turn around.

Moreover, we believe that it was within the discretion of FCPS administration, regardless of whether or not there were obstructions in the driveway, to determine that the bus stop was not safe and discontinue service there. The record shows that both Ms. Lowe and Ms. Meem had concerns about the safety of turning the bus around in the driveway on Rum Springs Road. (Lowe Letter; Meem Letter). The bus driver reported difficulty making the maneuver. (*Id.*). The superintendent had safety concerns as well. (Local Board Decision at 2). After unsuccessfully using the driveway as a turn around, the school system determined that the location of the property in question, with the design and geography of the road, made it impossible to safely establish a bus stop at the location desired by Appellants.

Appellants argue that local board Policy 441 - Transportation of Students - requires the school system to reinstate the bus stop or provide a stop closer to their home than the one they are currently using at Rum Springs Road and Highland School Road. They assert that the distance between Appellants' homes and the available bus stop is too long a distance under the policy. Policy 441.3 states only that the local board "will endeavor to route buses so that students will have a maximum of ½ of a mile to walk to a bus stop, exclusive of private driveways and roadways." The policy provides no guarantee of this distance.

Appellants also rely on Policy 441.2(E) to support their claim that the walking route to the current bus stop is unsuitable. That section states that bus transportation will be provided when students who reside within the "prescribed walking distance" of their home do not have a suitable walkway between their homes and their assigned school. A suitable walkway is defined as a sidewalk or road shoulder with a minimum surface width of three feet over which students may walk without being required to step on the traveled portion of the road.

In addition, Ms. Barbeito cites Policy 441.2 (F), which sets forth the criteria for establishing walking paths. Policy 441.2 (F) provides as follows:

1. Elementary
 - a. With the exception of residential areas as outlined in section b., elementary students are not to walk on the traveled portion of the road.
 - b. On residential-area roads without through-traffic, elementary students are not to walk farther than 25 feet at any one point on the traveled portion of the road.

2. Secondary
 - a. On a road with through-traffic, secondary students are not to walk at any one point on the traveled portion of the road that is farther than:
 - (1) 25 feet on a road where the speed limit is greater than 35 miles per hour.
 - (2) 50 feet on a road where the speed limit is 35 miles per hour or less.
 - b. On a road without through traffic, secondary students are not to walk at any one pint on the traveled portion of the road that is farther than:

- (1) 50 feet on a road where the speed limit is greater than 35 miles per hour.
- (2) 200 feet on a road where the speed limit is 35 miles per hour or less.

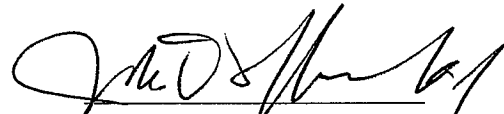
(Emphasis in original).

Ms. Barbeito claims that her children are being forced to walk over one mile on the traveled portion of the road with no shoulder, sidewalk or grass to get to the current bus stop. (Barbeito Letter to Boffman, 11/1/08). Ms. Griffin claims that her children must walk .6 miles in an unsafe walking area. (Griffin Letter to La Fiandra, 1/15/09).

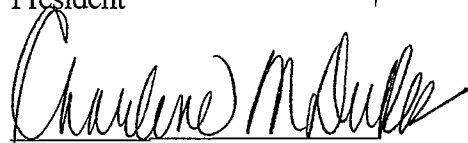
In its response to the appeal, the local board has not addressed Appellants' statements about the safety of the walking route to the current bus stop and whether that route is permissible under Policy 441.2. Nor was this issue addressed by the local board in its decision, despite being raised by the Appellants. (See Appellants' Letter to Keller, 8/5/08; Barbeito Letter to Boffman, 11/1/08). We are unable, therefore, to appropriately review this issue and will remand the matter to the local board for its consideration and ruling.

CONCLUSION

We remand this case solely for the local board to address Appellants' argument about the walking route from their homes to the current bus stop. As to all other issues presented on appeal, we affirm the decision of the local board.



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September 21, 2009