

DEBORAH HOLTEN,

Appellant

v.

MONTGOMERY COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 04-08

OPINION

This is an appeal of the elimination of bus transportation for students residing in the Quince Orchard Valley and Orchard Valley communities who live within the approved walking distances to Ridgeview Middle School and Quince Orchard High School.<sup>1</sup> The local board has filed a Motion for Summary Affirmance maintaining that there were no procedural errors below and that given distance and safety factors, the local board's decision is not arbitrary, unreasonable, or illegal. Appellants have submitted a response opposing the local board's motion.

FACTUAL BACKGROUND

Prior to 2002, students residing in the Quince Orchard Valley and Orchard Valley communities had been receiving bus service for many years. The local board maintains that bus service was provided despite the fact that these students were within the established walking distances, in accordance with local board Policy EEA which permits the provision of transportation "for distances less than that authorized by Board policy if a condition is considered hazardous to the safety of students walking to or from school. . . ." <sup>2</sup>

As part of its annual review, the Montgomery County Public Schools ("MCPS") Department of Transportation ("DOT") determined that bus service for students residing in the Quince Orchard Valley and Orchard Valley communities within the accepted walking distances could be eliminated. The DOT based this decision on the fact that a sidewalk along Longdraft Road and Fernshire Road had been completed. The DOT director notified the principals of

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<sup>1</sup>The appeal was initially filed by Deborah Holten and Pamela Kline as representatives of the affected communities. Per her request, Pamela Kline has been removed as an appellant.

<sup>2</sup>The local board's student transportation policy provides that middle school students who live within 1.5 miles of the school and high school students who live within 2.0 miles of the school are to walk to school unless "safety or other conditions warrant." The route is measured from the "nearest point of residential property to the curb in front of the nearest door accessible for entry by students to the school." Policy EEA permits the distances to be extended by one-tenth of a mile in establishing the line of demarcation between walking and transported students. See Policy EEA at C.2(a)(3).

Ridgeview Middle and Quince Orchard High that the change would be implemented for the school year beginning in August 2002.

Because various members of the affected communities disagreed with the decision to suspend bus service, an interagency review was conducted pursuant to local board Policy EEA.<sup>3</sup> The interagency review did not occur before the beginning of the 2002-2003 school year due to scheduling conflicts and because the intersection construction at Quince Orchard Road and Maryland Route 28 had not yet been completed. Consequently, the elimination of bus service was postponed until the 2003-2004 school year pending the interagency review.

The interagency review was conducted on May 14, 2003. The interagency team consisted of representatives of the Montgomery County Police Department, Montgomery County Department of Public Works and Transportation, Maryland State Highway Administration, and MCPS Departments of School Safety, Security, and Transportation. In addition representatives from the County Executive's Office, the affected schools, and members of the community participated in the review.

The interagency team agreed unanimously that students could walk safely to and from Ridgeview Middle and Quince Orchard High. Stephen M. Raucher, Director of the MCPS Department of Transportation, concurred with the interagency team's recommendations. In a memorandum to the principals of the two schools, Mr. Raucher, explained the basis for his decision:

The interagency team (Team) unanimously agreed that Ridgeview Middle School students, residing in the Fernshire Woods/Quince Orchard Valley community can safely walk to and from school. The Team found no compelling reasons or factors to continue transporting these students, who reside well within the 1.5 mile walk distance as established by the Board of Education (BOE). The Team found the walk from this community better than many other student walking routes in the county. The team therefore recommended that Bus Route 2316 to Ridgeview Middle School from the Fernshire Woods/Quince Orchard Valley community be

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<sup>3</sup>Policy EEA provides as follows:

In the event that a disagreement arises between the public's views and that of the transportation department on the hazardous nature of the condition, a joint assessment will be conducted by an interagency team including MCPS transportation staff, MCPS School Safety and Security Department staff, the Montgomery County Police Department School Safety Unit staff and the Department of Public Works and Transportation.

eliminated to maintain consistent and comparable levels of service throughout the county, and that the affected students can safely walk to school. I concur with that recommendation.

The interagency team also agreed that the walk from this community to Quince Orchard High School can be done safely by high school age students. The recommended walking route is for students to walk out of the community to Fernshire Rd., to Longdraft Rd., to Quince Orchard Road, and cross MD 28 to the school. Sight lines are clear, wide and visible. Sidewalks are on each, county and state, arterial roadway. The crossing at Route 28 and Quince Orchard Rd. is a signalized intersection with crosswalks and pedestrian button for crossing. The team found no compelling reason why a high school age student cannot safely cross the intersection.

Students who reside below or beyond Bayswater Road and Horn Point Drive are beyond the 2.0 mile walking distance as established by the BOE. The interagency team recommended that Bus Route 2330 be re-routed to provide transportation to those students who are beyond 2.0 miles. However, the majority of all high school students within this community are within the walking zone and do not meet BOE policy to continue being transported from within the walk zone.

By letter of June 12, 2003, Mr. Raucher's decision was appealed to Larry Bowers, Chief Operating Officer, acting as the superintendent's designee. Mr. Bowers denied the appeal responding as follows:

While I understand that there was a delayed start of the assessment, it did not affect topography, sight distances, and physical characteristics of the neighborhood.<sup>4</sup> Additionally, the representative of the Department of Public Works and Transportation revisited the area and logged traffic volumes and speeds between 6:30 a.m. and 7:30 a.m. Her observation was that fewer cars traveled these streets at that time than the interagency review team observed between 7:30 a.m. and 8:30 a.m. (76 cars versus 90 cars), average speeds were within 4 mph of the posted speed limit, and children and adults were observed walking

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<sup>4</sup>This was a response to Appellant's contention that the interagency team's tour through the neighborhoods did not occur until after 7:30 a.m. which is later than the time that the students would be walking to school.

successfully on these streets.<sup>5</sup> In addition, an investigation revealed that no pedestrian traffic accidents have been recorded.

As noted in the comparative statistics Dr. Raucher sent to you, exceptions for middle and high school students residing within the walking area are only provided for major traffic safety issues. Students in your community are not expected to cross state highways at uncontrolled intersections, walk along state highways or rural roads, or cross interstate highway ramps.

*See* 6/20/03 letter to Holten from Bowers.

On further appeal, the local board conducted a public hearing as required by local board Policy EEA and § 3-903(c) of the Education Article, Annotated Code of Maryland. The hearing was held on August 25, 2003. By a vote of five to three, the local board affirmed Mr. Bowers' decision to discontinue bus service concluding that "the appellants have not demonstrated that there is a condition which is hazardous to the safety of students walking to or from the schools in question . . . ." *See* local board decision at p. 2. The three dissenting board members indicated they would reverse the decision because of evidence demonstrating that conditions considered hazardous to the safety of the students walking to or from school exist. *See* local board decision at p. 3.

## 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).

### *Procedural Issues*

At a hearing scheduled for public comment on the elimination of the bus route, Appellant alleges that she was denied the right to have witnesses testify under oath, to examine and cross-examine witnesses, and to have a stenographic record of the part of the proceedings which involve presentation of evidence. Appellant relies on those portions of Policy BLB, entitled "Rules of Procedure in Appeals and Hearings", which apply to evidentiary hearings and oral arguments before the local board, unless otherwise indicated. *See* Policy BLB at B.5.

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<sup>5</sup>The Montgomery County Department of Public Works and Transportation, Division of Traffic and Parking Services ("DTPS"), made various recommendations for improvement of the walking route, some of which have already been implemented. *See* DTPS Traffic Study and July 9, 2003 letter from Gregory Leck, Montgomery County Department of Public Works and Transportation Team Leader.

Here, there was no evidentiary hearing or oral argument as described in the cited provisions. Rather this matter is governed by that portion of Policy BLB concerning appeals brought under §4-205 of the Education Article which does not require evidentiary hearings. Policy BLB specifically states that § 4-205 appeals “will be considered by the Board based on documents and arguments submitted in writing by the parties.”

Moreover, the public hearing about which Appellant complains is governed by § 3-903(c) of the Education Article concerning appeals of the elimination of bus routes. That statutory provision requires that the local board conduct a public hearing at which “members of the public shall be given a reasonable opportunity to testify and present their views. . . .” There is no legal requirement for sworn testimony, examination and cross-examination of those members of the public who choose to speak at the public hearing, or for a stenographic record of the proceedings. Accordingly, we do not find that there has been a procedural violation in this appeal as alleged by Appellant.

### *Substantive Issues*

#### 1. Distance

Appellant maintains that the local board erred in the measurement of the walking routes and that there are homes within the neighborhood that are outside of the acceptable walking distances.<sup>6</sup> Appellants used a walking wheel to measure the walking distances while the DOT used a vehicular mounted electronic device called Nitestar to measure the walking routes. This device, which is used by the DOT to measure walking routes all over Montgomery County, is known to the school system to be an extremely accurate method of measurement. The local board has explained that the distances were measured in accordance with Policy EEA from the curb at the end of the driveway of the furthest house to the nearest curb of the school. It is Appellant’s burden to demonstrate that the walking wheel is a more accurate method of measuring the distances. Appellant has not done so.<sup>7</sup>

#### 2. Safety

Appellant maintains that the width of portions of the walking route roadway combined with parked cars along the roadway, site distance, road slope, and driver speed create a narrow and hazardous channel for walkers to traverse when faced with roadway traffic. Appellant argues that the local board did not take all of these matters into consideration in reaching its decision.

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<sup>6</sup>Bus service continues to be provided for students in the neighborhood who reside below or beyond Bayswater Road and Horn Point Drive because they are beyond the two mile walking distance for high schools. However, the majority of students are within the walking zone.

<sup>7</sup>A letter dated January 8, 2004, on behalf of the Appellant continues to question the accuracy of Nitestar, but provides no evidence that the device was not calibrated properly.

Policy EEA states as follows, in pertinent part:

Students are expected to walk safely without sidewalks in residential subdivisions, on side streets, and to bus stops along roads where traffic is not heavy, where space is available at the side of the road, or where the road is of sufficient width to allow walking off the main road. Buses are not an alternative to the absence of sidewalks in a subdivision unless other safety factors such as inadequate sight distances are determined to jeopardize student safety.

The MCPS interagency team and the DTPS conducted safety studies. Both studies took the width of the streets and various obstacles and conditions drivers and pedestrians encounter into consideration when evaluating the walking routes. The interagency team study found the residential roadways without sidewalks measured 26 feet in width and had ample space for pedestrians to walk safely with the vehicle in the travel lane and cars parked sporadically on the roadway. Appellant argues that there was variation between the two studies regarding the precise number of cars observed parked on the streets. However, the DPWT study, while noting that “[m]any residents do park at least one vehicle on the street adjacent to their property,”<sup>8</sup> nonetheless deemed there to be “no compelling safety reasons why high school and middle school students should not walk along these streets.” The DPWT study that was considered by the Chief Operating Officer and local board in their decisions states as follows, in part:

In addition to the walk-about with the large group, DPTS conducted a 6:30-7:30AM evaluation (the hour requested by the community representative). On the day of the observation, 76 vehicles were observed on Bayswater Road, none appeared to be driving unsafely. While some residents had indicated that sight distances were poor along Bayswater Road due to the vertical and horizontal curvature of the roadway and the sun’s position for eastbound drivers, this observer found that both pedestrians and vehicles were adequately visible along the roadway. (Five pedestrians were observed, four of whom were students walking to the bus stop on Bayswater Road at Westbourne Terrace.) On the day of the DTPS observation, no cars were parked on Bayswater Road between Fernshire Road and Westbourne Terrace, while there where (sic) vehicles randomly (not bumper to bumper) parked on Bayswater Road between Westbourne Terrace and Horn

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<sup>8</sup>This finding is in contrast to the interagency study which noted that few cars are parked on the roadway. *See* report at 2.

Point Drive.<sup>9</sup>

Appellant faults the local board for failing to use empirical standards such as those used by the American Association of the State Highway and Transportation Officials (“AASHTO “). It is true that Policy EEA does not rely on empirical standards, but relies instead on the judgment of professionals which include among others members of the Montgomery County police department, Montgomery County Department of Public Works and Transportation, and the State Highway Administration. Based upon our review, we find the record discloses that the professionals considered the width of the roads in light of other factors to evaluate the safety of the walking routes, as already stated above. They also considered sight distance but concluded that students in middle and high school can negotiate obstacles such as hills and curves by being aware of their surroundings at all times. See interagency report at 2.

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. For the reasons stated in those cases and as well as the findings of the interagency team described above, we decline to do so here as well. 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). See *Michael P. Callahan v. Howard County Board of Education*, MSBE Opinion 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).

## CONCLUSION

Consistent with these precedents and finding that the majority decision is not arbitrary, unreasonable, or illegal, we affirm the decision of the Montgomery County Board of Education.

Edward L. Root  
President

JoAnn T. Bell  
Vice President

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<sup>9</sup>DPWT Study at page 3.

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February 25, 2004