

JAMES AND JOANIE HERRON, ET AL.

Appellant

v.

HARFORD COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 12-10

OPINION

INTRODUCTION

Appellants appeal the local board's decision denying their request to relocate a bus stop. The local board has filed a Motion to Dismiss and/or for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. The Appellants have responded to the Motion and the local board has replied.

FACTUAL BACKGROUND

Appellants are parents of students whose elementary, middle and high school children are serviced by the bus stop at issue. The Appellants all reside on Flora Meadows Drive which is approximately .2 miles long and ends in a cul-de-sac. It intersects only with Chestnut Hill Road. The bus stop is located on Chestnut Hill Road at that intersection. Appellants ask that the bus stop be relocated onto Flora Meadows Drive based on safety concerns. This would require that bus to pull onto Flora Meadows Drive, turn around at the cul-de-sac, and return to Chestnut Hill Road.

Appellants' relocation request is not a new one. Over the past several years, the Herrons and several other residents of Flora Meadows Drive have repeatedly requested that the bus stop be relocated to some point along Flora Meadows Drive based on the same safety concerns they raise in this case. They maintain the following: that the distance between the bus stop and the intersection of Route 24 and Chestnut Hill Road is too short to give drivers turning onto Chestnut Hill Road sufficient sight distance to stop safely when the bus stops at the intersection of Flora Meadows Drive; that cars speeding on Chestnut Hill Road "hug the curb" making it especially dangerous for the children waiting for the bus at the stop; and that the lack of a sidewalk makes it unsafe in times of inclement weather because the children end up standing several feet into the road while they wait for the bus. (R-1.a – R-1.h).

In December 2007, Charles Taibi, Director of Transportation, advised the Herrons and others that the bus stop would not be changed because it was appropriately located under established safety requirements. He explained that neither the distance of the stop from Route 24, the absence of sidewalks, nor the .2 mile street measurement of Flora Meadows Drive required that the bus stop be relocated. (Taibi Letter, 12/5/07).

In response to requests, during the summer of 2008, the school system performed another review of the bus stop. Mr. Taibi and Joseph P. Licata, Chief of Administration, advised the requesters that the local superintendent denied the request to relocate the bus stop. Mr. Licata stated that the distances were within the stated standards and the congregating area at the bus stop was sufficiently safe. He also stated that the location was consistent with other bus stops throughout the county. (Licata Letter, 8/13/08). A resident of Flora Meadows Drive appealed the decision to the local board. On September 23, 2008, the local board unanimously denied the request to relocate the bus stop. (R-1.a – R-1.h).¹

In the spring of 2011, the Herrons contacted the school system's Transportation Department requesting the same change in bus stop location. Matt Bedsaul, Assistant Supervisor of Transportation, and Mr. Taibi, advised the Herrons that the circumstances of the prior denials had not changed and the bus stop would remain at its same location.

By letter dated March 22, 2011, the Herrons appealed the decision to the local board claiming safety concerns. (R-3). In accordance with procedure, the local board referred the matter to the local superintendent. On April 19, 2011, Joseph P. Licata, acting as the Superintendent's Designee, denied the Herrons' request. He stated as follows:

In the time since I received your letter of March 22, 2011, Mr. Charles Taibi, Director of Transportation, and I have re-visited your street, verified distances, visited the other streets and courts in the area, and reviewed the written history and records regarding this issue (going all the way back to the previous Director of Transportation). Inasmuch as the conditions have not changed since we last dealt with this issue, and, since we have no evidence to suggest that there has been any record of increased safety issues, I need to advise you that the current elementary bus stop location will remain in place. All of the distances fall well within our standards and the congregating area at the end of Flora Meadows is sufficient for the safe boarding and exiting of the bus. This bus stop location is consistent with dozens of bus stop locations throughout the county. Our suggestion is that you continue to accompany your children to and from the bus stop if you believe the situation is unsafe.

(R-1.0).

¹ The appellant in the case did not appeal the local board's decision to the State Board.

The Herrons appealed the decision to the local board. (R-2.a – R-2.ii). In a decision conveyed by letter from counsel dated August 4, 2011, the local board upheld the decision of the Superintendent’s Designee to deny relocation of the bus stop finding that Appellants had provided insufficient evidence that the location was unsafe. It further found that the bus stop was within the scope of the Transportation Department’s standards for safe boarding and exiting of the bus. (R-7.a-b).

This appeal ensued.

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.

LEGAL ANALYSIS

Substantive Issues

The Appellants maintain that the bus stop is unsafe because cars turning onto Chestnut Hill Road from Route 24 do not have sufficient sight distance to stop safely given the distance between the intersection and the bus stop; there are no sidewalks which results in the children standing several feet into the street on days with inclement weather; and cars speeding on Chestnut Hill Road “hug the curb” and come dangerously close to where the children are standing while they wait for the bus.

COMAR 13A.06.07.13 sets forth the bus stop requirements for the public schools. It states, in pertinent part:

- A. The prime consideration is the safety of riders.
- B. Requirement for Stops.
 - (1) Stops should be approximately ¼ 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.

Thus, school systems have wide discretion in determining the location of bus stops.

The local board maintains that the location of the bus stop satisfies safety requirements. The measured distance from Route 24 to the bus stop exceeds 100 feet. In the opinion of the school system's transportation staff this provides sufficient stopping time for vehicles on Chestnut Hill Road and meets safety considerations.²

The transportation staff also found that the other conditions, including the lack of sidewalk and the 30 mile per hour posted speed limit, did not require a relocation of the stop under the safety standards. Staff noted that there are many roads on which bus stops are located that do not have sidewalks. They explained that lack of sidewalks is a factor in establishing a bus stop only on high volume, high speed roads with through traffic. The transportation professionals determined that those conditions did not exist at this bus stop location. (R-1.b).

In response to the local board's position, the Appellants have submitted a July 2010 guide entitled *Selecting School Bus Stop Locations: A Guide for School Transportation Professionals* prepared by the National Center for Safe Routes to School and the Pedestrian and Bicycle Information Center.³ There is no indication in the record that this guide is one that is commonly accepted in the public school community for the purpose of establishing bus stops, or that it is utilized by the public school systems in Maryland. Nevertheless the guide acknowledges that there are no standardized sight distance measures that provide sufficient visibility nor are there formulas for computing appropriate sight distance. Rather, it sets forth factors that should be taken into consideration when establishing a bus stop because they may impact sight distance. These factors are sunrise/sunset times, curves and hills, trees and other vegetation, on street parked cars and approaching vehicles, and snow drifts from snowplows. (R-2.n). In our view the guide simply reinforces the school system's discretionary latitude on the issue of bus stop location. It is not determinative of any one specific sight distance standard.

The Appellants also state that the bus driver agrees that the stop should be relocated to Flora Meadows Drive. Appellants have not submitted any written statement or affidavit from the bus driver, thus there is no evidence to support this bald assertion. (R-2.b).

The school system's transportation safety professionals have reviewed the conditions at the bus stop numerous times. It is the judgment of the transportation professionals that the bus stop satisfies safety standards. This conclusion is based on their review of the location taking into consideration the concerns raised by the Appellants. These concerns included sight distance, vehicle speeds, and lack of sidewalks. While the Appellants have presented their own opinions that the bus stop location is unsafe, they have not presented any evidence that would counter the opinions of the school system's transportation safety professionals that the current location conformed to applicable safety standards and provided a safe location for students.

² The local superintendent noted the lack of data from the Harford County Sheriff's Department or the Transportation Department regarding vehicular accidents or pedestrian accidents in the area of the bus stop along Chestnut Hill Road. Appellants believe this comment is indicative of a requirement that an accident or injury must occur before the bus stop location can be changed. We believe that the local board was simply suggesting that the lack of such evidence was consistent with the opinions of their transportation professionals that the bus stop is safe.

³ Both are part of the University of North Carolina Highway Safety Research Center.

In an attempt to demonstrate arbitrary application of the school system's standards for establishing bus stops, the Appellants also dispute the local board's assertion that the bus stop is consistent with other stops in the County. The Appellants identify three nearby stops on the bus route (Pheasant Drive, Bower Lane, and Colvard Court) in which the bus turns onto cul-de-sac streets for the bus stop.

The fact that Appellants can point to three stops on their route for which the school bus pulls onto cul-de-sac streets of similar distance to Flora Meadows Drive does not mean that their stop is inconsistent with the multitude of other bus stops in the County. There can be any number of reasons why the specified bus stops are different from theirs including road conditions, road dimensions, topography, site distances, and traffic flow. There are also legal requirements with which the school system must comply concerning the transportation of students with disabilities. Whether a bus stop may be located at different places for children living on a cul-de-sac road of similar length is an administrative and operational decision within the discretion of the school system.

We point out that the bus stops referenced by Appellants have been relocated and the bus no longer pulls off of the main road onto the cul-de-sac streets. While Appellants believe the local board moved the stops "in a clear attempt to mask their arbitrary administration of their bus stop policies", there is no evidence to support that assertion. Whatever the basis for the change, the fact remains that the bus stops no longer exist. Appellants have not shown arbitrary application of the criteria for establishing bus stops.

The State board has recognized the discretion of school systems in addressing transportation issues and has long held the view that the transportation of students is a matter traditionally within the domain of the local school system. Because of this view, the State Board has been reluctant to intrude in such cases. *See Lucas v. Board of Educ. of Garrett County*, 5 Ops. MSBE 421 (1989)(denial of bus transportation upheld despite claims of dangerous route with no sidewalks, barriers, or guardrails); *Robinson v. Board of Educ. of Howard County*, 7 Ops. MSBE 1296 (1998)(rejecting contention that bus stop location jeopardized student safety); *Hanson v. Board of Educ. of Howard County*, 7 Ops. MSBE 709 (1997)(finding bus stop along State highway to meet the acceptable level of safety).

Procedural Issues

Appellants argue that the appeal was "adjudicated with no transparency" and that the local board held an appeal hearing with no public record, no "documented meeting minutes" or any other explanation. Appellants state that the local board's Handbook notes the importance of meeting minutes and Roberts Rules of Assembly.

The local board considered this case under its documentary appeal procedures set forth in local board Policy No, 22-0018-000. *See R-6.a-b and R-6.f.* Documentary review is sufficient process under §4-205(c) of the Education Article with respect to an appeal of a bus stop location. Appellants have no right in this case to an in person evidentiary hearing because there is no constitutional or statutory basis to provide one. *See Roger B. v. St. Mary's County Bd. of Educ.*,

MSBE Op. No. 08-53 (2008); *Hanson v. Board of Educ. of Howard County*, 7 Ops. MSBE 709 (1997). The local board deliberated and voted on the case during its closed session. It communicated its decision and rationale to the Appellants by way of a letter from board counsel.

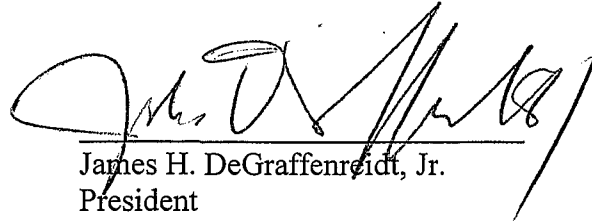
To the extent Appellants are arguing that the appeal review should have been conducted in an open meeting or are attempting to raise other claims under the Maryland Open Meetings Act, §10-501 *et seq.* of the State Government Article, the State Board is not the appropriate forum to raise such issues. Appellants must seek redress of such claims through the court or the Open Meetings Compliance Board. See *McDaniel v. Montgomery County Bd. of Educ.*, MSBE Op. No. 03-22 (2003). We note, however, that the local board was performing its responsibility under §4-205 of the Education Article of reviewing an appeal of a decision made by the local superintendent. The Open Meetings Act does not apply when a local board is carrying out an administrative, judicial or quasi-judicial function, as the local board was here. Md. Code Ann., State Gov't. §10-503(a)(1). This includes the Act's requirement under §10-509 for the production of meeting minutes. Although the local board's Handbook emphasizes the importance of meeting minutes, the Handbook refers to the keeping of minutes in the context of open and closed meetings pursuant to the requirements of the Open Meetings Act. (Handbook, p. 11).

Appellants also maintain that the local board's decision is somehow rendered arbitrary, unreasonable or illegal because a board member who lives in close proximity to the bus stop did not participate in the proceedings. There is no legal basis for this claim as there is no requirement that every member of the board participate in every decision. The local board's policy requires only a quorum of the board to decide the appeal. (R-6.d).


Appellants also challenge the legality of the local superintendent's written statement in which he asked the local board for "immediate disposition of this matter" given that the exact issue had been previously appealed to and upheld by the local board in 2008. The local superintendent explained that if the case were to proceed, the local board could face additional duplicative requests for appeal by the other residents on the street which would be a costly and inefficient endeavor. There is nothing illegal about the submission by the local superintendent and the local board appeal procedures do not prohibit its consideration.

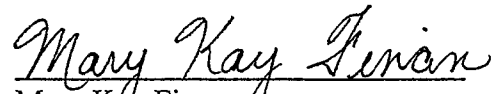
CONCLUSION

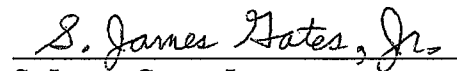
For all of these reasons, we affirm the local board's decision denying the Appellants' request to relocate the bus stop.




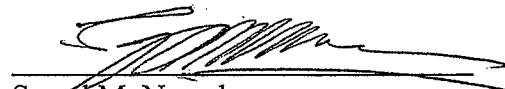
James H. DeGraffenreid, Jr.
President

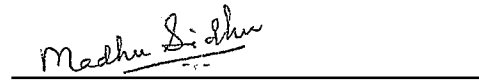

Charlene M. Dukes
Vice President

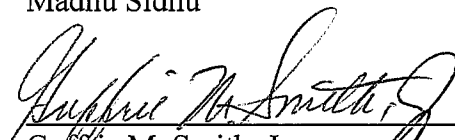

Mary Kay Finan

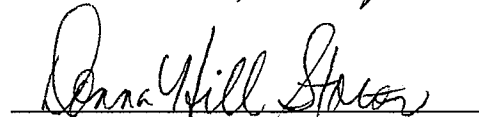

S. James Gates, Jr.

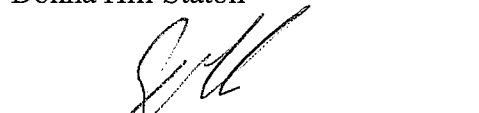

Luisa Montero-Diaz

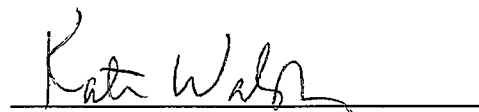

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March 27, 2012