

TAMMY M.

Appellant

v.

ALLEGANY COUNTY BOARD  
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 12-25

## OPINION

### INTRODUCTION

This is an appeal of the decision of the Allegany County Board of Education (local board) denying Appellant's son bus transportation to Mountain Ridge High School (Mountain Ridge). The local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. The Appellant responded and the local board replied to the response.

### FACTUAL BACKGROUND

Appellant lives on Powells Lane in the Grahamtown area of Frostburg. Her residence is located approximately 1.1 miles from Mountain Ridge High School where her son attends school. The school system does not provide bus transportation for Appellant's son because Appellant's residence is located within the 1.5 mile school walking zone.

Appellant asked the school system to provide bus transportation for her high school aged son because she believes that the walking route from her home to school is too dangerous due to heavy traffic, narrow roads, lack of sidewalks, and the "S" curve on Route 36. (LB Mtn., Ex. 1). Appellant suggested that the school system add a bus stop on the already existing route that passes by Powells Lane while traveling on Route 36 on its way to Mountain Ridge. (*Id.*).

The Transportation Office conducted a site meeting at Powells Lane on August 3, 2011. It also conducted a traffic count on August 4, 2011 from 7:15-7:30 am at the "S" curve, noting 15 cars at or below the speed limit at that time. Staff also identified several alternative routes which avoid passing through the "S" curve. The school system's Director of Transportation denied Appellant's request for bus service based on an acceptable level of safety for the walking route and on equity of service. (LB Mtn., Ex. 2). The Chief Business Officer upheld the decision. (LB Mtn., Ex. 4).

Appellant appealed to the local Superintendent. She again argued safety issues as the basis for her request. She stated that the alternate routes may have eliminated the "S" curve, but not the safety concerns related to heavy traffic and other unsafe road conditions. She also argued that the school system's assessment of the amount of traffic was inaccurate (15 vehicles from 7:15-7:30 at the "S" curve) because the site visit was conducted over the summer and not during the school year. She further noted that someone was hit by a car along the walking route several years ago.<sup>1</sup> (LB Mtn., Ex. 5). The local Superintendent denied the appeal. (LB Mtn., Ex. 7).

Appellant appealed to the local board, reiterating her prior arguments. In a memorandum to the local board, the Director of Transportation stated that transportation staff found no traffic conditions that would warrant an exception to the to the 1.5 non-transport distance. He noted a route deemed acceptable by the transportation office that avoids the Upper George's Creek "S" turn. (LB Mtn., Ex. 11). The local board unanimously upheld the local Superintendent's decision denying bus transportation, finding that consistent application of the existing rule was appropriate in this case. (LB Mtn., Ex. 12).

This appeal ensued.

#### STANDARD OF REVIEW

Because this appeal involves the decision of the local board involving 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

The Allegany County Public Schools' transportation policy does not provide bus service for high school students who live within 1.5 miles of school (referred to as the non-transport area). (See ACPS Policy EEA & EEA-R). For students who reside in the non-transport area, parents/guardians are responsible for the transportation of the student to and from school. (See ACPS Non-Transport Area Procedure).

The Appellant maintains that the local board acted unreasonably by not providing transportation to and from school for her son who lives within the 1.5 mile walking zone. She maintains that the walking route from her home to school is dangerous and requires that her request for transportation be granted.

The school system considered whether or not the walking route was sufficiently hazardous to justify an exception to the 1.5 mile transportation limit.<sup>2</sup> The school system's

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<sup>1</sup> Appellant does not provide any other information regarding the accident.

<sup>2</sup> Although the transportation policy does not contain a written exception for safety concerns, the school system clearly considered whether an exception should be granted on that basis.

transportation safety professionals reviewed the conditions of the walking route and conducted a traffic count in the area of the "S" curve. In their judgment, the walking route met acceptable levels of safety. They also identified four alternative walking routes that would avoid the "S" curve.

Normally we would rely on the opinions of the school system's transportation officials who have assessed the safety of a walking route in the absence of contradictory evidence. It is our view, however, that the opinions in this case pose a problem with regard to the traffic count. Transportation officials conducted the traffic count for the walking route in August during a time when school was not in session. They are, therefore, based on information that does not accurately reflect the traffic conditions that might exist on a regular school day. Nor have the transportation officials made any adjustments to the traffic count to take this fact into consideration or addressed the concern in any meaningful way. While we understand that Appellant initiated her transportation request in August, there was sufficient time for transportation officials to update the traffic count with information obtained during a regular school day prior to the time the local board issued its decision in December. This issue is important because one of Appellant's primary complaints was that the amount of traffic on the walking route created a hazardous situation. In addition, it does not appear that transportation officials considered a traffic count in assessing the safety of the identified alternative routes.

We do not usually depart from our long held view that the transportation of students is a matter traditionally within the domain of the local school system and that school systems have discretion in addressing transportation issues. 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). Here, however, because the local board upheld that the Superintendent's decision which, in our view, unreasonably relied on the inaccurate report of the transportation officials, we will intervene.

### CONCLUSION

For these reasons, we find the local board's decision to be unreasonable. We remand this case to the local board for the purpose of assessing the safety of all of the identified walking routes taking into account accurate traffic count information.

  
James H. DeGraffenreidt, Jr.  
President

  
Charlene M. Dukes  
Vice President

*Mary Kay Finon*

Mary Kay Finon

*absent*

S. James Gates, Jr.

*Luisa Montero-Diaz*

Luisa Montero-Diaz

*absent*

Sayed M. Naved

*absent*

Madhu Sidhu

*Donna Hill Staton*

Donna Hill Staton

Ivan C.A. Walks

Dissent:

We would have affirmed the local board's decision.

*Guffie M. Smith, Jr.*

Guffie M. Smith, Jr.

*Kate Walsh*

Kate Walsh

July 24, 2012