

LOUISA E. BAKER,

Appellant

v.

CARROLL COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 99-25

OPINION

In this appeal, Appellant challenges the local board's decision upholding the school system's policy of allowing bus drivers to drop off kindergarten students at their designated bus stops without verifying that a parent or responsible adult is waiting for each child. Specifically, Appellant argues that the policy is illegal in light of child neglect laws. The local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. Appellant has filed a response in opposition to the motion.

BACKGROUND

Appellant is the mother of a kindergarten student who attends Elmer A. Wolfe Elementary School in Carroll County.¹ After attending a kindergarten parents' meeting in April, 1998, Appellant sent correspondence to James L. Doolan, Supervisor of Pupil Transportation, and Vernon Smith, Jr., Assistant Superintendent of Administration, expressing her concerns about bus drivers leaving kindergarten students at their designated bus stops when the students' parents or other responsible adults are not present to meet the children. Both Mr. Doolan and Mr. Smith advised Appellant that it is the parent and not the bus driver who is responsible for the child once the child disembarks the bus at the designated stop, as stated in local board policies EEA and EEAC. They also both explained the difficulty and confusion that would result if bus drivers were required to match the students to the individuals waiting at bus stops.

Appellant appealed the matter to the superintendent. In upholding the school system's policy, the superintendent's designee advised Appellant that it is the "parent's responsibility to provide supervision of children once they disembark their school bus." The superintendent's designee also referred Appellant to the State Board's opinion in *Mary Davis v. Carroll County Board of Education*, MSBE Opinion No. 98-34 (June 24, 1998), in which the State Board upheld the local board's decision denying Ms. Davis' request for a change in local board policy that would require school bus drivers to bring kindergartners back to their home school if the parent is

¹Both Appellant and counsel for the local board have noted that the local board's decision incorrectly states that Appellant's child attends Taneytown Elementary School.

not present at the bus stop.

Appellant then appealed to the local board, maintaining that the school system's policy is illegal in light of federal and state child neglect laws. The local board upheld the superintendent's decision, explicitly rejecting the notion that a bus driver commits an act of child neglect by dropping a child off at a designated bus stop when a parent fails to meet the child there. This appeal followed.

ANALYSIS

Because this appeal concerns a controversy regarding a local board's policy, the decision of the local board shall be 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. *See* COMAR 13A.01.01.03E(1)(a).

As noted above, the board policy at issue in the instant case was previously upheld by the State Board in *Davis*, Op. No. 98-34. However, Appellant attempts to distinguish her case by raising a legal argument that she claims was not considered in the *Davis* appeal, i.e., that a bus driver commits an act of child neglect, as defined by Md. Code Ann., Fam. Law § 5-701(p), when he leaves a student at a bus stop without verifying that a parent or other responsible adult is present.² Section 5-701(p) provides the following:

'Neglect' means the leaving of a child unattended or other failure to give proper care and attention to a child by any parent or other person who has permanent or temporary care or custody or responsibility for supervision of the child under circumstances that indicate:

- (1) that the child's health or welfare is harmed or placed at substantial risk of harm; or
- (2) mental injury to the child or a substantial risk of

²Appellant also refers to child neglect as specified in the Child Abuse Prevention and Treatment Act ("CAPTA"). 42 U.S.C. §5101 *et seq.* CAPTA's implementing regulations define "child abuse and neglect" as "the physical or mental injury . . . of a child under the age of eighteen, or the age specified by the child protection law of the State, by a person including any employee of a residential facility or any staff person providing out of home care who is responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare." 45 CFR § 1340.2(d). We believe the analysis rejecting the applicability of child neglect as defined by the Family Law Article to the circumstances presented in this appeal also applies to child neglect as defined in CAPTA's regulations; and that the term bus driver would not fall within the definition of "a person responsible for a child's welfare" as defined by the CAPTA regulations. *See* 45 CFR §1340.2(d)(4).

mental injury.

While this precise argument was not specifically addressed in the *Davis* opinion, the State Board did note the absence of any statute or regulation that requires a local board to return a student to school if a parent is not waiting for the student at the bus stop. Moreover, Carroll County Board of Education Policy EEAC on bus routes and stops specifically puts parents on notice of their responsibility to supervise their own children once the children exit a school bus:

It is the responsibility of the parent or guardian to provide supervision for their child(ren) while walking to, from or waiting at the designated bus stop.³

This statement makes it clear that the bus driver has no responsibility for supervision of the child once the child disembarks the bus. At that point, the child becomes the responsibility of the parent, and the child neglect provision may apply to the actions of the parent or guardian, but not to the actions of the bus driver.

Moreover, as the local board has noted, Appellant has presented no legal authority in support of her contention. If Appellant were correct, then no school would be able to allow children who live within the walking zone to walk to or from school without an adult escort. Under Appellant's theory, if a child walked home alone, an act of criminal child neglect would occur.

It is also noteworthy that under another provision of the Family Law Article, an individual charged with the care of a child under the age of 8 is prohibited from locking or confining that child in a dwelling, building, enclosure, or motor vehicle while the individual is absent from those locations and the locations are out of the individual's sight, unless a reliable person at least 13 years old remains with the child to protect the child. *See* Md. Code Ann., Fam. Law § 5-801. The law mentions absolutely nothing about leaving a child outside of a dwelling, building, enclosure, or motor vehicle.

Finally, we note that there is flexibility built into the Carroll County policy because it provides exceptions in case of an emergency. Thus if a parent were not able to be at the bus stop, the parent may call the school and make arrangements for having the child picked up.

CONCLUSION

For all of these reasons, we affirm the decision of the Board of Education of Carroll County.

Walter Sondheim, Jr.
President

Edward Andrews

³The same language is also contained in the Carroll County Board of Education Policy EEA on eligibility for school bus transportation.

Vice President

Raymond V. Bartlett

JoAnn T. Bell

Philip S. Benzil

George W. Fisher, Sr.

Morris Jones

Marilyn D. Maultsby

Judith McHale

Adrienne L. Ottaviani

John Wisthoff

May 26, 1999