

MISSY BURKE,

Appellant

v.

HOWARD COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 00-23

OPINION

This is an appeal of the denial of bus transportation to Harper's Choice Middle School for students living on Beech Creek Drive in Columbia based on safety concerns due to the designation of the Harper's Choice area as a "HotSpot." The local board has filed a Motion for Summary Affirmance maintaining that the local board's decision should be upheld. Appellant has filed an opposition to the local board's motion.

BACKGROUND

Appellant lives on Beech Creek Drive in Columbia. Her child attends Harper's Choice Middle School. The Howard County School System does not currently provide bus transportation for Appellant's child, or for the children of other residents living on Beech Creek Drive who attend Harper's Choice Middle School because they reside within the walking zone for that school. Appellant, however, wants to have bus transportation provided by the Howard County Public Schools ("HCPS") due to safety concerns about the walking route. Appellant argues that the walking route is unsafe because it requires students to walk through the Harper's Choice area which has recently been designated as a "HotSpot" under the Maryland HotSpot Communities Initiative.¹ Appellant also believes that the walking route is unsafe because the students walk for approximately eight to twelve minutes through an area that is partially obscured from the view of residences and has minimal traffic exposure.² Additionally, Appellant claims that some of the neighborhood homes on Beech Creek Drive qualify for bus service because they are

¹The Maryland HotSpot Communities Initiative targets certain high-crime and at-risk neighborhoods and provides those neighborhoods with grant funds for additional resources in areas such as community policing, probation enforcement, nuisance abatement, youth violence prevention and community mobilization.

²Appellant indicates that this portion of the walking route is bordered on one side by a park and on the other side by townhouses which are set back from the road and obscured by trees, placing the students "out of sight and hearing of the community" and at risk for that period of walking time.

outside the one mile walking distance established by the HCPS pupil transportation policy.

Appellant raised her concerns regarding the walking route with the HCPS pupil transportation office (“PTO”). In response, the Student Walking Route Committee evaluated the walking route in accordance with established guidelines. The Committee reported the following:

The Committee finds this route meets these established standards. The majority of this route is through a thickly settled residential area with good clear visibility. The area of concern to the parent is the pathway. While the path has been cleared and has good sight distance, there are documented occurrences of criminal activity at this path area. We request [that] the Howard County Police Department conduct a thorough investigation of this area as soon as possible and determine the level of safety for a student walking this route.

See November 3, 1999 Student Walking Route Committee Report. Based on the Committee’s findings that the walking route meets safety standards and the fact that Appellant’s residence is situated within a mile from the school using the designated walking route, Glenn J. Johnson, Director of Pupil Transportation, advised Appellant that the superintendent denied her request for transportation services. Mr. Johnson also indicated that the committee’s recommendation for a study of criminal activity would be forwarded to the Howard County Police Department for its consideration. *See* Letter to Burke from Johnson dated 11/18/99.

Appellant appealed the Superintendent’s decision to the local board maintaining that transportation service should be provided because 10916 Beech Creek Drive³ is over one mile from the school, and the walking route “is in a recently designated crime ‘hot spot’ along a walkway that is secluded enough as to be a[n] invitation to crimes against the children who travel it.” The superintendent responded by memorandum to the local board. Among other things, the superintendent indicated that the traffic engineer, Mr. George Frangos, had evaluated the walking route and advised PTO staff that it was acceptable for all age students to cross Beech Creek Drive at the beginning of the cul-de-sac. *See* Memorandum from Hickey to Local Board dated 1/5/00.

The local board members reviewed the entire record, and several members personally visited the neighborhood at various times, examined the surrounding streets, and walked the route. In its decision upholding the denial of transportation service, the local board cited the following reasons:

- The designated walking route meets the acceptable level of safety of other walking routes during the time in which the students walk to and from school.

³Appellant lives on Beech Creek Drive but 10916 Beech Creek Drive is her neighbors’ address.

- The Student Walking Route Committee reviewed the walking route and concluded that it met established standards and was consistent with the HCPS pupil transportation policy.
- The PTO staff and Board members independently measured the distance of the walking route from Appellant's residence, finding that it does not exceed the one mile middle school walking distance criteria.
- 10916 Beech Creek Drive falls within the one mile middle school walking distance. Crossing a residential street at a cul-de-sac may be considered in measuring a walking route under the pupil transportation policy.
- The local board noted that students actually create a shorter walking route by taking a more direct route over lawns and parks.
- While an area's designation as a HotSpot acknowledges a crime rate high enough to qualify the area for extra funding, it also provides for additional resources that are used for police protection, a community police officer, probation officers, and juvenile justice counselors that help make the area safer than it might otherwise be without the funding.
- The local board is unaware of any crimes against children walking to and from schools in HotSpot areas.
- It is the responsibility of parents to supervise students and to instruct them on safe walking practices.
- The Board is charged with providing an equitable level of service across the county. If transportation services were provided here, then the same level of service would have to be extended for a minimum of 2,760 students countywide, requiring at least 17 additional buses at a large fiscal cost.

In its decision, the local board also directed the Pupil Transportation Office to continue to monitor the walking route to determine if the safety level remains acceptable. If conditions change, necessary adjustments would be made.

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). In accordance with the Howard County Transportation Policy, the following factors must be considered when determining the need for and/or implementing school bus services: (1) acceptable level of safety;

(2) program efficiency; (3) economy of operations; and (4) equity of service. Safety, however, is the primary concern.⁴ The record reveals that the local board took all of these factors into consideration in making its determination regarding the request for bus transportation, and that the board's decision was reasonable. For example, the Pupil Transportation Office staff concluded that the walking route provided an acceptable level of safety, and the Student Walking Route Committee determined that the route met the standards established by the pupil transportation policy.

Appellant is concerned about the safety of the walking route now that the Harper's Choice area has been designated as a HotSpot under the Maryland HotSpot Community Initiative. The designation of an area as a HotSpot does not necessarily mean that students in that area are at risk as they walk to and from school. The fact that the Harper's Choice area is now a HotSpot does mean that there will be an increase in safety measures in the area. There is no evidence in the record disclosing that students are at risk while traversing the walking route at issue. The school system has referred to the Howard County Police Department the Walking Route Committee's request that the police conduct a study of the area to determine the safety of students walking this route, and the local board has directed the pupil transportation office to continue to monitor the safety of the route to determine if a change in the route becomes necessary. The local board's decision is therefore not arbitrary or unreasonable given these measures as well as the fact that there are currently no figures demonstrating that students are at an increased risk due to the HotSpot designation.⁵

Appellant also argues that there are some homes on Beech Creek Drive which are eligible for transportation services because they are located more than one mile from the Harper's Choice Middle School, specifically the residence at 10916 Beech Creek Drive. Although it does not appear that Appellant has standing to raise this issue because her home is within the one mile walking radius, the local board did address the distance issue in its opinion. Therefore, we will address it as well.

Students in middle school who live within one mile from school are expected to walk to and from school. *See* HCPS Pupil Transportation Policy 5111-R (II.A). Appellant disputes the the walking route measured by the Pupil Transportation Office to 10916 Beech Creek Drive because it requires students to cross a residential road at a cul-de-sac, rather than continuing around the cul-de-sac on the sidewalk to access the residence. If the child were to continue on the sidewalk, the route would exceed one mile.

⁴The school system relies on the expertise of traffic engineers, the police, and the Howard County Public School System's Department of Transportation personnel to assess the level of safety for walking and bus routes.

⁵The local board also recommended strongly that the students continue to walk in groups. We recommend that parents reinforce this suggestion and instruct their children on safe walking practices.

The HCPS pupil transportation policy states that in measuring distances under the policy “the most direct route meeting an acceptable level of safety will be utilized.” See 5111-PR(C). Furthermore, the policy allows the crossing of a residential street at a cul-de-sac. See 5111-R(I.U. and I.V.). The policy does not require that the walking route be measured using the sidewalk around the cul-de-sac. The walking route was measured by both the Pupil Transportation Office and the local board, who found it to be within the one mile walking distance. There is nothing in the record to dispute this finding.

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. See *Doreen Robinson v. Board of Education of Howard County*, 7 Op. MSBE 1296 (1998); *Judy Hanson v. Board of Education of Howard County*, 7 Op. MSBE 709 (1997); *Lane v. Howard County Board of Education*, 6 Op. MSBE 587, 588 (1993). Based on the record in this case, we do not find the local board’s decision to be arbitrary, unreasonable or illegal.

CONCLUSION

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

Edward Andrews
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May 24, 2000