

MELISSA SMACK,

Appellant

v.

WORCESTER COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 02-44

### OPINION

In this appeal, Appellant disputes the decision of the local board denying her request for a bus stop in front of her home where she operates a family day care center. The local board has moved for Summary Affirmance, maintaining that the board did not act arbitrarily, unreasonably or illegally in this matter. Appellant has submitted an opposition to the local board's motion.

### FACTUAL BACKGROUND

Appellant has a seven year old son who attends Ocean City Elementary.<sup>1</sup> Appellant's home is located on North Road approximately 150 yards from two different bus stops.<sup>2</sup> One bus stop is on Center Drive at the intersection of North Road and the other stop is on Motter Road at the intersection of Golf Course Road. (See map, Smack Exhibit 3). The morning pick up is around 8:20 A.M. and the afternoon drop off is around 2:45 P.M. Tr. 18-19. The bus travels down Golf Course Road which splits around a traffic island, turns left on Motter Road where there is a bus stop, turns left around the island back onto Golf Course Road, makes a right on Center Drive and stops at the corner of Center Drive and North Road where there is a bus stop, and continues on Center Drive to the rest of the route. These two stops have been in existence for at least seven years and are readily accessible by the school bus. Appellant originally used the bus stop at Center Drive, but due to safety concerns now uses the one at Motter Road. There are five children using the bus stop on Motter Road and one child using the bus stop on Center Drive. The child using the bus stop on Center Drive resides on North Road.

Appellant is a licensed day care provider who operates a family day care business out of her home. She is licensed for eight children from birth through age twelve. At the time of the hearing before the local board, Appellant had six children in her care, two of which were under age two. Appellant's clients drop their children off around 8:00 A.M., shortly before her son must go to his bus stop. Tr. 17-18. The children are still in her care and are usually napping when she must pick her son up at the bus stop.

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<sup>1</sup>Her son will be starting the second grade this fall.

<sup>2</sup>Although children living on North Road live within the one mile walking distance to Ocean City Elementary, the school system provides bus service so that the students do not have to cross Center Drive which has been deemed a roadway where a safety hazard exists and there is no automatic signaling device or adult crossing guard. Tr. 37.

Appellant and her family recently moved to their current residence on North Road in West Ocean City. Before the start of the 2001-02 school year and prior to putting a contract on the house at North Road, Appellant maintains that she spoke with office staff at Ocean City Elementary who advised her that her son's bus stop would be located in front of her house on North Road.<sup>3</sup> Tr. 13. Upon enrolling her son in the school, Appellant received a letter from the principal and vice principal indicating that her son would be placed in the first grade at Ocean City Elementary and that he would "be picked up from North Rd. (home) and [would] go (same) after school." See letter from Kordick and Shorts to the Smacks. Based on this information, Appellant and her husband purchased the home on North Road where it appeared to them that Appellant would still be able to run her business. Tr. 14-15. Because Appellant and her family lived elsewhere while their newly purchased home was undergoing renovation, it was not until late October that Appellant became aware that the bus did not stop in front of the home. Tr. 16.

Because Appellant has safety concerns and does not want her son to walk to or from the bus stop alone, Appellant must take all of the children in her care with her when she walks to drop him off and pick him up. In all weather conditions, Appellant gets the children dressed and ready to go outdoors right after they arrive at her home and again during their nap time in the afternoon.<sup>4</sup> These two trips per day to and from the bus stop with all the children are extremely difficult for Appellant and she is concerned for the safety of the children and the impact on her business.

Appellant requested that the school system provide a bus stop in front of her house. Her request was denied by Tony McNabb, Director of Transportation, as well as by the local superintendent. Appellant appealed to the local board and a full evidentiary hearing was held. In a 5-1 vote, the local board upheld the denial of a bus stop in front of Appellant's home.<sup>5</sup> The appeal to the State Board followed.

## ANALYSIS

Because this is an appeal involving 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 this case, Appellant desires a bus stop in front of her home to accommodate her son who is now in second grade as well as assist her in the operation of her daycare business. On the one hand, the transportation of students is a matter traditionally within the domain of the local

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<sup>3</sup>Appellant believes that the individual she spoke with was the office secretary at Ocean City Elementary.

<sup>4</sup>Appellant pushes two of the children in a stroller while the other children walk around her holding hands.

<sup>5</sup>One board member abstained from the vote.

school system and the State Board has been reluctant to intrude in such cases. *See Doreen Robinson v. Board of Education of Howard County*, 7 Op. MSBE (98-44) (1998); *Judy Hanson v. Board of Education of Howard County*, 7 Op. MSBE (97-23) (1997); *Lane v. Howard County Board of Education*, 6 Op. MSBE 587 (1993). In this regard it does not appear that the present bus route or bus stops violate the local board's transportation policy or that there is anything inherently unsafe about them.

On the other hand, the circumstances here are unusual. Although Mr. McNabb testified that during his tenure as Director of Transportation no bus routes have been changed to accommodate daycare providers, the record discloses that all other daycare providers in the area have bus stops at their front doors. Only one of those providers is located on a main road while the others are located on side roads. It is difficult to believe that the location of these bus stops is by sheer coincidence. Perhaps there has been no need to alter a bus route because the bus routes were established in locations beneficial to the providers in the first place.

Moreover, prior to the beginning of the 2001-2002 school year, Appellant received a letter from the principal and assistant principal that stated: "According to our records your child(ren) will be picked up from North Road (home) and will go (same) after school." Mr. McNabb maintains that he spoke with the two secretaries at Ocean City Elementary who denied advising Appellant that the bus would stop in front of her home. Tr. 41-42. However, neither of these secretaries testified or provided an affidavit to controvert Appellant's testimony. As to the letter from the principal and vice principal regarding enrollment and the bus stop location, Mr. McNabb explained that the notation "North Rd. (home)" is a reference for the office staff which indicates whether the child is going to and from his or her home or to and from a day care provider. If the child were going to and from a day care provider, the name of the day care provider would be inserted. Tr. 33. Despite this explanation, we find the notation on Appellant's letter both confusing and misleading.

Appellant has suggested a rerouting of the bus which would minimally disrupt the bus route by a few minutes. The proposed route is for the bus to travel down Golf Course Road, make a left on Center Drive, stop the bus for students at the corner of Center and North, make a right on North Road and stop in front of Appellant's house, continue on North Road and make a right on Motter Road where the bus would then stop for students at the intersection of Motter Road and Golf Course Road, then make a right on Golf Course Road and a right on Center Drive to continue the bus route.

The local board noted in its decision that Mr. McNabb and the local superintendent have concerns about rerouting the bus in the way that Appellant requests, however there was no explanation given of the safety concerns about the proposed alternative route. However, the local board also indicated that there were concerns about having the bus come from the other direction on North Road so that it would have to turn right onto Center Drive. Testimony at the hearing indicated that turning right from the residential North Road onto Center Drive is more difficult than accessing Center Drive from Gold Course Road given the high volume of traffic on Center Drive and the nature of the intersections. Tr. 37-38. Appellant has indicated that as of June 17, 2002, she has observed a Worcester County Public School bus traveling on North Road in both directions to pick up and drop off her neighbor's child for summer school.

## CONCLUSION

For these reasons, we are remanding this matter to the Board of Education of Worcester County for further consideration of whether an alteration to the existing bus route or adding or eliminating a bus stop to the route is feasible.<sup>6</sup>

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<sup>6</sup>For example, it may be possible to eliminate the bus stop at Center Drive and North Road since the one student using that stop lives on North Road and could use the bus stop in front of Appellant's home if one were established there.

DISSENT

Based upon Appellant's description of the chronology of events in this matter, I find that the local board's decision is unreasonable. I would therefore reverse the decision.

JoAnn T. Bell

September 4, 2002