

TOM AND VERA WILLIAMS,

Appellants

v.

HOWARD COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 99-24

OPINION

This is an appeal of the denial of bus transportation to Long Reach High School for students living within a 1.5 mile walking distance of the school. Appellants contend that bus transportation should be provided based on safety concerns primarily due to the recent opening of the Snowden River Parkway extension to Route 100 across Tamar Drive. Appellants suggest that the Howard County Public Schools (HCPS) should consider utilizing already existing bus service which appears to have vacant seats and which passes by Appellants' children's walking route. The local board has filed a Motion for Summary Affirmance maintaining that the local board's decision should be upheld. Appellants have filed a response in opposition.

BACKGROUND

Appellants¹ are residents of Roan Stallion Lane in Columbia whose children attend Long Reach High School in Howard County. The school system does not currently provide bus transportation for Appellants' children who reside within the 1.5 mile walking zone of the high school.² Appellants, however, want to have bus transportation provided by HCPS due to safety concerns about the walking route. Appellants argue that the recent opening of the Snowden River Parkway extension to Route 100 across Tamar Drive has resulted in an "unacceptable level of safety."

The walking route at issue was evaluated by the Student Walking Route Committee. On May 17, 1998, the Committee reported that the route met the standards established by the local board pupil transportation policy. *See* May 17, 1998 Student Walking Route Committee Report. After reviewing a variety of information regarding the walking route, the superintendent denied Appellants' request for bus transportation. *See* Memorandum from Superintendent to Local

¹The Anderson, Lee, and Hana Bor families joined Mr. and Mrs. Williams in this appeal.

²Under Howard County Board procedures, the most direct route meeting an acceptable level of safety is utilized in measuring walking distances to and from school. *See* Pupil Transportation Implementation Procedures, Policy 511-PR. Appellants indicate that the actual walking distance between the school and the Williams' residence is 1.36 miles using the "walking stick" provided by the Howard County Transportation Office.

Board Dated 10/8/98.

Appellants appealed the Superintendent's decision to the local board which met on October 15, 1998. At the time of the local board decision, Snowden River Parkway was classified as a minor arterial roadway because it had average daily traffic ("ADT") of between 6000 and 8000 vehicles. It was anticipated that once the Snowden River Parkway extension was completed, the road would be reclassified to an intermediate arterial roadway. However, despite the reclassification, it was also anticipated that high school students would still be able to cross the roadway because the ADT was only expected to grow to 12,000. *See* Affidavit from Johnson Dated Oct. 15, 1998 and Memo to Local Board from Johnson Dated Oct. 15, 1998.³ The 12,000 ADT is below both the 15,000 ADT threshold for undivided highways and the 20,000 threshold for divided highways. *See* Transportation Policy, Appendix A.

The local board members reviewed documents, reports, correspondence and memoranda, and several members personally visited the neighborhoods at various times, examined the surrounding streets, and walked the route. In a written decision issued October 22, 1998, the local board upheld the Superintendent's decision to deny the transportation service. The local board cited six primary reasons in reaching its decision:

- The designated walking route meets or exceeds the acceptable level of safety of other walking routes which the Board has reviewed in previous appeals.
- The crossing at Snowden River Parkway is controlled by a traffic light with a crossing signal that permits safe crossing.
- The entire route is on sidewalks and paved walkways.
- According to Sgt. Donahue, no incidents of significance occurred in the areas of concern on days when school was in session. It was also noted that no interference between pedestrians and vehicles had been noted along the route.
- The Williams' residence is well within the walking area to Long Reach High School.
- The Board is charged with providing an equitable level of service across the county, and the walking route in question is clearly within the level of service and safety provided at numerous other locations in Howard County.

In its decision, the local board also directed the Pupil Transportation Office to monitor the safety of the walking route due to the expected increase in traffic with the opening of the additional section of Snowden River Parkway.

ANALYSIS

Right to Meet with Director of Transportation

³Contrary to Appellants' assertions, both the affidavits of Glenn J. Johnson and of George E. Frangos conform to the requirements set forth in Maryland Rule 1-202(b).

As a preliminary matter, Appellants claim that they had a right to meet with Mr. Glenn Johnson, Director of the Pupil Transportation Office, and interview him in order to respond to issues in this appeal. The regulations for appeals to the State Board do not provide for discovery. Counsel for the local board was entitled to provide legal advice to Mr. Johnson, a local board employee. Mr. Johnson's refusal to speak with Appellants concerning the appeal was not a violation of any law.

Request for Information

Appellants' request for information is governed by the Maryland Public Information Act. *See* Md. Code Ann., State Gov't §§ 10-611 *et seq.* (1995 Repl. Vol. & Supp. 1998). The Act provides procedures for information requests as well as for appeals of denials of such requests. *See Id.*, § 10-623. Appellants did submit a Public Information Act request in order to obtain the information, and they received answers to their written questions. If Appellants were not satisfied with the responses received, their recourse was through the appeal procedures of the Public Information Act and not by appeal to the State Board.

Right to Evidentiary Hearing

Appellants argue that they were denied due process and a fair opportunity for a hearing when their case was given only a "paper appeal" by the local board. The procedures for appeals to the State Board do not grant Appellants the right to an evidentiary hearing when there is no constitutional or statutory basis to provide one. Nor does due process require oral argument or an evidentiary hearing on issues that do not involve a genuine dispute of material fact. *See Michael Hethman v. Prince George's County Board of Education*, 6 Opinions MSBE 646, 648-649 (1993). Additionally, the State Board has held that "the term 'hearing' does not necessarily embrace the right to present oral argument or the right to an oral evidentiary hearing." *Id.*

Given the above standards, an appeal of a walking route is not generally entitled to an oral evidentiary hearing. Here, Appellants' own observations regarding the safety of the walking route are insufficient to create a material dispute of fact which would warrant an evidentiary hearing. Appellants were given sufficient opportunity to submit materials to the local board in support of their position, which they did. An appropriate record was compiled pursuant to COMAR 13A.01.01.03C(1)(d). We do not find in this record a genuine dispute of material fact that would trigger an evidentiary hearing.

Superintendent's Designee

Appellants also argue that Policy 5111-R(V)(A) was violated when the Student Walking Route Committee sent its report to the Director of the Pupil Transportation Office, Mr. Glen Johnson, and not to the superintendent as required by the policy. Appellants, however, did not raise this issue before the local board. The State Board has consistently declined to address issues that have not been reviewed initially by the local board. *See Chase Craven v. Montgomery County Board of Education*, MSBE Opinion No. 97-43, 3 (October 29, 1997); *Theresa H. Fentress v. Howard County Board of Education*, MSBE Opinion No. 96-37, 1 (September 25,

1996); *Earl Hart v. St. Mary's County Board of Education*, MSBE Opinion No. 97-37, 2 (September 25, 1996). Accordingly, Appellants have waived this issue.

However, even if the State Board were to consider the matter, any error would be harmless. The Director of the Pupil Transportation Office also serves as the superintendent's designee in transportation matters. Moreover, the superintendent stated in his memorandum to the local board regarding the appeal that he had reviewed the May 17, 1998 Student Walking Route Committee report in reaching his decision.

Substantive Basis of Decision

With respect to the merits of the appeal, 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 Based upon our review of the record, we find 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.

The local board transportation policy allows high school students to cross minor arterial roadways. *See* Transportation Policy, Appendix A. Students were advised to cross the roadway only at the intersection with Tamar Drive where there are appropriate crossing signals. Additionally, there are other similar minor arterial roadways which HCPS high school students walk along and cross. *See* Memo to Local Board from Johnson Dated Oct. 15, 1998. Finally, the Howard County Police Department reported that since 1997 there had been five reported accidents at the eleven intersections along the walking route, none of which involved pedestrians or occurred on a school day.⁵

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.

⁵Appellants rely on *Woodmoor-Pinecrest Citizens Association v. Montgomery County Board of Education*, 3 Op. MSBE 560 (1984) and *Mary Rice v. Montgomery County Board of Education*, 3 Op. MSBE 680 (1984) to support their request for transportation services. However, the facts of those cases are distinguishable from the instant appeal. In *Woodmoor-Pinecrest Citizens Association*, middle school students were required to traverse the hazards of three beltway ramps and a bridge without a guardrail or buffer strip between the students and traffic. In *Mary Rice*, a five year old was required to walk on the street because of an obstructed walkway.

Appellants are concerned about the safety of the walking route now that there is increased traffic on Snowden River Parkway due to the completion of the road extension. The extension was not complete, however, at the time the local board issued its opinion. It was anticipated that an increase in traffic would change the classification of Snowden River Parkway from minor arterial roadway to an intermediate arterial roadway. Although the precise ADT was not known, it was expected that the new ADT would be approximately 12,000.

The local board policy indicates that once a divided highway like Snowden River Parkway reaches an ADT of 20,000, it is unacceptable for high school students to cross the roadway. The record discloses that the Howard County Department of Public Works Traffic Office is conducting a study of the average daily traffic on Snowden River Parkway during the first quarter of 1999. *See* Affidavit of George Frangos. The local board has directed the pupil transportation office to monitor the safety of the route as conditions change. If the transportation office finds that new conditions make the walking route unsafe, the board indicated that it will reconsider the walking route designation. The board's direction to monitor the safety of the route is therefore not arbitrary or unreasonable given the fact that there are no precise ADT figures and it is anticipated that the new ADT will not result in a roadway classification that prohibits high school students from crossing the roadway on their walking route.

Appellants further contend that it was unreasonable for the local board to fail to assess the space availability of school busses passing through the walking route. In support of their contention they cite § 7-805 of the Education Article of the Annotated Code of Maryland. Section 7-805 states as follows:

- (a) Conditions.— A school bus may be used to transport any student who lives within the mileage limit, if a mileage limit has been established by a local board of education, and if:
 - (1) The school bus is not filled to capacity;
 - (2) No additional bus stop is added to the route to transport the student; and
 - (3) The transportation officer or his designee has identified a specific existing hardship that would justify allowing the student to be transported.
- (b) Reduction in transportation allocation.—The transportation allocation of a county may not be reduced because of compliance with this section.

We note that section 7-805 is permissive and does not place any absolute requirement on the local school system. It is also focused on a student's specific existing hardships. Moreover, contrary to the provisions of § 7-805 (a) precluding the addition of a bus stop, Appellants are requesting that the local board create an additional bus stop for Appellants' children. Thus, it was not unreasonable for the local board to decline to consider this option.

CONCLUSION

As noted above, the local board has indicated that it will reconsider the walking route designation if the results of monitoring demonstrate that the safety level of the route has changed. Based on the record in this case including the board's directive to monitor the safety level of the route, we do not find the local board's decision to be arbitrary, unreasonable or illegal. Accordingly, we affirm the decision of the Board of Education of Howard County.

Walter Sondheim, Jr.
President

Edward Andrews
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

April 28, 1999