

ROSA R.,
Appellant,
v.

HOWARD COUNTY
BOARD OF EDUCATION
Appellee.

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION

Opinion No. 20-11

OPINION

INTRODUCTION

Rosa R. (“Appellant”) appeals the decision of the Howard County Board of Education (“local board”) denying her request for bus service for her son. The local board filed a memorandum in response to her appeal maintaining that its decision is not arbitrary, unreasonable, or illegal. The Appellant did not reply to the local board’s memorandum.

FACTUAL BACKGROUND

The Appellant’s son attends Atholton High School (“AHS”) and walks to school because the Howard County Public School System (“HCPSS”) does not provide bus service to their residence on Llanfair Drive, Columbia, Maryland. On January 2, 2019, Appellant contacted the HCPSS Pupil Transportation Office (“PTO”) to request bus service between her residence and AHS for her son. (Response, Ex. C).

Local Board Policy 5200 – *Pupil Transportation* provides bus service to high school students who live more than 1.5 miles from their home school and to high school students who live within 1.5 miles of their home school but for whom a walking route meeting a reasonable level of safety is not available. (Response, Ex. H). PTO staff determined that, pursuant to Board Policy 5200 – *Pupil Transportation*, Appellant’s address was not eligible for school bus service. The decision was based on the fact that Appellant’s residence was not within the 1.5 mile service area for high school students and the fact that the walking route offers a reasonable level of safety. (Response, Ex. E (Appeal #19-15-Staff Response)).

On February 7, 2019, the Appellant appealed the PTO staff decision and submitted a completed Howard County Student Walking Route Committee Survey (“Survey”) with supporting documentation. (Response, Ex. F). The Appellant maintained that her residence is more than 1.5 miles from AHS and that the walking route is not safe. *Id.* Her main concerns included the dangers encountered when students cross Owen Brown Road and Freetown Road due to traffic and road conditions; the dangers encountered when students walk to and from school in the dark or in snowy weather; and crime in the area. *Id.*

On March 15, 2019, the PTO forwarded the Appellant's documentation to the Walking Route Committee ("Committee") along with a map depicting the walking route from Appellant's residence to AHS, a copy of Policy 5200, and a list of addresses of students who were expected to use all, or part, of the designated walking route. (Response, Ex. E (Appeal #19-15-Ex. 3)). The Committee is composed of representatives from the Howard County Bureau of Highways Traffic Division, the Howard County Office of Transportation, the Howard County Police Department and one Howard County citizen. Except for the citizen member who was unavailable for the appeal, the members of the Committee studied the materials, walked the walking route, and prepared individual reports. (Response, p.2).

The participating Committee members determined that the distance between the Appellant's residence and AHS is 1.4 miles, within the walking distance for high school students as set forth in Policy 5200.¹ In addition, each participating Committee member concluded that the walking route provided a reasonable level of safety. On April 4, 2019, Jennifer Biddle, Chief of the Traffic Division, Howard County Bureau of Highways, provided David Ramsay, Director of the HCPSS PTO, with the results of the field review conducted on March 28th and April 3rd. (Response, Ex. E (Appeal #19-15-Ex. 4)). She stated that "the school walking route and crossing points at the intersections are safe." *Id.* On April 9, 2019, Chris Eatough, from the Howard County Office of Transportation, provided Mr. Ramsay with the results of his field review conducted on April 8th. *Id.* He found the route to be safe and did not have any concerns with the walk to and from AHS for a high school student. *Id.* On April 30, 2019, Sergeant Pete Moskala, from the Traffic Enforcement Section, Howard County Police Department, provided Mr. Ramsay with his evaluation stating that the walking route "provides a reasonable level of safety for pedestrians." *Id.*

Anissa Brown Dennis, Chief Operating Officer, acting as the Superintendent's Designee, reviewed the materials from the Appellant, the Committee, and the PTO staff. By letter dated May 14, 2019, the CEO advised Appellant that she was denying the appeal for bus service. (Response, Ex. G).

Appellant appealed the CEO's decision on May 28, 2019 and submitted a completed "Appeal Information Form" on July 10, 2019. (Response, Ex. E (Appeal #19-15-Appeal to Board)). She argued that the walking route does not contain suitable crossings and pathways. Specifically, she stated that it is dangerous to cross Owen Brown Road because it has a speed limit of 35 mph and a curve with limited sight distance. She also stated that the route is dangerous when it snows because students have to walk in the plowed roadway when homeowners do not clear the sidewalks and Owens Brown Road is a snow emergency route with increased traffic on snowy days. Appellant also took issue with students having to walk to school prior to sunrise during portions of the school year. Finally, Appellant maintained that the walking route is unsafe because an adult male was twice seen engaging in an act of indecent exposure in the area of the designated route. *Id.*

On August 20, 2019, Mr. Ramsay responded to the Appellant's concerns by memorandum to the local board. He explained as follows:

- While Owen Brown Road is a 35 mph speed zone, the Committee members found no features that limit sight distance.

¹ The measurement standard is from the resident's property line to the property line of the school. (Response, Ex. H-Policy 5200.IV.E.2.b).

- Evidence produced by Committee members shows that at least 85% of motorists travel on Owen Brown Road at no more than 39 mph.
- There is no evidence that Owen Brown Road, or any other road on the walking route, is especially susceptible to motor vehicle accidents and there were no pedestrian involved accidents along the walking route from January 1, 2018 through April 15, 2019.
- The Howard County Code of Ordinances requires homeowners to clear sidewalks within 48 hours after snow has fallen.
- Although there are portions of the school year when the sun does not rise until after 7:00 a.m., HCPSS follows civil twilight to determine if visibility is an issue for utilizing walking routes. Students are not required to begin their walk to school prior to the civil twilight. Civil twilight is the time of day before sunrise when there is ordinarily enough natural light outside to see.
- Although two indecent exposure incidents occurred in the spring of 2018, there is no evidence to suggest that the walking route is a high crime area. The Howard County Police Department is committed to preventing additional incidents.

(Response, Ex. E (Appeal #19-15 – Staff Response)).

On September 5, 2019, the local board unanimously affirmed the denial of Appellant’s request for a bus stop finding that the walking route met an acceptable level of safety. (Response, Ex. C). The local board found that the procedures for conducting the walking route appeal were properly followed and that there was a thorough analysis of the walking route issues.

This appeal followed.²

STANDARD OF REVIEW

Because this appeal involves a decision of the local board involving a 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.01.05.06A. A decision may be arbitrary or unreasonable if it is contrary to sound educational policy or a reasoning mind could not have reasonably reached the conclusion the local board reached. COMAR 13A.01.05.06B.

LEGAL ANALYSIS

In general, Maryland law does not mandate that local school systems provide transportation to their students.³ Rather, State regulations provide that the local school systems

²In her appeal to the State Board, Appellant withdraws her argument that her residence is more than 1.5 miles from AHS.

³ Local school systems must provide transportation for children with disabilities during the regular school year, however, as required by the special education law. Md. Code Ann., Educ. §8-401.

are responsible for the safe operation of their transportation system, must comply with all State procedures and guidelines, and may adopt policies and procedures which exceed the State's minimum requirements. COMAR 13A.06.07.03. In accordance with this, the local board has adopted and implemented a transportation policy – Policy 5200. Pursuant to Policy 5200, HCPSS provides bus service to high school students who live more than 1.5 miles from their home school and to high school students who live within 1.5 miles of their home school but for whom there is no available walking route that meets a reasonable level of safety. (Response, Ex. H).

In her State Board appeal, the Appellant reiterates many of the same arguments concerning the safety of the walking route that she raised below. She maintains that the route lacks suitable crossings and pathways because the students have to cross Owen Brown Road which has a posted speed limit of 35 mph and a blind curve; the students have to walk to school in the dark for part of the school year; many residents along Owen Brown Road do not shovel snow from the sidewalks which results in the students walking in the plowed road which has a lot of traffic; and the danger of criminal activity. (Appeal).

Policy 5200 defines “suitable crossings” and “suitable pathways and walking routes” as follows:

- *Suitable Crossings*
 1. Where adequate sight distance, line stripping, and crosswalk signing exists when warranted;
 2. Where pupils are not required to walk across railroads, bridges, tunnels, or overpasses unless they have adequate pedestrian walkways;
 3. Where adequate safety provisions can be made for crossing roadways;
 4. Where pupils are not required to cross certain roadways unless a grade separated crossing is available.
 5. Where pupils are not required to cross a proliferation of business/commercial district entrances when utilizing the road shoulders or right-of-way as a walkway.
- *Suitable Pathways and Walking Routes* – Road shoulder, pathway, right-of-way, sidewalk or other surface which pupils can walk without being required to step on the portion of the road used by vehicles except:
 1. Residential streets in a community with little or no transient traffic.
 2. Roads/streets with speed limits of 30 mph or less.

(Response, Ex. H).

Transportation experts from the school system's Pupil Transportation Office, the Howard County Bureau of Highways Traffic Division, the Howard County Police Department, and the Howard County Office of Transportation fully evaluated the walking route in light of the requirements of Policy 5200. (Response, Ex. E (Appeal #19-15-Ex. 4)). The experts found the walking route to be a safe, walkable route in accordance with the requirements of Policy 5200. *Id.* The issues raised by the Appellant were reviewed by the Superintendent's Designee and the local board who concurred that the walking route meets acceptable safety standards. (Response, Exs. C & G). The local board fully explained the basis for its decision. We believe that the local board thoughtfully and carefully considered all of the relevant factors in making its

determination regarding the request for bus a bus stop, and that the board’s denial of the request was reasonable.

Appellant also maintains that the local board’s decision is illegal because there was no input from an HCPSS parent on the Walking Route Committee. Policy 5200 does not specifically state that a parent of an HCPSS student must serve on the Committee. Rather, it states that the Committee is “[c]omposed of . . . one (1) or more citizens of Howard County.” See Policy 5200.III.R. First, there is no provision in the policy for what occurs when a Committee member is unavailable. Second, the Committee serves in an advisory capacity and the reports submitted by its members are not binding. Rather, each report serves as a different perspective to be considered. Here, although the citizen representative was unavailable for the appeal and did not submit a report, there was substantial and overwhelming evidence from the other Committee members, all of whom were transportation experts, that the walking route achieved “a reasonable level of safety” per the requirements of Policy 5200. The experts’ recommendations were consistent with the assessment of the PTO staff. Thus, even if there was a violation of procedure, which we do not concede there was, any such error was harmless in light of the record in this case.

In her State Board appeal, Appellant also claims that her son should have been provided transportation services based on an injury he suffered at an AHS track meet which left him unable to walk to and from school. (Appeal, p.1). This issue was not raised in Appellant’s appeal to the local board. The State Board has long held that it will not consider arguments on appeal that were not raised before the local board. See *Nikol E. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 19-18 (2019)(citing cases). Thus, we decline to consider the Appellant’s argument because it would be inappropriate for us to rule on an issue that the local board did not first have the opportunity to address.

The State Board gives great deference to the local board decisions in transportation disputes and has long expressed its reluctance to intrude in such matters that have traditionally been within the domain of the school system. See *Scott T. v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 14-05 (2014); *Herron, et al. v. Harford County Bd. of Educ.*, MSBE Op. No. 12-10 (2012); *Robinson v. Board of Educ. of Howard County*, 7 Ops. MSBE 1296 (1998); *Lane v. Howard County Bd. of Educ.*, 6 Ops. MSBE 587, 588 (1993). The Appellant’s burden on appeal is to show by a preponderance of the evidence that the local board erred in upholding the decision not to provide bus service. See COMAR 13A.01.05.06D. Appellant has not met that burden here.

CONCLUSION

For the reasons stated above, we do not find the local board’s decision to be arbitrary, unreasonable, or illegal. We affirm the local board’s decision to deny the Appellant’s request for bus service for her son to and from Atholton High School.

Signatures on File:

Warner I. Sumpter
President

Jean C. Halle
Vice-President

Gail H. Bates

Clarence C. Crawford

Charles R. Dashiell, Jr.

Vermelle D. Greene

Justin M. Hartings

Rose Maria Li

Joan Mele-McCarthy

Michael Phillips

David Steiner

February 25, 2020