

D [REDACTED] S.,

Appellant

v.

HOWARD COUNTY  
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 24-04

## OPINION

### INTRODUCTION

D [REDACTED] S. (“Appellant”) appeals the decision of the Howard County Board of Education (“local board”) denying her request for bus transportation service for her children to and from school. The local board filed a memorandum in response to her appeal maintaining that its decision is not arbitrary, unreasonable, or illegal.

### FACTUAL BACKGROUND

The Appellant and her children reside in the [REDACTED] community in Howard County. Her children attend [REDACTED] Middle School (“[REDACTED] MS”) and are not eligible for bus transportation based on changes to the local board’s transportation policy which places their residence outside of the transportation service area.

Local Board Policy 5200 – *Pupil Transportation* provides that middle school students who live more than 1.5 miles from their home school are eligible for school bus transportation services. (R. 009-015, Policy 5200(III.F)).<sup>1</sup> The Student Transportation Office (“STO”) may make exceptions to the eligibility criteria for identified geographic areas due to safety reasons. (R. 016-020, Policy 5200-IP(I.C)). With regard to the policy changes that went into effect for the 2022-2023 school year, on July 14, 2022, the local board changed the transportation eligibility distance from 1.0 miles to 1.5 for middle school students when it adopted amendments to Policy 5200 implementing changes to the distances delineating the “non-transported area.”<sup>2</sup> (R. 021-026). The non-transported area is the area within the geographical school attendance area within which HCPSS school bus transportation services are not provided. (R. 009-015, Policy 5200(VI.H)). In establishing the demarcation line between transported and non-transported areas, the STO may extend the distances to coincide with break in the patterns of homes, such as cul-de-sac, street intersections, major roadways, streams, parks, and other features. (R. 016-020, Policy 5100-IP(I.B)).

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<sup>1</sup> R. refers to the Bates number on the upper left of the attachments to the local board’s response.

<sup>2</sup> Transportation services are available to students when the measured distance between their bona fide residence and the home school is greater than the following, except as otherwise specified within Policy 5200-IP: (a) Pre-K – 1 mile (changed from .50 mile); (b) K through Grade 5 – 1 mile (unchanged); (c) Grade 6 through Grade 8 – 1.5 miles (changed from 1.0 mile); and (d) Grade 9 through Grade 12 – 2.0 miles (changed from 1.5). *Id.*

In March and April 2023, the Appellant contacted the Howard County Public School System (“HCPSS”) by email to request bus service between the ██████████ community where she resides and ██████MS. (R. 189-191). The STO staff determined that, pursuant to Policy 5200, Appellant’s address was not eligible for school bus service because the Appellant’s residence was within 1.5 miles of the school and not within the transportation service area for middle school students, and there were walking routes from her residence and the ██████████ community to ██████MS that met a reasonable level of safety. (R. 116).

On May 25, 2023, the Appellant appealed the STO staff decision to the Walking Route Committee (“WRC”) and submitted a completed Howard County Student Walking Route Committee Survey with supporting documentation. (R. 089-091). The Appellant maintained that her home is more than 1.5 miles from the school and raised concerns about the safety of the walking route. Her concerns focused on potential dangers based on crime, level of difficulty of the walking route due to path inclines, complexity of navigating the route due to confusing and/or nonexistent signage, the time it takes to walk the route, and the conditions of the pathways, specifically the bridges, during inclement weather. Appellant also argued that the non-transport area for ██████MS violates equity of service under Policy 5200 because many ██████MS families are lower income and do not have the ability to transport their students to school. Appellant further maintained that her son is eligible for transportation based on his disability because he requires frequent and repeated directions which impacts his ability to utilize the walking route. *Id.*

On June 1, 2023, the STO forwarded the Appellant’s documentation to the WRC along with a map depicting the walking route from Appellant’s residence to ██████MS, a copy of Policy 5200, and a list of addresses of students in the ██████████ community who were expected to use all, or part, of the designated walking route. (R. 093). The WRC is composed of representatives from the Howard County Bureau of Highways Traffic Division, the Howard County Office of Transportation, and one Howard County citizen.<sup>3</sup> The committee evaluates walking route safety based on various factors, which include traffic volume and speed, presence of traffic control devices, presence of pedestrian infrastructure and facilities, roadway and pathway measurements, roadway grades and curvatures, and walkability.

The members of the WRC studied the materials, walked the route, and submitted reports to the Superintendent’s Designee. The WRC considered the issues raised by the Appellant and each member of the committee concluded that there were prescribed walking routes that met acceptable standards for middle school-aged students walking from the ██████████ community to ██████MS as prescribed by Policy 5200. (R. 112-115). WRC member Chris Eatough, Bicycle and Pedestrian Coordinator from the Howard County Office of Transportation, advised that the pathways around Lake Elkhorn felt safe, were pleasant for walking, and were not isolated as other people were using the pathways, mostly dog walkers and joggers. (R. 112). The WRC did not recommend that the Appellant’s children be found eligible for bus transportation.

On August 2, 2023, Scott W. Washington, Chief Operating Officer, acting as the Superintendent’s Designee, denied the Appellant’s appeal. (R. 116-117). He confirmed that the Appellant’s address was within the parameters of the non-transportation area for ██████MS and not

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<sup>3</sup> The WRC citizen representative in this case works at the Howard County Department of Public Work’s Transportation and Special Projects Division.

eligible for bus service under Policy 5200. In reaching his decision to deny transportation, Mr. Washington considered the appeal materials submitted by the Appellant, which included the Appellant's survey form noting her concerns with the walking route. He also considered the reports furnished by the WRC and consulted with Brian Nevin, Director of Student Transportation. *Id.*

The Appellant appealed Mr. Washington's decision to the local board reiterating her concerns. (R. 119-120, 149-176). On October 18, 2023, in response to the appeal, Mr. Nevin submitted a memorandum to the local board. (R. 183-186). He explained as follows:

- The WRC evaluated the concerns raised by the Appellant regarding the walking route's safety and level of difficulty, including its incline, terrain and ease of navigation, and determined that the route met the guidelines outlined in Policy 5200.
- Mr. Nevin noted that the Howard County Police Department ("HCPD") continually patrols the ██████████ community, Lake Elkhorn and its paths, and the greater Owen Brown area. The HCPD also maintains a satellite police office in the village center near the school campus. Additionally, an HCPD crossing guard is assigned to the intersection of Cradlerock Way and Cradlerock Farm Court to assist students and families utilizing the walking route.
- The STO staff members walked the area and found the pathways around Lake Elkhorn easy to navigate. There are several signs posted along the walking route, but like other areas in Howard County not every turn or fork in the path has signage.
- HCPSS considers the status of walking route pathways when making school closing and delay decisions. The Columbia Association prioritizes pre-treating and clearing of the pathways used by school children during inclement weather events.
- As part of the safety assessment, the STO staff reviewed several prior incidents of criminal activity mentioned by the Appellant and did not find that they rendered the walking route unsafe. The stabbing incident from 2020 occurred closer to the Owen Brown Village Center and not in the ██████████ community and took place two hours prior to ██████ MS student walking time. The suspect in that case was arrested. The two abductions mentioned occurred 27 years ago in 1996; the Harford County incident took place 48 miles from the Appellant's address; and the armed robbery of the convenience store on Snowden River Parkway took place four miles from the Appellant's address late at night.
- The Appellant's allegation that more privileged students in less urban areas of the county are receiving a different level of service is unfounded as the changes affected the non-transport areas for many of the schools across various jurisdictions within Howard County, including Clarksville, Columbia, Elkridge, Ellicott City, Fulton, Jessup, and Savage.
- The STO applied Policy 5200 fairly and justly to all students and families. Equity of service was maintained as the STO carefully examined all non-transportation areas changes and ensured removal of any barriers, discriminations, or disparities so that every student, regardless of socio-economic status, receives safe access to their respective school. *Id.*

In a decision issued November 6, 2023, the local board was unable to attain the four votes necessary to affirm or reverse the decision of the Superintendent's Designee. (R. 001-008). Three board members found that the school system properly followed the procedures for conducting the walking route appeal and conducted a thorough analysis of the walking route issues raised by the Appellant. These board members agreed with the STO staff and the WRC members that the proposed walking routes met an acceptable level of safety for middle school students. One board

member dissented with the decision. Three board members were absent and did not vote on the appeal. *Id.* The result was that the decision of the Superintendent’s Designee’s to deny transportation remained in effect.<sup>4</sup>

This appeal to the State Board followed.

### 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. Because the local board did not attain the necessary votes to either affirm or reverse Mr. Washington’s denial of the request for bus transportation, we apply this standard to our review of the decision. *Karina D. v. Montgomery Cnty. Bd. of Educ.*, MSBE Op. No. 19-01(2019).

### LEGAL ANALYSIS

In general, Maryland law does not mandate that local school systems provide transportation to their students.<sup>5</sup> Rather, State regulations provide that the local school systems 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 and 5200-IP. Pursuant to Policy 5200 and 5200-IP, HCPSS provides bus service to middle school students who live more than 1.5 miles from their home school and to middle 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. (R.010, 016).

The Appellant argues that her residence is outside of the 1.5 mile non-transported area. However, the STO staff confirmed that the Appellant’s residence lies within the non-transported area according to the measurement standards in Policy 5200(III)(F). Pursuant to those standards, the measurement begins at the school property boundary from the closest adjacent suitable pathway and ends at the property line of the student’s residence. (R. 010). This determination was upheld by Mr. Washington. There is not sufficient evidence in the record to overturn that determination.

In her State Board appeal, the Appellant reiterates many of the same arguments concerning the safety of the walking route that she raised previously. She maintains that the walking route is unsafe based on criminal activity, difficulty of the walking route due to inclines, complexity of navigation due to lack of signage, walking time, and pathway condition with

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<sup>4</sup> See *Fields v. Board of Educ. of Baltimore Cnty.*, MSBE Op. No. 16-05 (State Board recognizing that “conscious non-decision is a form, albeit a rare one, of decision” in instances when a local board fails to attain the majority votes needed to affirm or reverse).

<sup>5</sup> 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.

slippery bridges in inclement weather. In reviewing Appellant's concerns, HCPSS followed its transportation policy. The issues were considered by transportation experts in the STO, members of the WRC, which include experts from the Howard County Bureau of Highways Traffic Division, the Howard County Office of Transportation, and the Howard County Department of Public Work's Transportation and Special Projects Division, and Mr. Washington, acting as the Superintendent's Designee. The WRC conducted a field review and provided a thorough analysis of the walking route according to the requirements of Policy 5200. All of the decision-makers concurred that the walking route met an acceptable level of safety and was consistent with the transportation policy guidelines.

As to Appellant's claims about criminal activity, we recognize that personal safety is always a concern for students on walking routes. However, neither the STO staff, the WRC, or Mr. Washington found bus transportation warranted after considering the incidents raised by the Appellant. One of the events occurred twenty-seven years ago, the more recent events did not occur in the [REDACTED] Community or along the walking route, and one of the events occurred outside of Howard County. The HCPD patrols the area of the route and maintains a visible presence in the satellite office near the school. The HCPD also provides a crossing guard at the intersection of Cradlerock Way and Cradlerock Farm Court.

Appellant maintains that the failure to provide bus transportation violates equity of service. Policy 5200(III.E) provides that equity of service is one of the considerations "when considering the need for **and/or** implementing school bus service." (emphasis added). Although, as Appellant points out, Mr. Nevin stated that factors like FARMS and other demographic information were not considered in implementation of the new distances, Mr. Nevin reported that the STO "carefully examined all non-transportation area changes and ensured removal of any barriers, discriminations, or disparities so that every student, regardless of socio-economic status, receives safe access to their respective school." (Appeal, 11/16/23 Nevin Email). The STO applied Policy 5200 to all students and the distance changes affected schools across a variety of socio-economic ranges. With regard to the Appellant's request for bus transportation, she raised the equity issue and there was no finding by either the STO, the WRC, or Mr. Washington that equity of service necessitated a change to the non-transport area for the Appellant's children or the [REDACTED] community. We do not find otherwise.

Appellant also claims that her son is entitled to transportation services based on his disability. Policy 5200(III)(C) recognizes that transportation services will be provided to students with an individualized education program ("IEP") or 504 plan in accordance with that plan. Thus, the Appellant must raise her request for transportation based on the special education needs of her child with the IEP team and utilize the special education process to determine transportation eligibility. The IEP team makes the determination if a student is entitled to transportation as a related service under the Individuals with Disabilities Education Act. Raising the issue through a §4-205 appeal to the State Board is not the proper vehicle to access that remedy. *See Jon N. v. Charles Cnty. Bd. of Educ.*, MSBE Op. No. 17-19 (2017) (State Board declining to exercise jurisdiction to resolve special education disputes because other existing forums are available).

The Appellant has the burden to show by a preponderance of the evidence that Mr. Washington's decision upholding the denial of bus transportation was arbitrary, unreasonable, or illegal. *See* COMAR 13A.01.05.06D. Mr. Washington's decision was supported by the

determinations of the STO and the WRC, who determined that there was a safe and walkable route. We believe that Mr. Washington thoughtfully and carefully considered all relevant factors in making his determination regarding the transportation request. The State Board gives great deference to local decisions in transportation disputes and normally relies on the opinions of the school system’s transportation officials who have assessed the safety of a walking route. *See Scott T. v. Anne Arundel Cnty. Bd. of Educ.*, MSBE Op. No. 14-05 (2014); *Herron, et al. v. Harford Cnty. Bd. of Educ.*, MSBE Op. No. 12-10 (2012); *Robinson v. Board of Educ. of Howard Cnty.*, 7 Ops. MSBE 1296 (1988). We find, therefore, that the Appellant has not met her burden of proof in this case.

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 transportation service.

Signatures on File:

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Clarence C. Crawford  
President

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Joshua L. Michael  
Vice-President

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Shawn D. Bartley

\_\_\_\_\_  
Chuen-Chin Bianca Chang

\_\_\_\_\_  
Susan J. Getty

\_\_\_\_\_  
Monica Goldson

\_\_\_\_\_  
Nick Greer

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Irma E. Johnson

\_\_\_\_\_  
Rachel McCusker

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Joan Mele-McCarthy

\_\_\_\_\_  
Samir Paul

\_\_\_\_\_  
Holly Wilcox

February 27, 2024