

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RYAN A. JOHNSON,

Petitioner,

vs.

Case No. 18-3481

ST. JOHNS COUNTY SCHOOL BOARD,

Respondent.

_____ /

RECOMMENDED ORDER

A duly-noticed hearing was held on February 15, 2019, in St. Augustine, Florida, before Suzanne Van Wyk, an Administrative Law Judge assigned by the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Ryan Alan Johnson, pro se
120 South Arabella Way
St. Johns, Florida 32259

For Respondent: Frank D. Upchurch, Esquire
Upchurch, Bailey and Upchurch, P.A.
Post Office Drawer 3007
St. Augustine, Florida 32085-9066

STATEMENT OF THE ISSUE

Whether Petitioner is entitled to bus transportation for his children to and from Liberty Pines Academy, pursuant to section 1006.21(3)(a), Florida Statutes; Florida Administrative Code Rule 6A-3.001; and operative rules of the St. Johns County School Board.

PRELIMINARY STATEMENT

On June 4, 2018, Respondent notified Petitioner that school bus transportation for his children to and from Liberty Pines Academy ("the Academy") would not be provided for the 2018-2019 school year. On June 8, 2018, Petitioner sent a letter to Respondent opposing the termination of bus transportation to and from the Academy for his children, and other students residing in his neighborhood, and requesting reconsideration. On June 22, 2018, Respondent's Superintendent communicated to Petitioner his intent to move forward with termination of bus transportation, and Petitioner responded with his intent to request a hearing before the Division of Administrative Hearings ("the Division").

On July 5, 2018, Respondent forwarded Petitioner's communications to the Division and requested assignment of an Administrative Law Judge to conduct an administrative hearing pursuant to Respondent's contract with the Division. The undersigned originally scheduled the matter for hearing on September 10 and 11, 2018, but the case was subsequently abated for Respondent to take official action, at a publicly-noticed meeting, on the Superintendent's recommendation to terminate bus transportation. The School Board took that action on October 9, 2018, and by subsequent status report to the undersigned, the parties requested the matter be rescheduled for hearing. The

case was scheduled for hearing on January 17, 2019, and subsequently rescheduled to February 15, 2019.

At the final hearing, Petitioner testified on his own behalf and introduced the testimony of Frank Sebregandio and Sonya Cook. Petitioner's Exhibits P3 through P11 were admitted in evidence.

Respondent introduced the testimony of Alfred Pantano and Tim Forson. Respondent's Exhibits R1 through R35 were admitted in evidence.

A one-volume Transcript of the proceedings was filed on March 6, 2019. The parties timely filed Proposed Recommended Orders on March 18, 2019, which have been considered by the undersigned in preparing this Recommended Order.

Unless otherwise noted, all references to the Florida Statutes are to the 2018 version.

FINDINGS OF FACT

1. Petitioner, Ryan A. Johnson, is the parent of two elementary-school-aged children who attend the Academy, a public school operated by Respondent. The Academy is located on Russell Sampson Road in northern St. Johns County.

2. Petitioner and his children reside at 120 South Arabella Way in the St. Johns Forest subdivision ("the subdivision") in St. Johns County. The subdivision is a large, gated, planned unit development in northern St. Johns County. The subdivision is roughly bounded by County Road 2209 ("CR 2209") on the east,

Russell Sampson Road on the west, and County Road 210 West ("CR 210") on the south.

3. Respondent, St. Johns County School Board, is the constitutional entity authorized to operate, control, and supervise the public schools within St. Johns County. See Art. IX, § 4(b), Fla. Const.; § 1001.32, Fla. Stat.

4. Respondent is required to provide transportation for public school students "whose homes are more than a reasonable walking distance" from their designated school, as defined by the rules of the State Board of Education. § 1006.21(3)(a), Fla. Stat.

5. The State Board of Education defines "reasonable walking distance" as "not more than two (2) miles between the home and school." Fla. Admin. Code R. 6A-3.001(3).

Background

6. Prior to the 2018-2019 school year, Respondent provided bus transportation for Petitioner's children as "courtesy riders," students who live within two miles of their assigned school, but for whom transportation is provided by special authorization of the Superintendent.

7. In this case, there was a direct route of two miles or less between the subdivision and the Academy. Part of the route proceeded through a wooded area out of sight of the roadway. Respondent deemed the route "too great a risk" for the

students,^{1/} and provided bus transportation by special authorization.

8. Prior to the beginning of the 2018-2019 school year, the Florida Department of Transportation built an interchange at the intersection of CR 2209 and State Road 9B ("SR 9B"), northwest of the subdivision. SR 9B is a divided highway that runs from Interstate 295, across Interstate 95, to CR 2209.

9. In connection with the interchange construction, a new sidewalk was constructed connecting the existing sidewalk along CR 2209 to the Academy, via a route parallel to CR 2209 and a portion of the SR 9B entrance ramp.

10. In the spring of 2018, Respondent's transportation staff reevaluated the eligibility of students residing in the subdivision for bus transportation to and from the Academy.

11. Based on the reevaluation, the Superintendent recommended termination of bus transportation to and from the subdivision. On October 9, 2018, Respondent voted to approve the Superintendent's recommendation to terminate bus transportation between the Academy and the subdivision. The decision to terminate was based on Respondent's finding that the subdivision is located within a reasonable walking distance from the Academy.

Petitioner's Challenge

12. Petitioner challenges Respondent's decision to terminate bus transportation on three grounds. First, he asserts

that Respondent incorrectly calculated the distance of the most direct traveled route between the Academy and his residence. Second, Petitioner asserts that the route constitutes a hazardous walking condition under state law. Third, Petitioner argues Respondent's decision was arbitrary, capricious, oppressive, erroneous, an abuse of agency discretion, or an invalid exercise of delegated authority.

Respondent's Calculation

13. To determine whether Academy students living in the subdivision would be eligible for bus transportation for the 2018-2019 school year, Respondent's transportation staff calculated the walking distance from their homes to the Academy, measured from the end of their driveways, along interior subdivision sidewalks, through the North Arabella Way pedestrian gate, along the CR 2209 sidewalk to the Academy front door. Transportation staff determined this route to be the "most direct traveled route" to and from the school.

14. Petitioner's home is located 6,740 feet (1.276 miles) from the Academy, calculated based on the most direct traveled route. On that basis, Respondent determined Petitioner's children are not entitled to bus transportation to and from the Academy.

15. Petitioner disputes the calculation because the designated "most direct traveled route" requires access through

the North Arabella Way pedestrian gate, which he argues is not accessible to school-aged children.

16. The gate is equipped with a locking mechanism. Residents may gain access from the sidewalk into the subdivision at the gate with an electronic access card issued by the subdivision's homeowner's association ("HOA").

17. Pursuant to the subdivision's master property owners' association rules and regulations, no electronic access card may be issued to residents under the age of 15.

18. The subdivision's declaration of covenants and restrictions states, in pertinent part:

Minors shall not be permitted to use the Common Area except under the supervision of an adult Owner or lawful occupant over the age of eighteen (18) years, except under such conditions as the Board may from time to time establish. (emphasis added).

The Common Area is defined broadly to include "all real property dedicated to, owned by, or held by the Association, or intended by the Declarant to be devoted to the common use or enjoyment of the Members," and includes streets, landscaping, fencing, signage, buffer areas, conservation areas, and "entry features," as well as the clubhouse and recreational facilities.

19. The subdivision's controlling documents allow for exceptions to be made at the Board's discretion. In other words, the subdivision's HOA, not Respondent, has control over whether

Academy students can access the North Arabella Way pedestrian gate.

20. Petitioner did not introduce any evidence supporting a finding that Respondent is required to consider, in determining the most direct traveled route, whether access is limited by private property restrictions.

21. Nothing in the state statute or rules require Respondent to consider whether a pedestrian entry point is privately controlled.

22. The HOA has the authority to create an exception to the gate entry restriction, which apparently would not even require an amendment to the subdivision covenants and restrictions.

23. Further, pursuant to rule 6A-3.001, the reasonable walking distance "shall be measured from the closest pedestrian entry point of the property where the student resides" to the closest school entrance. The rule provides that the pedestrian entry point of the residence "shall be where private property meets the public right-of-way." Fla. Admin. Code R. 6A-3.001(3).

24. The public right-of-way is located 81 feet west of the North Arabella Way pedestrian gate, where the subdivision's private property ends. The rule does not require Respondent to include in its measurement the distance between Petitioner's driveway and the right-of-way. Thus, the rule does not

anticipate consideration of any gate, or other entry structure, beyond the right-of-way.

25. The distance from the public right-of-way outside the North Arabella Way entrance to the school entrance is 0.816 miles. Respondent's much more generous calculation errs in favor of Petitioner's children.^{2/}

Hazardous Walking Conditions

26. Even if the subdivision were less than two miles from the Academy, Respondent would be required to provide transportation for Petitioner's elementary school children if they were subject to hazardous walking conditions on the most direct traveled route. See § 1006.21(3)(b), Fla. Stat.

27. Petitioner argues that his children are entitled to bus transportation to and from the Academy because the most direct traveled route identified by Respondent subjects his children to hazardous walking conditions.

28. Section 1006.23 defines hazardous walking conditions with respect to walkways parallel to a road, perpendicular to a road, and crossings over a road.

29. In the instant case, Petitioner's children will travel through the North Arabella Way pedestrian gate and follow a sidewalk parallel to CR 2209, and parallel, for a short distance, to the SR 9B entrance ramp.

30. For walkways parallel to a road, “[i]t shall be considered a hazardous walking condition with respect to any road along which students must walk . . . if there is not an area at least 4 feet wide adjacent to the road . . . having a surface upon which students may walk.” § 1006.23(2)(a)1., Fla. Stat.

31. This requirement is referred to as a “suitable walk area,” and is not required to contain a paved sidewalk.

32. The walk area parallel to CR 2209 and entrance ramp to SR 9B is improved with a continuous concrete sidewalk that is a minimum of five feet wide.

33. The statute additionally requires, where the road is uncurbed, the walking area be offset three feet from the edge of the roadway.

34. In the instant case, CR 2209 and SR 9B are both curbed roadways. Nevertheless, the sidewalk along the walking route is set off a minimum distance of three feet from the edge of the curb. That area is referred to as the “utility area” and is a grassed area between the edge of the curb and the edge of the sidewalk.

35. There are no other applicable statutory components to the definition of hazardous walking condition.

36. Despite the conformance of the route with the “suitable walk area” requirements, Petitioner maintains the walking route poses a hazardous walking condition because of the speed with

which traffic travels the adjacent roadways, the proximity of the sidewalk to those roadways, and documented instances of vehicle accidents in the area, at least one of which resulted in an overturned car on the subject sidewalk.

37. The posted speed limit on CR 2209 is 45 miles per hour. The posted speed on the SR 9B entrance ramp increases to 50 miles per hour. The posted increased speed limit is located on the ramp after the subject sidewalk "jogs" away from SR 9B to the Academy.

38. Petitioner points to School Board Rule 8.13(8), which provides as follows:

Maximum regard for the safety of students and due consideration for the protection of health of all students transported shall be primary requirements in the routing of buses, establishing student stops, appointing drivers, and in providing and operating transportation equipment.

Petitioner argues that Respondent's decision to terminate bus transportation to his children violates this rule. He argues that making his children walk along roadways with a posted speed limit of 45 miles per hour, and along an entrance ramp where cars are accelerating to a speed of 50 miles per hour, and where documented accidents have occurred, including one which resulted in an overturned car on the sidewalk, does not take into account maximum regard for their safety. He argues that maximum regard

for their safety dictates providing bus transportation between the subdivision and the Academy.

39. Petitioner's argument fails because rule 8.13 applies to Respondent's transportation program, not determinations of hazardous walking conditions. Subsection (8) governs decisions regarding bus routes, establishing bus stops, selecting and appointing drivers, and operating buses and equipment. Subsection (8) does not govern Respondent's decisions whether to provide courtesy bus transportation to students within a reasonable walking distance to the Academy.^{3/}

40. The route identified by Respondent for Petitioner's children to walk to and from the Academy does not contain any hazardous walking condition as defined in section 1006.23(2)(a).

CONCLUSIONS OF LAW

41. The Division has jurisdiction over the subject matter and parties in this case, pursuant to sections 120.569 and 120.57(1), Florida Statutes.^{4/}

42. Petitioner seeks to establish entitlement to bus transportation for his children between the subdivision and the Academy. As the party asserting the affirmative of the issue, Petitioner has the burden to prove said entitlement by a preponderance of the evidence. Fla. Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981); Balino v. Dep't of HRS, 348 So. 2d 349 (Fla. 1st DCA 1977); § 120.57(1)(j), Fla. Stat.

43. Petitioner did not meet his burden in this case. While Petitioner introduced evidence that access to the North Arabella Way pedestrian gate is controlled by the HOA, that fact alone does not render incorrect Respondent's calculation of the distance between Petitioner's residence and the Academy entrance by the most direct traveled route.

44. Petitioner did not prove that the Academy is not within a reasonable walking distance from his home to require bus transportation for his children.

45. Petitioner likewise failed to establish that the "most direct traveled route" designated by Respondent presents hazardous walking conditions for his children, pursuant to the governing statute. The route actually exceeds the statutory requirements for a suitable walk area because it contains a paved sidewalk a minimum of five feet wide, as well as an additional three-foot utility area.^{5/}

46. Petitioner challenged Respondent's determination on a third ground: the decision was arbitrary, capricious, oppressive, erroneous, an abuse of agency discretion, or an invalid exercise of delegated authority. As authority for this argument, Petitioner cites the Federal Administrative Procedure Act, 5 U.S.C. § 706.

47. Petitioner's argument is misplaced. The instant action is governed by sections 120.569 and 120.57(1) of the Florida

Administrative Procedure Act, not the Federal Administrative Procedure Act.

48. Petitioner failed to establish entitlement to bus transportation for his children between the subdivision and the Academy.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the St. Johns County School Board enter a final order dismissing Petitioner's challenge and affirming its decision to terminate bus transportation for Petitioner's children, unless a special authorization is granted by the Superintendent.

DONE AND ENTERED this 5th day of April, 2019, in Tallahassee, Leon County, Florida.



SUZANNE VAN WYK
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 5th day of April, 2019.

ENDNOTES

1/ T.148:16-17.

2/ Respondent calculates "reasonable walking distance" broadly. Rather than measuring from the public right-of-way located outside the subdivision entrance, to the school entrance, Respondent calculates the distance between the end of the student's driveway to the school entrance. Respondent's Director of Transportation, Alfred Pantano, explained that Respondent's interpretation ensures that no child has to walk two miles or more from where they actually reside.

3/ This finding should not be construed to imply that Respondent has no duty to consider student safety other than in designing bus routes, selecting bus stops, appointing bus drivers, and operating buses and other equipment. The finding simply confirms that the statute governing "hazardous walking conditions" is the controlling authority in the instant case; not rule 8.13.

4/ Pursuant to a contract between Respondent and the Division, the provisions of chapter 120 apply to proceedings determining the substantial interests of a party, such as Petitioner.

5/ This conclusion should not be construed to minimize Petitioner's substantial fears for the safety of his children walking along CR 2209 and the entrance ramp to SR 9B. However, as noted by the undersigned at the final hearing, School Board Rule 8.13(3)(a) authorizes the Superintendent to provide school bus service to students living within two miles of their designated school by "special authorization," even if they are not eligible for state transportation funding. The undersigned has no authority to recommend an equitable remedy, such as granting a "special authorization" in this case.

COPIES FURNISHED:

Jason Nieman
832 Chanterelle Way
Fruit Cove, Florida 32259
(eServed)

Frank D. Upchurch, Esquire
Upchurch, Bailey and Upchurch, P.A.
Post Office Drawer 3007
St. Augustine, Florida 32085-9066
(eServed)

Ryan Alan Johnson, Esquire
120 South Arabella Way
St. Johns, Florida 32259
(eServed)

Tim Forson, Superintendent
St. Johns County School District
40 Orange Street
St. Augustine, Florida 32084-3693

Richard Corcoran, Commissioner of Education
Department of Education
Turlington Building, Suite 1514
325 West Gaines Street
Tallahassee, Florida 32399-0400
(eServed)

Matthew Mears, General Counsel
Department of Education
Turlington Building, Suite 1244
325 West Gaines Street
Tallahassee, Florida 32399-0400
(eServed)

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.