

140-04 (Link to OAL Decision: http://lawlibrary.rutgers.edu/oal/html/initial/edu01900-03_1.html)

B.M. and M.M., on behalf of minor child, M.M., :
PETITIONERS, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE BOROUGH : DECISION
OF WOODCLIFF LAKE, BERGEN COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioning parents alleged the Board denied their elementary school child, M.M., transportation based on improper measurement of the distance between school and home.

Having considered the measurement of the route to be taken by M.M. and the motor vehicle law concerning pedestrians, the ALJ concluded that under the particular circumstances of this case, M.M. was eligible for transportation from the Board pursuant to *N.J.S.A.* 18A:39-1.

The Commissioner adopted the Initial Decision as his own.

<p>This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p>

March 29, 2004

OAL DKT. NO. EDU. 1900-03
AGENCY DKT. NO. 12-1/03

B.M. and M.M., on behalf of minor child, M.M., :
PETITIONERS, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE BOROUGH : DECISION
OF WOODCLIFF LAKE, BERGEN COUNTY, :
RESPONDENT. :
_____ :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The Board’s exceptions were untimely, pursuant to *N.J.A.C.* 1:1-18.4, and, thus, are not considered herein.¹

Upon his full and independent review, the Commissioner concurs with the determination of the Administrative Law Judge that, under the particular circumstances presented in this matter, minor child M.M. is eligible for transportation to and from school from the Board pursuant to *N.J.S.A.* 18A:39-1. In so concluding, the Commissioner again finds, as he did under slightly different circumstances in *Dreifuss v. Board of Education of the Township of Chatham, Morris County*, 1988 *S.L.D.* 952 that:

the anomalous circumstances of this matter necessitate reaching a result which is consonant with the probable intent of the legislators drafting the statute and, particularly in this case, “the common

¹ It is noted that on February 27, 2004, the day after exceptions were due in this matter, counsel for the Board requested a one-day extension for the filing of exceptions as he, mistakenly, believed that exceptions had to be “mailed” rather than “received” by this due date. Pursuant to *N.J.A.C.* 1:1-18.8(b), “[a] request for extension of any time period must be submitted no later than the day on which that time period is to expire. This requirement may be waived only in case of emergency or other unforeseeable circumstances.” The Commissioner cannot accept counsel’s justification for his late filing as either an emergency or unforeseeable circumstances as *N.J.A.C.* 1:1-18.4 clearly directs that exceptions must be “filed” with the agency within 13 days of the mailing of the initial decision to the parties.

sense of the situation,” as articulated in *Matlack [v. Burlington County Board of Chosen Freeholders]*, 194 N.J. Super 359, 361, (App. Div. 1984), *certif. den.* 99 N.J. 191 (1984).] (*Dreifuss* at 960)

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter for the reasons clearly stated therein.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: March 29, 2004

Date of Mailing: March 31, 2004

² This decision may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6A:4-1.1 *et seq.*