

L.S., on behalf of minor child, E.S., et al., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF WESTFIELD,
UNION COUNTY, :
RESPONDENT. :

SYNOPSIS

Forty-seven petitioning parents of impacted students challenged the Board's revised attendance zone and transportation policies, contending that the adoption of the revised policies was arbitrary and capricious, and in violation of applicable law. Specifically, petitioners allege that the revised policies violate several laws, including state busing laws, *N.J.S.A. 18A:39-1* and *N.J.A.C. 6A:27-1.2*, and fiscal accountability regulations, *N.J.A.C. 6A:23A-5.1*. Additionally, petitioners contend that the procedures for adoption of the revised policies violated the Open Public Meetings Act, *N.J.S.A. 10:4-6 to 21*, and that the revisions were without rational basis. Respondent Board contends that its actions were carefully considered and consistent with the law. Motions for summary decision were filed by both parties.

The ALJ found that: the Board's revised policies violate *N.J.S.A. 18A:39-1* and *N.J.A.C. 6A:27-1.2*, which obligate the Board to provide transportation to public school students who reside remote from their assigned school of attendance; expenditures related to the district's revised busing plan are not unlawful on the basis of *N.J.A.C. 6A:23A-5.1*; the factual support in the record on the issue of the Open Public Meetings Act, *N.J.S.A. 10:4-6 to 21*, is not adequate to make a determination and precludes summary decision on this issue; and the respondent Board's redistricting decision, in itself, was not arbitrary, capricious or unreasonable. Accordingly, the ALJ ordered that respondent shall, within sixty days of the final decision in this matter: 1) provide transportation to Roosevelt Intermediate School (RIS) for all students who attend RIS and reside beyond two miles from the school, and 2) revise its attendance zone and transportation policies to bring them into compliance with *N.J.S.A. 18A:39-1* and *N.J.A.C. 6A:27-1.2*.

Upon a full and independent review, the Deputy Commissioner – to whom this matter has been delegated pursuant to *N.J.S.A. 18A:4-33* – adopted the recommended decision of the OAL for the reasons stated therein, and additionally remanded the matter to the OAL solely for adjudication of the issue relating to the Open Public Meetings Act.

<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>

OAL DKT. NO. EDU 7387-09
AGENCY DKT. NO. 101-5/09

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Primary exceptions of both parties and reply exceptions of the Board,^{1 2} filed in accordance with the provisions of *N.J.A.C.* 1:1-18.4, were fully considered by the Deputy Commissioner – to whom this matter has been delegated pursuant to *N.J.S.A.* 18A:4-33 – in reaching her determination herein.

Although agreeing with the Administrative Law Judge’s (ALJ) central determinations – upholding the Board’s underlying redistricting decisions as inherently reasonable rather than arbitrary, capricious and unreasonable – the Board asserts that the ALJ erred in concluding that its two policies, #8600 (Transportation) and #8110 (Attendance Zones), are violative of *N.J.S.A.* 18A:39-1 and *N.J.A.C.* 6A:27-1.2. Renewing its arguments advanced below in this regard, the Board asserts that in light of its ongoing efforts to achieve an

¹ This submission was inartfully captioned “cross exceptions”. Such a submission is not contemplated by *N.J.A.C.* 1:1-18.4. It was clear from their content, however, that they were reply exceptions within the purview of the governing regulatory provision.

² It is noted that on December 17, 2009 petitioners filed a reply (also miscaptioned as cross exceptions) to the reply exceptions submitted by the Board on December 8, 2009. As *N.J.A.C.* 1:1-18.4 makes no provision for replies to reply exceptions, these were not considered herein.

equalization of the student population at Roosevelt Intermediate School (RIS) and Edison Intermediate School (EIS), consolidation of the Board's remote busing obligations was deemed a necessary component of its redistricting plan. It charges that the ALJ – in ruling on this transportation issue in a single sentence, *i.e.*, **“Denial of transportation to students who actually attend RIS while residing beyond two miles therefrom is inconsistent with *N.J.S.A. 18A:39-1* and *N.J.A.C. 6A:27-1.2*”** (Initial Decision at 11) – clearly failed to recognize or analyze the Board's legal position that this plan “does not deny busing to remote eligible RIS students, but offers those students the choice of either attending RIS without busing or being provided busing to EIS with EIS as their school of attendance.” (Board's Exceptions 1-7, quote at 7) Furthermore, it avers, the ALJ's decision does not cite to any language – either in the statute, code provisions or applicable case law – which would operate to invalidate these policies. (Id. at 7)

Exceptions of the petitioners seek to expound on or modify certain of the ALJ's findings of fact to more closely reflect their particular position in this matter. They additionally except to certain of the ALJ's conclusions of law – specifically, his finding on page 14 of the decision that respondent's redistricting decision was not arbitrary, capricious and unreasonable, and his conclusion on page 12 that the busing expenditures were not unlawful pursuant to the fiscal accountability regulations (*N.J.A.C. 6A:23A-5.1*) – reiterating arguments advanced below in support of these propositions. Finally, petitioners object to the ALJ's refusal to decide their Open Public Meetings Act charge on summary decision, contending that they have presented sufficient factual information to sustain this charge. Notwithstanding their position that the record is sufficient to allow a determination in this regard, petitioners request an OAL hearing on this issue. (Petitioners' Exceptions at 1-7)

Upon a comprehensive and independent review, the Deputy Commissioner, finding the parties' exception arguments unpersuasive, initially concurs with the ALJ's determination that the Board's Policy #8600 (Transportation) and Policy #8110 (Attendance Zones) are violative of *N.J.S.A.* 18A:39-1 and *N.J.A.C.* 6A:27-1.2 governing transportation of students to and from school, and these policies must be revised to provide transportation to all students in the assigned attendance zone of RIS who live more than 2 miles from this school.³ It is readily apparent that the focus of *N.J.S.A.* 18A:39-1 (Transportation of pupils) and its implementing regulation, *N.J.A.C.* 6A:27-1.2 (Students who shall be transported), is to confer **entitlement** to transportation to public school students living remote from their assigned attendance zone school. *See T.J.F. and J.W.F., on behalf of their minor children, J.F. and M.F. v. Board of Education of Wildwood Crest, Cape May County*, decided by the State Board August 7, 1996, wherein the State Board, upon consideration of paragraph one of *N.J.S.A.* 18A:39-1 – that portion of the statute pertinent in this matter – stated:

In 1990, the Legislature amended the first paragraph of *N.J.S.A.* 18A:39-1 to expressly mandate that district boards “shall provide transportation” for elementary school students who live more than two miles from their public school of attendance and secondary students who live more than 2-1/2 miles from their public school. Such action codified the obligation of district boards to provide “remote” transportation under the New Jersey Supreme Court's decision in *West Morris Reg. Bd. of Ed., et al. v. Sills, et al.*, 58 *N.J.* 464 (1971), *cert. denied*, 404 *U.S.* 986 (1971) (school districts have a duty under *N.J.S.A.* 18A:33-1 to provide “convenience of access” to public schools). *See also Board of Education of West Amwell, etc. v. State Board of Education*, 5 *N.J. Misc.* 152 (Sup. Ct. 1927).
(*T.J.F.* slip opinion at 5-6)

³ The Deputy Commissioner further concurs with the ALJ – for the reasons detailed on pp. 10-11 of his decision – that this issue is not time-barred pursuant to *N.J.A.C.* 6A:3-1.3(i).

The Deputy Commissioner, therefore, finds and concludes that the Board's obligation to these students arises by virtue of the fact that the students reside "remote" from their assigned school; is **mandatory**, not discretionary in nature; and a Board's policies with respect to its transportation entitled students in this regard must be applied to address its responsibility in an evenhanded manner. It must be emphasized that no matter how well-intentioned its underlying motives may be, the Board's conditioning of its provision of transportation to entitled RIS students only if they agree to attend EIS, and the denial of such transportation to RIS students who refuse to so agree, is a total abrogation of its statutory and regulatory obligations. Under the circumstances here, the Board's Policies #8600 and #8110 are discriminatory on their face and violate the clear intent of the legislation. As such, these two policies must be revised to provide transportation to RIS for all students who attend that school, or are eligible to do so, and reside beyond two miles from this school.

Next, the Deputy Commissioner agrees – for the reasons presented on pp. 13-14 of the ALJ's decision – that the Board's redistricting decision, in itself, was not arbitrary, capricious or unreasonable. It is by now well-established that the standard of review which must be utilized in examining the Board's adoption of its redistricting plan is extremely circumscribed, *i.e.*, local Boards of Education have broad discretionary authority and their actions are entitled to a presumption of correctness absent a showing of bad faith, illegal motive or a lack of rational basis. *Kopera v. West Orange Board of Education*, 60 *N.J. Super.* 288 (App. Div. 1960) Petitioners here have not met their burden to overcome the presumption of reasonableness on the part of the Board in their attempts to prove that its redistricting was arbitrary, capricious or unreasonable. It is not sufficient for petitioners to show that the Board may have erroneously chosen a plan that was not the optimal one when compared to other possible plans. There must

be an evidentiary showing of bad faith or wrongdoing as the motive for the Board's action. Plaintiffs have not made such a demonstration. As there is no issue as to **material facts** and it can be determined that the Board's action in adopting its redistricting plan was not arbitrary, capricious or unreasonable, summary decision is therefore appropriately granted to the Board on this issue. Similarly, the Deputy Commissioner further agrees with the ALJ – for the reasons presented on pp. 11-12 of the Initial Decision – that expenditures incurred for busing in connection with Policy #8600 (Transportation) and Policy #8110 (Attendance Zones) are not violative of the fiscal accountability regulations (*N.J.A.C. 6A:23A-5.1*) so as to invalidate these policies.

Finally, the Deputy Commissioner finds and determines, as did the ALJ, that the instant record is insufficient to address on summary decision petitioners' final charge – whether the procedures for adoption of Policy #8600 (Transportation) and Policy #8110 (Attendance Zones) on February 24, 2009 failed to comply with the requirements of the Open Public Meetings Act (OPMA) (*N.J.S.A. 10:4-6 to 21*). As such, this matter must be remanded to the OAL for expansion of the record and the ALJ's resultant recommendation as to whether such charge is established and, if so, the possible implication(s), if any, such a violation might have on this matter.

Accordingly, the recommended decision of the OAL is adopted for the reasons stated therein. The Board is hereby directed – no later than 60 days from the date of this decision – to revise its Policy #8600 (Transportation) and Policy #8110 (Attendance Zones) to reflect that the provision of transportation will be made to RIS and to provide such transportation to this school for all students who attend RIS, or are eligible to do so, and reside beyond two miles

therefrom. This matter is hereby remanded to the OAL solely for the adjudication of the one remaining OPMA issue.

IT IS SO ORDERED.⁴

DEPUTY COMMISSIONER OF EDUCATION

Date of Decision: December 30, 2009

Date of Mailing: December 31, 2009

⁴ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).