

G.E.S. AND N.D.S., ON BEHALF OF :
MINOR CHILDREN, G.E.S., K.L.S. :
AND N.J.S., :

PETITIONERS, : COMMISSIONER OF EDUCATION

V. : DECISION

BOARD OF EDUCATION OF THE :
TOWNSHIP OF CLINTON, :
HUNTERDON COUNTY, :

RESPONDENT. :

SYNOPSIS

Petitioners challenged the respondent Board's determination that the non-public school attended by petitioners' children was not "remote" (over two miles) from their home; this determination deemed them ineligible for transportation services or aid-in-lieu-of transportation pursuant to *N.J.S.A. 18A:39-1*. Respondent Board subsequently re-measured the disputed walking route between the non-public school and petitioners' home, determined that the distance is more than two miles, and advised petitioners and the OAL of same.

The ALJ found that the sole purpose of submitting this matter to the OAL was to determine whether petitioners were entitled to aid-in-lieu-of transportation services from the respondent Board for the 2003-2004 school year when actual transportation was not provided, and that respondent had conceded as much. Thus, the ALJ concluded that there was no longer a controversy to consider, and ordered respondent Board to provide aid-in-lieu-of transportation to petitioners pursuant to *N.J.S.A. 18A:39-1* for that portion of the 2003-2004 school year when busing services were not provided by the Board.

The Commissioner concurs with the ALJ's conclusions and recommended order, and adopts the initial decision of the OAL as the final decision in this matter. In so doing, the Commissioner adds that petitioners' children are entitled to free transportation prospectively. In addition, the Commissioner finds that the exception issue raised by petitioners is immaterial, and points out that the ALJ did not rely on the language in respondent's concession letter, to which petitioners' take issue, in reaching his initial decision.

<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 10759-04
AGENCY DKT. NO. 264-7/04

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The Commissioner has carefully and independently reviewed the record, the initial decision of the Office of Administrative Law (OAL), petitioners’ “exception” and respondent’s reply to same, and he has determined to adopt the Administrative Law Judge’s (ALJ’s) initial decision.

This matter concerns transportation for the petitioners’ children to a non-public school. Respondent had declined to provide it, due to its determination that the school was not “remote” (over two miles) from petitioners’ home. Petitioners appealed.

By letter decision dated November 24, 2004, ruling on two motions to dismiss, the Commissioner initially forwarded this case to the OAL

for the limited purpose of determining whether petitioners’ children were entitled to bus transportation services or aid-in-lieu thereof, pursuant to *N.J.S.A. 18A:39-1*, for that portion of the 2003-04 school year when busing services were not provided by the Board, and prospectively, assuming no change in circumstances. (Commissioner’s decision, p. 8)

Petitioners did not appeal that decision on motion. Thus, narrow parameters corresponding to the Commissioner's decision were imposed on the ALJ's determinations in this case. The Commissioner finds that the ALJ properly conformed to those parameters, and adopts the ALJ's finding that petitioners are entitled to aid-in-lieu of transportation for the designated time period. (Initial decision at 2.) The Commissioner adds that the relief shall also be prospective, assuming no change in circumstances.

N.J.S.A. 18A:39-1 provides, in pertinent part: "Whenever in any district there are elementary school pupils who live more than two miles from their public school of attendance * * the district shall provide transportation to and from school for these pupils." The same statute directs that

When any school district provides any transportation for public school pupils to and from school pursuant to this section, transportation shall be supplied to school pupils residing in such school district in going to and from any remote school other than a public school, not operated for profit in whole or in part, located within the State not more than 20 miles from the residence of the pupil * * * .

And the statute further provides that

It shall be the obligation of the parent, guardian or other person having legal custody of the pupil attending a remote school, other than a public school, not operating for profit in whole or in part, to register said pupil with the office of the secretary of the board of education at the time and in the manner specified by rules and regulations of the State board in order to be eligible for the transportation provided by this section. If the registration of any such pupil is not completed by September 1 of the school year and if it is necessary for the board of education to enter into a contract establishing a new route in order to provide such transportation, then the board shall not be required to provide it, but in lieu thereof the parent, guardian or other person having legal custody of the pupil shall be eligible to receive \$675 or the amount determined pursuant to section 2 of P.L. 1981, c. 57 (18A:39-1a) * * * .

Clearly, the core question was whether petitioners live over two miles from the children's parochial school. In the course of the proceedings at the OAL, respondent conceded that they do. Thus, respondent had been obligated to, but had not, provided bus service for petitioners' children during part of the 2003-2004 school year. Accordingly, respondent agreed that petitioners were entitled to aid-in-lieu-of transportation for the time during which respondent did not provide the bus service. The ALJ therefore correctly concluded that there was no longer a controversy before him. (Initial decision at 2.)

The gravamen of petitioners' exception is that the ALJ attached to the initial decision the letter from respondent conceding that a remeasuring of the distance between petitioners' house and the children's school established the distance to be over two miles. In the body of his initial decision the ALJ had identified respondent's concession by quoting the following language in the letter: "Consequently petitioners would be entitled to 'aid-in-lieu' thereof pursuant to *N.J.S.A. 18A:39-1*, for that portion of the 2003-2004 school year when busing services were not provided by the Board."

Petitioners contend as their exception that respondent's letter contains a material error, i.e., that respondent "remeasured the disputed walking route, in the fashion requested by Petitioners" Even assuming that petitioners are correct that respondent's method of measurement did not comply with petitioners' requests, the Commissioner finds the issue to be immaterial to the resolution of the controversy. A determination by respondent that the petitioners' children's parochial school was "remote" settled the issues. Moreover, while the ALJ attached respondent's letter to the initial decision, he did not rely on the language to which petitioners object.

Accordingly, for the reasons expressed by the ALJ and stated herein, the ALJ's recommended order for relief is to be implemented forthwith.

IT IS SO ORDERED.¹

COMMISSIONER OF EDUCATION

Date of decision: July 6, 2005

Date of mailing: July 6, 2005

¹ 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.*