

EDU #1900-03
C # 140-04
SB # 19-04

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

Decided by the Commissioner of Education, March 29, 2004

For the Petitioners-Respondents, B.M. and M.M., pro se

For the Respondent-Appellant, Fogarty & Hara (Vittorio S. LaPira, Esq., of Counsel)

After a careful review of the record, we affirm, as modified herein, the decision of the Commissioner that the Woodcliff Lake Board is required to provide the petitioners' daughter, an elementary student, with transportation to and from school. We conclude that N.J.S.A. 18A:39-1¹ requires a district board to provide an elementary school student with transportation if the student would have to walk more than two miles either

¹ 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 or secondary school pupils who live more than 2½ miles from their public school of attendance, the district shall provide transportation to and from school for these pupils.

to or from school, as measured pursuant to N.J.A.C. 6A:27-1.2(a)2.² Accordingly, we overrule the Commissioner's decision in Dreifuss v. Board of Education of the Township of Chatham, 1988 S.L.D. 960, to the extent that it provides for the measurements to be averaged in order to determine eligibility for transportation if the distance the student would be required to walk from school is more than two miles but the walk to school is less than two miles.³

In Dreifuss, the shortest measured distance to school was less than two miles while the walk home was more than two miles.⁴ The ALJ in that case reasoned that N.J.A.C. 6:21-1.3 [now codified as N.J.A.C. 6A:27-1.2(a)2] "requires transportation of an elementary school child as long as the average distance of the shortest routes from school to home and from home to school...is beyond two miles." Dreifuss, supra, at 958. Such reasoning was based on language in the regulation which refers to measuring the distance "from the entrance of the pupil's residence nearest such public roadway or walkway to the nearest public entrance of the assigned school."

However, N.J.S.A. 18A:39-1 makes no such distinction. That statute is clear that a district is required to provide transportation to and from school whenever "there are elementary school pupils who live more than two miles from their public school of attendance...." Indeed, it would defy logic to conclude that the Legislature, in enacting

² N.J.A.C. 6A:27-1.2(a)2 provides:

For the purpose of determining eligibility for student transportation, measurement shall be made by the shortest route along public roadways or public walkways from the entrance of the student's residence nearest such public roadway or public walkway to the nearest public entrance of the school which the student attends.

³ The Commissioner's decision in Dreifuss was not appealed to the State Board.

⁴ We note that curves in the road, in addition to the location of sidewalks and crosswalks, resulted in the different measurements.

N.J.S.A. 18A:39-1, which had as its purpose the safety and welfare of children, Board of Educ. of Tp. of Wayne v. Kraft, 274 N.J. Super. 211, 226 (App. Div. 1994), certif. granted, 138 N.J. 267 (1994), reversed on other grounds, 139 N.J. 597 (1995), intended to require district boards to provide elementary students with transportation only when a student would have to walk more than two miles to school. It is evident that the same concerns apply to a situation, such as in Dreifuss, in which a student would have to walk more than two miles from school, and we reject the notion that averaging is required in such instances to determine a student's eligibility for transportation. Nor was the regulation at issue intended to create such a distinction.

In the matter now before us, there is no dispute that M.M. would be required to walk more than two miles to school.⁵ Consequently, we concur with the ultimate determination of the Commissioner that the Woodcliff Lake Board is required to provide her with transportation. Given our holding today, the result would be no different if only the walk from school was more than two miles.

August 4, 2004

Date of mailing _____

⁵ Although the parties disagree as to the exact measurement, they both agree that it is more than two miles.