

J.F.N., Jr., and J.N. on behalf of minor child, C.N., :  
PETITIONERS, :  
V. : COMMISSIONER OF EDUCATION  
BOARD OF EDUCATION OF THE : DECISION  
MORRIS HILLS REGIONAL :  
SCHOOL DISTRICT, MORRIS :  
COUNTY, :  
RESPONDENTS. :

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SYNOPSIS

Petitioning parents alleged that the Board's assignment of an unsafe, distant bus stop for their daughter was arbitrary, capricious and unreasonable. There was no question that petitioners' child lived more than two and a half miles from school and was entitled to free transportation. The issue was the suitability of a bus stop at a closed landfill. Petitioners contended that walking to the stop presented a threat to their daughter's safety – the narrowness of the roadway, blind curves, absence of streetlights, lack of sidewalks or shoulders, and the wooded sparsely populated nature of the area known as a feeding place for bears.

The ALJ noted that school districts have broad discretion with respect to selection of bus routes and placement of bus stops, and that the Commissioner will not second-guess such exercise of discretion unless it is arbitrary, capricious and unreasonable. Here, the Board repeatedly denied petitioners' request, without explanation, for an extension of the Board's bus route to accommodate a different bus stop. The record demonstrated that the road was dangerous and the landfill was near the woods frequented by bears, seasonal hunters and strangers driving all-terrain vehicles and motorcycles. Having found that the landfill area was an unsuitable location for a bus stop because of the high risk to the safety of students assigned to it, and noting that other routes could bring a District van close to petitioners' property, the ALJ concluded that the location of the school bus stop at the landfill area was arbitrary, capricious and unreasonable. The ALJ ordered that the Board immediately discontinue using the abandoned landfill site as a bus stop, and that the Board select one of the proposed alternatives for extending van service to petitioners' home.

The Commissioner affirmed the ALJ's conclusion that, under the particular circumstances of this matter, petitioners have demonstrated that the Board's refusal to accommodate their request to locate an alternative bus or van stop for C.N. was arbitrary and capricious.

May 19, 2000

OAL DKT. NO. EDU 3936-98  
AGENCY DKT. NO. 70-4/98

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The Board’s exceptions and petitioners’ reply thereto are duly noted as submitted in accordance with *N.J.A.C.* 1:1-18.4.

On exception, the Board points to statements in the Initial Decision which, it finds, did not fully comport with the testimony, citing these as either erroneous findings by the ALJ or omissions from his summary of the testimony adduced at the hearing. Additionally, the Board clarifies that, contrary to the ALJ’s statement on page 6 of the initial decision, it “*does* dispute any finding that the landfill is not an appropriate stop.” (Board’s exceptions at 2) (emphasis added) Moreover, the factors identified by the ALJ as contributing to the danger of the bus stop near the landfill, are, according to the Board, “factors within the express control of the Township.” (*Id.* at 3) Still central to the Board’s position is its contention that, due to safety concerns, it has not provided bus or van transportation over unpaved roads since an accident occurred on such a road more than ten years ago. As before the ALJ, the Board maintains that the case law supports its stance.

In reply, petitioners generally submit that the ALJ’s findings are supported by the record herein, noting, *inter alia*, that respondent’s own witness, Board President Jeffrey Biggs,

testified that he would not want his children waiting at the bus stop assigned to C.N. (Petitioners' Exceptions at 2) Petitioners further argue that, "[r]egardless of who is responsible for the 'bear problem,' Judge Springer correctly concluded that this is a dangerous situation and in weighing all of the evidence, he found that it is in the best interest of both the Respondent and the Petitioners for the bus stop to be relocated." (*Id.* at 3, 4) Petitioners assert that the ALJ's conclusions of law are proper and urge the Commissioner to affirm the Initial Decision.

Upon careful and independent review of the record in this matter, including all documentary, photographic and videotaped exhibits, the Commissioner concurs with the ALJ's conclusion that, under the particular circumstances of this matter, petitioners have demonstrated that the Board's refusal to accommodate their request to locate an alternative bus or van stop for C.N. was arbitrary and capricious.<sup>1</sup>

Accordingly, the Initial Decision of the ALJ is adopted for the reasons expressed therein. The Board is directed to select a suitable alternative route allowing for van service to C.N.'s driveway.<sup>2</sup>

IT IS SO ORDERED.<sup>3</sup>

COMMISSIONER OF EDUCATION

Date of Decision: May 19, 2000

Date of Mailing: May 19, 2000

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<sup>1</sup> The Commissioner notes that, to the extent that the misstatements and omissions identified by the Board indeed exist, they are not material to his determination in this matter.

<sup>2</sup> In so concluding, the Commissioner notes that the ALJ's finding on page 11 of the Initial Decision with respect to the unsuitability of the landfill area for a bus stop should not be read as a general proscription, but as applied to petitioners herein.

<sup>3</sup> This decision, as the Commissioner's final determination, 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.* 6:2-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.