

EDU #8786-95
C # 267-96
SB # 49-96

GEOFFREY AND CECILIA SHREWSBURY, :
JOHN GATTUSO, AND CARLA JARDIM, :
 :
PETITIONERS-APPELLANTS, :
 :
V. : STATE BOARD OF EDUCATION
 :
BOARD OF EDUCATION OF THE TOWNSHIP : DECISION
OF HOLLAND, HUNTERDON COUNTY AND :
ROBERT J. SOPRANO, SUPERINTENDENT, :
 :
RESPONDENTS-RESPONDENTS. :
_____ :

Decided by the Commissioner of Education, July 21, 1996

For the Petitioners-Appellants, Bivona, Cohen, Kunzman, Coley, Yospin,
Bernstein & DiFrancesco (Judith A. Babinski, Esq., of Counsel)

For the Respondents-Respondents, McDonald, Rogers & Rizzolo (Michael J.
Rogers, Esq., of Counsel)

This case involved a challenge by Geoffrey and Cecilia Shrewsbury, John Gattuso and Carla Jardim (hereinafter "petitioners"), residents of Shire Road in Holland Township, to the refusal by the Board of Education of the Township of Holland (hereinafter "Board") to relocate their children's bus stop closer to their homes.

As summarized by the Administrative Law Judge ("ALJ"), Holland Township is a rural area characterized by a hilly topography, and the Board does not permit school buses to travel on some Township roads, including that portion of Shire Road on which petitioners reside. A minibus currently stops approximately three-tenths of a mile south

of petitioners' homes near the crest of a hill, where it turns around and continues on its route. From the hill crest, Shire Road drops in grade and bends twice before reaching the Shrewsbury driveway. There are no sidewalks or shoulders on Shire Road between the Shrewsbury home and the crest of the hill, and, due to embankments and a retaining wall, it is necessary to walk in the roadway to get to and from the existing bus stop.

In 1993, the Shrewsburys offered to construct a turnaround on their property at their own expense to accommodate a minibus. They, however, withdrew their proposal after being informed by the district superintendent that any bus service to their home would have to be discontinued if route schedules did not make it convenient to travel on Shire Road. As indicated by the ALJ, the Shrewsburys remain willing to undertake the turnaround project if they have assurances that the minibus will continue to stop in front of their home during the duration of their children's attendance in the district's schools.

On May 7, 1996, the ALJ concluded that petitioners had established that the Board's refusal to extend minibus service to petitioners' homes was arbitrary and capricious. Taking into consideration the fact that Holland Township is situated on hilly terrain, the ALJ observed that the portion of Shire Road between the crest of the hill and petitioners' homes did not appear to be especially perilous for a minibus. Moreover, he found that a turnaround on the Shrewsbury property would eliminate any sight distance and turnaround problems. The ALJ further observed that the Board had authorized other bus routes and maneuvers that were patently more risky than a ride down Shire Road. Accordingly, he recommended that the Commissioner direct the

Board to choose one of the alternative possibilities for extending minibus service to petitioners' homes within 60 days of final agency action.

On June 21, 1996, the Commissioner rejected the ALJ's recommendation. The Commissioner found that there was no allegation that the bus stop itself was unsafe and stressed that the provision of safe conditions for children traveling to and from bus stops was a municipal function. Accordingly, he dismissed the petition, concluding that petitioners had failed to establish by a preponderance of credible evidence that the Board's action lacked a rational basis or that it was treating petitioners' children in a manner different than other children similarly situated.

Petitioners Geoffrey and Cecilia Shrewsbury filed the instant appeal to the State Board.¹

After a careful review of the record, including the video tape submitted into evidence by petitioners,² we reverse the decision of the Commissioner. We agree with the ALJ that petitioners have demonstrated that the Board's action in refusing to extend its minibus service to their home was arbitrary and capricious under the circumstances.

As we stated in Peary v. Board of Education of the Township of Barnegat, 93 N.J.A.R. 2d (EDU) 798:

Although district boards have wide discretion to promulgate pupil transportation policies, including school bus routes and stops, they may not discriminate or act in a manner that is arbitrary, capricious or unreasonable. Our review of the Board's action herein is not limited to the relative safety of

¹ We note that John Gattuso and Carla Jardim, petitioners in the proceedings below, have not joined in the instant appeal. Consequently, our determination herein pertains only to petitioners Geoffrey and Cecilia Shrewsbury.

² Like the ALJ, we have not considered the commentary of the camera operator in determining this matter. See Initial Decision, slip op. at 2. We note further that the parties have not provided this agency with transcripts from the hearings held in the Office of Administrative Law in this matter.

the school bus stop...or the Board's jurisdiction over safety conditions of sidewalks and roadways within the Township. Rather, the broader issue is whether the Board abused its discretion in denying petitioner's request to reestablish the former bus stop...in this particular case.

See also Board of Educ. v. Kraft, 139 N.J. 597 (1995) (the State Supreme Court recognized the relevance of student safety in determining whether a walkway could be included in calculating remoteness from school); Nichols v. Board of Education of the Township of Wayne, Docket #A-3526-93T5 (App. Div. 1995), cert. denied, 142 N.J. 449 (1995) (where the route marked for measurement of remoteness had existing sidewalks and marked crosswalks, then the measurement must be based on the assumption that the children should use them).

Given the particular circumstances in the record before us, we agree with the ALJ that petitioners have demonstrated that the Board's action in this instance was arbitrary and capricious, particularly in view of the Shrewsburys' offer to construct a minibus turnaround on their property at their expense. As previously noted, our review herein is not limited to the safety of the existing bus stop or the Board's jurisdiction over safety conditions on the Township's roads. Rather, the standard is whether the Board abused its discretion in refusing to extend minibus service to petitioners' home.

As found by the ALJ, a minibus turnaround on the Shrewsburys' property would alleviate the Board's concerns regarding a sight distance and turnaround problem. It would also eliminate the need for a bus to continue down Shire Road or to navigate the sharp "S" curves located beyond petitioners' home. Moreover, while Shire Road between the current bus stop and petitioners' home does bend twice and drop in grade, we agree with the ALJ that it does not appear to be particularly perilous for a minibus.

Indeed, an engineering study conducted for the Board in 1993 concluded that, with certain specifications regarding the turnaround on petitioners' property, a minibus could safely operate to their home. Exhibit P-1, in evidence.

Nor do we find it reasonable for the Board to refuse to extend minibus service to petitioner's home on the basis of the potential hazards of this portion of Shire Road in poor weather conditions. As stressed by the ALJ, the Board is free to apply any general policy it may have concerning roadway safety in bad weather, as it would for other bus routes.

Accordingly, under the circumstances presented herein, we agree with the ALJ that petitioners have demonstrated that the Board's action in refusing to extend its minibus service to their home was arbitrary and capricious.³ We therefore reverse the decision of the Commissioner and direct the Board to select one of the proposed alternatives for extending such service to the home of petitioners Geoffrey and Cecilia Shrewsbury.

S. David Brandt opposed.

Attorney exceptions are noted.

April 2, 1997

Date of mailing _____

³ Contrary to the contention of the Board in its exceptions to the report of our Legal Committee, our decision herein is not predicated upon a finding that there are other bus routes in the Township that are more dangerous than the road at issue in this case. We note further that our decision is limited to the specific facts in the record before us involving these particular petitioners. Thus, the Board's assertion in its exceptions that "13 [other] students who do not receive bus services in circumstances similar to petitioners will inevitably now insist upon door to door bus service" is immaterial to our determination.