

BOARD OF EDUCATION OF THE	:	
TOWNSHIP OF MOUNT HOLLY,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
NEW JERSEY STATE DEPARTMENT	:	DECISION
OF EDUCATION,	:	
	:	
RESPONDENT.	:	
	:	
_____	:	

SYNOPSIS

Petitioning Board, a constituent member of a limited purpose (9-12) regional school district, requested that the Commissioner construe the provisions of *N.J.S.A.* 18A:39-1 and determine that no school district which is a constituent of a regional school district shall be required to provide transportation or pay the costs of transporting nonpublic school students where the only transportation presently provided by said constituent district is for pupils transported pursuant to Chapter 46 of Title 18A of the New Jersey Statutes or to a vocational, technical or other public school offering a specialized program.

Having reviewed the applicable statutory provision, interpretive case law and the parties' arguments, the Commissioner found that, on its face, the statute places an obligation on regional school districts to transport *all* students living within the bounds of the regional district to remote nonpublic schools, if *any* student within the regional district is so transported, with the cost of transporting pupils below the grade level for which the regional district is organized to be borne by the constituent members of the regional district on a prorated per pupil basis. Even though the petitioning constituent district does not transport its own K-8 students, nor do any of its resident students require remote transportation to the regional high school, in the context of the present inquiry, "the practices or circumstances of the constituent district are superseded by those of a larger geographical entity – the regional organization." (*Northern Valley Regional* citing *Woodbury Heights*) Commissioner concluded that, pursuant to *N.J.S.A.* 18A:39-1, petitioner is obligated to pay Rancocas Valley Regional High School District its pro rata share of costs incurred for transportation services to eligible nonpublic school students below grade 9 who reside in petitioner's school district.

March 1, 2000

BOARD OF EDUCATION OF THE :  
TOWNSHIP OF MOUNT HOLLY, :  
 :  
 PETITIONER, :  
 :  
 V. : COMMISSIONER OF EDUCATION  
 :  
 NEW JERSEY STATE DEPARTMENT : DECISION  
 OF EDUCATION, :  
 :  
 RESPONDENT. :  
 :  
 \_\_\_\_\_ :

For Petitioner, Frank P. Cavallo, Jr., Esq. (Parker, McCay & Criscuolo)

For Respondent, Arlene Goldfus Lutz, DAG

This matter comes before the Commissioner of Education by way of a Petition of Appeal for Declaratory Ruling, pursuant to *N.J.A.C.* 6:24-2.1, filed by petitioner, Board of Education of the Township of Mount Holly, on April 13, 1999. Petitioner requests that the Commissioner construe the provisions of *N.J.S.A.* 18A:39-1 and determine that no school district which is a constituent of a regional school district shall be required to provide transportation or pay for the costs of transporting nonpublic school students where the only transportation presently provided by said constituent district is for school children transported pursuant to Chapter 46 of Title 18A of the New Jersey Statutes or to a vocational, technical or other public school offering a specialized program.

Respondent, New Jersey State Department of Education, filed its Answer on May 13, 1999. On May 14, 1999, the parties were notified that the Commissioner had

determined to entertain petitioner's Declaratory Ruling request. Petitioner was directed to submit a memorandum of law in support of its position, and respondent was accorded an opportunity to submit a reply to petitioner's filing.

### BACKGROUND

Petitioner's submission reports that it operates a K-8 public school district, and it avers that all of the students attending these schools walk to their respective school buildings from home. Prior to 1995, courtesy busing was provided to nonpublic school students who were residents of Mount Holly, but this service was eliminated in late 1995. Petitioner further reports that it sends its pupils in grades 9-12 to Rancocas Valley Regional High School, which also educates pupils from Eastampton, Westampton, Hainesport and Lumberton. All of petitioner's pupils at Rancocas Valley Regional walk to school, and no busing is provided for any Mount Holly student to attend this school. It advises that the Rancocas Valley Regional High School District does, however, provide transportation, as required by *N.J.S.A. 18A:39-1 et seq.*, to public and nonpublic school students from the other constituent districts who reside remote from their schools of attendance. (Petition for Declaratory Judgment at pp. 1-2)

### POSITIONS OF THE PARTIES

Petitioner advances that this matter was precipitated by a letter received from Dr. John Sherry, Assistant Commissioner, Division of Field Services, on December 11, 1998, dealing with transportation for nonpublic school students, wherein he stated:

Based upon *\*\*\*[N.J.S.A. 18A:39-1]* when any eligible nonpublic school student, who lives within a school district that is a constituent of a regional school district, receives transportation services from the regional district, all eligible nonpublic students living within any of the regional's constituent districts must receive those same services. (Petitioner's Memorandum of Law at p. 1)

Petitioner argues that this interpretation of *N.J.S.A.* 18A:39-1 is incorrect in that it specifically ignores the express terms of this statute. Petitioner advances that *N.J.S.A.* 18A:39-1 in pertinent part provides as follows:

Whenever any regional school district provides any transportation for pupils attending schools other than public schools pursuant to this section, said regional district shall assume responsibility for the transportation for all such pupils and the costs of such transportation for pupils below the grade level for which the regional district was organized shall be prorated by the regional district among the constituent districts on a per pupil basis, after approval of such costs by the county superintendent. *This section shall not require school districts to provide any transportation for pupils attending a school other than a public school, where the only transportation presently provided by said district is for school children transported pursuant to chapter 46 of title 18A of the New Jersey Statutes or to a vocational, technical or other public school offering a specialized program (Emphasis added).* (Petitioner’s Memorandum of Law at p. 3)

In interpreting this statute, petitioner advances, prescribed rules of statutory construction must be followed. Petitioner cites New Jersey Supreme Court cases for the propositions that “[a] statute should be read as a whole and not in separate sections”; “every requirement of the act must have the full effect the language imports unless such interpretation of the words will lead to great inconvenience or subversion of some important object of the act or would lead to an absurdity”; and “there is a presumption that the word ‘shall’ \*\*\*is used in an imperative and not directory sense\*\*\*.” (Petitioner’s Memorandum of Law at p. 4) (citations omitted) When considering these precepts and the fact that the statute is clear on its face, petitioner contends, only one interpretation can reasonably be made, that is, “a constituent school district of a regional school district not providing any transportation cannot be compelled to provide transportation to non-public pupils merely because the regional district transports pupils from another constituent school district.” (*Id.* at p. 5) Petitioner states that the contrary interpretation espoused by

Assistant Commissioner Sherry is “in derogation of the clear statements of the Legislature,” and would require a legislative modification of the statute. (*Id.*) Petitioner contends that, since its original adoption in 1967, the Legislature has made a number of amendments to this provision, but the above-referenced highlighted language has remained unaltered. Additionally, it posits, although there is case law interpreting the “validity” of *N.J.S.A. 18A:39-1*, *Board of Education of Woodbury Heights v. Gateway Regional H.S.*, 104 *N.J. Super.* 76 (Law Div. 1968) and *Board of Education of Northern Valley Regional High School District v. Boards of Education of Old Tappan and Northvale*, 1971 *S.L.D.* 6, neither of these cases ever “specifically addressed the interplay between the portion of the statute requiring the regional district to provide the transportation and the highlighted portion of the statute which state[s] that no school district will be compelled to provide transportation to non-public school pupils,” and, therefore, this “significant issue” and the resultant effect for petitioner and similarly situated districts must be resolved. (*Id.* at pp. 3-4)

In reply, respondent argues that the law is settled “that *N.J.S.A. 18A:39-1* requires all constituent members of a regional school district to provide transportation to nonpublic schools if the regional school provides such transportation, notwithstanding that the board of education may not provide transportation to its own residents.” (Respondent’s Reply Memorandum of Law at p. 1) It observes that the court in *Woodbury Heights, supra*, dealing with a district with “identical circumstances” as those existing in this matter, extensively reviewed and analyzed the legislation and case law construing this transportation dictate. Viewing the regional district as a single entity, it cited that portion of *N.J.S.A. 18A:39-1* which states:

Whenever any regional school district provides any transportation for pupils attending schools other than public schools pursuant to

this section, said regional district shall assume responsibility for the transportation of all such pupils, and the cost of such transportation for pupils below the grade level for which the regional district was organized shall be prorated by the regional district among the constituent districts on a per pupil basis, after approval of such costs by the county superintendent,

and concluded that if the regional district transported *any* students residing in the district it was required to transport *all* qualified students residing in the district. Transportation policies of the individual constituent districts were of no moment in this determination, since the court found the policy of the regional school district controlling. (Respondent's Reply Memorandum of Law at p. 3) Likewise, respondent observes, the court in *Northern Valley Regional, supra*, also noted that, pursuant to *Woodbury*, "it is apparent that a child acquires the right to transportation to a private school by virtue of residence in the total area of the regional school, if any student within the regional school is transported to private school." (*Id.*)

Respondent further avers that petitioner's reliance on that portion of the statute which specifies that school districts are not required to provide transportation for nonpublic school students if they presently provide such transportation only for special education students or vocational, technical or specialized program students, is misplaced. (*Id.* at p. 4) What petitioner fails to recognize, it advances, is that the "district" referred to in this portion of the statute, in cases such as the one existing here, does not refer to individual constituent districts comprising a regional district, but to the regional district itself. Obviously, pursuant to this provision, it posits, if Rancocas did not provide remote transportation to any public students in the district, it would have no obligation to transport nonpublic school students. (*Id.*) Since this is, admittedly, not the case in the present matter, *N.J.S.A. 18A:39-1* mandates that Rancocas provide transportation for all nonpublic school students residing within the district and compels petitioner to pay its pro rata cost of transporting such students. (*Id.* at p. 5)

## DETERMINATION

The Commissioner has reviewed the applicable statutory provision, interpretative case law, and the arguments advanced by the parties in this matter. Upon such review, the Commissioner finds and determines, notwithstanding petitioner's assertions to the contrary, that pursuant to the clear language of *N.J.S.A. 18A:39-1*, and the holdings of *Woodbury Heights, supra*, and *Northern Valley, supra*, which interpreted this statute in light of a situation analogous to that of petitioner, the law in this area is settled. On its face, the statute places an obligation on a *regional school district* to transport *all* students living within the bounds of the regional district to remote nonpublic schools, if *any* student within the regional district is so transported pursuant to law. The statute also unmistakably directs that the expense incurred by a regional district in providing for transportation of students below the grade level of the regional district is to be borne by the constituent districts comprising the regional district, prorated on a per pupil basis. Consequently, as a constituent member of a regional district which is required by law to transport nonpublic school students, petitioner is indisputably responsible for payment of that share of the regional district's transportation costs associated with those pupils attending nonpublic schools below grade 9 who reside in petitioner's local district. The question of whether petitioner's obligation is altered because petitioner *itself*, as a *local district*, does not transport remote public students, or because none of petitioner's 9-12 students require remote transportation to the regional high school, has been addressed and resolved in case law. As was clearly stated in *Northern Valley Regional, supra*, in reviewing the court's holding in *Woodbury Heights, supra*:

[I]t is apparent that a child acquires the right to transportation to a private school pursuant to *N.J.S.A. 18A:39-1, supra*, by virtue of residence in the total area of the regional district, if any student within the regional district is transported to private schools. *It matters not whether a constituent district of the regional district transports students to public schools or whether it doesn't. The*

*practices or circumstances of the constituent district are superseded by those of a larger geographical entity – the regional organization.* (emphasis added) (1971 *S.L.D.* at 9)

The responsibilities of petitioner, in its capacity as a constituent member of a regional district which provides student transportation, are explicitly established by *N.J.S.A.* 18A:39-1. The Commissioner cannot concur with petitioner's contention that one sentence in that statute, inapplicable to local constituent districts within the overall context of the law, acts to obviate or limit petitioner's clearly established obligation to the regional district.

Accordingly, the Commissioner concludes that, pursuant to *N.J.S.A.* 18A:39-1, petitioner is obligated to pay Rancocas Valley Regional High School District its pro rata share of costs incurred for providing transportation services to eligible nonpublic school students below grade 9 who reside within petitioner's school district.

IT IS SO ORDERED.<sup>1</sup>

COMMISSIONER OF EDUCATION

Date of Decision: March 1, 2000

---

<sup>1</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.