

R.M. AND K.M., ON BEHALF OF MINOR CHILDREN, M.M., E.M., AND T.M.,
 PETITIONERS,
 V.
 BOARD OF EDUCATION OF THE TOWNSHIP OF FRANKLIN, HUNTERDON COUNTY,
 RESPONDENT.

COMMISSIONER OF EDUCATION
 DECISION

SYNOPSIS

Petitioners challenged the decision of the Franklin Township Board of Education (Board) to assign a school bus stop 0.9 miles from petitioners’ home, in lieu of allowing the bus driver to pick up the children in their driveway. Petitioners contend that a previous bus driver picked the children up at their home, which involves making a “K- turn” in petitioners’ driveway. Petitioners contended that the approved bus stop .9 miles from their house requires the children to walk along the shoulder of a narrow and winding country road, which they argue is especially dangerous in winter weather. The Board asserted that the assigned bus stop was appropriate under the District’s policies governing the assignment of transportation routes and services, and the District policy governing transportation safety standards. The parties filed opposing motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue in this case, and the matter is ripe for summary decision; local school boards are given broad discretion to determine appropriate bus routes and stops for school children; the decisions of local boards will only be overturned if those decisions are shown to be arbitrary, capricious or unreasonable; here, the district assigned a bus stop .9 miles from petitioners’ home that it determined to be appropriate and safe; a previous bus company or driver had customarily picked up petitioners’ children at their home, using a private driveway to make a K-turn on a public road (in violation of the District’s policy governing transportation safety standards) in order to avoid navigating over a narrow bridge for which the school bus exceeds the weight limit; a new bus driver assigned to petitioners’ route was unwilling to pick up the children at their residence, and instead stopped at the District-assigned bus stop; after filing their appeal, petitioners were twice provided opportunity to be heard by the Board; after the petitioners’ first appearance before the Board, the Board determined the bus stop in question to be appropriate under its policies and regulations, and further directed an investigation to ensure the safety of the assigned bus stop and the logistics of possibly rerouting the bus; following the investigation, the Board affirmed its decision to maintain the assigned bus stop. The ALJ concluded that petitioners did not meet their burden to demonstrate that the decision of the Board to maintain the present bus stop was arbitrary, unreasonable or otherwise discriminatory. Accordingly, the ALJ denied petitioners motion for summary decision, and granted the Board’s motion for summary decision.

Upon review, the Commissioner concurred with the ALJ’s findings and conclusions, and adopted the Initial Decision of the OAL as the final decision in this matter. The petition was dismissed.

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.

OAL DKT. NO. EDU 14237-16
AGENCY DKT. NO. 240-9/16

R.M. AND K.M., ON BEHALF OF MINOR	:	
CHILDREN, M.M., E.M., AND T.M.,	:	
	:	
PETITIONERS,	:	COMMISSIONER OF EDUCATION
V.	:	
	:	DECISION
BOARD OF EDUCATION OF THE TOWNSHIP	:	
OF FRANKLIN, HUNTERDON COUNTY,	:	
	:	
RESPONDENT.	:	

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties did not file exceptions.

Upon such review, the Commissioner agrees with the Administrative Law Judge (ALJ) – for the reasons thoroughly set forth in the Initial Decision – that the Board did not act in an arbitrary, capricious, or unreasonable manner when it maintained the present bus stop .9 miles from petitioners’ home, rather than permitting the school bus to drive over a bridge, for which it exceeds the weight limit, or make a K-turn in petitioners’ driveway. The Commissioner further concurs with the ALJ that there are no apparent safety concerns on the route from petitioners’ home to the bus stop, as River Road has not been designated a hazardous roadway.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter and the petition is hereby dismissed.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: November 3, 2017

Date of Mailing: November 3, 2017

* This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36 (N.J.S.A 18A:6-9.1)*.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION GRANTING
RESPONDENT'S MOTION FOR
SUMMARY DECISION AND
DENYING PETITIONER'S APPLICATION
FOR SUMMARY DECISION

OAL DKT. NO. EDU 14237-16

AGENCY DKT. NO. 240-9/16

**R.M. AND K.M. ON BEHALF OF M.M.,
E.M., AND T.M.,**

Petitioners,

v.

**TOWNSHIP OF FRANKLIN, BOARD OF
EDUCATION, HUNTERDON COUNTY,**

Respondent.

Paul N. Barger, Esq., for petitioners (Barger & Gaines, attorneys)

Janelle N. Winters, Esq., for respondent (Machado Law Group, attorneys)

Record Closed: August 18, 2017

Decided: September 26, 2017

BEFORE JOSEPH A. ASCIONE, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

In this matter, petitioners, R.M. and K.M. o/b/o M.M., E.M., and T.M. (petitioners), challenge the Franklin Township Board of Education's ("Board,") decision to maintain a school bus stop 0.9 miles from petitioners' home in lieu of allowing the bus driver to pick up the children at their home and make a "K-turn" in petitioners' private driveway as arbitrary, capricious or unreasonable.

On September 23, 2016, the New Jersey State Department of Education, Bureau of Controversies and Disputes, transmitted the matter to the Office of Administrative Law (OAL) pursuant to N.J.A.C. 1:1-8.2. On May 19, 2017, the petitioners moved for summary decision, seeking to reverse the Board's determination. On May 25, 2017, respondent opposed said motion and filed a cross motion for summary decision. The record closed on August 18, 2017.

FACTS

The parties submitted a motion and cross motion for summary disposition. There is no discrepancy between each's factual presentations and accordingly, the matter is ripe for a summary decision application. The parties submitted a twenty-two paragraphs statement of undisputed facts with attached Exhibits A to G; and a Joint Exhibit List containing Exhibits J-1 through J-26, inclusive. Both documents are accepted and are marked as CT-1 and CT-2, respectively. The tribunal also accepts CT-3, a CD-Rom of images of the roadway in evidence. Although River Road is not a formal two-lane road, it appears wide enough to allow cars to pass by one another. There are grassy shoulders along the road which are obviously not unsafe for pedestrians to use. The road itself is relatively flat and unremarkable in character. Although there is a twenty-five mile-per-hour speed limit posted near the bridge there is no indication in the record of the speed limit along River Road itself. I **FIND AS FACT** the following:

1. M.M., aged five, E.M., aged nine, and T.M., aged twelve, all reside within the Franklin Township School District ("District"), Hunterdon County.

2. District Policy 3541.1 and Regulation 3541.1R govern the assignment of transportation routes and services.
3. District Policy 3541.33 governs the transportation safety standards.
4. The District assigned a bus stop that is 0.9 miles from their residence.
5. Previously, the bus company or prior driver, picked up the petitioners at their home by navigating over a bridge, and traveling down a paved uncovered road without sidewalks. The driver used the petitioners' private driveway to make a K-turn and return over the bridge.
6. The tonnage capacity of the bridge is lower than the tonnage of the bus.
7. The use of a private driveway to make a K-turn on a public road is against the District policy 3541.33.
8. The new bus driver assigned to petitioners' route would not drive down to petitioners' residence.
9. Petitioners challenged the Board's designated bus stop. Petitioners were afforded an opportunity to be heard on September 29, 2014. The Board determined the bus stop to be appropriate under the Policy and Regulations identified above.
10. Petitioners again raised the bus stop issue in April 2016. The Board directed an investigation which was conducted. The investigation revealed the logistics of rerouting the bus route.
11. On May 31, 2016, the petitioners' request to move the bus stop was denied, and petitioners were advised of their appeal rights. Petitioners took an appeal and were again heard by the Board on June 20, 2016.
12. On July 26, 2016, the Board affirmed their prior decision.

LEGAL DISCUSSION

Under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, “[a] party may move for summary decision upon all or any of the substantive issues in a contested case.” N.J.A.C. 1:1-12.5(a). Summary decision may be granted “if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged, and that the moving party is entitled to prevail as a matter of law.” N.J.A.C. 1:1-12.5(b). Herein, there is no dispute as to any material fact.

N.J.S.A. 18A:39-1 provides that for “elementary school pupils who live more than two miles from their public school of attendance or secondary school pupils who live more than 2 ½ miles from their public school of attendance, the district shall provide transportation to and from school...” However, local school boards are given broad discretion to “make reasonable classifications for furnishing transportation, taking into account differences in the degree of traffic and other conditions existing in the various sections of the district.” Buonocore v. Hillsdale Bd. of Educ., 92 N.J.A.R.2d (EDU) 655, 658 (internal citations and quotation marks omitted). “It is well-settled that a local school board’s action lying within their discretion will not be overturned unless it is arbitrary, without rational basis, or induced by improper motives.” Lemma v. Bd. of Educ. of Twp. of Branchburg, EDU 8953-97, Initial Decision (July 22, 1998) (citing Kopera v. West Orange Bd. of Educ., 60 N.J. Super. 288 (App. Div. 1960)), adopted, Comm’r (August 28, 1998) < <https://njlaw.rutgers.edu/collections/oal/> >.

Further, “responsibility for the removal of traffic safety hazards belongs to the municipal governing authority rather than to the school boards.” Mr. & Mrs. T.F.S. ex rel. J.R.S. v. S. Brunswick Twp. Bd. of Educ., EDU 10118-05, Initial Decision (June 29, 2006) (citing Schrenk v. Ridgewood Bd. of Educ., 1961 S.L.D. 185, 187)), adopted, Comm’r (August 4, 2006), < <https://njlaw.rutgers.edu/collections/oal/> >. That maxim notwithstanding, both “the manner in which the Board designs a walk route and student

safety are factors to be considered in assessing whether the Board acted in an arbitrary, capricious, or unreasonable way.” Ibid. (citations omitted). Thus, “[w]hether a walk route is safe depends on the surrounding facts.” Ibid. (internal citations omitted).

Herein, petitioners argue that the instant case is similar to Shrewsbury v. Holland Twp. Bd. of Educ., 96 N.J.A.R.2d (EDU) 795; 97 N.J.A.R.2d (EDU) 416, in which the State Board of Education ultimately concluded that a school board’s decision to not provide minibus service to the petitioners’ home was arbitrary, capricious and unreasonable because the petitioners offered to construct, at their own expense, a minibus turnaround on their property, which “would [have] alleviate[d] the Board’s concerns regarding a sight distance and turnaround problem” and saved the minibus from having “to navigate the sharp ‘S’ curves located beyond petitioners’ home.”

In Shrewsbury, the petitioners sought to relocate a bus stop 0.3 miles south of their home on the top of a hill. 96 N.J.A.R.2d (EDU) 795, 796. The road in question had no sidewalks or shoulder to walk on. Ibid. For this reason, it was necessary at times for the children to walk in the roadway. Ibid. Alternative paths would have involved land leased to a hunting club or trespassing onto a neighbor’s property. Ibid. The petitioners provided a video showing how the district’s buses made K-turns on other township roads where it was impossible both to see and be seen by oncoming traffic during the turn. Ibid. Petitioners had unsuccessfully tried for many years to pay for the construction of a turnaround on their property if the district agreed to extend minibus service closer to their home. Id. at 797. The ALJ found the argument that the bus stop could not be relocated for safety reasons rang hollow, in light of the use of more dangerous maneuvers on similar routes—citing to the video as highly persuasive. Id. at 798.

The ALJ’s initial decision was, however, rejected by the Commissioner on the basis that the safety of the bus stop was not in doubt, the safety of the route to the bus stop was a municipal concern and other similarly situated students were not being treated differently. Id. at 799. On appeal, the State Board overturned the decision of the

Commissioner. 97 N.J.A.R.2d (EDU) 416. According to the State Board, “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.” Id. at 417. The State Board, agreeing with the ALJ, found the decision to not extend service arbitrary and capricious especially because the petitioners had offered to finance a turnaround, a study by respondent's engineer had found placing a turnaround on the property a feasible solution and the persuasive use of the video by the petitioners to make their case.

In opposition, the Board cites Lemma, supra, and T.F.S. ex rel. J.R.S., supra, among other cases, to argue that its decision was reasonable and within its discretionary authority. In Lemma, the petitioner sought to relocate a bus stop approximately one mile from his home. Lemma, supra. The petitioner's children at the time were ages six and nine respectively and, to get to their bus stop, they had to walk through “a half-mile uninhabited area with no sidewalks or street lighting and along an often foggy 50 MPH road with blind curves.” Ibid.

However, the school board in Lemma successfully argued that its decision was “based on information leading them to believe that the bus stop met the requirements for the [petitioner's] children's safety,” and that accommodating petitioner's request would put other children's safety at risk because the bus would have to navigate and make a K-turn on a narrow, dead-end road. The ALJ contrasted the case to Shrewsbury, noting the persuasive factors present in that case were not present in Lemma.

Likewise, in T.F.S. ex rel. J.R.S., the district implemented a plan to eliminate bussing and establish a walking route from petitioner's home to the school. T.F.S. o/b/o J.R.S., supra. Therein, petitioners challenged the plan based on the speed limit of forty-five miles per hour and other traffic safety concerns. Ibid. Although there were

sidewalks along the walking route, petitioners raised concerns about students walking in the road after snow storms—because neighbors did not consistently shovel their portion of the sidewalk. The ALJ concluded, however, that the “Board literally spent years studying and deliberating the merits of requiring students ... to become walkers” and made its decision only after the police department approved the walking route. For that reason, the ALJ found the decision did not rise to the level of arbitrary and capricious, nor did the district abuse their discretion in discontinuing some bussing routes for financial reasons. Ibid.

Here, petitioners’ children have been asked to walk along a winding country road to their assigned bus stop. Petitioners assert that the road is narrow and questions the usability of the shoulder, especially in winter weather. However, based on a review of the images provided in the attached exhibits, the road contains no obvious safety concerns and a relatively wide shoulder. There is no indication of the speed limit along River Road in the portions the children must walk and petitioners have not claimed that anyone travels the road at dangerously high speeds.

The Board’s investigation was thorough and involved experts, physical inspections of the route and ultimately a determination that the path to the bus stop was safe as a walking route. Petitioners have not shown that the Board ignored obvious dangers in making their determination. Indeed, the Board followed the established policy in rejecting both the use of K-turns and similar maneuvers in private driveways. This case is unlike Shrewsbury, where the respondent allowed other busses to take unsafe risks and official policy permitted the district’s engineer to consider the use of private property for the construction of a turnaround—even finding it feasible to do so.

Further, River Road is comparatively safer than the roadway approved as sufficiently safe in Lemma because there are no apparent blind turns, claims of regular visual impairment or high speed limits. Likewise, while petitioners have pointed to weather conditions comparable to those in T.F.S. ex rel. J.R.S., that route was

approved after the safety of the route was investigated and approved. Snow and other infrequent extreme weather are insufficient to make approval of a walking route by a district, especially after an investigation into its safety, arbitrary and capricious.

Finally, although petitioners use the word “discriminates” in their supporting brief, there is no indication or claim that other similarly situated individuals have been treated differently by the school district. Thus, petitioners have not shown the refusal to relocate the bus stop and use their private driveway is discriminatory and therefore arbitrary, capricious or unreasonable.

Local boards have wide discretion to determine appropriate bus routes and stops for school children. The decisions of local boards will only be overturned if arbitrary, capricious or otherwise unreasonable.

The Board herein thoroughly investigated the possibility of moving the bus stop, but determined that the route would require the bus to make risky or otherwise dangerous maneuvers and found that the walking route from petitioners’ home to the established bus stop was non-hazardous. Petitioners, however, have not shown that the roadway was unreasonably dangerous or that the Board had otherwise acted in an arbitrary or discriminatory fashion in denying their bus stop proposal.

CONCLUSION

I **CONCLUDE** petitioners have not met their burden to demonstrate that the decision of the Board, in maintaining the present bus stop in lieu of having the school bus execute a K-turn in Petitioners’ private driveway in order to avoid driving over a bridge for which the school bus exceeds the weight limit, was arbitrary, capricious, unreasonable or otherwise discriminatory.

I **CONCLUDE** petitioners' motion for summary decision should be **DENIED**.

I **CONCLUDE** as the record is sufficiently ripe for a determination, the respondent's motion for summary decision dismissing the petition should be **GRANTED**.

ORDER

Based on the foregoing, it is **ORDERED** that the petition's motion for summary decision is **DENIED**; and the respondent's motion for summary decision is **GRANTED**, and the petition is **DISMISSED**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey**

08625-0500, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



September 26, 2017
DATE

JOSEPH A. ASCIONE, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

/tat

APPENDIX
LIST OF WITNESSES

For Petitioner:

None

For Respondent:

None

LIST OF EXHIBITS

For Petitioner:

P-1 Summary Decision Motion and attachments

For Respondent:

R-1 Cross Motion for Summary Decision and Opposition to Summary Decision

Court Exhibits

CT-1 Statement of Undisputed Facts (Twenty-Two Paragraphs)

CT-2 Joint Exhibit List (J-1 to J-26, inclusive)

CT-3 Roadway Images on CD-Rom