

M.L. AND T.L., on behalf of minor child, J.L.,	:	
	:	
PETITIONERS,	:	COMMISSIONER OF EDUCATION
	:	
V.	:	DECISION
	:	
BOARD OF EDUCATION OF THE TOWNSHIP OF TEANECK, BERGEN COUNTY,	:	
	:	
RESPONDENT.	:	
_____	:	

SYNOPSIS

Petitioners filed the within appeal in August 2017, seeking to have the respondent Board provide bus transportation to the Yavneh Academy – a private school – for their son, J.L., who was four years old at the time. J.L. began kindergarten at Yavneh Academy during the 2017-2018 school year, in advance of his fifth birthday on October 17, 2017. Petitioners alleged that the respondent Board’s denial of bus transportation for J.L. was based on a discriminatory policy. The Board asserted that J.L. did not meet the eligibility requirements to qualify for bus transportation; specifically, J.L. did not meet the age requirement for starting kindergarten in the Teaneck School District. The Board filed a motion 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; the eligibility requirements for a non-public school student to receive transportation from the public school district of residence are set forth in *N.J.A.C. 6A:27-2.2(d)*, and include the requirement that non-public school students must meet the same entrance age requirement as public school students in their resident district board of education, in accordance with *N.J.S.A. 18A:38-5* and *N.J.S.A. 18A:44-2*, in order to receive transportation services; further, Teaneck Board Policy 5112 states that “[o]nly those pupils who will be five years of age on or before October 1 of the year they will enter school will be permitted to enroll in the Teaneck Public Schools Kindergarten,” and the only exception to this rule is when a student transfers from a public or private kindergarten in which they have been registered for at least three months during the course of the school year; in the instant case, J.L. did not turn five until October 17, 2017, and thus did not meet the District’s entrance age requirement; J.L. is not currently eligible to enroll in the District’s kindergarten program, and is therefore not eligible for transportation in accordance with *N.J.A.C. 6A:27-2.2*. The ALJ concluded that the District is not required to provide a non-public school student with transportation unless that student first meets the District’s entrance age requirements; further, petitioners’ allegations of discrimination based on their faith are without merit. Accordingly, the ALJ granted the Board’s motion for summary decision and dismissed the petition.

Upon review, the Commissioner concurred with the ALJ’s findings and conclusions, and adopted the Initial Decision as the final decision in this matter, for the reasons expressed therein. 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.

March 23, 2018

OAL DKT. NO. EDU 13260-17
AGENCY DKT. NO. 193-8/17

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	:	
RESPONDENT.	:	
_____	:	

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

Upon such review, the Commissioner concurs with the Administrative Law Judge – for the reasons set forth in the Initial Decision – that the Teaneck Board of Education is entitled to summary decision. 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.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 23, 2018
Date of Mailing: March 23, 2018

* This decision may be appealed to the Superior Court, Appellate Division, 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

SUMMARY DECISION

OAL DKT. NO. EDU 13260-17

AGENCY DKT. NO. 193-8/17

M.L. AND T.L. ON BEHALF OF J.L.,

Petitioners,

v.

**BOARD OF EDUCATION OF THE
TOWNSHIP OF TEANECK, BERGEN
COUNTY,**

Respondents.

Jason F. Lowe, Esq., for petitioners (Law Offices of Jason Lowe, attorneys)

Isabel Machado, Esq., for respondent (Machado Law Group, attorneys)

Record Closed: January 9, 2018

Decided: February 9, 2018

BEFORE **MICHAEL ANTONIEWICZ**, ALJ:

STATEMENT OF THE CASE

On August 30, 2017, M.L. and T.L. on behalf of J.L. (petitioners/parents) filed for due process seeking transportation (busing) as a related service for the school year 2017-2018. Petitioners assert that their son, J.L., who was four years old at the time,

requires transportation to the Yavneh Academy, a non-public school in New Jersey. J.L. will be attending kindergarten in the present school year. Petitioners also alleged that the denial of such transportation is based on a discriminatory policy.

PROCEDURAL HISTORY

On June 16, 2017, petitioners contacted a member of the Teaneck Board of Education (Board) and requested transportation. On June 19, 2017, Superintendent Vincent McHale informed the petitioners that J.L. did not meet the eligibility requirements to qualify for such transportation. Petitioners' legal counsel requested a redetermination of the decision because the child is attending a private kindergarten program in the 2017-2018 school year and thus alleged that the student is entitled to busing. The exact basis for the respondent's decision is that the District policy provides for transportation to kindergarten students only if they meet the age requirements to participate in the District's program.

The Department of Education, Bureau of Controversies and Disputes transmitted the matter to the Office of Administrative Law (OAL), where it was filed on September 11, 2017.

After review of the submissions filed by the parties, oral argument was held via telephone on January 9, 2018, at which time the record closed.

FACTUAL DISCUSSION

Based upon a review of the pleadings, and the parties' written submissions and attached exhibits, and drawing all reasonable inferences in favor of each respective non-moving party, for purposes of summary decision only, I **FIND** as **FACT** the following:

J.L., at the time, a four-year-old student, who began the 2017-2018 school year attending kindergarten in a private school at the Yavneh Academy. The student/child did not turn five years old until October 17, 2017.

Based on this attendance, the parents applied to the Board for the District to provide transportation for J.L. The Superintendent denied the parents' request. On July 3, 2017, the attorney for the petitioners submitted a letter for purposes of clarification of their position, factually and legally. This letter was responded to on July 5, 2017, by the respondent's attorney again denying the petitioners' request. On July 12, 2017, the attorney representing the petitioners wrote a letter to the Board appealing the Superintendent's decision. On July 20, 2017, the petitioners were informed that the Board would consider the appeal in closed session at the August 23, 2017, Board meeting. At this closed session, the Board declined to overturn the decision of Superintendent McHale.

LEGAL ANALYSIS AND CONCLUSION

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). The standard for granting summary judgment (decision) is found in Brill v. Guardian Life Insurance Company of America, 142 N.J. 520, 540 (1995) (citation omitted):

[A] determination whether there exists a "genuine issue" of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact-finder to resolve the alleged disputed issue in favor of the non-moving party. The "judge's function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial."

By way of further guidance,

An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom

favoring the non-moving party, would require submission of the issues to the trier of fact.

[R. 4:46-2.]

The Brill standard contemplates that the analysis performed by the trial judge in determining whether to grant summary judgment should comprehend the evidentiary standard to be applied to the case or issue if it went to trial. While it is true that a judge is not to “weigh evidence and determine the truth of the matter,” Brill, 142 N.J. at 540, “there is in this process a kind of weighing that involves a type of evaluation, analysis and sifting of evidential materials.” Id. at 536. Thus, a judge is to scrutinize the competent evidential materials presented, in a light most favorable to the non-moving party, and consider whether a rational fact-finder could resolve the disputed issue in favor of the non-moving party. Id. at 540. “To send a case to trial, knowing that a rational jury can reach but one conclusion, is indeed ‘worthless’ and will ‘serve no useful purpose.’” Id. at 541.

When a motion for summary decision is made and supported, the burden shifts to the adverse party to set forth, by affidavit, specific facts showing there is a genuine issue resolvable only by an evidentiary proceeding. N.J.A.C. 1:1-12.5(b). Given this burden shift, a party opposing a summary-judgment motion “who offers no substantial or material facts in opposition to the motion cannot complain if the court takes as true the uncontradicted facts in the movant’s papers.” Burlington Cnty. Welfare Bd. v. Stanley, 214 N.J. Super. 615 (App. Div. 1987). Failure of the opponent to make such a showing entitles the moving party to summary judgment. Brill, 142 N.J. at 529. The Court’s standard for summary judgment is thus designed to “liberalize the standards so as to permit summary judgment in a larger number of cases,” due to the perception that we live in “a time of great increase in litigation and one in which many meritless cases are filed.” Id. at 539 (citation omitted).

In this case, there is no genuine issue of material fact. There is no dispute as to the age of the child, where he is going to school as of fall 2017, what type of school the placement school is, and the type of services requested by the parents. As such, this matter is ripe for a summary decision.

As set forth in N.J.A.C. 6A:27-2.2(d), the eligibility requirements for a non-public school student to receive transportation from the District are as follows: a student shall only be eligible for transportation if they are “enrolled in grades kindergarten through grade 12.” This requirement is further clarified as providing “[n]on-public school students shall meet the entrance age requirement for the public-school students of their resident district board of education in accordance with N.J.S.A. 18A:38-5 and N.J.S.A. 18A:44-2” in order to receive transportation services. N.J.A.C. 6A:27-2.2(d).

“[N]o child under the age of five years shall be admitted to any public school, except such as may be provided pursuant to law for children of his age.” N.J.S.A. 18A:38-5. This statute goes on to state that “[n]o board of education shall be required to accept by transfer from public or private school any pupil who was not eligible by reason of age for admission on October 1 of that school year.” Ibid.

Based on the complete reading of the applicable regulations and statutes, I **FIND** that the District is not required to provide a non-public school student with transportation, unless that student first meets the District’s entrance age requirements. It is conceded by the petitioners that J.L. did not turn five until October 17, 2017, and thus is not eligible for the District’s kindergarten program for the 2017-2018 school year. The regulations do not dictate that the transportation services provided to non-public school students must be equivalent to those provided to public school students. The guidance provided in the New Jersey Department of Education Nonpublic Transportation Procedures does not indicate that the eligibility requirements for non-public school students must mirror the eligibility requirements for public school students.

Furthermore, Teaneck Board Policy 5112 states that “[o]nly those pupils who will be five years of age on or before October 1 of the year they will enter school will be permitted to enroll in the Teaneck Public Schools Kindergarten.” The only exception to this rule is when a student transfers from a public or private kindergarten in which they have been registered for at least three months during the course of the school year. In this case, J.L. did not turn five until October 17, 2017, and thus does not meet the District’s entrance age requirement, is not eligible to enroll in the District’s kindergarten

program at this time, and thus is not eligible for transportation in accordance with N.J.A.C. 6A:27-2.2.

Petitioners argue that Teaneck Board Policy 8600 required the District to provide transportation to J.L. Teaneck Board Policy states in part:

The Board will also transport resident children enrolled in kindergarten through grade twelve who attend a non-public school in the State of New Jersey, in accordance with New Jersey statute and code, not more than twenty miles from their residence, but not a lesser distance from their residence than that required for the transportation of pupils enrolled in the schools of this district

The clear interpretation of the above policy must be read in accordance with other Board policies and New Jersey statutes and regulations. New Jersey code holds that a non-public school shall meet the District's entrance age requirements prior to being provided with transportation services from a public entity. The Board Policy, as set forth herein above, requires the student to turn five prior to October 1 in order to enroll in the District's kindergarten program. That has not occurred in this case

Discriminatory Intent

Petitioners allege that the Teaneck Board of Education's decision was made based on discriminatory intent. As argued by the petitioners, they state that a "policy which provides service for public school students and not for non-public school students **seems** to be a policy that has a discriminatory purpose." Petitioners go on to argue that the policy has a discriminatory purpose for a protected class of people, "namely this **may** be really a disguise for discrimination based on religion." Two issues become apparent here. One, the leap from providing services to public students and then not providing same to non-public students to the allegation of religious discrimination which is not fully explained by the petitioners. Two, the allegation of religious discrimination is based on speculation through the use of such words "seems" and "may" and not based on any concrete facts. In fact, petitioners' counsel in the petition calls the policy as "possibly discriminatory." The policies followed by the Teaneck Board (N.J.A.C. 6A:27-

2.1 through N.J.A.C. 6A:27-2.6) have certain regulations which only apply to the transportation of all non-public school students.

In the respondent's reply submission, they point out that the New Jersey Department of Education Nonpublic Transportation Procedures suggests that so long as a District provides non-public students with access to busing in compliance with the minimum requirements of N.J.A.C. 6A:27-2.2, a District is free to decide for itself whether or not to provide non-public school students with additional courtesy busing. Respondent, in addressing the allegations of discriminatory intent, stated that the limitation on the busing of non-public students was due to recent budgetary constraints and not on any discriminatory intent. There is much support for this position that the policy applies to all non-public school students, both sectarian and secular. N.J.A.C. 6A:27-2.2 mandates that transportation for non-public school students who meet certain eligibility requirements. The District points out that in order to be eligible for mandatory transportation, the student must reside more than two miles from their non-public school; attend a non-profit, non-public school within twenty miles of their home; be enrolled in "kindergarten through grade 12" and "meet the district's entrance age requirements for the public-school students of their resident district."

Respondent counters that the petitioners are unable to provide any factual support for the position that the District's decision to deny the petitioners' request for transportation is the result of the District or the Board having any discriminatory intent toward the petitioners because of their Jewish faith. I support this position.

I further **FIND** that respondent is entitled to summary decision because petitioners have not sufficiently demonstrated a genuine issue of material fact regarding any requirement or necessity that J.L. receive transportation to the student's private school.

I, therefore, **CONCLUDE** that respondent is entitled to summary decision on the issue of whether the District has to provide transportation for J.L. to the private school placement.

ORDER

Accordingly, I hereby **ORDER** that respondent's motion for summary decision is **GRANTED** and that the due-process petition is hereby **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, P.O. 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.

February 9, 2018

DATE



MICHAEL ANTONIEWICZ, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

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