

**New Jersey Commissioner of Education
Final Decision**

S.W. and N.W., on behalf of minor child, M.W.,

Petitioners,

v.

Board of Education of the Township of Maurice
River, Cumberland County,

Respondent.

Synopsis

Petitioners challenged the decision of the respondent Board to relocate M.W.'s bus stop from their driveway to a consolidated school bus stop located approximately one-tenth of one mile away from petitioners' home. Petitioners contended that there is no safe walking path between their home and the new bus stop. A hearing in this matter was held on April 27, 2023.

The ALJ found, *inter alia*, that: the Commissioner will not overturn the decision of a local board of education in the absence of a finding that its were arbitrary, capricious, or unreasonable; in this case, the Board determined a need to consolidate bus stops prior to the start of the 2022-2023 school year; M.W.'s bus stop was changed from in front of her home to a consolidated stop approximately three hundred feet away; petitioners argued that the new bus stop location is unsafe because it is on a heavily traveled road that lacks a sufficient shoulder and proper maintenance, and has a posted speed limit of fifty mph; however, the proposed consolidation of bus stops was needed for safety reasons to reduce the number of home stops and to help alleviate a bus driver shortage; members of the Board listened to parental concerns about the new bus stops, investigated the new consolidated bus routes and determined that the plan was safe and efficient. The ALJ concluded that petitioners have not met their burden to demonstrate that the decision of the Board in adopting the consolidated bus stop proposal was arbitrary, capricious, or unreasonable. Accordingly, the ALJ ordered the petition dismissed.

Upon review, the Commissioner concurred with the ALJ's detailed findings and conclusions, and adopted the Initial Decision of the OAL as the final decision in this case. 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.

216-23

OAL Dkt. No. EDU 11099-22

Agency Dkt. No. 318-11/22

New Jersey Commissioner of Education

Final Decision

S.W. and N.W., on behalf of minor child, M.W.,

Petitioners,

v.

Board of Education of the Township of
Maurice River, Cumberland County,

Respondent.

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

Upon review, and for the reasons thoroughly detailed in the Initial Decision, the Commissioner concurs with the Administrative Law Judge that petitioners failed to demonstrate that the Board's decision to relocate M.W.'s school bus stop from the petitioners' driveway to a consolidated school bus stop located approximately one-tenth of one mile away from petitioners' home was arbitrary, capricious, or unreasonable.

Accordingly, the petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹


ASSISTANT COMMISSIONER²

Date of Decision: July 17, 2023
Date of Mailing: July 19, 2023

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.

² Pursuant to *N.J.S.A. 18A:4-34*, this matter has been delegated to Assistant Commissioner Kathleen Ehling.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 11099-22

AGENCY DKT. NO. 318-11/22

S.W. AND N.W. ON BEHALF OF M.W.,

Petitioners,

v.

**BOARD OF EDUCATION OF THE
TOWNSHIP OF MAURICE RIVER,
CUMBERLAND COUNTY,**

Respondent.

S.W. and N.W., petitioners pro se

Erin R. Thompson, Esq., for respondent (Birchmeier & Powell, LLC, attorneys)

Record Closed: May 22, 2023

Decided: June 20, 2023

BEFORE **KATHLEEN M. CALEMMO**, ALJ:

STATEMENT OF THE CASE

Petitioners, S.W. and N.W. on behalf of their daughter, M.W. challenged the decision by the respondent, Board of Education of the Township of Maurice River (Board) changing their daughter's bus stop from their residence to Park Drive and Hesstown Road because they allege there is no safe walking route from their home to the new bus stop.

PROCEDURAL HISTORY

Petitioner filed a petition of appeal with the Commissioner of Education Controversies and Disputes (the Commissioner) on November 18, 2022. The respondent filed its answer on December 8, 2022. On December 12, 2022, the matter was transmitted to the Office of Administrative Law (OAL), where it was filed on December 13, 2022, as a contested case. N.J.S.A. 52:14B-1 to B-15 and N.J.S.A. 52:14F-1 to F-13. 2019.

The hearing was held on April 27, 2023. After receipt of the closing summations on May 22, 2023, the record closed.

FACTUAL DISCUSSION AND FINDINGS

I **FIND** the following to be the undisputed **FACTS** of the case:

Prior to the commencement of the 2022-2023 school year, the Board determined the need to consolidate bus stops. M.W.'s stop was changed from in front of her home to a consolidated stop approximately three hundred feet away.

In August 2022, before M.W. was scheduled to start eighth grade, petitioners received bus information, notifying them of the new bus stop. Once notified of the new bus stop, petitioners brought their safety concerns to the Board. Petitioners maintained that there was no safe walking route from their home to the bus stop because the road lacked a sufficient shoulder and the posted speed limit was fifty miles per hour. Petitioners further maintained that the road is highly traveled and not well maintained. The white shoulder line is washed out in spots or covered with debris. They also expressed issues with flooding even after a normal rainstorm.

Maurice River is a rural community of approximately ninety-two miles. There are three State Highways, State Highway 47, State Highway 49, and Millville/Mays Landing Road. Only the state highways have paved shoulders. Most of the roads in Maurice

River have dirt or gravel shoulders. Some of the roads are unpaved. There are very limited sidewalks.

During the 2022-2023 school year, the Board was responsible for busing approximately three hundred and fifty elementary students and two hundred high school students. The buses traveled on all the roads through out Maurice River.

The new consolidated bus stop at Hesstown and Park Drive accommodated five or six students. The bus was able to pull into the stop off the road to an area that was large enough to accommodate parked cars. The stop was considered centrally located for all students to access being approximately one tenth of a mile from the impacted students' homes.

TESTIMONY

Petitioners

S.W. believed that the Board did not exercise due diligence in investigating her safety concerns. On September 8, 2022, S.W. and N.W. sent an email to Susan Walkup, Transportation Coordinator, and to Dr. Cohen, Superintendent, to express their concerns. (P-1.) The ability of their daughter to safely walk from their home to the new bus stop was their main concern. They did not believe that Hesstown Road was safe for walking for anyone, especially children. After attending the Board meeting on September 20, 2022, and learning that the bus stops were going to remain in place, S.W. sent another email and included Patricia Powell, (Powell), Business Administrator, because she felt her safety concerns had not been addressed. (P-2.) S.W. outlined her safety concerns to include no sufficient shoulder, uneven ground, speed limit of fifty miles per hour, and flooding concerns.

Although Dr. Cohen responded by email, dated October 5, 2022, S.W. felt his answer was vague and non-responsive. (P-3.)

S.W. wanted to attend the Transportation Committee meeting, but her request was denied. She sent an email dated October 27, 2022, so the committee would have her main safety concerns, including a video of flooding after a normal rainfall, along with her daughter's comment about fearing heavy traffic coming in both directions with nowhere for her go. (P-4.) By email, dated November 7, 2022, Dr. Cohen advised S.W. that the Transportation Committee reviewed all her concerns but voted to keep the bus stop in place. (P-5.) S.W. was not satisfied. She wanted information which adequately addressed her safety concerns.

S.W. walked the route and took pictures. (P-6.) The pictures showed that the ground on the sides of the road is uneven and overgrown. Although the bus stop is on the same side of the street as their home, M.W. crosses the street to the east side to walk home so she can see the traffic coming towards her. The east side is covered with debris and trash.

S.W. has lived in her home for fifteen years. She acknowledged that Maurice River, not the school district, is responsible for snow, shrubbery, and debris removal along Hesstown Road. She did not contact Maurice River about the condition of the shoulder, only the Board.

N.W. testified that after fifteen years of living on Hesstown Road, they are very familiar with how unsafe it is. It is not safe for anyone to walk. He understood the need to consolidate bus stops but questioned the desire for efficiency over safety.

Respondents

Susan Walkup (Walkup) is the transportation coordinator. She was hired by the Board two years ago. She received her transportation supervisor certification eight years ago. She has fifteen years of experience in driving a school bus. During her first year as the transportation coordinator, Walkup studied the bus routes but made no changes. As a result of driving and studying the routes, she proposed consolidating fifty bus stops beginning in the 2022-2023 school year.

She understood that parents prefer front door stops, but central location community bus stops are safer for bus drivers and children. She drove the new and old routes with the business administrator, Powell.

To provide Dr. Cohen and the Board members with visualization of the new routes, Walkup drove them in a school bus to visit eleven of the new bus stops where parents had expressed concerns. The tour included the Hesstown Road and Park Drive new bus stop. There were no expressed concerns about the safety of this sight. Walkup did not view any impediments to M.W. walking to and from her home on the grassy shoulder area alongside the road.

Walkup is very familiar with Hesstown Road. It is not a major road and there are no sidewalks, which is typical for Maurice River Township. This stop was selected because it was centrally located for all impacted students, being approximately one tenth of a mile from all their homes. The location was off the road and large enough to accommodate parked cars for parents. While waiting for the bus, the children are off the road. She deemed the location safe for the students and safe for the bus driver.

Due to S.W.'s and N.W.'s concerns about flooding. Walkup drove the road with Powell on January 31, 2023, after it had been raining for about six hours. There were puddles but no safety concerns. Powell took pictures of the road. (R-6.)

In her professional opinion, the new bus stop did not present any safety concerns.

Patricia Powell has been the school's business administrator for the past twenty-one years. Powell hired Walkup to be the transportation coordinator. Facing a bus driver shortage, part of Walkup's duties was to study the routes for efficiency and safety. After Walkup revised the routes, Powell went with her on a school bus to experience the changes. There had been too many home bus stops that needed to be consolidated. When buses make multiple short stops on the same road, there is more cause for concern from aggressive drivers. Powell deemed Walkup's proposals to be safe and needed.

After Powell reviewed the proposal for the new routes, she sent the information to the Board's Transportation Committee for their review. At the August 22, 2022, meeting the Board approved the proposal to consolidate bus stops. After the new bus passes were sent to the families, complaints about the changes were received. To address these complaints, Walkup took Powell, Dr. Cohen, the Board president, and two members of the Transportation Committee on a bus trip to experience the old and new routes. There were complaints about eleven consolidated stops. At each new stop, the Board members would vote yes or no on whether to keep the change. The stop at issue got a unanimous yes vote from the Transportation Committee members. Powell believed the consolidated routes were more efficient.

The new stop on Hesstown and Park Road was situated at an entrance to a trailer park. It was wide enough to accommodate parked cars and all impacted students had an equal walking distance of about one tenth of a mile. There were no expressed concerns about the walkability of the grassy dirt shoulder running along the roadway. In Powell's opinion, the distance between petitioners' house and the bus stop was walkable with sufficient room to walk on the grassy/dirt area off the limited shoulder.

After a rainstorm, Powell returned to the area with Walkup. She took pictures of the road and did not notice any flooding concerns. (R-6.)

Robert A. Chard (Chard) is the chairman of the Transportation Committee. Chard has been a Board member for nineteen years. He has been on the Transportation Committee for sixteen years. Chard grew up on Hesstown Road, near where petitioners currently live. He is very familiar with all the roads in the Township because he spent twenty-five years as a Maurice River police officer.

In July 2022, after receiving the information on the proposed consolidation of bus stops, he personally drove the new route. He thought the plan to cut down the number of stops was good for the children and the bus drivers. He had no issues with the proposal.

He described Hesstown Road as having one lane in each direction with a dirt shoulder. He noted that the speed limit was forty-five miles per hour. He was advised on cross-examination by S.W. that the speed limit is fifty miles per hour.

Chard participated on the bus trip to review the new sites. At the Hesstown and Park stop, he got off the bus and walked a short distance. From what he viewed, he believed petitioners' daughter could easily walk to her home. When the members got back on the bus, they unanimously voted to keep the consolidated stop. Chard also viewed the video of the road during a rainstorm, but it had no effect on his decision. At the Board meeting, Chard voted to approve the consolidated stop.

Having heard the testimony presented at the hearing, and having reviewed the documentary evidence, I **FIND** the following additional **FACTS**:

The proposed consolidation of bus stops was needed for safety to reduce the number of home stops and to help alleviate the shortage of bus drivers. After voting to approve the consolidation plan, the Board listened to the concern of the parents. Walkup took members of the Board on a school bus tour to directly experience the proposed changes. They were able to experience first-hand from the seat of a bus, these new routes and stops.

The petitioner's concern is not with the site, but rather with their daughter's inability to safely walk to and from their home to the bus stop. Without access to sidewalks, the only way to walk from the house to the bus stop is on the shoulder and grassy area of a road where cars can drive at speeds of fifty miles per hour. The pictures showed a grass, gravel, and dirt area off the sides of the road. (R-6 and P-6.) Testimony from Walkup, Powell, and Chard about the walkability of the shoulder area differed from S.W. and N.W. While I do not doubt the sincerity of the petitioners and their obvious motive to keep their daughter as safe as possible, I was more persuaded by the pictures from both parties and the testimony from respondent's witnesses that there was sufficient room to walk. The terrain was uneven, and overgrown, but there was room to safely walk the short distance from petitioners' home to the bus stop. All the students to the new site were required to navigate one tenth of a mile to this new communal bus stop.

Petitioners' flooding concern was also investigated by the Board. The Transportation Committee reviewed the video she submitted. Moreover, Walkup and Powell drove the road after a six-hour rainstorm and found no concerns.

CONCLUSIONS OF LAW

The Commissioner will not overturn the decision of a local board in the absence of a finding that the action below was arbitrary, capricious, or unreasonable. T.B.M. v. Moorestown Bd. of Educ., EDU 2780-07, Initial Decision (February 6, 2008), <<http://njlaw.rutgers.edu/collections/oal/>> (citing Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965), aff'd, 46 N.J. 581(1966)). The Commissioner will not substitute his judgment for that of the board of education, whose exercise of its discretion may not be disturbed unless shown to be "patently arbitrary, without rational basis or induced by improper motives." Kopera v. W. Orange Bd. of Educ., 60 N.J. Super. 288, 294 (App. Div. 1960). Our courts have held that "[w]here there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached." Bayshore Sewage Co. v. Dep't of Env'tl. Prot., 122 N.J. Super. 184, 199-200 (Ch. Div. 1973), aff'd, 131 N.J. Super. 37 (App. Div. 1974). Thus, to prevail, the petitioner must demonstrate that the Board acted in bad faith, or in utter disregard of the circumstances before it. T.B.M., EDU 2780-07. It is a weighty burden; one which I **CONCLUDE** these petitioners have not met. This record has presented me with no evidence that would suggest that the actions of this Board, or its personnel, were taken in bad faith or in utter disregard of the circumstances presented.

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 two and one-half 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).

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/> >.

Here, petitioners’ daughter has been asked to walk approximately one tenth of a mile along a rural road to her assigned bus stop. Petitioners assert that the shoulder is not safe for walking, made even worse by rain. However, based on a review of the images admitted into evidence, the road contains no obvious safety concerns and there is a sufficiently wide grassy dirt area for walking. I agree that the terrain does not look even and there are areas in need of maintenance, but it remains, nonetheless, walkable. There is a concern about the fifty miles per hour speed limit and aggressive driving in this area. However, these concerns and the maintenance of the shoulder to the roadway are the responsibility of the governing authority and not the school Board.

The Board’s investigation was thorough and involved physical inspections of the route and ultimately a determination that the bus stop was safe and accessible by all impacted students. Petitioners have not shown that the Board ignored obvious dangers in making their determination.

Local boards of education 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 new consolidated bus routes and determined that the plan was safe and efficient. Petitioners 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 request to reject the bus stop proposal and allow their daughter to be picked up and returned to their home.

I **CONCLUDE** petitioners have not met their burden to demonstrate that the decision of the Board, in adopting the consolidated bus stop proposal was arbitrary, capricious, or unreasonable.

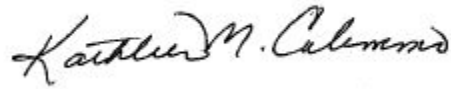
ORDER

Based on the foregoing, I **ORDER** that the appeal be **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.



June 20, 2023

DATE

KATHLEEN M. CALEMMO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

KMC/tat

APPENDIX

WITNESSES

For Petitioner:

S.W.

N.W.

For Respondent:

Susan Walkup

Patricia Powell

Robert Chard

EXHIBITS

For Petitioner:

P-1 Email, dated September 8, 2022, regarding safety concerns

P-2 Email, dated September 21, 2022, regarding lack of response

P-3 Follow-up email, dated October 5, 2022 and video of flooding

P-4 Email, dated October 27, 2022 with concerns for Transportation Committee

P-5 Email, dated November 6, 2022

P-6 Pictures of walking route

For Respondent:

R-1 Email exchange

- R-2 Board minutes, dated September 20, 2022
- R-3 Board minutes, dated October 18, 2022
- R-4 Board minutes, dated November 21, 2022
- R-5 Google map of area
- R-6 Photographs of new bus stop after rain on January 31, 2023
- R-7 Photographs of other bus stops after rain on January 31, 2023