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New York State Education Department

Decisions of the Commissioner

Appeal of T.C.-D., on behalf of her children, from action of the Board of Education of the Malverne Union Free School District regarding transportation.

Decision No. 18,508
Decided: October 15, 2024

***1** Frazer & Feldman, LLP, attorneys for respondent, Bryan Georgiady, Esq., of counsel

ROSA., Commissioner

Petitioner appeals the determination of the Board of Education of the Malverne Union Free School District ("respondent") to deny her two children (the "students") transportation to a nonpublic school for the 2023-24 school year. The appeal must be dismissed.

Petitioner and the students reside within respondent's district and attend a nonpublic school. Respondent provides transportation to K-8 students attending nonpublic schools who live between 2 and 15 miles from the school they attend. Petitioner's children are ineligible for transportation as they reside less than two miles from the nonpublic school.

On February 26, 2023, petitioner requested the designation of a child safety zone so the students could obtain transportation to the nonpublic school, claiming there was "no safe or reasonable route to walk to school." In response, the district hired an independent traffic expert ("expert") to perform a route safety analysis. The expert completed a report on June 5, 2023, concluding that a pedestrian path between petitioner's residence and the nonpublic school did not support the designation of a child safety zone. This appeal ensued.

Petitioner contends that the expert's report is inaccurate due to several errors, including misidentifying road conditions and the layout of intersections. She seeks the establishment of a child safety zone that would authorize transportation to the nonpublic school.

Respondent denies petitioner's contentions and argues that its determination was rational.

A board of education has broad discretion to determine how transportation is to be provided (*Appeal of Del Prete*, 40 Ed Dept Rep 148, Decision No. 14,444; *Appeal of Reich*, 38 id. 565, Decision No. 14,094; *Appeal of Broad*, 35 *id*. 248, Decision No. 13,530). Pursuant to Education Law § 3635-b, a school district may provide transportation to a student who would otherwise ineligible if it finds "that a hazardous zone exists which in the opinion of the board would be reasonably alleviated by the establishment of a child safety zone" (Education Law § 3635-b [2]). A child safety zone is an area "within which children who reside at a lesser distance from the school they legally attend than the minimum transportation limit of the district will be provided transportation on the basis that their most direct walking route to school will traverse a hazardous zone" (Education Law § 3635-b [2]). A board of education "may directly, or by appointment of an advisory committee, make an investigation to determine if a hazardous zone exists within such district" (Education Law § 3635-b [5]).

***2** Eligibility for a child safety zone is evaluated using regulatory criteria contained in Department of Transportation regulations (19 NYCRR part 191). Hazards along pedestrian paths are generally assigned point values. If the sum of the points exceeds a certain value, which differs based on student grade level and the number of hazards, a school district may establish a child safety zone (19 NYCRR 191.1, 191.4).

In an appeal to the Commissioner, a petitioner has the burden of demonstrating a clear legal right to the relief requested and establishing the facts upon which he or she seeks relief (8 NYCRR 275.10; *Appeal of P.C. and K.C.*, 57 Ed Dept Rep, Decision No. 17,337; *Appeal of Aversa*, 48 *id.* 523, Decision No. 15,936; *Appeal of Hansen*, 48 *id.* 354, Decision No. 15,884). The Commissioner of Education will uphold a district's transportation determination unless it is arbitrary, capricious, unreasonable or an abuse of discretion (*Appeal of Smith*, 44 Ed Dept Rep 201, Decision No. 15,148; *Appeal of Flemming*, 43 *id.* 391, Decision No. 15,028; *Appeal of Bissar*, 43 *id*. 74, Decision No. 14,923).

The record reflects that respondent complied with Department of Transportation regulations in conducting the child safety zone assessment. In his report, the expert identified an acceptable, nonhazardous path between the students' residence and the nonpublic school. The expert considered sidewalks, crossing guard availability, electronic crossing signals, traffic flow, and street width in connection therewith. The expert ultimately determined that a child safety zone was not required because the approved route generated 11 hazard points, one point less than the amount needed to establish a child safety zone (19 NYCRR 191.1, 191.4).

In addition, respondent has refuted petitioner's specific complaints, as summarized below.
• Incorrect road. In the narrative section of his report, the expert made a reference to “Broadway” that was allegedly inaccurate. Respondent explains that this statement was made in comparison to the expert's “prior experience working with other roadways in the immediate adjacent vicinity of ... Malverne.” The statement does not concern any roads on the approved pedestrian path and, thus, does not affect the expert's analysis.

• Inadequate or nonexistent sidewalks. The expert's report identifies a “pedestrian route ... [that] permits students to stay on paved sidewalks for the entire length of the [route] between the proposed child safety zone” and the nonpublic school. With one exception, the route includes roads with sidewalks on both sides. The exception is a 750-foot stretch where one side of the road has a sidewalk and the other has grass. The expert opined that either route could be safely traversed.

• Inaccurate assessment of XXXXXXXX Avenue. Respondent accurately stated that XXXXXXXX Avenue, which is portrayed in the expert's photographs, is a two-lane road. While petitioner argues that another road with more lanes should have been analyzed, respondent explains that the expert considered, in accordance with Department of Transportation regulations, the path with the largest amount of hazards (*see* 19 NYCRR 191.3 [b] [“[t]he intersection with the highest point value should be used in the analysis to determine if a (child safety zone) exists because a hazardous intersection must be crossed”]). [1]

***3** • Vehicle count. The expert counted 296 cars within a 15-minute time span, resulting in a hazard score of five points (19 NYCRR 191.1 [p]). Petitioner presents no evidence to contradict this observation. Any error would have been harmless, in any event, as five points is the highest score that can be assigned for traffic volume (*id*.). [2]

Thus, petitioner's general statements as to the safety conditions of the proposed route are insufficient to establish a clear legal right to the relief requested (*Appeal of Antoniadis*, 44 Ed Dept Rep 84, Decision No. 15,106; *see Appeal of Mulligan*, 61 Ed Dept Rep, Decision No. 18,205). While I understand petitioner's concerns for her children's safety, I cannot find that respondent's determination to deny petitioner's request to create a child safety zone was arbitrary or capricious.

In light of this disposition, I need not address the parties' remaining contentions.

THE APPEAL IS DISMISSED.

Footnotes

1 This also explains the expert's use of a 30 miles per hour (mph) speed limit, the limit on Lakeview Avenue, instead of the 45-mph limit on Peninsula Boulevard.

2 Petitioner also alleges that some of the photographs inaccurately portrayed traffic conditions and that the superintendent did not sign the report. The photographs, however, do not purport to represent average traffic conditions. Additionally, the superintendent's failure to sign the report, even if contemplated by a sample form contained in Department of Transportation regulations, was harmless (19 NYCRR 191.8).

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