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<p>[REDACTED]</p> <p><i>Petitioner,</i></p> <p>vs.</p> <p>Board of Education of the Township of Parsippany-Troy Hills,</p> <p><i>Respondent.</i></p>
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OFFICE OF ADMINISTRATIVE LAW

AGENCY REFERENCE NO. 28-1/25
DOCKET NO. EDU 3654-25

**PETITIONER'S MOTION FOR
SUMMARY DECISION PURSUANT
TO N.J.A.C. 1:1-12.5**

Petitioner, [REDACTED], by and through undersigned counsel, hereby moves that the Court exercise its authority pursuant to N.J.A.C. 1:1-12.5 to issue a summary decision in Petitioner's favor, concluding that respondent, the Parsippany Troy-Hills School District ("the District"), violated its legal obligations. Particularly in light of the District's admissions, and against the backdrop of the District's failure to provide answers or responses to *any* of Petitioner's discovery requests and

therefore failure to comply with the discovery deadline, there are no material facts in dispute and the matter is ripe for summary decision. The sole issue presented is the legal question of whether the District has discretion to evade its legal responsibility contained in N.J.S.A. 18A:39-1. It does not.

LEGAL STANDARD

New Jersey law provides that “[t]he decision sought may be rendered 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. An adverse party can only prevail by showing “specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding.” *Id.* This standard is substantially similar to that governing a civil motion under New Jersey Court Rule 4:46-2 for summary judgment. *See E.S. v. Div. of Med. Assistance & Health Servs.*, 412 N.J. Super. 340, 350 (App. Div. 2010); *Contini v. Bd. of Educ. of Newark*, 286 N.J. Super. 106, 121 (App. Div. 1995).

MATERIAL FACTS

This Motion for Summary Decision relies on the following sources: the Petition, the Respondent’s Answer, the Certification from Petitioner [REDACTED], and Certification from Counsel. Petitioner served his requests for admission on April 7, 2025 (hereinafter, “Requests for Admission”). (Certification of Donald A. Soutar (“Soutar Cert.”), ¶ 3 & Ex. 1). N.J.A.C. 1:1-10.4(c) provides that,

“[n]o later than 15 days from receipt of a notice requesting discovery, the receiving party shall provide the requested information, material or access or offer a schedule for reasonable compliance with the notice; or, in the case of a notice requesting admissions, each matter therein shall be admitted unless within the 15 days the receiving party answers, admits or denies the request or objects to it pursuant to N.J.A.C. 1:1-10.4(d).”

At the time of the submission of this Motion for Summary Decision, it has been twenty-one days since Petitioner served requests for admission, and no response has been received. (Soutar Cert., ¶¶ 3-5). Accordingly, pursuant to N.J.A.C. 1:1-10.4(c), each matter in the Request for Admission is deemed admitted. *See James v. Alternate Ben. Program*, 2018 N.J. Super. Unpub. LEXIS 688, *5 (N.J. Super. Ct. App. Div. Mar. 27, 2018) (“Petitioner did not respond to the requests for admission. Because of petitioner's failure to respond, the admissions are deemed true.”) (Petitioner also made other discovery requests to which Respondent wholly failed to respond. (Soutar Cert., ¶ 7)).

████ is a resident of the Parsippany Troy-Hills School District. (Petition ¶ 1, Answer ¶ 1). His daughter █████. attends █████, located at █████. (Petition ¶ 2, Answer ¶ 2). He and his daughter reside at █████. (Certification of █████ Cert.), ¶ 2).

On August 1, 2024, █████. was sent a letter by the District, informing him that his daughter, █████ was being denied aid in lieu of transportation due to a finding that the mileage between their home and school is over the state law maximum of twenty miles for aid in lieu assistance. █████ Cert., ¶ 3 & Ex. A). In response, █████. sent the District a printout from Google Maps on September 6, confirming that Google Maps provided a route between his residential address and his daughter’s school that was under the twenty-mile limit provided by state law. (Petition, ¶ 5 & Ex. B, Answer ¶ 5; █████ Cert., ¶ 4 & Ex. B). (The District admitted receipt of this correspondence and that it “speaks for itself.”). The District refused to confirm this distance, and in a response to █████ insisted on only using “walking miles” to calculate distance. (Petition ¶ 9, Answer ¶ 9).

Since the District was dismissing █████.’s evidence, he contracted with Brevard Surveying & Mapping LLC, a licensed New Jersey survey company; that survey company provided a formal,

official report dated October 1, 2024, confirming that there is a route measured at 19.7 miles between [REDACTED]'s home address and the address of the school his daughter attends. ([REDACTED] Cert., ¶ 5 & Ex. C). [REDACTED] provided this official report to the District. (Petition ¶ 12, Answer ¶ 12; [REDACTED] Cert., ¶ 6; Soutar Cert., Ex. 2 at Request No. 1 (deemed admitted)).

The District has now admitted that “[t]he route of travel from 9 [REDACTED] [REDACTED] to the [REDACTED] [REDACTED] set forth below results in a distance travelled of less than twenty (20) miles[.]” (Soutar Cert., Ex. 2 at Request No. 3 (deemed admitted)). The route set forth in Request No. 3 was a direction by direction route that aligns with the route created by Brevard Surveying & Mapping LLC. (Compare [REDACTED] Cert., Ex. C and Soutar Cert., Ex. 2 at Request No. 3).

The District has also now admitted that

[t]he map generated by Google Maps at the link below demonstrates a distance traveled from 9 [REDACTED]

[REDACTED] of less than twenty (20) miles:



(Soutar Cert., Ex. 2 at Request No. 4 (deemed admitted)). (This link will bring the Court to a Google Maps distance calculation that confirms a distance of less than twenty miles between ■■■'s home and his daughter's school).

■■■ sought several times to call and communicate with the District, seeking an explanation for the refusal to provide transportation aid, and received no response. (■■■ Cert., ¶ 7). The District sent ■■■ a letter on November 4, 2024. (Petition ¶ 14, Answer ¶ 15). This letter informed ■■■ that the decision it contained "is the District's final decision." (■■■. Cert., Ex. D; Petition ¶ 15, Answer ¶ 15). The letter claimed that "I understand that your expert has set forth a different route, however even if we utilize that route, it still equates to over 20 miles." ■■■ Cert., Ex. D; Petition ¶ 16, Answer ¶ 16). As the District has now admitted, *that claim was false*.

ARGUMENT

This matter is straightforward and uncomplicated. New Jersey law provides, "Whenever in any district there are 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 for these pupils." N.J. Stat. § 18A:39-1. Transportation is specifically supplied to students "residing in such school district in going to and from any remote school other than a public school, not operated for profit in whole or in part, located within the State not more than 20 miles from the residence of the pupil." *Id.* The law sets a range of distance, in other words, within which a school district is obligated to provide transportation assistance. By these statutes, "the Legislature chose to extend to the private school student a right to transportation on the same basis upon which transportation would have been available if he attended public school in his district, i.e., remoteness from the school, and in

that way to deal evenly with him and the public school student within that district.” *West Morris Regional Board of Education v. Sills*, 58 N.J. 464, 479 (1971).

The District denied transportation to Petitioner [REDACTED]’s child based on a finding that the mileage between the [REDACTED] home and school is over the maximum of twenty miles. ([REDACTED] Cert., Ex. A). The letter to [REDACTED] stated expressly that that finding was the reason for the transportation decision, checking the box for “Mileage is over maximum of 20 miles.” *Id.* The District has now admitted that that finding is false.

The distance between the Petitioner’s home and school is in fact less than twenty miles, as Petitioner confirmed through correspondence (that the District admitted in its Answer to having received, and has now admitted “speaks for itself”). This was confirmed once through Google Maps ([REDACTED] Cert., Ex. B) and once through an official surveyor (*id.*, Ex. C). In particular, the formal survey report attached as Exhibit C confirmed a distance of *19.7 miles*. The District has now admitted the existence of this route and that it is less than twenty miles. Moreover, Petitioner provided a route on Google Maps, and the link (provided above) can easily be verified as under twenty miles. The District has still nonetheless refused to provide transportation assistance, despite this confirmation and despite the statute’s clear language. The District’s position is not just incorrect, but it is also unreasonable and vexatious.

The State Board of Education has authority to adopt “rules and regulations necessary to implement the provisions of this act.” N.J.S.A. 18A:39-3.2. It has done so and specified the precise manner in which distance is calculated “[f]or the purpose of determining eligibility for student transportation.” N.J.A.C. 6A:27-1.3(a)(1). Deference is shown to this interpretation. *Nelson v. Board of Educ. of Borough of Glen Ridge*, 246 N.J. Super. 467, 470 (N.J. Sup. Ct. App. Div. 1991) (“We have no difficulty deferring, as we must, to that sensible interpretation of the encompassing

language of the State Board's own regulation.”). The New Jersey Administrative Code is clear: “[d]istance shall be measured using the shortest route along public roadways or public walkways between the entrance of the student’s residence nearest the public roadway or public walkway and the nearest public entrance of the school the student attends.” N.J.A.C. 6A:27-1.3(a)(1)(ii). There is no alternative; the District must use the shortest route to calculate distance and has no discretion to use an alternative route. And as discussed above, it cannot be materially disputed, and has in fact now been admitted, that when distance is measured along “the shortest route” between the [REDACTED] home and school, that distance is below the twenty-mile limit, with a route available at 19.7 miles. That should end this matter.

The District has no authority to make a distance determination that does not use “the shortest route.” The law’s requirement is non-discretionary; when measuring distance, it “shall be measured using the shortest route.” N.J.A.C. 6A:27-1.3(a)(1)(ii). The use of “shall” creates a nondiscretionary duty. *Harvey v. Board of Chosen Freeholders*, 30 N.J. 381, 391 (1959) (“[T]he words ‘must’ and ‘shall’ are generally mandatory.”); *SAS Inst., Inc. v. Iancu*, 584 U.S. 357, 362 (2018) (“The word ‘shall’ generally imposes a nondiscretionary duty.”); *see Murphy v. Smith*, 583 U.S. 220, 223 (2018) (“[T]he word ‘shall’ usually creates a mandate, not a liberty.”); *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U. S. 26, 35 (1998) (emphasizing that shall is mandatory and “normally creates an obligation impervious to judicial discretion.”).

The Manual for Completion of 2024-2025 District Report of Transported Resident Students (DRTRS), published by the New Jersey Department of Education, Office of School Finance, Student Transportation Unit, likewise merits deference, and it further clarifies and emphasizes that distance must be the shortest route:

4. One-Way Home to School Miles

Enter the shortest one-way distance between the student’s home and the school.

https://homeroom5.doe.state.nj.us/drtrs2425/docs/DRTRS_TECHNICAL_MANUAL.pdf, at 27.

The legal standard is clear: a district has no discretion to use some other route, it must use the shortest one-way distance as the basis for its calculation. Otherwise, the District violates the law.

In response, the District may perhaps argue that it would be impractical for it to examine every possible alternative route. Petitioner by no means suggests that any and all routes must be affirmatively examined by the District; this case is far simpler. Here, the only issue is whether, *once a district has been informed of a shorter route than the initial route it calculated*, it must abide by that shorter route. The law is clear and unambiguous: the shortest route along public roadways or walkways *is* the requisite route. As discussed above, [REDACTED] has documented through both Google Maps and a formal official survey from a third party that the shortest route available is under twenty miles. The District has admitted the existence of these routes. The District's initial use of, or desire to use, a longer route does not provide a justification to ignore the mandatory shorter route, once it had been informed of that route. The district "shall" use the shortest route, and its duty to do so is nondiscretionary. *Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 171 (2016) ("Unlike the word 'may,' which implies discretion, the word 'shall' usually connotes a requirement."). Therefore, the decision to reject transportation assistance should be reversed.

CONCLUSION

Wherefore, Petitioner respectfully requests that the Court rule in Petitioner's favor and enter an order that Respondent must immediately provide the aid in lieu of transportation to which the Petitioner is entitled under N.J.S.A. 18A:39-1, and enter an order granting to Petitioner his reasonable attorneys' fees.

Dated: April 28, 2025

s/ John D. Coyle

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