

In the Matter of Appeal of ALFRED O. RETTER from Action of Board of Education, Central School District No. 1, Towns of CLARENCE, LANCASTER, NEWSTEAD AND AMHERST, ERIE COUNTY, Refusing to Allow His Daughter to Enroll in Kindergarten of Said District.

Case No. 5693
(July 24, 1952)

Pupil (age)—school age—board of education (powers and duties)—Education Law, sections 1712, 3202

Education Law provides that board of education may in its discretion admit child to kindergarten if child is four years old but is not required to unless child will attain age of five on or before December first—appeal dismissed—fact that child attended kindergarten portion of year in another district does not alter situation if policy of this district is not to admit children under age of five

WILSON, Commissioner.—This is an appeal by appellant from the action of the board of education of Central School District No. 1 of the towns of Clarence, Lancaster, Newstead and Amherst, Erie county, New York in refusing to allow his daughter to enroll in the kindergarten of said district.

It appears that appellant's daughter attained the age of five years on February 21, 1952 and in September, 1951, entered the public schools in the city school district of the city of Buffalo where she was assigned to attend kindergarten. On March 1, 1952, appellant attempted to transfer his daughter and enter her in the kindergarten maintained by the respondent board of education. The respondent board of education refused to admit appellant's daughter due to the fact that said child did not meet the policy of respondent board of education in that she had not attained the age of five years by December 31, 1951.

Subdivision 1 of section 1712 of the Education Law provides as follows:

§ 1712. Kindergartens; nursery and night schools.

1. The board of education of each school district may maintain kindergartens which shall be free to resident children between the ages of four and six years, provided, however, such board may fix a higher minimum age for admission to such kindergartens.

Subdivision 1 of section 3202 of the Education Law, however, provides in part:

§ 3202. Public schools free to resident pupils; tuition from nonresident pupils.

"1. * * * Nothing herein contained shall, however, require a board of education to admit a child who becomes five years after the school year has commenced unless his birthday occurs on or before the first of December."

The import of these two provisions of the Education Law is that a board of education may in its discretion admit a child to the kindergarten of the district if such child is four years old but may not be required to admit a child to the kindergarten of the district unless such child will attain the age of five years on or before the first day of December.

The respondent board of education has determined that it will admit children to the kindergarten only if such child attains the age of five years on or before December 31. This policy meets the requirements of the Education Law as set forth above and the mere fact that appellant's daughter attended another kindergarten during a portion of the year does not alter the situation. The statute would be set at naught if, after a board of education has determined to exclude children attaining five years of age after December first, they could attend another school and insist upon a transfer.

The appeal is dismissed.

In the Matter of Appeal from Action of Annual School Meeting Held in Common School District No. 13, TOWN OF EAST FISHKILL, DUTCHESS COUNTY, May 6, 1952, Refusing to Provide Transportation for Elementary Pupils Residing Therein and Attending Public School Located Therein

Case No. 5694

(July 24, 1952)

Transportation (public school)

Unless district has been dissolved and territory annexed to adjoining district—Commissioner of Education will not order common school district to provide transportation for elementary pupils to a school within such district

Wilson, Commissioner.—The appellants herein request that the above-mentioned district be required to furnish transportation for children of elementary school age attending the school within the district. It appears that the children attending grades 7 and 8 and the academic pupils attend the Wappinger Falls Central School under a contract for instruction between the two districts. Transportation is provided for these pupils and is not the subject for this appeal.

The rule has been announced in many cases that unless a district has been dissolved and its territory annexed to an adjoining district, the Commissioner of Education will not order a common school district to provide transportation for elementary pupils to a school located within such district (*Matter of Common School District No. 9, town of Chatham, Columbia county and town of Schodack, Rensselaer county*, 71 State Dept. Rep. 120).

The appeal is dismissed.