

T.B. v. Novia

472 N.J. Super. 80 (App. Div. 2022) · 275 A.3d 47
Decided May 3, 2022

DOCKET NO. A-1405-21, A-1406-21

05-03-2022

T.B., an Infant by his Guardian Ad Litem, E.B., and E.B. and R.B., individually and as parents of T.B., Plaintiffs-Respondents, v. Alexis NOVIA, Patrick Novia, and Woodbridge Township School District, a public entity of the State of New Jersey, Defendants, and Woodbridge Township Board of Education, a public entity of the State of New Jersey, and Township of Woodbridge, a public entity of the State of New Jersey, Defendants-Appellants.

Roshan D. Shah argued the cause for appellant Woodbridge Township Board of Education (Anderson & Shah, LLC, attorneys; Roshan D. Shah, of counsel and on the brief; Erin Donegan, on the brief). Brian A. Bontempo argued the cause for appellant Township of Woodbridge (James P. Nolan and Associates, LLC, attorneys; Brian A. Bontempo, on the brief). Robert G. Goodman, Woodbridge, argued the cause for respondents (Palmisano & Goodman, PA, attorneys; Robert G. Goodman, on the briefs).

MAYER, J.A.D.

Roshan D. Shah argued the cause for appellant Woodbridge Township Board of Education (Anderson & Shah, LLC, attorneys; Roshan D. Shah, of counsel and on the brief; Erin Donegan, on the brief).

Brian A. Bontempo argued the cause for appellant Township of Woodbridge (James P. Nolan and Associates, LLC, attorneys; Brian A. Bontempo,

on the brief).

Robert G. Goodman, Woodbridge, argued the cause for respondents (Palmisano & Goodman, PA, attorneys; Robert G. Goodman, on the briefs).

Before Judges Sabatino, Mayer, and Bishop-Thompson.

50 *50 The opinion of the court was delivered by

85 MAYER, J.A.D. *85 By leave granted, defendants Woodbridge Township Board of Education (Board) and Township of Woodbridge (Township) appeal from December 9, 2021 orders denying their motions for summary judgment. We affirm the order denying summary judgment to the Board and reverse the order denying summary judgment to the Township.

I.

We summarize the facts from the motion record.

The Collision

On February 22, 2019, plaintiff T.B. (Tom)¹ and his twin brother, K.B. (Kurt), were freshmen attending Colonia High School. That afternoon, the brothers walked home from school along New Dover Road. While driving on New Dover Road, defendant Alexis Novia became distracted by a deer, lost control of her car, and struck Tom. Tom suffered significant injuries, including internal bleeding, multiple broken bones, lacerations to his organs and face, and a skull fracture. As a result of his injuries, Tom had difficulty walking, eating, and speaking. He continues to have trouble performing activities of daily living.

¹ We use initials and pseudonyms to protect the privacy of the children and their parents.

The School District's Busing Policies

Colonia High School is part of the Woodbridge Public School District. The Board operates and manages the Woodbridge Public School District.

In accordance with [N.J.S.A. 18A:39-1](#),² the Board adopted a policy providing mandatory free busing to high school students *⁸⁶ living more than two and a half miles from their school. On the date of the accident, Tom and Kurt lived fewer than two and a half miles from Colonia High School.

² Under the statute "[w]henver in any district there are ... secondary school pupils who live more than 2½ miles from their public school of attendance, the district shall provide transportation to and from school for these pupils."

In 1978, the Board adopted Policy 3541.1, entitled "Transportation Routes and Services," governing, as [N.J.S.A. 18A:39-1.5](#) prescribes, transportation services for students who "must walk to and from school along hazardous routes."³ The Board reviewed and updated this policy in 2011, and then readopted the policy in 2014 and 2016. The policy directed "the superintendent [of the school district] to supervise development of bus routes to provide safe, economical and reasonably expeditious transportation" for certain students, including "[e]ducationally disabled students in accordance with their [Individualized Education Program (IEP)]" and "[s]tudents whose route to the school is deemed hazardous by the [B]oard." The policy further provided "the [B]oard may transport ... public ... students who live within statutory limits (courtesy busing)" and "may charge for this service."⁴ *⁵¹ As part of Policy 3451.1, the Board adopted criteria to determine hazardous routes. The criteria included: population density; traffic volume; average vehicle velocity; existence or absence of *⁸⁷ sufficient sidewalk space; winding roads and highways; roads or highways with blind

curves; steeply inclined roads or highways; drop-offs in close proximity to a sidewalk; crossing bridges or overpasses to reach the school; traversing train tracks or trestles to reach the school; and crossing busy roads and highways to reach the school. The Board also considered the age of the students walking a particular route as part of its hazardous route evaluation. See [N.J.S.A. 18A:39-1.5\(a\)](#) (mandating implementation of a policy by a school district for courtesy busing services, listing of hazardous routes requiring courtesy busing, and adopting criteria used in designating the hazardous routes).

³ [N.J.S.A. 18A:39-1.5\(a\)](#), entitled "[h]azardous routes; policy regarding courtesy transportation," provides "[a] school district that provides courtesy busing services shall adopt a policy regarding the transportation of students who must walk to and from school along hazardous routes. The policy shall include a list of hazardous routes in the district requiring the courtesy busing of students and the criteria used in designating the hazardous routes."

⁴ [N.J.S.A. 18A:39-1.3](#), governing "courtesy busing," provides "[a]ny board of education ... may enter into a contract for the transportation of public school pupils who are not eligible for transportation services pursuant to [N.J.S.A. 18A:39-1](#) or any other law, and may require that if the parent, guardian or other person having legal custody of the child elects to have the pupil transported pursuant to the contract, then the parent, guardian or other person having legal custody of the child shall pay all or a part of the costs of that transportation" Courtesy busing may be available for a student who is ineligible for mandatory busing because the student lives less than the required distance from the school, qualifies for busing based on an IEP, or must travel to and from school along a hazardous route.

Policy 3541.1 expressly provided "the superintendent shall work in conjunction with municipal officials to determine the criteria necessary for the classification of a hazardous route and shall maintain a list of all hazardous routes in the district." See [N.J.S.A. 18A:39-1.5\(b\)](#) (requiring "[a] school district shall work in conjunction with municipal officials in determining the criteria necessary for the designation of a hazardous route."). The Board's witnesses indirectly testified the Board and Township worked together to craft criteria for designating hazardous routes. The Board then adopted a Hazardous Route Criteria Rating Chart (Rating Chart), applying a point system for delineating hazardous routes.

For a route to be designated as hazardous in the Woodbridge Public School District, it must receive at least one hundred points per the Rating Chart. The Rating Chart stated the criteria "applied to conditions only during normal student walking hours to and from school using the shortest reasonable route from the home of the student to the school." The Rating Chart identified four main categories: roadway; walkway; grade level; and extraordinary temporary conditions. The "extraordinary temporary conditions" category applied to routes "[p]osing immediate and substantial danger not otherwise described [in the other categories] resulting in immediate busing." Under this category, regardless of the number of points assigned to a route, the relative risk of a particular route would be "determined by Township Safety Officer *88 and/or Officer in Charge of Transportation." A notation at the bottom of the Rating Chart stated, "[a]ll hazardous busing is based on conditions as they exist. Changes in conditions will result in re-evaluation."

In August 2014, the Board adopted Regulation 3541.33b listing the hazardous routes for students walking to and from school. According to this regulation, "[i]t would be considered hazardous for an elementary (K-5) school student to: ... walk on New Dover Road from the Parkway bridge to

the Route #27 bridge" However, the same route was not considered hazardous for high school students walking to and from school. *52 At his deposition, the Board's former Supervisor of Transportation, Jonathan Triebwasser, testified that he and the former Woodbridge Police Traffic Safety Coordinator evaluated New Dover Road several times between the mid-1990s and 2005. According to Triebwasser, New Dover Road was deemed safe for students above the fifth-grade level. When asked during his deposition to apply the point criteria in the Rating Chart to New Dover Road, Triebwasser explained the roadway would receive forty points, fewer than the required one hundred points to be designated as a hazardous route for high-school-age students. Triebwasser further testified a completed Rating Chart for a particular roadway and records of any route evaluation are "thrown away" by the Board after three years.

Mark Cinelli, the Board's current Supervisor of Transportation, testified during his deposition that the list of hazardous routes for students existed when he started the job in August 2012. He explained the Board does not review "every hazardous route every year or that often" because the criteria for deeming a route hazardous did not change "year to year." Based on documents produced in discovery, the hazardous route list remained unchanged between 2005 and 2014. Cinelli confirmed the hazardous route list did not change from 2012 to 2021. Cinelli also explained there was no policy or procedure specifying when hazardous routes would be reevaluated. *89 Triebwasser confirmed Cinelli's testimony regarding when the Board would reevaluate a hazardous route designation. According to Triebwasser, if hazardous routes were already "identified and evaluated, there would be no reason to reevaluate" Triebwasser claimed routes would only be reevaluated by Board employees based on a change in circumstances.

In addition to adopting Policy 3541.1 and Regulation 3541.33b, the Board approved written procedures for parents seeking to contest hazardous or non-hazardous route designations. According to the written procedures, a parent who wishes to contest the Board's designation of a route must first contact the Board's Supervisor of Transportation.⁵ After a parent states the problem with a route designation, the Supervisor of Transportation "reviews the problem with the Police Traffic Safety Officer." If the Supervisor of Transportation and Traffic Safety Officer agree, they "render[] [a] decision to [the] contestant." If the two officials disagree, the matter is submitted "to the Business Administrator, who renders a decision after a conference with the Township Traffic Safety Director." Thereafter, "[i]f a contestant disagrees, he/she can then submit [a] written request for a decision to the Superintendent of Schools," who will then "review[] and make[] [a] decision based on [the] criteria." If a parent remains dissatisfied, there are additional procedures to contest a route designation.

⁵ Cinelli served as the Supervisor of Transportation during the 2018-2019 school year.

Around 2010, the Township assigned Sergeant Eric Nelson to work in conjunction with the Board to assess the safety of walking paths to and from school. From 2010 until his retirement in 2016, Sergeant Nelson served as the traffic safety officer for the Woodbridge Police Department. Although he could not recall the specific year, Sergeant Nelson testified he served as a liaison between the Township and the Board for a three-month period. According to Sergeant Nelson, as a result of school budget cuts, he was *90 asked to evaluate the safety of various student walking routes to determine whether busing costs *53 could be reduced. During his assignment, Sergeant Nelson met regularly with Board employees to assess several routes. Sergeant Nelson made recommendations to the Board regarding the

hazardous nature of certain routes, including New Dover Road. However, regardless of Sergeant Nelson's recommendation, the Board ultimately decided whether a student was eligible for busing based on the hazardous nature of a particular route.

Sergeant Nelson considered New Dover Road to be dangerous for students of any age, including high school students, as a walking path to or from school. He confirmed during his deposition that New Dover Road has curves, heavy traffic, no sidewalks, and limited roadway shoulders. Sergeant Nelson testified, "there would be no way I would recommend or give my blessing ... to allow a pedestrian to walk [on New Dover Road]" However, Sergeant Nelson had no recollection of a specific discussion with a Board member or Board employee regarding New Dover Road.

The 2018-19 Change in Plaintiff's Busing

Prior to the 2018-2019 school year, Kurt and Tom received a courtesy bus to and from school due to Kurt's speech-related IEP. Around August 27, 2018, Kurt's mother, plaintiff E.B. (Ellie), received a letter discharging Kurt from his IEP plan. Without an IEP designation, Kurt was ineligible for courtesy busing under the Board's policy because he lived fewer than two and a half miles from his high school.

Ellie telephoned the number provided in the letter to discuss the busing situation. On September 6, Ellie spoke to Phyllis, an employee at Colonia High School. Phyllis advised Ellie to contact Cinelli about busing. On September 13, Ellie called Cinelli's main office number three times and left messages. She did not receive a return phone call. She then called Cinelli's direct office line twice on September 13 and left messages. Cinelli himself never returned her telephone calls.

⁹¹ *91 Sometime after September 13, an employee from Cinelli's office called Ellie to confirm Kurt and Tom were ineligible for busing because they lived fewer than two and a half miles from Colonia High School. Ellie received no

information about courtesy busing or procedures for contesting a non-hazardous route designation. During her deposition, Ellie testified she would have paid for courtesy busing for her children if someone in the Transportation Supervisor's office notified her of such an option.

Cinelli testified he was the person in charge of responding to parents concerning hazardous route and busing issues. Cinelli did not recall any communications with Ellie regarding busing for her sons. Nor did Cinelli recollect receiving any telephone messages from Ellie. According to Cinelli, he would not have instructed someone from his staff to return Ellie's telephone calls. Additionally, he testified there were no specific policies or procedures for responding to parents who contacted his office about transportation issues.

During his deposition, Tom testified he and Kurt only walked home from school on Fridays because they either took the afternoon school activity bus home Mondays through Thursdays or had family and friends drive them home on those days. According to Tom, in the beginning of the 2018-2019 school year, he and Kurt walked home using Inman Avenue and Bramhall Road. At some point during the school year, he and Kurt started walking home using New Dover Road because they "wanted to find a quicker route." Tom testified the Bramhall Road route was "equally as dangerous and longer" than the New Dover Road route. *54 The Present Litigation and Summary

Judgment Motions

On December 12, 2019, Tom and his parents filed suit against the Board, the Township, and the Novias. Plaintiffs' complaint asserted defendants were negligent. Early in the litigation, plaintiffs settled their claims against the Novias.

After completing discovery, the Board and the Township separately moved for summary judgment. On December 9, 2021, *92 following oral argument, the motion judge denied the

summary judgment motions. The judge issued a supplemental written decision on January 10, 2022.

The judge found the Board failed to accord Ellie a hearing pursuant to the Board's written procedure for contesting the designation of a hazardous route. The judge concluded the Board's interpretation of [N.J.S.A. 18A:39-1.5\(a\)](#) and determination that the children were "ineligible for courtesy busing simply because [the children] could have gotten home via another route" was "arbitrary, capricious, and unreasonable." The judge held "the Board's strict interpretation of the word 'must' [was] too narrow and restrictive and [ran] counter to the statutory purpose" of [N.J.S.A. 18A:39-1.5\(a\)](#).

The judge also determined whether the Board and the Township were entitled to immunity under the Tort Claims Act (TCA), [N.J.S.A. 59:1-1](#) to 12-3, presented factual questions to be resolved by a jury rather than a legal issue for the court. The judge concluded a jury should decide whether New Dover Road was a hazardous route and whether the Board's actions or inactions were "reasonable under all the facts and circumstances of the case."

The Board and the Township each moved for leave to appeal the December 9, 2021 orders denying summary judgment. We granted leave to appeal.

II.

On appeal, the Board argues the judge erred in concluding a plaintiff's subjective belief regarding a hazardous route supersedes a school district's hazardous route designation. Additionally, the Board asserts the judge mistakenly denied summary judgment because its determination regarding hazardous routes was entitled to immunity under the TCA.

The Township, meanwhile, claims the judge erred in denying its own motion for summary judgment because the Board ultimately determined

93 hazardous routes regardless of any input from the *93 Township. It also asserts the judge mistakenly denied summary judgment because the Township was entitled to immunity under the TCA.

In considering these arguments, we note appeals are taken from orders and judgments, not a trial judge's statement of reasons or written decisions. See Do-Wop Corp. v. City of Rahway, 168 N.J. 191, 199, 773 A.2d 706 (2001) ("[I]t is well-settled that appeals are taken from orders and judgments and not from opinions, oral decisions, informal written decisions, or reasons given for the ultimate conclusion."); see also R. 2:2-3(a).

We review a trial court's grant or denial of a summary judgment motion de novo. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582, 243 A.3d 633 (2021). A motion for summary judgment must be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, 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 a judgment or order as a matter of law." R. 4:46-2(c).

55 "To decide whether a genuine issue of material fact exists, the trial court must 'draw[] all legitimate inferences from the *55 facts in favor of the non-moving party.' " Friedman v. Martinez, 242 N.J. 449, 472, 231 A.3d 719 (2020) (quoting Globe Motor Co. v. Igdaley, 225 N.J. 469, 480, 139 A.3d 57 (2016)). The key inquiry is whether the evidence presented, when viewed in the light most favorable to the non-moving party, is "sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540, 666 A.2d 146 (1995) ; see also Rozenblit v. Lyles, 245 N.J. 105, 121, 243 A.3d 1249 (2021).

A.

We first examine the Board's arguments on appeal. We affirm the denial of the Board's motion for summary judgment but for reasons other than those expressed by the motion judge. *94 In their complaint, plaintiffs alleged negligence against the Board. To sustain a cause of action for negligence, a plaintiff must establish: (1) a duty of care, (2) a breach of that duty, (3) proximate cause, and (4) actual damages. Townsend v. Pierre, 221 N.J. 36, 51, 110 A.3d 52 (2015).

N.J.S.A. 18A:39-1.5, which we have quoted in part above, imposes a duty on the Board to designate hazardous routes for children traveling to and from school where, as here, the school district provides courtesy busing. The statute identifies criteria the Board may consider in designating hazardous routes. In compliance with this statute, the Board adopted Policy 3541.1, establishing criteria for the designation of hazardous routes and requiring reevaluation of those designations. However, nothing in Policy 3541.1 identifies when the Board should reevaluate its hazardous route designations. According to the Board, reevaluations were performed if there was a change in circumstances related to a specific route.

Under N.J.A.C. 6A:27-1.3, the Board is required to provide transportation to "students with disabilities ... who require transportation services in accordance with their [IEP]." Prior to the start of the 2018-2019 school year, Kurt received courtesy busing to and from school annually based on his IEP.⁶ Due to a change in Kurt's IEP status in August 2018, the boys were no longer eligible for courtesy busing under N.J.A.C. 6A:27-1.3. However, Ellie testified she would have paid for courtesy busing had she been informed about that option.

⁶ As a result of his brother's IEP designation, Tom also received courtesy busing to and from school.

Under a separate written policy adopted by the Board, entitled "Procedures for Contesting Hazardous or Non-Hazardous Designation," a parent may contest the Board's designation of a route as hazardous or non-hazardous and, by extension, the denial of busing based on the designation of a particular route. While the Board admits Cinelli never returned Ellie's telephone calls, it claims Ellie did not leave any specific
 95 messages. The Board ^{*95} asserts Cinelli did not understand Ellie to be contesting the Board's designation of New Dover Road as a non-hazardous route for high school students or the denial of courtesy busing based on the change in Kurt's IEP status.

There are several material factual issues related to plaintiffs' negligence claims against the Board. One unresolved factual dispute relates to Ellie's efforts to speak with the Board's Transportation
 56 Supervisor and communicate her concern ^{*56} about her children's route to school. It is undisputed Ellie called Cinelli, the Board's Transportation Supervisor, several times at the start of the 2018-2019 school year. Ellie testified she left messages for Cinelli, requesting a return telephone call. However, Cinelli did not recall receiving any telephone messages from Ellie. A jury, after hearing the evidence and assessing the credibility of the trial witnesses, must determine whether the Board breached its duty to plaintiffs by not adhering to its own policies regarding the designation of hazardous routes and the procedures adopted for parents seeking to contest such designations and related busing determinations.

Another unresolved factual dispute relates to the Board's duty to reevaluate New Dover Road as a hazardous route prior to Tom's accident. According to Triebwasser, New Dover Road had been evaluated while he served as the Board's Transportation Supervisor between the mid-1990s and 2005. Cinelli testified he never reevaluated New Dover Road after he became the Board's Transportation Supervisor in 2012. Thus, a jury

must determine whether the Board breached its duty of care by not reevaluating the designation of New Dover Road as a hazardous route between 2005 and the date of Tom's accident in 2019.

A jury will also be required to resolve whether the Board received safety information from the Township regarding New Dover Road. Sergeant Nelson testified he spoke to someone from the Board about the danger to pedestrians walking along New Dover Road. The Board claimed
 96 Sergeant Nelson never communicated any concern regarding the safety of students traveling to ^{*96} and from school using New Dover Road. Because Sergeant Nelson retired in 2016, plaintiffs claim the Board knew, or should have known, as of 2016 that the Township's Traffic Safety Officer deemed New Dover Road unsafe for all students, and the Board failed to reevaluate New Dover Road based on safety information provided by Sergeant Nelson.

After listening to the trial evidence and assessing the credibility of the testifying witnesses, a jury must determine whether Sergeant Nelson told the Board that New Dover Road was unsafe for pedestrians. If the jury concludes Sergeant Nelson informed the Board of his concern regarding New Dover Road, the jury must next decide whether the Board had a duty to act on that information. Under the circumstances, given the factual disputes related to the Board's duty and whether the Board breached any duty, the judge correctly denied the Board's motion for summary judgment.⁷

⁷ The Board argues Tom and Kurt had the option of taking other routes to and from school rather than using New Dover Road. However, this argument relates to the proximate cause prong of the negligence analysis and does not resolve the factual disputes related to whether the Board owed a duty to plaintiffs and whether the Board breached that duty.

The Board asserts entitlement to immunity under [N.J.S.A. 59:2-3\(a\)](#) and (b) of the TCA. The Board further contends the judge misapplied [Estate of Gonzalez v. City of Jersey City](#), 247 N.J. 551, 255 A.3d 1175 (2021), by concluding a jury must decide whether the Board's acts were discretionary or ministerial. The Board also asserts entitlement to legislative immunity because the designation of hazardous routes is a legislative and administrative function. We reject these arguments.

[N.J.S.A. 59:2-3\(a\)](#), applicable to discretionary acts by a public entity, provides "[a] public entity is not liable for an injury resulting from the exercise of judgment or *57 discretion vested in the entity." However, [N.J.S.A. 59:3-2](#) states "[n]othing in this section shall exonerate a public employee for 97 negligence arising out of his *97 [or her] acts or omissions in carrying out his [or her] ministerial functions."⁸ Case law distinguishes between a public entity's discretionary decision, entitled to immunity, and a ministerial action, which is not. See [Kolitch v. Lindedahl](#), 100 N.J. 485, 495, 497 A.2d 183 (1985).

⁸ [N.J.S.A. 59:2-2](#) provides "[a] public entity is liable for injury proximately caused by an act or omission of a public employee within the scope of his [or her] employment"

"A 'discretionary act ... calls for the exercise of personal deliberations and judgment, which in turn entails examining the facts, reaching reasoned conclusions, and acting on them in a way not specifically directed.' " [S.P. v. Newark Police Dept.](#), 428 N.J. Super. 210, 230, 52 A.3d 178 (App. Div. 2012) (quoting [Kolitch](#), 100 N.J. at 495, 497 A.2d 183). On the other hand, a ministerial act, which is not entitled to immunity under the TCA, is one "which a person performs in a given state of facts in a prescribed manner in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment upon the propriety of the act being done." [Gonzalez](#), 247 N.J. at 571-72, 255 A.3d 1175 (quoting [S.P.](#), 428 N.J. Super. at 231, 52

[A.3d 178](#)). A public entity seeking immunity under the TCA "must 'come forward with proof of a nature and character [that] would exclude any genuine dispute of fact' " [Kolitch](#), 100 N.J. at 497, 497 A.2d 183 (quoting [Ellison v. Housing Auth. of South Amboy](#), 162 N.J. Super. 347, 351, 392 A.2d 1229 (App. Div. 1978)). "[W]hen the parties dispute the predicate facts necessary for deciding whether the conduct of a public entity was discretionary or ministerial conduct ... that dispute requires submission to the jury." [Henebema v. S. Jersey Transp. Auth.](#), 430 N.J. Super. 485, 506, 65 A.3d 846 (App. Div. 2013), [aff'd](#), 219 N.J. 481, 99 A.3d 336 (2014).

Consistent with [Henebema](#), whether Cinelli's failure to return Ellie's telephone call constituted a discretionary act or ministerial act must be resolved by a jury. According to Cinelli, if a parent complained that a route to or from school was hazardous, *98 the Board would "go back to check the route to see if it was dangerous" He testified a parent would then have an opportunity to contest the designation of a particular route.

However, Ellie evidently never had a chance to contest the denial of busing for Tom and Kurt or the designation of New Dover Road as a non-hazardous route because she never received a return telephone call from Cinelli in accordance with the Board's policies and procedures. Nor does it seem anyone associated with the Transportation Supervisor informed Ellie of her right to contest the Board's designation of New Dover Road and denial of busing. Given the facts as developed on the motion record in a light most favorable to plaintiff, the judge correctly concluded the Board was not entitled to immunity as a matter of law because a jury must determine whether Cinelli's failure to return Ellie's telephone calls constituted an immune discretionary act or a ministerial act that may result in liability.

The Board is not entitled to immunity under [N.J.S.A. 59:2-3\(b\)](#). [N.J.S.A. 59:2-3\(b\)](#) provides "[a] public entity is not liable for legislative or

58 judicial action or inaction, or administrative action or inaction of a legislative or judicial nature." *58 Plaintiffs alleged negligence against the Board is based, in part, on the Transportation Supervisor's failure to return Ellie's telephone call. The return of a parent's telephone call by the Transportation Supervisor involves neither legislative nor judicial action. Nor does the failure to return a parent's telephone call involve an administrative action of a legislative or judicial nature. Thus, the Board is not entitled to immunity under this section of the statute and the judge properly denied the Board's motion for summary judgment.

B.

99 We next consider the Township's motion for summary judgment. We are satisfied the Township is entitled to summary judgment because it had no duty to plaintiffs beyond the obligation *99 stated in [N.J.S.A. 18A:39-1.5\(b\)](#). As we noted above, in accordance with the express language of that statute, "[a] school district shall work in conjunction with municipal officials in determining the criteria necessary for the designation of a hazardous route." [N.J.S.A. 18A:39-1.5\(b\)](#). The Township complied with its statutory duty by working with the Board to determine the criteria for designating hazardous routes in the municipality.

The Board appears to admit it worked with the Township to determine the criteria for designation of hazardous routes.⁹ There is nothing in Title 18A of the education laws, or any other laws or regulations, requiring the Township to identify hazardous routes or participate in the decision-making process for the designation of specific hazardous routes. The Board concedes it ultimately determines hazardous routes and student busing decisions. Thus, even if Sergeant Nelson conveyed his opinion to the Board regarding the safety of school-age pedestrians using New Dover Road, the Township did not itself designate hazardous routes for students.

9 Significantly, the criteria adopted by the Board for designating hazardous routes were identical to the suggested criteria in [N.J.S.A. 18A:39-1.5\(a\)\(1\)](#) through (10).

Having reviewed the record, we are satisfied decisions related to student busing and designation of hazardous routes rested solely with the Board. The Township satisfied its statutory duty by working in conjunction with the Board to create criteria for designating hazardous routes and had no legal obligation beyond the duty identified under [N.J.S.A. 18A:39-1.5\(b\)](#). Thus, we remand the matter to the trial court for entry of an order granting summary judgment to the Township.

Affirmed as to denial of the Board's motion for summary judgment. Reversed as to denial of the Township's motion for summary judgment. We do not retain jurisdiction.

