

D.M.L., on behalf of minor child, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF UPPER : DECISION
TOWNSHIP, CAPE MAY COUNTY, :
RESPONDENT. :
_____ :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner’s exceptions were timely filed in accordance with *N.J.A.C.* 1:1-18.4 and were considered by the Commissioner in rendering his determination herein.

Petitioner’s exceptions essentially reiterate arguments made before the Administrative Law Judge (ALJ) and considered in the Initial Decision. Petitioner argues that Superintendent Monillas did not follow his own procedures for conducting a lottery pursuant to the “Letter of Commitment” because the superintendent conducted the lottery, not the principal; the superintendent did not secure Board approval for the 2002-2003 French Immersion Program prior to conducting the lottery; the lottery was held before it was determined which children were eligible by the scores achieved on the Kindergarten Readiness Test given in June 2002; and, although Board Policy P9120 (Exhibit P-11) speaks to the importance of disseminating information to parents, the Board denied her child access to the French Immersion Program by

its failure to provide notice to parents with respect to the procedures that would be followed for selection of students for the program. (Petitioner’s Exceptions at 1-2) Petitioner also submits that no Upper Township parent was apprized that a lottery was going to be conducted to select students for the program prior to registration and that no Upper Township parent was informed of the procedures for selection to the French Immersion Program prior to registration. (*Id.* at 1) Moreover, petitioner argues that respondent’s rationale that he conducted the lottery when he did because he wanted parents of the children selected to know that they would not need daycare is nonsensical, and “that this parental inconvenience argument simply provides no excuse as to why PTA parents received notice of the French Immersion Program prior to registration and non-PTA parents did not.” (*Id.* at 3)

Petitioner notes that the ALJ did not apply a balancing test to evaluate her argument that her child suffered unequal protection and treatment under the law under *Brown v. City of Newark*, 113 N.J. 565, 573-574 (1989). (*Ibid.*) Petitioner speculates that the ALJ eschewed a constitutional analysis based on flawed constitutional arguments advanced by the Board, citing *Goss v. Lopez, supra*, (a case petitioner submits she did not rely on), in arguing that equal protection rights flowing from the state and federal constitutions were not implicated because this child’s rights were not at issue. (*Ibid.*) Petitioner further argues that a child does not have to belong to a protected class to enjoy the rights of equal protection and that there is no governmental interest “furthered by the differential treatment engendered by the Superintendent’s differential notification***.” (*Ibid.*) Petitioner, therefore, urges the Commissioner to analyze her equal protection claim. (*Id.* at 4)

Finally, petitioner takes issue with the fact that the ALJ did not acknowledge her exhibits 6 or 10 (Statements by Dr. Dragon, the parent of a kindergarten student) in the summary

of relevant facts, which petitioner avers confirms petitioner's experience relative to the staff's ignorance of the French Immersion Program. (*Id.* at 2)

Initially, the Commissioner notes that it is well-settled that boards of education in New Jersey have broad discretion with regard to the operation and management of a local district, pursuant to *N.J.S.A* 18A:11-1. When a local school board acts within its authority, its decision is entitled to a presumption of correctness and will not be upset unless there is an affirmative showing that the decision was arbitrary, capricious or unreasonable. *Thomas v. Bd. of Ed. of Morris Twp.*, 89 *N.J. Super.* 327, 332 (App. Div. 1965), *aff'd* 46 *N.J.* 581 (1966).

In the law, "arbitrary" and "capricious" means having no rational basis.*** Arbitrary and capricious action of administrative bodies means willful and unreasoning action, without consideration and in disregard of circumstances. Where 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.*** Moreover, the court should not substitute its judgment for that of an administrative or legislative body if there is substantial evidence to support the ruling. (citations omitted) *Bayshore Sew. Co. v. Dep't. of Env.*, *N.J.*, 122 *N.J. Super.* 184, 199-200 (Ch. Div. 1973), *aff'd* 131 *N.J. Super.* 37 (App. Div. 1974).

Upon his full and independent review, the Commissioner concurs with the ALJ that the decision to conduct the lottery for the French Immersion Program on February 8 from the applicants who indicated an interest in the program at the February 5 and 7 kindergarten registration was made honestly, in good faith and within reason. Therefore, the Commissioner has determined that petitioner failed to establish that the actions of the Board with respect to the notice provided for kindergarten registration and the failure of the Board to include in the notice the fact that a lottery would be drawn from applicants for the French Immersion Program who appeared at the registration was arbitrary, capricious and unreasonable and, therefore, such

actions must be upheld. The Initial Decision of the OAL is affirmed for the reasons set forth therein and the instant Petition of Appeal is hereby dismissed.

The Commissioner observes that the Board's Policy 9120 states that "all reasonable means should be employed to keep the community served by this district informed on matters of importance regarding district policies, finances, programs, personnel, and operations" and that "[e]very effort shall be made to foresee and avoid problems caused by misunderstanding or lack of information." (Exhibit P-11) Given the Board's strong commitment to effective communication and the obvious confusion and misunderstandings in this instance, it would be appropriate for the Board to review and revise its procedures with respect to notice to the public of the availability of the French Immersion Program for kindergarten students and the communication of the deadline for such registration so that misunderstandings will not occur in the future.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: October 24, 2002

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* This decision, as the Commissioner's final determination may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6A:4-1.1 et seq.* Commissioner decisions are deemed filed three days after the date of mailing to the parties.