

M.C., on behalf of minor child, L.C., :
 PETITIONER, :
 V. : COMMISSIONER OF EDUCATION
 BOARD OF EDUCATION OF THE : DECISION
 FREEHOLD REGIONAL HIGH SCHOOL
 DISTRICT, MONMOUTH COUNTY, :
 RESPONDENT. :
 _____ :

SYNOPSIS

Petitioners asserted that when they attempted to enroll L.C., a home-schooled student, in respondent’s district and sought her placement in tenth grade at the newly established Colts Neck High School, respondent arbitrarily determined that L.C. should be placed in ninth grade at Manalapan High School.

The ALJ found that the District failed to make a reasonable discretionary judgment as to the appropriate grade level placement of L.C. since it did not assess L.C.’s educational status through the means established for evaluating transfer students. The ALJ upheld respondent’s denial of petitioner’s request for a waiver permitting L.C. to attend Colts Neck High School rather than Manalapan High School, finding no extraordinary or medical reasons to justify a waiver.

The Commissioner adopted the Initial Decision as the final decision in this matter but clarified that the District should have, upon representation by L.C.’s parents as to the grade level of her equivalent instruction, initially placed L.C. in accordance with that level, and then assessed her actual level of academic achievement with respect to the District’s specific course proficiencies to ascertain if the initial placement was, in fact, appropriate. The Commissioner emphasized that the District’s assessment should not have focused on the equivalency of L.C.’s home-school instruction to the District’s specific curriculum, but rather on L.C.’s *level of proficiency* in the context of that curriculum.

February 2, 2000

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. Petitioner's exceptions and the Board's reply exceptions were submitted in accordance with *N.J.A.C.* 1:1-18.4 and were duly considered by the Commissioner in reaching his determination herein. ¹

Petitioner's exceptions are limited to, and essentially reiterate the arguments advanced below in support of, her contention that L.C. be permitted to attend Colts Neck High School via the waiver process. In its reply exceptions, the Board contends that petitioner and the Board have reached a voluntary agreement that L.C. will attend Freehold Boro High School and that petitioner's exceptions are therefore moot.

¹ Along with her exceptions, petitioner submitted a Psychology Report from Benedict J. Trigani, Ph.D., dated November 15, 1999, and a letter from Michael J. Tirpak, Ph.D., dated November 16, 1999. Attached to the Board's reply exceptions were two letters, both dated November 17, 1999 and designated as "Exhibits A & B." These additional documents submitted by petitioner and the Board were not before the ALJ and not previously made a part of the record. In accordance with *N.J.A.C.* 1:1-18.4(c), these additional submissions were therefore not considered by the Commissioner in rendering his decision. Further, *N.J.A.C.* 1:1-18.4 does not provide for submissions other than exceptions and replies. Accordingly, petitioner's submission, filed on December 9, 1999, and the Board's submission, filed on December 13, 1999, were not considered.

Upon careful and independent review of the record in this matter, the Commissioner determines to affirm the Initial Decision, with clarification. Initially, the Commissioner concurs with the Administrative Law Judge (ALJ) that it is implicit in the language of *N.J.S.A.* 18A:38-25 that a home-schooled child is required to receive instruction equivalent to that provided by the public schools. (Initial Decision at 34) The Commissioner also concurs that, when a child has been lawfully home schooled, a district should place the child for initial purposes at the level represented by the parents as being the level of instruction received by the child at home. (*Id.*)

In his analysis, the ALJ found the District's actions insufficient in that "there was no attempt to review or even obtain L.C.'s up-to-date cumulative record, no attempt to review L.C.'s grade history, no review of her attendance history and insufficient consideration of her standardized test scores." (*Id.* at 38) The Commissioner agrees with the ALJ's finding that the actions taken by the District were deficient, but for different reasons. The Commissioner finds the actions taken by the District were insufficient because the District did not, upon L.C.'s parents' representation that L.C. had been provided with a ninth-grade curriculum at home, place L.C. in accordance with that level and determine thereafter, based on L.C.'s demonstrated level of academic achievement with respect to the *District's* specific course proficiencies, if the initial placement was, in fact, appropriate.² Instead, prior to placing L.C., the District conducted an in-depth review of L.C.'s course materials in an effort to determine whether her home-school *curriculum* was equivalent to the District's *curriculum*. Put another way, the District's assessment should not have occurred prior to L.C.'s initial placement, and should not have

² Such determination could be accomplished by the administering of "final exams" in the appropriate courses, or by other means determined by a district through its policies and procedures.

focused on the equivalency of L.C.'s home-school instruction to the specific curriculum taught by the district; rather, such assessment should have occurred *after* preliminary review of, and initial placement in accordance with the representation of L.C.'s parents as to the grade level of her instruction, and focused on L.C.'s *level of proficiency* within the context of the District's instructional program so that an adjustment could then be made if necessary.³

Accordingly, the District is directed, should L.C. wish to return to Manalapan High School rather than continue at Freehold Boro High School as previously agreed to by the parties, to place L.C. in the eleventh (11th) grade and expeditiously assess her course proficiencies through the mechanisms established by the District for such assessments.

Like the ALJ, the Commissioner finds that the Board's denial of petitioner's request that L.C. be placed at Colts Neck High School was within its lawful authority and was not arbitrary, unreasonable or taken in bad faith.

Accordingly, the Initial Decision of the ALJ is adopted as the final decision in this matter for the reasons expressed therein, as clarified above.⁴

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

February 2, 2000

³ The Commissioner stresses that initial placement is not to be solely based upon a student's age, as an age-appropriate initial placement may not be warranted based upon the grade level of instruction provided at home.

⁴This decision, as the Commissioner's final determination in the instant matter, 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. 6:2-1.1 et seq.*, within 30 days of its filing. Commissioner's decisions are deemed filed three days after the date of mailing to the parties.