

A.T., on behalf of minor child, S.T., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
BOROUGH OF RUTHERFORD, :
BERGEN COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner challenged the December 2010 determination of the respondent Board to remove his minor child, S.T., from the first grade and enroll him in a split-day kindergarten/first grade program. The petitioner requested that S.T. be promoted to second grade in September 2011, and sought tutoring to compensate for the time missed since S.T. was transferred from a full-time first grade classroom. The Board asserted that its placement determination was made correctly and in good faith, based upon the professional judgment of teachers and administrators who felt that S.T. was not thriving in a full-day first grade classroom. The Board's enrollment policy for first grade requires that a student must be six years old on or before October 1, or be six years old by December 31 and have a transfer card that reflects successful completion of a private kindergarten program. Students meeting this second enrollment criterion are closely monitored to ensure that their placement is developmentally appropriate. S.T. turned six on October 6, 2010, and had completed a private kindergarten program.

The ALJ found, *inter alia*, that: boards of education are granted discretionary authority under *N.J.S.A. 18A:4-24* to adopt policies and rules for grade promotion; appropriate deference must be given to professionals in a school district when assessing the appropriate placement of a student; the Commissioner will not substitute his judgment for that of the board of education unless the board's action is shown to be arbitrary, without rational basis or induced by improper motives; in the instant matter, S.T.'s class placement was based on the advice of experienced education professionals who were motivated only by genuine concern for the child's happiness and educational growth; and, accordingly, petitioner has not met his burden of proving arbitrary, capricious or unreasonable Board action. The ALJ denied petitioner's application for relief, and dismissed the petition.

Upon consideration and review, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter. Accordingly, the petition was dismissed.

<p>This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p>

August 17, 2011

OAL DKT. NO. EDU 03640-11
AGENCY DKT. NO. 64-3/11

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed.¹ The parties did not file exceptions to the Initial Decision.

Upon a comprehensive review of the record in this matter, the Commissioner concurs with the Administrative Law Judge that the Board's decision to move S.T. into a kindergarten/first grade split program during the 2010-2011 school year and to place S.T. in first grade for the 2011-2012 school year was not arbitrary, capricious or unreasonable.

Accordingly, the Initial Decision is adopted as the final decision in this matter and the petition of appeal is dismissed.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: August 17, 2011

Date of Mailing: August 19, 2011

¹ The record did not contain a copy of the transcripts from the hearing conducted at the Office of Administrative Law on June 10, 2011 and June 24, 2011.

² Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Superior Court, Appellate Division.