

July 13, 2000

Michael F. Rehill, Esq.
345 Kinderkamack Road
Westwood, New Jersey 07675

Robert M. Tosti, Esq.
Rand, Algeier, Tosti & Woodruff
60 Washington Street
Morristown, New Jersey 07960

Dear Counsel:

Upon review of the Petition of Appeal and Answer filed in the matter entitled *N.R. and F.R. on behalf of minor child, E.R. v. Board of Education of the Borough of Harrington Park, Bergen County and Dr. Robert B. Westfield, Superintendent*, Agency Dkt. No. 212-6/00, I have determined, for the reasons set forth below, to dismiss the within petition challenging the Board's refusal to waive its policy requiring students entering first grade for the 2000-2001 school year to reach the age of six by October 1, 2000.

The petitioners indicate that their daughter, E.R. is currently completing kindergarten at The Palisades Country Day School in Closter, New Jersey, and will turn six years of age on October 7, 2000. Petitioners challenge the Board's denial of their request to enroll their daughter in first grade for the 2000-2001 school year because, as required by the Board's admittance policy, E.R. will not be six years old on or before October 1. Petitioners contend that the Board abused its authority in adopting a policy imposing a cut off date for first grade enrollment and its refusal to amend or waive the admittance policy for E.R. was arbitrary, capricious, unreasonable and unlawful.

The Board's policy at issue herein, No. 5112, in pertinent part specifies:

First Grade

A child is eligible for entrance into first grade who will have attained the age of six years on or before October 1 of the year in which entrance is sought and has completed the kindergarten program of this district or an equivalent public school kindergarten

program elsewhere and has been recommended by the teacher for advancement to the first grade. (Petition, Exhibit B)

Initially, I find that it is well-established that local boards of education have broad discretion with regard to the governance and management of their local school districts 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 validity and will not be disturbed by the Commissioner unless there is an affirmative showing that the decision was arbitrary, capricious or unreasonable. *Thomas v. Bd. of Ed. of Morris Tp.*, 89 *N.J. Super.* 327 (App. Div. 1965), *aff'd* 46 *N.J.* 581 (1966).

Here, it is clear that the statutory authorization for the Board's policy arises from *N.J.S.A.* 18A:38-5, which provides that:

No child under the age of five years shall be admitted to any public school, except as may be provided pursuant to law for children of his age.

*No board of education shall be required to accept by transfer from public or private school any pupil who was not eligible by reason of age for admission on October 1 of that school year, but the board may in its discretion admit such pupil if he or she meets such entrance requirements as may be established by rules or regulations of the board. (emphasis supplied)*¹

Moreover, it is well-established that

[s]ince boards of education generally are charged with the managements [sic] of their districts and are responsible for the maintenance of standards, including those involving promotion, *N.J.S.A.* 18A:4-24, there is nothing improper in the Board exercising its discretion to determine which graduates of equivalent programs shall be advanced and which shall not. So long as the determination is made in a reasonable fashion and is not arbitrary, capricious and unreasonable, there is no basis for the Commissioner to overturn the local board's decision. (citation omitted) *L.B. on behalf of minor child S.B. v. Board of Education of the Township of Hillsborough and Dr. Michael Carey, Superintendent*, 1990 *S.L.D.* 655, 659.

As such, I find that the Board's policy, which requires pupils to be six years of age on or before October 1 in order to qualify for entrance into first grade, is a lawful exercise of its discretionary authority. It is, likewise, clear that a board is under no obligation to grant exceptions to its

¹Petitioners' argument that, although this provision operates to permit denial of admission to kindergarten of children less than five years old on October 1, it provides no such authority for a cut-off date for admission into first grade, is rejected as meritless, as is their argument that the Board's policy is in conflict with *N.J.A.C.* 6:20-1.2 (Subtitle D. Division of Business and Finance, Chapter 20. Business Services) which they claim *requires* the admission of any child over the age of five years to first grade.

established cut-off date for entry into first grade, (*see N.A.C. v. Cedar Grove Board of Education*, 94 *N.J.A.R.* 2d (EDU) 28 (1993), nor is it required to provide testing for students who do not otherwise meet its admission policy. *Shenkler v. Board of Education of the Borough of Ho-Ho-Kus*, 1974 *S.L.D.* 772, 777-778.

Finally, it is evident from petitioners' own submissions, that the Board has taken a clear position with respect to its entry-age requirements, duly adopted a policy in furtherance of its position, published that policy, enforced its rule in a consistent manner and afforded petitioners the opportunity to appeal its determination with respect to E.R, notwithstanding that the appeal was ultimately unsuccessful.

Accordingly, having found no arbitrary, discriminatory or unlawful action on the part of the Board, there is no basis for me to overturn the Board's decision or to order further proceedings in this matter. Pursuant to my discretionary authority under *N.J.A.C.* 6A:3-1.10, the within Petition of Appeal is, therefore dismissed.²

Sincerely,

David C. Hespe
Commissioner

c: Board Secretary
County Superintendent

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