

J.P. AND M.P., on behalf of their :
minor children, M.P. AND J.P., :
 :
 PETITIONERS, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE TOWNSHIP : DECISION
 OF SOUTH BRUNSWICK, MIDDLESEX :
 COUNTY, :
 RESPONDENT. :
 :
 _____ :

SYNOPSIS

Petitioning parents challenged the Board’s redistricting plan to accommodate the building of a new elementary school as arbitrary, capricious, unreasonable and violative of school law. Under this plan petitioners’ children and other children in the neighborhood, who currently walk to school, would be bussed to another school.

The ALJ noted that since a board of education’s actions are entitled to a presumption of lawfulness and good faith, petitioner bears the burden of proving such actions unlawful. In this case, petitioners did not prove bad faith or wrongdoing as the motive for the Board’s action. Moreover, the ALJ determined that there was no issue as to material fact and that the Board’s action in adopting the redistricting plan was not arbitrary, capricious or unreasonable. The Board’s motion for summary decision was granted and petitioner’s motion for summary decision was denied.

The Commissioner adopted the findings and determination in the Initial Decision as his own.

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.

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_____	:	

The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. Petitioners’ exceptions were untimely filed pursuant to *N.J.A.C.* 1:1-18.4(a), in that the Initial Decision was mailed to the parties on December 20, 2002 and the exceptions were filed on January 6, 2003, outside the 13-day period prescribed by regulation. Accordingly, neither the exceptions nor the reply thereto is considered in the Commissioner’s determination of this matter.

Upon careful and independent review of the record in this matter, the Commissioner initially notes that pursuant to a motion for summary decision, in order to prevail, the adverse party “must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding.” *N.J.A.C.* 1:1-12.5. Thus, “petitioners must raise factual issues which are sufficient to lead a rational factfinder to rule in their favor if a trial were held.” *Piccoli, supra*, slip opinion at 6. Here, even accepting petitioners’ allegations as true, they cannot, for the reasons set forth in the Initial Decision, meet their considerable burden of demonstrating that the Board’s actions were arbitrary, capricious,

unreasonable, or otherwise contrary to law.¹ There being no disputed issues of *material* fact, therefore, the Commissioner finds that summary decision is properly granted in the Board's favor.

Accordingly, the Initial Decision is adopted and the Petition of Appeal is dismissed.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: February 3, 2003

Date of Mailing: February 3, 2003

¹ The Initial Decision at page 15, footnote 7, indicates that, despite petitioners' claim, there can be no finding that the Board violated "*N.J.S.A. 18A:7F-1-14*" because the statute does not exist. Presumably, however, petitioners' argument at Count V in the Petition of Appeal refers to *N.J.S.A. 18A:7F-1 through 18A:7F-14*. In any event, petitioners' Brief in Support of Petitioners' Opposition to Respondent's Motion for Summary Judgment and In Support of Petitioners' Cross-Motion for Summary Judgment makes no argument with respect to this statute.

² 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.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.