

417-98 EM

M.M. AND V.M., on behalf of their minor child, R.M.,	:	
	:	
PETITIONERS,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE TOWNSHIP OF HILLSBOROUGH, SOMERSET COUNTY,	:	DECISION
	:	
RESPONDENT.	:	
	:	

SYNOPSIS

Petitioning parents contended that the Board's refusal to grant a waiver of its Policy No. 5111, which imposes tuition charges after 60 days on those planning to move to the District, was arbitrary, capricious and unreasonable.

ALJ concluded that petitioners did not show that the policy in question was arbitrary, capricious or unreasonable and that petitioners had not shown that the Hillsborough Board employees had breached any statutory requirements or bylaws. ALJ did conclude, however, that the Board should have taken formal action to either accept or reject the recommendation of its Policy Committee regarding petitioners' request for a waiver. ALJ ordered the challenge as to the validity of the Board's Policy No. 5111 be dismissed. Moreover, the ALJ ordered the Board to take formal action at a Board meeting on petitioners' request for a waiver.

Commissioner adopted findings and determination in initial decision as his own.

OCTOBER 29, 1998

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	:	
PETITIONERS,	:	
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V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE TOWNSHIP OF HILLSBOROUGH, SOMERSET COUNTY,	:	DECISION ON MOTION
	:	
RESPONDENT.	:	
	:	

The record of this accelerated matter and the initial decision of the Office of Administrative Law have been reviewed. Petitioners' exceptions were filed in accordance with *N.J.A.C. 1:1-9.4(e)7*, and were considered by the Commissioner in rendering this decision.

Upon careful and independent review of the record, the Commissioner concurs with the findings and conclusions of the ALJ.¹ Accordingly, the initial decision is adopted for the reasons expressed therein. The Commissioner orders that petitioners' challenge to the validity of the Board's policy be dismissed and that the Board take formal action on the

¹ It is noted that petitioners take exception, *inter alia*, to the ALJ's finding that "V.M. admitted that she did not ask Mr. Venanzi about the Hillsborough Board's procedure for the consideration of their waiver request and did not ask for a reconsideration by the Hillsborough Board." (Initial Decision at p. 4) In this regard, the Commissioner notes that challenges to the factual findings made by an ALJ based upon testimony presented before her require the party to supply the agency head with the relevant and necessary portions of the transcript. See *In re Morrison*, 216 *N.J. Super.* 143, 158 (App. Div. 1987) Having no copies of such transcripts from the hearing, the Commissioner must accept the ALJ's summary of the testimony. However, to the extent the ALJ's finding does not comport with the documentary evidence on record, as petitioners argue, the Commissioner observes that, even assuming, *arguendo*, the facts are as petitioners purport, these facts would not affect the outcome of this matter. Further, the Commissioner observes that on pages four and eight of the initial decision, the June 15, 1998 Board meeting, which is the subject of the within controversy, is erroneously noted as having taken place on January 15, 1998.

recommendation of its policy committee, which recommendation has been found herein to be both reasonable and consistent with law.²

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

OCTOBER 29, 1998

² This 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 decisions are deemed filed three days after the date of mailing to the parties.