

265-02L

July 3, 2002

L.L., *Pro Se*

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Dear Parties:

I have reviewed the Petition of Appeal and Answer filed in the matter entitled *L.L., on behalf of minor child v. Board of Education of the Township of Verona, Essex County*, Agency Dkt. No. 24-1/02, wherein petitioner reports that a recently enacted change in the admission policy of the Verona Board of Education sets the cut-off date for entrance into kindergarten as September 1, thereby rendering her child, who will be five years of age on September 25, 2002, ineligible for entrance into kindergarten for the 2002-2003 school year. Petitioner requests that I direct the Board to amend their policy to include all children who turn five years of age in the month of September. Upon my full review of this matter, I determine that, as a matter of law, petitioner's requested relief must be granted.

It is well-established that local boards of education have broad authority to set policies and procedures for the governance and management of their schools, *so long as such policies and procedures are within the parameters established by law and regulation*. *N.J.S.A.* 18A:11-1. With respect to the establishment of a cut-off date for admission into kindergarten, that question has been addressed by prior decisional law with which the Commissioner fully agrees. In *Donald E. Tepper v. Board of Education of the Township of Hackensack, Bergen County*, 1971 *S.L.D.* 549, the Commissioner interpreted the four statutory provisions which deal with this issue, *N.J.S.A.* 18A:44-2, *N.J.S.A.* 18A:38-1, *N.J.S.A.* 18A:38-5 and *N.J.S.A.* 18A:38-6, *in pari materia*, and held:

a child who has attained his [or her] fifth birthday on or before  
October 1 has a clear and legal right to a "free" public education

guaranteed by the statute, 18A:38-1, even though he has “never attended any public or private school” before.  
1971 *S.L.D.* at 550-551

Consequently, a board may determine in its discretion, and as permitted by statute, to set initial admission into its schools based on an October 1 or later cut-off date. However, because the law grants children who are five years of age prior to October 1 an entitlement to enrollment, establishment of a cut-off date prior to this date, as is the case here, is clearly contrary to law and, consequently, the Board’s policy in this regard must be overturned.

Accordingly, the Board of Education of the Township of Verona is hereby directed to modify its kindergarten admission policy and establish a cut-off date no earlier than October 1.

Sincerely,

Dwight R. Pfennig  
Acting Commissioner

c: Board Secretary  
County Superintendent  
William L. Librera

Date of Mailing: July 8, 2002