

R.H., on behalf of minor child, M.H., :  
PETITIONER, :  
V. : COMMISSIONER OF EDUCATION  
BOARD OF EDUCATION OF THE : DECISION  
PASCACK VALLEY REGIONAL HIGH :  
SCHOOL DISTRICT, BERGEN COUNTY, :  
RESPONDENT. :

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SYNOPSIS

Petitioner appealed the decision of the respondent Board not to issue his child a laptop computer for the 2005-2006 school year, pursuant to a district policy regarding student laptops with which the petitioner refused to comply; specifically, that petitioner declined to pay the \$50 annual premium required to cover accidental damage and fire/theft/loss insurance on the computer. Petitioner argued that the district was required to provide the computer to his daughter pursuant to *N.J.S.A. 18A:34-1*.

The ALJ found, *inter alia*, that the facts of this matter indicate that the laptop computer does not qualify as a supply mandatory to successful completion of the classroom curriculum, and that M.H.'s grades did not suffer from lack of access to the laptop computer. The ALJ concluded that the respondent's action in refusing to issue M.H. a laptop for use during the 2005-2006 school year was reasonable and permissible because her parents refused to comply with district computer use policy, and dismissed the petition with prejudice.

The Commissioner concurred with the ALJ for the reasons stated in the Initial Decision, and dismissed the petition.

<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>
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OAL DKT. NO. EDU 1538-06  
AGENCY DKT. NO. 330-11/05

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner’s exceptions and the Board’s reply and counter exceptions – submitted in accordance with the provisions of *N.J.A.C.* 1:1-18.4 – were fully considered by the Commissioner in her determination of this matter.

Petitioner first excepts to the Administrative Law Judge’s (ALJ) determination that in order for a particular item to constitute a “supply” within the intendment of *N.J.S.A.* 18A:34-1 – requiring its provision to students free of charge – it is first necessary to establish whether the item was “mandatory” or “integral” to classroom instruction. Petitioner maintains such a determination is not dispositive. Rather, he argues, “once material is made a basic part of the regular classroom instructional activities, as in the instant matter, then such materials must be provided for free.” (Petitioner’s Exceptions at 1) Notwithstanding this, petitioner argues that – contrary to the finding of the ALJ – the record here establishes that the laptop computers were “a basic, fundamental, mandatory and integral part of the education program conducted in the Respondent schools.” (*Id.* at 2)

Petitioner next charges that the ALJ's reasoning that M.H. could have used the school's computers in the library or her own home computer to obtain the information available to students who paid for insurance fails to recognize that in addition to not being issued a school laptop, M.H. was not issued an access code for the 2005-06 school year. Thus, even assuming computer hardware in the library or on her own computer was available to her, "she did not have the same ability to completely use the school district's full technology resources that were available to the students who paid the insurance premium due to the school's refusal to issue her an access code." (*Id.* at 3)

Finally, petitioner submits that the ALJ's decision failed to address the provisions of *N.J.S.A.* 18A:20-25, which requires a board to maintain insurance: a responsibility which he avers cannot, in turn, be transferred to students by "administrative fiat." (*Id.* at 4)

In reply, the Board charges that petitioner has provided no support whatsoever for his conclusion that "once material is made a basic part of the regular classroom instruction activities, as in the instant matter, then such materials must be provided for free." To the contrary, it argues, *N.J.S.A.* 18A:34-1 makes no mention of "material" which a board must furnish free of charge for use by pupils. Rather, this provision clearly and unambiguously imposes such an obligation only for "textbooks" and "other school supplies." The Board urges that:

[i]t is obvious that an optional learning tool such as the laptop computer issued by the Pascack Valley School District \*\*\*is not a textbook or equivalent to required textbooks. Indeed, required textbooks are components of an approved curriculum that meets the New Jersey Core Curriculum Content Standards. District issued laptop computers are not a component of the New Jersey Core Curriculum Content Standards.\*\*\* Similarly, computer hardware, such as a district issued laptop computer, is not synonymous with consumable school supplies. A court or state agency cannot amend the clear and unambiguous language of

*N.J.S.A.* 18A:34-1 to include an item that does not meet the requirement established by the Legislature.  
(Board's Reply Exceptions at 2)

The Board further points out as significant the fact that it neither required students to pay for laptops nor did it charge a use fee. Rather, the insurance toll was just a cost effective mechanism for parents to pay the expense of damage or loss to the computer which they otherwise would be solely responsible to bear. (*Id.* at 3)

As to petitioner's argument that the school issued laptops were a "basic, fundamental, mandatory and integral part of the educational program in the district," the Board observes that the core curriculum content standards do not require districts to "provide instruction on computers and information literacy and technology education through the issuance of a laptop computer or provide access to the school district's computer network from home". (*Ibid.*) Further, to the extent M.H. needed a computer to assist her in her schoolwork, she had access to computers in the school library and her own personal computer. It points out that M.H. was not penalized because she did not have a school issued laptop and access code, and that her grades for the 2005-2006 school year were comparable to those she achieved during the 2004-2005 school when she had a laptop and those she received during the 2003-2004 school year before the implementation of the laptop initiative. Therefore, it urges that the ALJ correctly concluded:

[t]hough it may have been less convenient for M.H. to not have had use of a district laptop her performance combined with the fact that she retained all the privileges of any other student otherwise not participating in the e-learning initiative, clearly shows that the laptops were not [an] integral part of her curriculum. (Initial Decision at 5; Board's Reply Exceptions at 4)

As to petitioner's claim that *N.J.S.A.* 18A:20-25 is applicable to this matter, the Board professes that this assertion is without merit, instead reasoning:

[w]hile *N.J.S.A.* 18A:20-25 requires a school district to maintain insurance against loss or damage caused by fire, other coverage is discretionary. This statute had nothing to do with the payment of the insurance premium for the district issued laptop computers. Rather, the intent of *N.J.S.A.* 18A:20-25 is to ensure that school districts are protected against property loss or damage caused by fire.

Indeed, the imposition of the \$50.00 fee to cover the cost of the insurance premium is a viable method to protect parents from paying much higher costs if the Board issued laptop computer is damaged, lost, or stolen. Boards of education are, in fact, permitted to assess reasonable fees to cover the costs of damage or loss to district property. *N.J.S.A.* 18A:37-3. If boards of education were not permitted to recoup such expenses, taxpayer dollars would regularly be spent to pay for the loss and damage of such property caused by students. Not only would this be a drain on district resources, but it would also minimize students' responsibility for the care and protection of district property in their possession.\*\*\**(Board Reply Exceptions at 6)*

In conclusion, in light of petitioner's filing of exceptions, the Board urges it was compelled to file cross exceptions renewing its arguments advanced in papers below that this matter should be dismissed on procedural grounds which were not addressed by the ALJ in her decision. Specifically:

- 1) The matter is untimely, pursuant to *N.J.A.C.* 6A:3-1.3(i), as a consequence of petitioner's failure to file within 90-days from the implementation of the laptop program;
- 2) Because petitioner previously signed the laptop agreement and paid the insurance fee, this claim is barred by the equitable doctrine of laches; and
- 3) Since – effective with the 2006-07 school year – the Board will issue laptop computers and an access code to students even if they do not purchase insurance coverage, petitioner here fails to state a claim upon which relief can be granted.

Upon careful, independent review of the record and finding petitioner's exceptions without merit, the Commissioner agrees with the conclusion of the ALJ that the Board's imposition of a \$50 accidental damage, theft or loss insurance premium and agreement to pay a \$100 deductible for insurance claims as a condition of participation in the district's laptop program was not violative of the district's duty to provide M.H. a free public education pursuant to the New Jersey Constitution, Article VII, Section IV, Paragraph 1 and *N.J.S.A. 18A:38-1*.<sup>1</sup>

Accordingly, the recommended decision of the OAL is adopted – for the reasons stated therein – and the instant Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.<sup>2</sup>

COMMISSIONER OF EDUCATION

Date of Decision: September 28, 2006

Date of Mailing: September 28, 2006

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<sup>1</sup> Based on the record before her, the Commissioner finds that the ALJ was correct in declining to dismiss this matter on procedural grounds.

<sup>2</sup> This decision 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.*