

R.W. on behalf of minor children, :
A.W., J.W., O.W. and L.W., :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 TOWNSHIP OF WASHINGTON, :
 GLOUCESTER COUNTY, :
 :
 RESPONDENT. :
 _____ :

SYNOPSIS

The instant petition was originally filed as an application for emergent relief, contesting the respondent Board’s decision to test R.W.’s children prior to determining grade placement after a year of home schooling. Petitioner additionally sought an order from the Commissioner placing her children in the grades she selected, as well as an order requiring that all of the children be tutored as needed in any academic subject. Respondent Board contended that it has the authority to test children who have not been in the district schools prior to placement, and that R.W. has not filed a claim for which relief may be granted. The emergent application was denied after a hearing at the OAL.

The ALJ found that: it is well-settled that school districts may test children to determine grade placement; the issue regarding the conducting of tests on R.W.’s children is now moot, since the tests have been administered and the children each tested below the grade level requested for placement; the district’s authority to determine the grade placement of children is clear; and petitioner’s claims for tutoring under the federal No Child Left Behind law cannot be brought before the OAL, which has no jurisdiction to hear them. The ALJ dismissed the petition with prejudice.

The Commissioner concurred with the ALJ and adopted the Initial Decision of the OAL as the final decision in this matter, noting, *inter alia*, that: she has no basis upon which to order respondent to place the children into the grades that petitioner selected since the children tested below the level of those grades; there is no basis for petitioner’s assertion that her children’s substandard test results are attributable to respondent; only claims that fall under the purview of New Jersey’s school laws may be adjudicated by the Commissioner; and if the petitioner’s children have been withdrawn from school or have been classified, as petitioner’s exceptions suggest, the Commissioner has no jurisdiction. Accordingly, the petition was dismissed.

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.

October 30, 2009

R.W. on behalf of minor children, :
A.W., J.W., O.W. and L.W., :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 TOWNSHIP OF WASHINGTON, :
 GLOUCESTER COUNTY, :
 :
 RESPONDENT. :
 _____ :

Petitioner filed a petition and application for emergent relief in June of 2009, requesting that the Commissioner of Education (Commissioner) order respondent to place her children into the grades of her choice.¹ She also asked for tutoring for her children.² Originally, petitioner demanded that respondent be ordered to provide her with copies of her children's educational test scores so that she could present the scores to other districts which might, petitioner believed, place her children in the grades that she prefers. It appears, however, that subsequent to the Initial Decision, petitioner was provided with said test scores *i.e.*, on or about September 26, 2009. A copy of the letter, dated September 24, 2009, which was sent to petitioner with a summary of her children's test scores, was provided to the Commissioner on September 28, 2009, by way of reply exceptions from the respondent.

¹ Petitioner asked that J.W., who has tested below the eighth grade level, be placed in ninth grade. She asked that L.W. be placed in seventh grade, although he has tested below the sixth grade level, and that O.W. be placed into fourth grade, although she has tested below the second grade level.

² The Commissioner notes that although the caption set forth above indicates that petitioner's son, A.W., is part of the instant controversy, petitioner concedes that he is not. A separate case concerning A.W. is pending in the Office of Administrative Law (OAL) under the OAL docket number EDUOS 0098-08, agency docket number 28-1/08. Accordingly, any claims in this petition that are related to A.W. are hereby dismissed.

The emergent application filed by petitioner was denied after a hearing in the OAL on September 8, 2009. The denial was adopted by the Commissioner on September 14, 2009. On September 17, 2009, Chief Administrative Law Judge (ALJ) Laura Sanders issued an Initial Decision dismissing the petition, finding 1) that “it is well settled that school districts may test children to determine grade placement, *J.U. and J.U. on behalf of T.U. v. Warren Hills Regional High Board of Education*,” OAL DKT. NO. EDS 09912-08, AGENCY DKT. NO. 2009-14017, decided September 5, 2008, and 2) that “the statutes specifically reserve to the local school district the right to prescribe its own rules for promotion, notwithstanding the commissioner’s duty to ascertain the thoroughness and efficiency of operation of any of the public schools and any grades therein. *N.J.S.A.* 18A:4-24.” Initial Decision at 2.

In her exceptions to the Initial Decision, petitioner alleges a variety of harms that she feels have been imposed upon her and her children by respondent. The Commissioner’s jurisdiction, however, is limited. Petitioner’s claims of slander or libel may be adjudicated in Superior Court, and petitioner may bring civil rights or discrimination claims to the New Jersey Division on Civil Rights. Petitioner may not receive relief under the federal law known as “No Child Left Behind” because that law bestows no private right of action. *Newark Parents Assoc. v. Newark Public Schools*, 547 F. 3d 199 (3d Cir. 2008). Only claims that arguably fall under the purview of New Jersey’s school laws (*N.J.S.A.* 18A) may be adjudicated by the Commissioner.

Petitioner also appears to report in her “exceptions” that she has withdrawn her children from public school.³ If that is the case, she is advised that the Commissioner does not

³ In discussing the withdrawal of her children from school, petitioner appears – in her exceptions – to allege that at the beginning of the 2009-2010 school year, her children went to school but were not allowed to go to class. In its above-referenced letter to petitioner dated September 24, 2009, however, respondent explained that the children had

have jurisdiction to adjudicate disputes regarding children who do not attend school. *See, e.g. N.M., on behalf of R.M. v. Tinton Falls Board of Education*, OAL Dkt. No. EDS 02352-03S, Agency Dkt. No. 2003-7486, decided June 23, 2003.⁴ Further, petitioner's exceptions appear to allege that her son, L.W., and possibly her daughter, O.W., have been classified, in which case their placement would be appropriately reviewed by the Office of Special Education of the Department of Education.

To the extent that any of petitioner's children are still attending school, the Commissioner finds as follows. First, the Commissioner agrees with petitioner that the test scores suggest that her children have not been receiving an appropriate education. However, the record seems to indicate that during the school year prior to the tests, the children, including J.W., had not been enrolled in respondent's schools. Consequently, the Commissioner has no basis upon which to conclude that the children's educational status is attributable to respondent.

Second, the Commissioner endorses the legal analysis set forth in the Initial Decision, *i.e.*, that school districts have the authority to test children for grade placement, and to establish rules for promotion. *See, e.g., N.J.S.A. 18A:4-24*, which provides, in pertinent part, that "nothing in this section shall affect the right of each district to prescribe its own rules for promotion."

Third, because petitioner has provided no evidence that the educational testing of her children was deficient, or that the grade assignments made by respondent were arbitrary, capricious or unreasonable, the Commissioner has no basis to order respondent to place

refused to go to the class/grade to which they were assigned after testing. Any time that they spent in the school office was the result of such refusals. The Commissioner notes that in her exceptions, petitioner acknowledges that O.W. refused to go to "an unacceptable grade."

⁴ In her exceptions, petitioner complains of communications between "DYFS" (now the Department of Children and Families) and herself, and alleged communications between respondent and "DYFS." As this issue was not adjudicated below, the Commissioner will not address it.

petitioner's children into the grades that petitioner selected. Finally, if and when the children are enrolled in respondent's school district, the parties may discuss the need and/or implementation of "special help in basic skills" which, in its letter of September 24, 2009, respondent indicated it was prepared to provide.

For the above articulated reasons, petitioner's request that her children be placed by respondent in grades nine, seven and four, respectively, is denied. Her demand for her children's test scores and her request for special assistance for her children are moot, insofar as respondent has provided or has stated that it will provide same. The petition is dismissed.⁵

IT IS SO ORDERED.⁶

COMMISSIONER OF EDUCATION

Date of Decision: October 30, 2009

Date of Mailing: October 30, 2009

⁵ As stated above, if petitioner's children have been withdrawn from school the petition must be dismissed for lack of jurisdiction.

⁶ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36, N.J.S.A. 18A:6-9.1*.