#333-14 (OAL Decision: http://njlaw.rutgers.edu/collections/oal/html/initial/edu9482-13_1.html)

R.N. on behalf of minor child A.N.,	:	
PETITIONER,	:	COMMISSIONER OF EDUCATION
V.	:	DECISION
BOARD OF EDUCATION OF THE UPPER FREEHOLD REGIONAL SCHOOL DISTRICT, MONMOUTH COUNTY,	:	
RESPONDENT.	:	

SYNOPSIS

Petitioner – the mother of A.N., a student in the Farmingdale School District – challenged the respondent Board's rejection of an application for A.N.'s admission into Upper Freehold Regional's Advanced Mathematics and Algebra Academy (Academy), an Interdistrict Public School Choice Program. Petitioner alleged that the Board's action in revoking A.N.'s acceptance into the program after initially sending a letter of welcome was arbitrary, capricious and unreasonable. A.N. has an Individualized Education Program (IEP) in his home district which, for the 2012-2013 school year, contained at least 23 modifications including one that called for A.N. to be able to dictate responses to tests and other work in lieu of writing them, and participation in the Wilson reading program. The Board contended that petitioner failed to provide A.N.'s full IEP with his application, and the late notice of necessary accommodations, together with the related financial and administrative burden that the district would need to assume if A.N. were accepted into the Academy program, justified the Board's rejection of A.N.'s application pursuant to the Interdistrict Public School Choice Program Act, *N.J.S.A.* 18A:36B-20(c). The Board filed a motion for summary decision.

The ALJ found, *inter alia*, that: there are no disputed issues of material fact; in the instant matter, the Board determined to reject A.N.'s application to the district's choice program based on several factors, including the late notice of necessary accommodations and the financial and administrative burden that the district would have to assume if it were to accept A.N.; by the time the district was provided with A.N.'s complete IEP in May 2013 and had the opportunity to review it, the district's budget for the upcoming school year had been set, and there was limited time to secure a qualified instructor for the required Wilson program; and under *N.J.S.A.* 18A:36B-20(c), a district may reject the application of a classified student if that student's IEP would create an undue financial or administrative burden on the district. The ALJ concluded that petitioner has not shown that the district's May 2013 determination to reject A.N.'s application was unreasonable, and granted the Board's motion for summary decision.

Upon a full and independent review, the Commissioner concurred with the findings and conclusion of the ALJ. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, and the petition was dismissed.

August 14, 2014

OAL DKT. NO. EDU 9482-13
AGENCY DKT. NO. 151-7/13

R.N. on behalf of minor child A.N.,	:	
PETITIONER,	:	COMMISSIONER OF EDUCATION
V.	:	DECISION
BOARD OF EDUCATION OF THE UPPER FREEHOLD REGIONAL SCHOOL DISTRICT, MONMOUTH COUNTY,	:	
RESPONDENT.	:	

The controversy now before the Commissioner concerns one of respondent Upper Freehold Regional School District Board of Education's (UFRSD) Interdistrict Public School Choice Programs, *i.e.*, the Advanced Mathematics and Algebra Academy (Academy).[1] Respondent rejected an application to the program which had been submitted by petitioner, R.N., on behalf of her minor child, A.N., and petitioner challenges the rejection. After review of the record, the May 14, 2014 Initial Decision of the Office of Administrative Law (OAL), petitioner's exceptions thereto[2] and respondent's reply to petitioner's exceptions, the Commissioner cannot conclude that respondent's decision to reject petitioner's application was arbitrary, capricious, unreasonable, or contrary to applicable school law and regulations.

[1] A description of the Interdistrict Public School Choice Program was provided in the Initial Decision of the Office of Administrative Law (OAL) and will be relied upon for purposes of the instant final decision.

[2] The Commissioner disagrees with respondent's contention that petitioner's exceptions should not be considered. Said exceptions were stamped in on May 28, one day after the deadline for filing exceptions to the May 14, 2014 Initial Decision. However, a notation at the top of the exceptions indicates that they were faxed to the Department of Education (Department) on May 27 at 4:09, making them timely. The Commissioner will not deny petitioner its say because of an innocuous discrepancy between a fax notation and a filing stamp.

Procedurally, the matter comes to the Commissioner as a recommended grant of summary disposition to respondent.[3] More specifically, respondent applied for summary disposition on December 16, 2013, contending that the material facts are not in dispute and that – pursuant to *N.J.S.A.* 18A:36B-20(c) – respondent was entitled to reject R.N.'s application after determining that acceptance of A.N. into its Advanced Mathematics and Algebra Academy (Academy) would be burdensome financially and administratively. As with any motion for summary disposition, the threshold task is to establish whether there are material facts which are genuinely disputed.

In her papers opposing summary disposition and in her exceptions, petitioner has maintained that competing evidence about several material facts precludes summary disposition and, therefore, the Initial Decision should not be adopted. Examination of the record does reveal factual disagreements. First, there has been disagreement about what petitioner was asked to submit with her application. Second, the parties' representations about the requirements of A.N.'s IEP have not been harmonious. Third, the parties' estimates of the costs of implementing A.N.'s IEP differed significantly.

Relevant to the first area of disagreement are the affidavits of petitioner and UFRSD employee Louise San Nicola. Petitioner contends in her December 19, 2013 affidavit (R.N. Affidavit) that UFRSD knew at the beginning of the application process what A.N.'s IEP required because 1) she submitted the first two pages of the 2012-23 IEP with her Choice application, 2) she was told by someone at UFRSD that she need only submit the first two (of thirteen) IEP pages, 3) UFRSD Superintendent Richard Fitzpatrick (Fitzpatrick) called her after receiving her application to request that she waive the IEP requirement that A.N. participate in the

[3]Respondent's answer and summary disposition motion were filed on December 16, 2013.

Wilson reading program (Wilson program), and 4) after she wrote a letter to Fitzpatrick waiving the Wilson program, she was never again told to submit additional documents or information. (R.N. Affidavit, Para. 2-3)

By way of contrast, Louise San Nicola – the UFRSD employee responsible for collecting and reviewing the paperwork from choice program applicants – stated that petitioner did not submit the required copy of A.N.'s 2012-13 IEP with her November 26, 2012 application. San Nicola averred that she contacted petitioner on November 30, 2012 to request the IEP and did not tell petitioner that the first two pages of the IEP would be sufficient. Nonetheless, on or about November 30, 2012 petitioner sent San Nicola only the first two pages of A.N.'s thirteen-page IEP for 2012-13. (San Nicola Certification, July 15, 2013, Para. 7-10)

The specific language of petitioner's affidavit relates that an unspecified employee at UFRSD told her "that it was standard practice to submit the first two pages of the IEP because it contained all the information that was needed." (R.N. Affidavit, Para. 2) The Commissioner notes that in an email dated May 24, 2013 from petitioner to Mark Guterl, Principal of respondent's Stone Bridge Middle School, petitioner made the same allegation, *i.e.,* that it was standard practice to only submit the first two IEP pages. At that point in time, however, petitioner attributed the opinion about standard practice to the Farmingdale child study team lead, a Ms. Barrall, who is said to have told petitioner: "normally it is only required to send the first two pages of an IEP (she said it is quite common practice that only the first two pages be requested to get a general idea of services)." (Exhibit E to Fitzpatrick Certification, July 15, 2013)

In light of the facts that 1) petitioner cannot identify who at UFRSD allegedly advised her to submit only two IEP pages, 2) petitioner's description of what respondent allegedly told her is very similar to what Barrall (of the Farmingdale child study team) is purported to have

told her, and 3) petitioner's claims – concerning who told her to submit only two IEP pages – were made over a year after A.N.'s IEP was requested, the Commissioner finds petitioner's assertions on this issue to be less persuasive than those of San Nicola. But in the end, the foregoing factual disagreement does not affect the ultimate issue in the instant controversy, and is consequently not a material factual dispute which would preclude summary disposition.

The application form for potential choice students states on page five that "Acceptance into the Choice Program is conditional upon the Upper Freehold Child Study Team acceptance of the final 2012-13 annual [IEP] review/re-evaluation, if applicable. Falsifying information on this application will render acceptance as null and void." (Exhibit C to Petition [emphasis added]) Thus, any indications of acceptance from respondent that may have been provided to petitioner, such as an "acceptance letter" sent to petitioner on December 21, 2012, were provisional pending the child study team's review and approval, *vel non,* of A.N.'s IEP. Petitioner did not reach out to respondent's child study team until April 10, 2013 – when she emailed its secretary asking for a child study team meeting. (Exhibit I to Petition) By the time petitioner met with the child study team, on May 16, 2013, respondent's budget for the following school year had been approved and could not be modified to accommodate extra expenses. (Fitzpatrick Certification, February 3, 2014, Para. 15)

The significance of the foregoing becomes evident when comparing the first two pages of A.N.'s 2012-13 IEP, to the entire 2012-13 IEP (Exhibit B to Petition), the latter of which petitioner brought to the May 16, 2013 meeting with respondent's child study team. The initial two pages of A.N.'s 2012-13 IEP had indicated that A.N. required in-class supports in Language Arts, Social Studies and Science (not math), that he needed unspecified "modifications," that he did not need supplementary aids and services, but that he participated in the Wilson program.

(Exhibit B to the petition) However, the balance of A.N.'s 2012-13 IEP, which respondent first reviewed at the May child study team meeting, contained many modifications not referenced on the IEP's first 2 pages. (Fitzpatrick Certification, July 15, 2013, Para. 17)

More specifically, the full IEP contained about 23 other accommodations which A.N. had been receiving in his home district and had been deemed to need, including one that called for A.N. to be able to dictate responses to tests and other work in lieu of writing them. (Exhibit B to Petition) Further, the previously unpresented IEP pages revealed more detailed and specific information about those accommodations, and contained comments from teaching staff members which shed more light on A.N.'s capabilities and limitations.

Significant accommodations not evident on the first two pages of the 2012-13 IEP were the placement of A.N. in small group environments for his math instruction, testing in a separate room with questions read aloud, modifications of tests, and provision of a scribe in all subjects except math. As to the latter accommodation, in a July 15, 2013 certification, Learning Disabilities Teacher-Consultant Louise Smith related that at the May 16, 2013 child study meeting petitioner was adamant that A.N.'s IEP required him to have a scribe. (Smith Certification, Para 12) According to Smith, R.N. indicated that provision of a scribe was an important issue, that A.N. would likely have an emotional meltdown without one, and that it was unacceptable for respondent not to provide a scribe. (Smith Certification, Para. 14) Petitioner does not deny that she took this position at the May 16, 2013 child study meeting. *See* Paragraph 10 of petitioner's Counter-Statement of Material Facts in her December 23, 2013 opposition to summary disposition.

Teacher comments on the 2012-13 IEP included the observation by A.N.'s social studies teacher (on page three of the 2012-13 IEP) that A.N. "can get frustrated when the class

goes too fast or he does not get the topic." (Exhibit B to Petition) A.N.'s science teacher wrote that A.N. "will show frustration when he is overwhelmed or slower than other students in the class." (*Ibid.*) And his language arts teacher noted that A.N. would "get overwhelmed with the idea of homework or larger assignments. . . ." The Farmingdale child study team noted that A.N.'s "reading difficulties impact his ability to succeed in the general education classroom without supports." (*Ibid.*)

On May 17, 2013, consequent to the first-time review of A.N.'s full IEP at the May 16, 2013 meeting, Smith emailed petitioner and advised that respondent would not accept his 2012-13 IEP. (Smith Certification, Para.15) Smith advised in the email that respondent would not provide A.N. with a scribe, and suggested that, in any event, a computer might be better than a scribe for A.N. (Exhibit I to Smith Certification) Smith did identify test accommodations which could be provided. (*Ibid.)*

The record indicates that petitioner wrote back to Smith on May 20, 2013 stating that A.N. was "willing to give [a keyboard] a try," however his transition should be monitored and his emotional difficulty addressed "as his frustration threshold maybe [sic] low on writing assessments and he will need good support." (E-mail dated May 20, 2013, Exhibit II to Smith Certification) Smith noted that "this was contrary to [petitioner's] position at the meeting and A.N.'s identified needs in the IEP." (Smith Certification, Para. 16)

At this point Fitzpatrick contacted petitioner. In a May 24, 2013 telephone conversation, he expressed the view that A.N. should stay in his home district for the 2013-14 school year. (Fitzpatrick Certification, July 15, 2013, Para. 18) Acknowledging that petitioner had offered to remove multiple accommodations from A.N.'s IEP, he told petitioner that UFRSD could not ignore A.N.'s IEP, and conveyed his "concern about taking away all of A.N.'s related

services that were believed necessary by his home school district." (*Ibid.*) Further, he expressed uncertainty as to whether respondent could meet all of A.N.'s educational needs. (*Ibid.*)

On May 27, 2013, in an email to petitioner, Fitzpatrick confirmed that A.N. was not accepted to the Academy and explained that the services required by A.N.'s IEP would create encumbrances which would change the accelerated character of the Advanced Mathematics and Algebra program. (Exhibit E to Fitzpatrick Certification, July 15, 2013) He suggested that, rather than removing all of A.N.'s accommodations just to allow him to attend the Academy, petitioner should make provisional modifications to A.N.'s educational program and monitor his responses: "Clearly withdrawing services will not make his needs disappear and we all want him to do his very best now and in the future." [4] (*Ibid.*)

Fitzpatrick followed the email up with a letter dated May 29, 2013, formally setting forth the reasons for the rejection of petitioner's/A.N.'s application to the Academy. (Exhibit M to Petition) He began by reminding petitioner that the full 2012-13 IEP had been due with her application on December 3, 2012, that the application form cautioned that acceptance was contingent upon the child study team's approval of A.N.'s IEP, and that she did not provide A.N.'s full IEP until May 16, 2013.

He stated that, without experiencing undue financial and administrative burdens, respondent could not provide the range of services/accommodations called for in A.N.'s IEP: the seventeen weekly 45-minute in-class resource programs for A.N.'s general education classes; a scribe for A.N.'s written work in all content areas; provision of class notes; multiple modifications and reductions to homework requirements, tests and grading; reading tests aloud; repetitive, clarified and reworded directions; extra time for class and tests; editing of A.N.'s

[4] Fitzpatrick also reminded petitioner that A.N.'s acceptance to the choice program was expressly conditioned upon receipt of all documents which had been requested in the application form. (Exhibit E to Fitzpatrick Certification, July 15, 2013)

written work by teacher; small-group administration of tests and quizzes; assistance with organization of A.N.'s schedule and planner; books on tape or read-aloud computer software. (Exhibit M to Petition)

Fitzpatrick's letter further communicated that to provide the range of services A.N. needed, it would have to fundamentally alter the nature of the Academy program – which was "rigorous" and "fast paced," requiring "superior mathematics ability, strong literacy skills, strong expressive language skills and the ability of participants to frame thoughts related to math using both their verbal and mathematical strengths." (Exhibit M to Petition) He juxtaposed the foregoing to A.N.'s IEP which noted that A.N.'s "broad mathematics and math calculation skills scores are average; his basic reading skills score is in the low average range," and that A.N. was easily frustrated when overwhelmed or slower than the other students in the class. (Exhibit M to Petition at 1 and 2, referencing Exhibit K to Petition at 2 and 4) Fitzpatrick also reiterated that petitioner's willingness to waive services recommended by A.N.'s IEP would "not resolve his need for the delivery of services which appear to be essential to his development in all content areas." [5] (Exhibit M to Petition, at 2)

There is no material dispute concerning the difference between the amount and character of information set forth in the first two pages of A.N.'s 2012-13 IEP versus what was revealed in the IEP as a whole. And, as explained by the Administrative Law Judge (ALJ) in his August 15, 2013 order[6] recommending denial of petitioner's application for emergent relief, it was "necessary that [A.N.'s] IEP be evaluated by District administration and the District child study team in order to determine whether A.N. met the program requirements, and whether the District would be able to satisfy the requirements of the IEP, and do so without imposing too

[5] Fitzpatrick reiterated the foregoing in Paragraphs 20-21 of his July 15, 2013 certification.
[6] Said order was adopted by the Commissioner on August 23, 2013.

great a financial burden." (Order at 6) Therefore "[t]he choice district ha[d] the right, even though it admitted the student in a December 2012 letter, to reject the student after review of the complete IEP, which was not submitted to the District until May 16, 2013." (Order at 7)

The "material" factual dispute which petitioner contends is relevant to the impact that acceptance of A.N. would have upon respondent and its Academy, was framed by petitioner in her December 19, 2013 papers opposing summary disposition. In her affidavit, R.N. stated that A.N.'s 2013-14 IEP at Farmingdale did not call for a scribe and that for the first four months of the 2013-14 school year A.N. had not been using one. (R.N. Affidavit, Para. 9) Petitioner also averred that A.N. was not participating in the Wilson reading program at Farmingdale, but was instead receiving private tutoring at petitioner's expense. (R.N. Affidavit, Para. 10) Petitioner reported that A.N. was doing well without the scribe and Wilson program (R.N. Affidavit, Para. 8), and reasoned in her brief opposing summary disposition and in exceptions that it had been unreasonable for respondent to determine that accepting A.N. into the Academy would cause an undue financial burden.

The foregoing assertions are not helpful to petitioner for the following reasons. First, the express language on the choice program application put petitioner on notice that it was the 2012-13 IEP which she was required to submit. Clearly, at the time the application had to be considered, the full 2012-13 IEP would have been the most reliable indicator of which services and accommodations the applicant was deemed to need and which were actually being provided. This could be compared with the other required information and documents, such as report cards, to assess how the student was doing under the IEP. By way of contrast, the draft 2013-14 IEP (Exhibit K to Petition), undisputedly submitted by petitioner to the UFRSD child study team for the first time in May 2013, was speculative and an inferior tool by which to predict A.N.'s

capabilities and needs. Even less relevant to the decision respondent had to make in May 2013 are petitioner's contentions that A.N. did not need the scribe and the Wilson program during the 2013-14 school year.

Second, in point of fact, the draft 2013-14 IEP did not indicate that A.N. would no longer participate in the Wilson program. More specifically – on page 3 – it stated that A.N. "receives additional pull-out instruction in the Wilson Program at the Farmingdale School." Further – on pages 7 and 8 – it called for most of the services, accommodations and modifications required by the 2012-13 IEP, and – on page 4 – it contained teacher input similar to what had been included in the 2012-13 IEP. For example, A.N.'s language arts teacher stated that A.N. still demonstrated "frustration and anxiety with the idea of homework or longer assignments . . . ." His social studies teacher noted that he was easily frustrated with himself when he did not timely complete his assignments. And his science teacher stated that A.N. had difficulty beginning assignments independently and was still easily frustrated when overwhelmed or slower than the other children in the class. As did the 2012-13 IEP, the draft 2013-14 draft IEP advised that A.N.'s "reading difficulties impact his ability to succeed in the general education classroom without supports."

Third, the absence of any mention of a scribe in the 2013-14 IEP – which was annexed as Exhibit K to the July 2013 petition – may signify that Exhibit K is not a copy of the 2013-14 draft IEP which was actually presented to the UFRSD child study team in May 2013. More specifically, in multiple locations on the Exhibit K version of the 2013-14 IEP, reference is made to the provision to A.N. of a keyboard: "Mrs. Newell requested keyboarding be used in the classroom for written assignments" (page 3); "it was discussed at the meeting that [A.N.] will have access to a keyboard for writing activities in the classroom" (page 3); keyboard is

added to the bottom of the list of planned modifications (page 7); (r)esponse accommodations/modifications to tests to include "recording responses on a word processor" (page 10). However, the issue of keyboarding as a replacement for a scribe was not raised until months after the date on which the draft 2013-14 IEP was supposed to have been composed.

March 20, 2013 is set forth on the draft 2013-14 IEP as the date on which the child study team met for reevaluation of A.N.'s IEP. However, the record contains no reference to or discussion of keyboarding until May 17, 2013, when Smith proposed it as an alternative to the use of a scribe – which petitioner had demanded in the child study meeting of the previous day. (*See,* Exhibit J to Petition) The first appearance in the record of petitioner's agreement to keyboarding was in her May 20, 2013 email to Smith, in which she indicated A.N. would try to use a keyboard instead of a scribe but he would have to be monitored and his emotional needs would have to be addressed. (Exhibit II to Smith Certification)

Similarly, the Commissioner finds the absence of the scribe requirement in Exhibit K to be inconsistent with the fact that the draft 2013-14 IEP was supposedly written on or about March 20, 2013. This was a period of time in which A.N. was still receiving the services of a scribe, and it was prior to the May 16, 2013 child study meeting at which petitioner not only contended that A.N. needed a scribe, but also insisted that his IEPs called for same. (Smith Certification, Para. 12 and 14)

In sum, the Commissioner cannot conclude that there exists a genuine issue of fact about the information available to respondent in May 2013 concerning A.N.'s IEP. The record supports respondent's contention that the IEP documents finally presented to it on May 16, 2013 gave it reason to believe that if it accepted A.N. as a choice student it could not – without ignoring A.N.'s IEP – avoid providing A.N. with both a scribe and the Wilson program.

The third category of facts alleged by petitioner to be material and disputed is the quantum of expenses which respondent would incur in accepting A.N. to the Academy. Respondent presented its estimated costs via Fitzpatrick's February 3, 2014 certification with attachments. Fitzpatrick explained that in order to accept A.N., respondent would have had to hire an extra Wilson program instructor at a cost of approximately $68,000 per year. (Fitzpatrick Certification, Para. 9 and Exhibit C) He added that such instructors are not easy to find. (*Ibid.*) Fitzpatrick also estimated that it would cost $42,489 per school year to provide A.N. with a scribe. (Fitzpatrick Certification, Para. 11 and Exhibit D) By way of contrast, Exhibit B to Fitzpatrick's certification, a printout from the State Department of Education's projected choice aid for UFRSD, indicated that the amount of State dollars respondent would receive for a 2013-14 choice student such as A.N. would be the much smaller sum of $10,970.

In an attempt to rebut respondent's presentation about the costs it would incur in accepting A.N. to the Academy, petitioner offered a notarized letter dated February 12, 2014, from the superintendent and the business administrator of the Farmingdale school district. The letter advised that Farmingdale had a full-time Wilson program instructor on staff, and estimated that A.N.'s three Wilson classes per week had cost the district $190 for the school year. It is unclear how many students receive instruction from the Wilson program teacher at a time, how many periods the instructor teaches per week, and what the instructor's salary is. Thus, it is not known how Farmingdale arrived at the $190 figure. The notarized letter indicated that the approximate cost for the use of a scribe for the 2014 NJASK assessment would be $639.60 (15 hours of testing with a one-on-one scribe). No other information about the costs of providing a scribe was offered.

Even if the Commissioner were to accept the notarized letter from Farmingdale as evidence, the scant information provided therein does not rebut the evidence in Fitzpatrick's certification. Farmingdale was apparently able to provide A.N. with Wilson instruction by adding him to other students receiving such instruction from a teacher who was already on staff. Its costs, therefore, would not likely be the same as those incurred by respondent to find and hire an extra teacher. Nor do we know what Farmingdale's instructor's salary was, making it impossible to compare it with the pay to which a teacher in respondent's district would be entitled under the applicable collective bargaining agreement. The notarized letter provided even less means of comparing the costs in the two districts of providing a scribe.

In sum, there is no material dispute of fact concerning the costs which respondent maintains it would incur in accepting A.N. to the Academy, and there is no genuine dispute of facts about the accommodations which – in May 2013 – appeared necessary for A.N. The ALJ did not err in making a summary determination.

As was explained in the Initial Decision, the provision of the Interdistrict Public School Choice Act controlling the instant controversy is *N.J.S.A.* 18A:36B-20(c), which provides:

> A choice district may reject the application for enrollment of a student who has been classified as eligible for special education services pursuant to chapter 46 of Title 18A of the New Jersey Statutes if that student's individualized education program could not be implemented in the district, or if the enrollment of that student would require the district to fundamentally alter the nature of its educational program, or would create an undue financial or administrative burden on the district.

The foregoing is also reflected in a document issued by the State Department of Education (which may be found on the Department's website), entitled "Interdistrict Public School Choice Policy

Frequently Asked Questions, Updated and Revised June 7, 2013". (Exhibit II to Respondent's Summary Disposition Brief)

The Commissioner concurs with the ALJ that acceptance of A.N. into the Academy would have been financially burdensome for respondent, and that the accommodations itemized in A.N.'s IEP were inconsistent with the rigorous and accelerated nature of the Academy program – which required candidates to be strong both in mathematical ability and literacy. It was thus not arbitrary, capricious or unreasonable for respondent to decide against accepting A.N. [7]

Accordingly, the Commissioner adopts the Initial Decision of the OAL as the final decision in this case.[8] Summary disposition is granted to respondent and the petition is dismissed.

IT IS SO ORDERED.[9]

ACTING COMMISSIONER OF EDUCATION

Date of decision: August 14, 2014

Date of mailing: August 15, 2014

[7] Further, Pursuant to *N.J.S.A.* 18A:36B-20(d), Fitzpatrick wrote a detailed letter to petitioner explaining the reasons for not accepting A.N.

[8] Counts 2-4 of the petition were not addressed in the Initial Decision and petitioner has not addressed them in her exceptions to same. They are, in any case, without merit. As regards Count 2, petitioner has enjoyed due process by exercising the remedy available to individuals who wish to challenge decisions made by choice districts. *See, N.J.S.A.* 18A:36B-20(d) and *N.J.A.C.* 6A:12-6.2. As regards Counts 3 and 4, "expulsions" are imposed in consequence of unacceptable student behavior and are disciplinary in nature. The regulations governing expulsions are therefore not relevant to the instant controversy.

[9] This decision may be appealed to the Superior Court, Appellate Division, pursuant to *N.J.S.A.* 18A:6-9.1).