

W.M., on behalf of minor child, M.M.,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE	:	DECISION
BOROUGH OF BRADLEY BEACH,	:	
MONMOUTH COUNTY,	:	
	:	
RESPONDENT.	:	

SYNOPSIS

Petitioner challenged the Bradley Beach Board of Education’s (Bradley Beach or Board) decision to deny petitioner’s request to pay the out-of-district tuition for his son, M.M., to attend school at Shore Regional High School (Shore Regional). Bradley Beach does not operate its own high school. Therefore, pursuant to established send-receive relationships outlined in Board Policy 5120.1, Bradley Beach students attend either Neptune High School (Neptune) or Asbury Park High School; alternatively, the Board pays tuition for students accepted into one of the specialized academies offered at Red Bank Regional High School. Here, M.M.’s designated high school is Neptune. Petitioner contended that M.M. is gifted and talented in dance, and applied to Red Bank Regional’s dance academy, but was rejected. Subsequently, petitioner enrolled M.M. at Shore Regional – a school petitioner identified as meeting the educational needs of his son because of its dance program. Petitioner argued that the Board’s denial of tuition reimbursement was arbitrary, capricious and in bad faith. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts in dispute here, and the matter is ripe for summary decision; the only issue to be decided in the instant case is whether petitioner is entitled to reimbursement for the unilateral out-of-district placement of M.M. at Shore Regional, pursuant to *N.J.S.A. 18A:38-15*; Bradley Beach considered and denied petitioner’s request for tuition reimbursement, and there is no evidence that the Board abused its discretion; petitioner’s argument that since M.M. is gifted and talented in the area of dance, Bradley Beach is obligated to pay for him to attend an out-of-district placement is without merit; the relevant statute here is permissive, and absent an abuse of discretion, there is no obligation on the part of the Board to pay for M.M. to attend Shore Regional. The ALJ concluded that Bradley Beach did not abuse its discretion in declining to pay the out-of-district tuition for M.M., and there is no basis upon which to require the Board to pay the tuition for M.M.’s unilateral out-of-district placement. Accordingly, the Board’s motion for summary decision was granted and the petitioner’s cross-motion was denied. The petition was dismissed.

Upon comprehensive review of this matter – and finding petitioner’s exceptions to be unpersuasive – the Commissioner concurred with the ALJ’s findings and conclusions; the Initial Decision was adopted as the final decision in this matter and 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.

OAL DKT. NO. EDU 11801-17
AGENCY DKT. NO. 158-7/17

W.M., on behalf of minor child, M.M., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
BOROUGH OF BRADLEY BEACH,
MONMOUTH COUNTY, :
RESPONDENT. :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C.* 1:1-18.4 by the petitioner, W.M., and the Bradley Beach Board of Education’s (Board) reply thereto. In this matter, the petitioner alleges that the Board’s decision to deny his request for tuition reimbursement under *N.J.S.A.* 18A:38-15 was arbitrary, capricious and unreasonable.

Based upon the sending-receiving relationship between the Bradley Beach School District and the Neptune School District, M.M.’s designated high school is Neptune High School.¹ Petitioner enrolled M.M. at Shore Regional High School (Shore Regional) because he contends that M.M. is gifted and talented in dance and Shore Regional has a dance program that better suits M.M. The petitioner then sought to have M.M.’s tuition payed for by the Board pursuant to *N.J.S.A.* 18A:38-15, which provides that:

¹ Bradley Beach does not operate its own high school, therefore, it has a send-recvie relationship with both the Asbury Park School District and the Neptune School District. Some students from Bradley Beach attend Asbury Park High School and others attend Neptune High School. Board Policy 5120.1 outlines how the Board determines what high school its students will be assigned to attend. Additionally, the Board pays tuition for students accepted into one of the academies at Red Bank Regional High School.

[a]ny board of education not furnishing instruction in a particular high school course of study, which any pupil resident in the district and who has completed the elementary course of study provided therein may desire to pursue, may, in its discretion, pay the tuition of such pupil for instruction in such course of study in a high school of any other district.

The Administrative Law Judge (ALJ) granted the board's motion for summary decision and recommended that the petition of appeal be dismissed. In so doing, the ALJ found that the Board did not abuse its discretion by declining to pay tuition for the petitioner's unilateral placement of M.M. out-of-district.

The petitioner's exceptions substantially reiterated the substance of his submissions at the OAL, recasting the arguments therein to support the contention that the ALJ erroneously granted summary decision in favor of the Board. Specifically, the petitioner maintains that summary decision should be granted in favor of the petitioner as there are a number of facts supported by admissible evidence that show that the Board violated the law and acted in bad faith. The petitioner also maintains that since the Board pays the tuition for certain Bradley Beach students to attend the dance program at Red Bank Regional High School (Red Bank Regional), its claim that Neptune High School has a sufficient dance program directly violates *N.J.S.A. 18A:38-15*. The Board's decision to pay for students to attend Red Bank Regional also demonstrates that the Board is acting in bad faith against M.M. Petitioner contends that if the Board acknowledges the fact that Neptune High School has a course of study in dance, and that is the reason for denying petitioner's request for tuition, then no other students who reside in the Bradley Beach should be allowed to attend a dance program out-of-district.

The petitioner also emphasizes that M.M. is gifted and talented in dance, and Shore Regional is an International Baccalaureate World School that offers a dance program

which meets the educational needs of M.M. The petitioner cites to *N.J.A.C. 6A:9-3.1*, which defines students who are gifted and talented, to demonstrate that M.M. is gifted and has a passion for dance. M.M. was not accepted into Red Bank Regional; therefore, the petitioner found a suitable high school that meets M.M.'s educational needs. The Board should be required to pay for M.M.'s tuition under *N.J.S.A. 18A:38-15*. As a result, the petitioner asserts that the ALJ erroneously granted summary decision in favor of the Board.

In reply, the Board also reiterated the positions advanced in its submissions at the OAL, maintaining that the ALJ properly granted its motion for summary decision. The ALJ correctly found that the petitioner failed to present any facts to support his claim that the Board acted in bad faith or abused its discretion in rejecting the petitioner's tuition request. The Board maintains that it is beyond question that *N.J.S.A. 18A:38-15* is permissive, and allows a school district to pay for a student to attend school in another district if the board, in its discretion, determines to do so. Bradley Beach students may attend high school at either of its receiving districts (Neptune High School or Asbury Park High School) or Red Bank Regional; pursuant to Board Policy 5120.1, these are the only schools that the Board pays for students to attend. The Board's general policy that it will only offer instruction courtesy of these districts is a permissible exercise of the Board's discretion, and is not arbitrary, capricious, unreasonable or done in bad faith. The Board recognizes that M.M. is interested in dance, but unfortunately M.M. was not accepted into Red Bank Regional's dance academy. M.M.'s desire to pursue dance does not give the petitioner the right to unilaterally select which school district M.M. will attend at the Board's expense. Therefore, the Commissioner should adopt the Initial Decision as the final decision in this matter.

Upon a comprehensive review of the record in this matter, the Commissioner concurs with the ALJ that the Board's decision to deny the petitioner's request for tuition was not arbitrary, capricious or unreasonable. The relevant case law makes clear that local boards of education have the absolute discretion concerning whether a student will attend a program in another district at public expense. *Board of Educ. of the Upper Freehold Regional School District, Monmouth County v. Board of Educ. of the Township of Millstone, Monmouth County, et al.*, Commissioner Decision No. 224-18, decided July 26, 2018; *D.M., on behalf of minor child, A.M. v. Board of Educ. of the City of Long Branch, Monmouth County*, Commissioner Decision No. 391-00, decided November 28, 2000. Further, a board's exercise of its discretionary powers "may not be upset unless patently arbitrary, without rational basis or induced by improper motives." *Kopera v. Board of Education of West Orange*, 60 N.J. Super. 288 (App. Div. 1960).

Here, the petitioner has presented no evidence to suggest that the Board's decision to deny his request for tuition was arbitrary, without rational basis or induced by improper motives.

In reaching its decision regarding the petitioner's request for tuition, the Board considered the dance programs furnished at Neptune High School and at Shore Regional and did not find a discernable difference.² The Board also took into consideration the potential negative impact that paying tuition for M.M. to attend Shore Regional would have on its send-receive relationship with the Neptune School District. Moreover, before the Board voted on the petitioner's tuition request, the petitioner was afforded an opportunity to appear before the Board

² It is not necessary for the Commissioner to compare the dance programs furnished by Neptune High School and Shore Regional to determine whether Neptune High School furnishes a course of study in dance. The Board has discretion under N.J.S.A. 18A:38-15 and its decision to consider the nature and extent of the programs offered at Neptune High School and Shore Regional was not unreasonable.

and present his case. There is simply nothing in the record to suggest that the Board acted in bad faith.

The Commissioner does not agree with the petitioner's argument that the Board acted in bad faith by refusing to pay for M.M. to attend Shore Regional, while at the same time paying for other Bradley Beach students to attend the dance program at Red Bank Regional. The Board has the discretion to establish a policy whereby its students attend Neptune High School, Asbury Park High School or one of the academies at Red Bank Regional. Had M.M. been accepted into the dance program at Red Bank Regional, the Board would have exercised its discretion to pay M.M.'s tuition. Finally, the Commissioner finds that the petitioner's remaining exceptions largely reflect arguments previously raised before the ALJ and taken into account by her in determining that the Board was entitled to summary decision.

Accordingly, the recommended decision of the ALJ is adopted as the final decision in this matter and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: August 8, 2018

Date of Mailing: August 8, 2018

³ Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Superior Court, Appellate Division.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION GRANTING BRADLEY
BEACH'S MOTION FOR SUMMARY
DECISION AND DENYING
PETITIONER'S MOTION FOR
SUMMARY DECISION**

W.M. ON BEHALF OF MINOR CHILD

M.M.,

Petitioner,

v.

BOARD OF EDUCATION OF BRADLEY BEACH,

Respondent.

OAL DKT. NO. EDU 11801-17

AGENCY NO. 158-7/17

W.M., petitioner, pro se

Daniel R. Roberts, Esq., for respondent Bradley Beach Board of Education
(Kenny, Gross, Kovats & Parton, attorneys)

Record Closed: May 7, 2018

Decision: June 26, 2018

BEFORE **SARAH G. CROWLEY, ALJ**:

PROCEDURAL HISTORY AND STATEMENT OF CASE

On July 20, 2017, M.M. (petitioner) filed a Verified Petition with the Commissioner of the Department of Education challenging the denial by the respondent to pay the tuition for M.M. to attend school in another district. The Director of the

Bureau of Controversies and Disputes of the New Jersey Department of Education transmitted the matter to the Office of Administrative Law (OAL), where it was filed for hearing as a contested case on August 17, 2017. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. Respondent, Board of Education of Bradley Beach (Bradley Beach or Board) filed a Motion for Summary Decision on April 20, 2018. On April 30, 2018, Bradley Beach filed Opposition and a Cross-Motion for Summary Decision. On May 7, 2018, Bradley Beach filed a response to the Cross-Motion for Summary Decision.

The sole issue in this case is whether the petitioner is entitled to reimbursement for the unilateral out-of-district placement of their son pursuant to N.J.S.A. 18A:38-15. Petitioner lives in Bradley Beach, and pursuant to a send-receive relationship, is to attend Neptune High School. Petitioner sent a letter to Bradley Beach on April 4, 2017, requesting that Bradley Beach pay M.M.'s tuition to attend Shore Regional High School. The reason stated in the letter dated April 4, 2017, from the petitioner requesting such payment was concerns about chaos at the Neptune High School. The petitioner's brief further states that Neptune High School was becoming hostile and unsafe. Bradley Beach Board of Education considered the request at its meeting on April 26, 2017, and denied the request. Bradley Beach advised in a letter dated April 27, 2017, there was no legal basis to pay for such out-of-district placement, and as such, they had denied the request. Bradley Beach further noted that there was no unique program and that a Dance program was provided at Neptune High School.

The petitioner argues that the decision was arbitrary, capricious and in bad faith, and seeks judgment in their favor as a matter of law. However, the petitioner fails to allege any facts, even if construed in their favor constitute arbitrary, capricious, unreasonable conduct on the part of Bradley Beach. The petitioner also argues that since their son is gifted and talented in the area of Dance that Bradley Beach is obligated to pay his tuition because the Shore Regional High School program is better suited to him and that he should be able to select

FACTUAL BACKGROUND AND SUMMARY

Bradley Beach is a K-8 public body organized pursuant to N.J.S.A. 18A:10-1 et seq. Pursuant to a send-receive relationship, respondent sends its high school students to either Neptune High School or Asbury Park High School. Some of their students apply to, and attend Red Bank Regional High School academies. Others go to the Monmouth County Vocations School, as well as some special education placements. The foregoing placements are paid for by Bradley Beach after review and approval by their board. M.M. applied and was denied admission to the Red Bank Regional High School. M.M. was then unilaterally placed at Shore Regional High School by his parents, who seek to have Bradley Beach pay his tuition pursuant to N.J.S.A.18A:38-1.

M.M. requested reimbursement in an email dated April 4, 2017. The stated reason for the request is that Neptune High School is chaotic. The petitioner had received approval for M.M. to attend Shore Regional on April 7, 2017. The original request was not related to a course of study which may, or may not have been offered in Bradley Beach, but rather the chaotic nature of Neptune High School. Petitioner later argues that M.M. is gifted and talented in dance and the Shore Regional High School Dance program is superior to Bradley Beach.

Bradley Beach considered the request at a April 26, 2017, Board meeting and advised the petitioner by letter dated April 27, 2017, that they would not pay for M.M.'s tuition, due to the absence of any legal basis to do so. They stated that there was nothing unique about the program and they were obligated to send and pay for their students to attend Neptune High School pursuant to a send-receive relationship. Moreover, even if the program at Neptune was superior, there is a course of study in dance at Bradley Beach, and they properly exercised their discretion in declining to pay M.M.'s tuition for an out-of-district placement.

The foregoing facts are not in dispute and I **FIND** as **FACT**.

LEGAL ANALYSIS

Summary decision is the administrative counterpart to summary judgment in the judicial arena. N.J.A.C. 1:1-12.5 provides that summary decision should be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law. To defeat a summary decision motion, the adverse party must respond by affidavits setting forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary hearing. Use of the summary procedure is aimed at the swift uncovering of the merits and either their effective disposition or their advancement toward a prompt resolution by trial. Judson v. Peoples Bank & Trust Co. of Wesfield, 17 N.J. 67, 74 (1954).

The New Jersey Supreme Court encouraged trial-level courts not to refrain from granting summary judgment when the proper circumstances present themselves. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 541 (1995). While cautioning that a judge should not weigh the truth of the evidence or resolve factual disputes at this early stage of the proceedings, the Court clarified that when the evidence is so one-sided that one party must prevail as a matter of law, the trial court should not hesitate to grant summary judgment. Id. at 540. Appellate courts recognize that “[a]n evidentiary hearing is mandated only when the proposed administrative action is based on disputed adjudicatory facts.” Contini v. Bd. of Educ. of Newark, 286 N.J. Super. 106, 120 (App. Div. 1995), certif. denied, 145 N.J. 372 (1996).

Respondent has filed a Motion for Summary Decision alleging that there are no factual issues in dispute and they are entitled to judgment as a matter of law. They maintain that they do have a course of study in dance, and thus, N.J.S.A. 18A:38-15 is not applicable. Moreover, Bradley Beach considered and denied the request for tuition and transportation for M.M, and as there is no evidence of an abuse of discretion. The petitioner also argues the since M.M. is gifted and talented in the area of dance, Bradley Beach is obligated to pay for him to attend an out-of-district placement. However, there is no legal or factual basis to support this argument. Moreover, since the statute is

permissive, and absent an abuse of discretion, there is no obligation on the part of respondent to pay for M.M. to attend Shore Regional High School. There are no facts alleged to support of claim of bad faith or an abuse of discretion.

The relevant statute provides as follows:

[a]ny board of education not furnishing instruction in a particular high school course of study, which any pupil resident in the district and who has completed the elementary course of study provided therein may desire to pursue, may, in its discretion, pay the tuition of such pupil for instruction in such course of study in a high school of any other district.

[N.J.S.A. 18A:38-15 (emphasis supplied).]

A similar issue was raised in the case of D.M. on behalf of minor child, A.M. v. Board of Education of Long Branch, EDU 04737-99, Initial Decision (October 16, 2000), adopted, Comm'r (November 28, 2000), aff'd, St. Bd. (July 10, 2001), <http://njlaw.rutgers.edu/collections/oal/>. In that case, the petitioners had unilaterally placed their son out-of-district and sought and order compelling the local board of education to pay for tuition and transportation for the petitioner to attend the visual performing arts program operated by Red Bank Regional High School. The issue was whether the District of residence must pay the tuition for students attending the Red Bank Regional School. An attorney general opinion from 1994 was reviewed which the concluded that Red Bank could accept non-residents, but the District of residence would not be required to pay unless the local board of education choose to approve such placements.

In D.M., the ALJ noted the permissive nature of the relevant statutory provision. The judge noted that the "statute makes clear that the ultimate discretion concerning whether a student will attend a program in another district at the public expense lies with the local board." The Judge further noted that the statue "may not be read to create a right for a student to have their tuition payed by a local district where there is no clear language of an intent to do so." There is no need in this case to compare the courses in

Bradley Beach to that in Shore Regional, as there is discretion on the part of Bradley Beach to decline such payment. Moreover, there is no evidence of an abuse of discretion or bad faith.

CONCLUSION

Accordingly, I **CONCLUDE** that Bradley Beach did not abuse its discretion of declining to pay the out-of-district tuition for M.M. I further **CONCLUDE** that even assuming there was no course of study in Dance Bradley Beach, the statute does not mandate such payment. I therefore **CONCLUDE** that since there is no basis to require Bradley Beach to pay the tuition for the unilateral placement of M.M. out-of-district, the petition is hereby **DISMISSED**.

ORDER

I hereby **ORDER** that the District's Motion for Summary Decision is hereby **GRANTED** and the Petition is hereby **DISMISSED**. It is further **ORDERED** that the petitioner's Motion for Summary Decision is **DENIED**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



June 26, 2018

DATE

SARAH G. CROWLEY, ALJ

Date Received at Agency:

June 26, 2018(email)

Date Mailed to Parties:
