

J.L.D., on behalf of minor child, N.D., :  
PETITIONER, :  
V. : COMMISSIONER OF EDUCATION  
BOARD OF EDUCATION OF THE : DECISION  
UPPER TOWNSHIP SCHOOL DISTRICT,  
CAPE MAY COUNTY, :  
RESPONDENT. :

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SYNOPSIS

Petitioning parent challenged the lottery utilized to select pupils for the District's French Immersion Program for kindergarten students and sought a new lottery to select pupils for the program.

The ALJ found that petitioner failed to prove by a preponderance of credible evidence that the action of the Board in not placing her child, who was possibly being retained, in the lottery for the French Immersion Program for kindergarten students was arbitrary, capricious or unreasonable. The ALJ further concluded that petitioner failed to prove by a preponderance of credible evidence that the Board's decision to perform the lottery in February, rather than June, was arbitrary, capricious or unreasonable. The petition was dismissed.

The Commissioner adopted the findings and determination in the Initial Decision as his own.

<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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October 25, 2002

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties filed no exceptions.

Upon his full and independent review, the Commissioner concurs with the Administrative Law Judge's determination that petitioner has failed to establish that the actions of the Board 1) not to place her child in the lottery for the kindergarten French Immersion Program for the 2002-2003 school year and 2) to perform the lottery in February rather than June were arbitrary, capricious or unreasonable and, therefore, such actions must be upheld.

Accordingly, the Initial Decision of the OAL is affirmed for the reasons detailed therein and the instant Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.\*

COMMISSIONER OF EDUCATION

Date of Decision: October 25, 2002

Date of Mailing: October 28, 2002

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\* This decision, as the Commissioner's final determination 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.* Commissioner decisions are deemed filed three days after the date of mailing to the parties.