

**New Jersey Commissioner of Education**

**Decision**

C.B., on behalf of minor child, A.J.B.,

Petitioner,

v.

Board of Education of the City of Newark,  
Essex County,

Respondent.

**Synopsis**

*Pro se* petitioner filed a petition challenging the online processes required by the respondent Board to enroll petitioner’s child at Newark’s Central High School for the 2020–2021 school year. Petitioner claimed, *inter alia*, that she was being bullied, intimidated, manipulated and forced to register A.J.B. online with her personal information such as immunization records, photo ID, proof of residence and birth certificate. In her filing, no relief was requested aside from a statement that “this matter needs attention,” and in response to the Board’s interrogatory regarding the relief being sought, petitioner responded that she was “seeking a[n] investigation.” The Board filed a motion for summary decision, contending, *inter alia*, that the matter is moot, as A.J.B. is enrolled and attending Central High School; further, the online registration protocol for the 2020-2021 school year had been approved by the Department of Education for use during the Covid-19 pandemic; and petitioner failed to state a claim for which relief can be granted.

The ALJ found, *inter alia*, that: there are no material facts at issue here, and the matter is ripe for summary decision; the claims set forth in the petition are either moot, insufficient to assert a justiciable claim for relief or outside of the OAL’s jurisdiction. The ALJ concluded that the dismissal of the petition of appeal is warranted. Accordingly, the Board’s motion to dismiss was granted and the petition was dismissed with prejudice.

Upon review, the Commissioner concurred with the ALJ that petitioner’s claims regarding the enrollment of her child are moot, and that any other issues raised by petitioner fail to state a claim for relief that can be granted by the Commissioner. Accordingly, respondent’s motion for summary decision was granted, and the petition of appeal 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.

**New Jersey Commissioner of Education**  
**Final Decision**

C.B., on behalf of minor child, A.J.B.,

Petitioner,

v.

Board of Education of the City of Newark,  
Essex County,

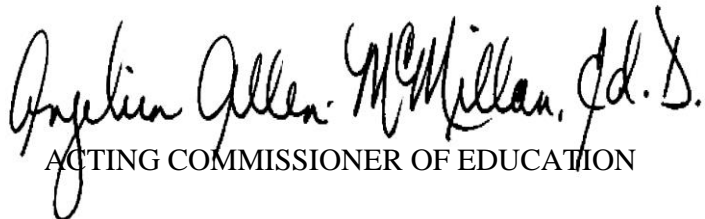
Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered. The parties did not file exceptions.

Upon review, the Commissioner concurs with the Administrative Law Judge that petitioner's claims regarding the enrollment of her child are moot, and that any other issues raised by petitioner fail to state a claim for relief than can be granted by the Commissioner.

Accordingly, respondent's motion for summary decision is granted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.<sup>1</sup>

  
ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 15, 2021  
Date of Mailing: June 15, 2021

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<sup>1</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

**SUMMARY DECISION**

OAL DKT. NO. EDU 10179-20

AGENCY DKT. NO. 213-10/20

**C.B. ON BEHALF OF MINOR**

**CHILD A.J.B.,**

Petitioner,

v.

**CITY OF NEWARK BOARD OF  
EDUCATION, ESSEX COUNTY,**

Respondent.

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**C.B.**, petitioner, pro se

**Bernard Mercado**, Senior Associate Counsel, for respondent (Brenda C. Liss,  
General Counsel)

Record Closed: April 22, 2021

Decided: May 3, 2021

BEFORE **MARGARET M. MONACO**, ALJ:

**STATEMENT OF THE CASE**

Petitioner C.B. on behalf of A.J.B. commenced this action relating to her son's enrollment at Central High School in Newark. The Board of Education of the City of

Newark (the Board) contends that dismissal of the matter is appropriate since the issues raised by the petition have been rendered moot and the relief sought by petitioner is beyond the jurisdiction of this forum.

### **PROCEDURAL HISTORY**

On or about October 6, 2020, petitioner filed a Petition of Appeal with the Commissioner of Education (the Commissioner). On or about October 21, 2020, the Board filed an Answer to Petition of Appeal, and the Department of Education transmitted the matter to the Office of Administrative Law for determination as a contested case. On November 23, 2020, I held a prehearing conference and thereafter issued a prehearing order scheduling the hearing for April 16, 2020. Prior to the hearing, the Board filed a motion for summary decision and the hearing was adjourned at the Board's request. In support of its motion, the Board filed a brief and a certification of counsel (Mercado Cert.). Petitioner filed a response opposing the motion and the Board filed a reply brief. The record was closed upon receipt of the last submission.

### **FACTUAL DISCUSSION**

Based upon a review of the documentation submitted, I **FIND** the following undisputed **FACTS**:

Petitioner is the parent of student A.J.B. (See Petition of Appeal).<sup>1</sup> On or about September 8, 2020, petitioner enrolled A.J.B. at Central High School in Newark for the 2020–2021 school year. (See Petition of Appeal; Mercado Cert. at Exhibit A.)

Or about October 6, 2020, petitioner filed the instant Petition of Appeal relating to the Board's enrollment process. Petitioner claims, among other things, that she was being bullied, intimidated, manipulated and forced to register A.J.B. on-line with her personal information such as immunization records, photo ID, proof of residence and birth certificate; she advised a Board representative that she "felt very uncomfortable providing

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<sup>1</sup> The Petition of Appeal does not include numbered paragraphs.

[her] private information online” because the information “is not safe [and] secure”; and Board representatives were “very disrespectful.” (See Petition of Appeal.) In her Petition of Appeal, petitioner requests relief in the form of “[t]his matter needs attention.” In response to the Board’s interrogatory regarding the relief being sought, petitioner responded that she was “seeking a[n] investigation.” (Mercado Cert. at Exhibit C, Answer to Interrogatory 9.)

### **LEGAL DISCUSSION AND CONCLUSIONS**

Pursuant to N.J.A.C. 1:1-12.5(b), summary decision “may 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.” This rule is substantially similar to the summary-judgment rule embodied in the New Jersey Court Rules. See Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 74 (1954). In Brill v. Guardian Life Insurance Co., 142 N.J. 520, 540 (1995), the New Jersey Supreme Court addressed the appropriate test to be employed in deciding the motion:

[A] determination whether there exists a “genuine issue” of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party. The “judge’s function is not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” . . . . If there exists a single, unavoidable resolution of the alleged disputed issue of fact, that issue should be considered insufficient to constitute a “genuine” issue of material fact for purposes of Rule 4:46-2.

[Citations omitted.]

In evaluating the merits of the motion, all inferences of doubt are drawn against the movant and in favor of the party against whom the motion is directed. Judson, 17 N.J. at 75. However, “[w]hen a motion for summary decision is made and supported, an

adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding.” N.J.A.C. 1:1-12.5(b). The New Jersey Supreme Court has cautioned that, “if the opposing party offers no affidavits or matter in opposition, or only facts which are immaterial or of an insubstantial nature, a mere scintilla, . . . ‘[f]anciful, frivolous, gauzy or merely suspicious’ . . . , he will not be heard to complain if the court grants summary judgment, taking as true the statement of uncontradicted facts in the papers relied upon by the moving party, such papers themselves not otherwise showing the existence of an issue of material fact.” Judson, 17 N.J. at 75 (citation omitted). Stated differently, “[b]are conclusions . . . without factual support in tendered affidavits, will not defeat a meritorious application for summary judgment.” U.S. Pipe & Foundry Co. v. Am. Arbitration Ass’n, 67 N.J. Super. 384, 399-400 (App.Div.1961). Likewise, unsupported and self-serving statements, standing alone, are insufficient to create a genuine issue of material fact. Heyert v. Taddese, 431 N.J. Super. 388, 413-414 (App. Div. 2013). And the “non-moving party cannot defeat a motion for summary judgment merely by pointing to any fact in dispute.” Brill, 142 N.J. at 529. Disputed issues of fact that are immaterial or of an insubstantial nature will not suffice. Ibid. Rather, “[c]ompetent opposition requires ‘competent evidential material’ beyond mere ‘speculation’ and ‘fanciful arguments,’” Cortez v. Gindhart, 435 N.J. Super. 589, 605 (App. Div. 2014), certif. denied, 220 N.J. 269 (2015) (citation omitted), and the party opposing the motion “‘must do more than simply show that there is some metaphysical doubt as to the material facts.’” Alfano v. Schaud, 429 N.J. Super. 469, 474 (App. Div. 2013), certif. denied, 214 N.J. 119 (2013) (citation omitted).

Against this backdrop, the Board contends that petitioner’s claims relating to its enrollment process are moot since it is undisputed that A.J.B. is currently enrolled in Central High School. The Board further maintains that petitioner’s claims regarding her uncomfortable feelings toward the Board’s enrollment process and being taken advantage of or disrespected during that process fail to state a claim for which relief can be granted and that the relief sought by petitioner (i.e., the matter “needs attention” and an investigation) also do not fall within the jurisdiction of this forum to award.

Based upon the foregoing facts and the applicable law, I **CONCLUDE** that the matter is ripe for summary decision. Succinctly stated, there is no genuine issue as to any material fact, and the claims set forth in the Petition are either moot, insufficient to assert a justiciable claim for relief or outside my jurisdiction.

It is firmly established that “questions that have become moot or academic prior to judicial scrutiny generally have been held to be an improper subject for judicial review.” Anderson v. Sills, 143 N.J. Super. 432, 437 (Ch. Div. 1976); see Oxfeld v. New Jersey State Board of Education, 68 N.J. 301, 303 (1975). An action is moot when it no longer presents a justiciable controversy because the issues raised have become academic or when a decision is sought on a matter which, when rendered, will have no practical effect on the existing controversy. Betancourt v. Trinitas Hosp., 415 N.J. Super. 301, 311 (App. Div. 2010). “[F]or reasons of judicial economy and restraint, courts will not decide cases in which the issue is hypothetical, a judgment cannot grant effective relief, or the parties do not have concrete adversity of interest.” Anderson, 143 N.J. Super. at 437.

In short, petitioner’s claim regarding the enrollment process that she underwent on behalf of her son in September 2020 is moot. It is undisputed that A.J.B. was enrolled in Central High School and, therefore, no ongoing controversy relating to enrollment exists. See Robinson v. State-Operated School Dist. of Paterson, EDU 09407-09, Initial Decision, (December 14, 2010), adopted, Comm’r (January 25, 2011) <http://njlaw.rutgers.edu/collections/oal/>, aff’d., 2011 N.J. Super. Unpub. LEXIS 2832 (App. Div. November 17, 2011) (dismissing as moot a student’s petition challenging a suspension when no reference to the disciplinary incident existed in the student’s records and the student had already graduated). In addition, our courts have recognized that where a petitioner is no longer subject to the force of school procedures or regulations, a challenge to those procedures or regulations becomes academic and moot. See Oxfeld, 68 N.J. at 303. It is not the role of the Commissioner to function in the abstract or to enter advisory rulings. See N.J. Civil Serv. Ass’n v. State of New Jersey, 88 N.J. 605, 611 (1982); Crescent Park Tenants Assoc. v Realty Eq. Corp. of New York, 58 N.J. 98,107 (1971). This matter also does not present any issue of great public importance compelling a definitive resolution despite its mootness. Oxfeld, 68 N.J. at 303.

Further, for this matter to be justiciable before this forum, petitioner must have suffered a distinct injury or harm that can be remedied by the Commissioner. See e.g., New Jersey Turnpike Auth. v. Parsons, 3 N.J. 235, 240 (1949). Petitioner's claims relating to her feelings of discomfort toward the Board's enrollment process and being taken advantage or disrespected during that process do not state a cognizable claim for which relief can be granted by this forum. This forum also lacks the jurisdiction to order an investigation or somehow give the matter some type of broad attention as requested by petitioner.

Based upon the foregoing, I **CONCLUDE** that dismissal of the Petition of Appeal is warranted.

### **ORDER**

It is **ORDERED** that respondent's motion for summary decision be and hereby is **GRANTED** and petitioner's Petition of Appeal be and hereby is **DISMISSED WITH PREJUDICE**.

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.

May 3, 2021  
DATE

  
MARGARET M. MONACO, ALJ

Date Received at Agency:

May 3, 2021

Date Mailed to Parties:

May 4, 2021

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