

**New Jersey Commissioner of Education  
Final Decision**

C.H. and S.H., on behalf of minor children, C.H.,  
S.H., and S.H.,

Petitioners,

v.

Board of Education of the Township of Alloway,  
Salem County,

Respondent.

**Synopsis**

This appeal stems from a residency challenge filed by petitioners in October 2017, which was ultimately decided in favor of the respondent Board and petitioners were ordered to pay tuition for a period of unauthorized attendance by petitioners' children. (see *Commissioner's Decision No. 79-19*, decided March 26, 2019) During the pendency of that case, petitioners filed the within matter, in which they alleged that the Board denied access to the student records of their three children – specifically, email correspondence that pertained to or included reference to any of petitioners' named children – that were exchanged between the petitioners and the Board's teachers, administrators and staff during the period from September 2009 through November 21, 2017. Petitioners requested that the Board release these records to them at no cost. Following a lengthy and contentious procedural history, a virtual hearing in this matter was held in February 2021, and the record closed.

The ALJ found, *inter alia*, that: C.H. conceded during testimony that, in September 2020, petitioners received over nine hundred pages of emails provided by the District; these documents were provided to the petitioners at no cost; the District's Records Custodian was responsible for overseeing the fulfillment of the petitioners' records request, and assigned the email search and retrieval task to Salem Community College's Information Technology Department through a shared services agreement; the testimony of the the District's representatives was credible and persuasive, and was, accordingly, accepted as fact; petitioners' contention that the documents provided to them did not include all emails between counsel and the District relative to their three children is without merit as those emails were not included in petitioners' original petition. The ALJ concluded that: based upon petitioners' original records request, the District established appropriate, detailed email search parameters; the District conducted a fulsome and responsive email search that complied with the petitioners' original records request; the complete results of that search were provided at no cost to the petitioners; and petitioners failed to show that the Board withheld any document included in their original request. Accordingly, the ALJ ordered the within matter dismissed.

Upon review, the Commissioner concurred with the ALJ that the Board conducted a thorough email search and provided petitioners with all student records that were the subject of the within petition of appeal. Accordingly, the Initial Decision of the OAL 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.

279-21R

OAL Dkt. No. EDU 03608-20  
(EDU 02929-18 On Remand)  
Agency Dkt. No. 30-1/18

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

C.H. and S.H., on behalf of minor children,  
C.H., S.H., and S.H.

Petitioners,

v.

Board of Education of the Township of  
Alloway, Salem 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 the Board conducted a thorough email search and has provided petitioners with all student records that were the subject of the petition of appeal.

Accordingly, the petition of appeal is hereby dismissed.

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



ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 4, 2021  
Date of Mailing: November 4, 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**

OAL DKT. NO. EDU 03608-20

AGENCY DKT. NO. 30-1/18

(ON REMAND FROM EDU 02929-18)

**C.H. AND S.H. ON BEHALF OF**

**C.H., S.H. AND S.H.,**

Petitioners,

v.

**BOARD OF EDUCATION OF THE  
TOWNSHIP OF ALLOWAY, SALEM  
COUNTY,**

Respondent.

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**C.H. and S.H.**, petitioners, pro se

**William C. Morlok**, Esq., for respondent (Parker McCay, P.A., attorneys)

Record Closed: September 17, 2021

Decided: September 29, 2021

BEFORE **JEFFREY R. WILSON**, ALJ:

**STATEMENT OF THE CASE**

Petitioners allege that the respondent denied access to the student records of their three children. Petitioners request that the records be released to them at no cost.

## **PROCEDURAL HISTORY**

The petitioners filed an appeal of the denial of access to the student records of their three children and requested a hearing before the Office of Administrative Law (OAL). The matter was transmitted to the OAL, where it was filed on February 26, 2018, as a contested case, under Docket No. EDU 02929-18. N.J.S.A. 52:14B-1 to 15 and N.J.S.A. 52:14F-1 to 13. The petitioners filed a motion for summary decision on June 10, 2018. The respondent filed its cross-motion for summary decision and response on June 21, 2018. The petitioners filed a reply brief on July 2, 2018. On October 1, 2018, the petitioners filed a motion to supplement the record. On October 8, 2018, the respondent filed its brief in opposition to the motion to supplement the record. Those cross-motions for summary decision were denied by order, dated June 12, 2019.

By order, dated September 24, 2019, petitioners' attorney was relieved as counsel. Since that date, the petitioners continued self-represented. On October 21, 2019, a telephone status conference was held and this matter was scheduled to be heard on February 18 and February 19, 2020.

At the request of the parties, an in-person settlement conference was held on December 26, 2019. At that time, the parties reached a settlement agreement that was placed on the record. During *voire dire*, the pro se petitioners, C.H. and S.H., affirmed they understood the terms of the agreement and entered into the agreement freely, voluntarily and without coercion or duress. Counsel for the respondent was directed to reduce the agreement to a writing and provide it to the petitioners to execute.

By letter, dated January 14, 2020, counsel for the respondent informed this Administrative Law Judge that the petitioners returned the signed agreement with additions and deletions unilaterally made by them. Counsel for the respondent did not agree with the petitioners' amendments.

On January 16, 2020, this Administrative Law Judge sent a letter to the parties and acknowledged that clearly there was no meeting of the minds and that there was no settlement of the case. In said letter, the parties were directed to participate in a

telephone conference on January 23, 2020, to address outstanding issues. During the January 23, 2020, telephone conference, the parties still could not reach an agreement as to the petitioners' amendments and the petitioners were directed to provide respondent's counsel with a draft of their understanding of the agreement on or before January 27, 2020. The petitioners complied however; respondent's counsel was not in agreement with their submission.

On January 28, 2020, counsel for the respondent filed a motion to enforce the December 26, 2019, settlement agreement. The petitioners acknowledged receipt of the motion on January 30, 2020. By letter order, dated January 30, 2020, the respondent's motion was denied, and it was ordered that the matter would proceed to a fair hearing, as scheduled, on February 18 and February 19, 2020. It was further ordered that a mandatory telephone conference would be held on February 3, 2020, at 4:00 p.m. to address prehearing issues. It was noted that if any party failed to participate in this telephone conference, the file would be returned to the transmitting agency for the appropriate action which may include imposition of the proposed penalty or granting the relief requested by the opposing party. The petitioners failed to participate in the February 3, 2020, telephone conference. On February 5, 2020, an initial decision/dismissal was filed for the petitioners' failure to appear without an explanation for their nonappearance.

By its final decision No. 89-20, issued March 20, 2020, the New Jersey Commissioner of Education remanded this matter to the OAL, under Docket No. EDU 03608-20, for further disposition based upon the petitioners' "timely written explanation stating that they did not appear at the February 3, 2020, conference because they did not receive adequate notice of the call." Upon remand, this matter was scheduled for a peremptory hearing on October 7, 2020.

On September 17, 2020, the respondent informed this Administrative Law Judge that all records requested (R-1 at R0001-R0936) had been turned over to the petitioners with a request that the petitioners formally withdraw their petition. On October 4, 2020, the petitioners filed a motion to compel discovery and to adjourn the October 7, 2020, peremptory hearing. Accordingly, that hearing date was converted to oral argument on the petitioners' motion. By letter order, dated October 7, 2020, the petitioners' motion

was denied, and the matter was scheduled for a peremptory hearing on December 17, 2020, pursuant to the amended prehearing order.

On December 4, 2020, the petitioners filed a “certification in support of motion to compel discovery (reconsideration).” With this, the petitioners requested that this Administrative Law Judge review and reconsider the previously denied motion to compel discovery and seek the same relief as in their prior application. By letter order, dated December 11, 2020, the petitioners’ application for reconsideration of the motion that was previously denied was denied as untimely, pursuant to the amended prehearing order. The matter was ordered to proceed to a peremptory hearing on December 17, 2020, at 10:00 a.m., utilizing the ZOOM platform.

At 9:39 a.m., on December 17, 2020, the petitioners requested to adjourn the hearing that was to commence at 10:00 a.m. The respondent submitted their objection at 9:45 a.m. and the parties were directed to appear, via ZOOM, at 10:00 a.m. At that time, the petitioners formally requested an adjournment of the hearing to allow them time to submit their request for interlocutory review of their recently denied motion to compel discovery. The motion was granted, over the respondent’s objection as the petitioner was still in time to request interlocutory review, pursuant to N.J.A.C. 1:1-14.10.

On January 4, 2021, the Acting Commissioner of the New Jersey Department of Education denied the petitioners’ request for interlocutory review and the matter was ultimately heard virtually on February 9, 2021. The record remained open for the receipt of closing submission and the record closed.

### **FACTUAL DISCUSSION AND FINDINGS**

C.H. testified on behalf of the petitioners. C.H. and S.H. are the parents of the minor children, S.H., S.H. and C.H. The petitioners allege that the respondent denied access to the student records of their three children. Specifically, the petitioners requested:

All email correspondence between myself, teachers, administrators and staff pertaining to or including reference to any of my children, SH, SH, CH, September 2009 through present [November 21, 2017]

Petitioners request that the records be released at no cost to them.

Through her testimony, C.H. conceded receiving the over nine hundred pages of emails provided by the District in September 2020. (R-1 at R0001-R0936.) These documents were provided to the petitioners at no cost.

**Shannon N. DuBois-Brody** (DuBois-Brody), testified on behalf of the respondent. She has been employed by the District for eighteen and one-half years and presently serves as the District's Business Administrator and Secretary to the Board of Education. The District is a small rural district (Pre-Kindergarten through eighth grade) consisting of approximately three hundred students. None of the petitioners' children are presently in the district.

DuBois-Brody has been the District's Records Custodian since 2018 and was responsible for overseeing the fulfillment of the petitioners' records request. She assigned the email search task to Christopher Pierce through the District's shared service agreement with Salem Community College's IT Department.

DuBois-Brody reviewed the search parameters utilized (R-2) and all of the emails produced through the search. (R-1 at R0001-R0936.) Based upon this review, she determined that the emails produced were fully responsive to the petitioners' request. Copies of all of the emails were provided to the petitioners at no cost. (R-1 at R0001-R0011.)

**Christopher Pierce** (Pierce) testified on behalf of the respondent. He has ten years of IT experience and provides services to the District through a shared services agreement. In the present matter, Piece conducted the search utilizing the District's old serve as well as their newer cloud based server. He conducted the email search utilizing

the parameter dates of September 1, 2009, through November 21, 2017. Every mailbox on the servers was searched. None were excluded. The parameters are fully detailed in R-2. All emails responsive to the search are included in R-1 at R0001-R0936 and all of those emails were provided to the petitioners in .pst and .pdf formats.

Credibility is best described as that quality of testimony or evidence which makes it worthy of belief. The Supreme Court of New Jersey considered the issue of credibility in In-re Estate of Perrone, 5 N.J. 514 (1950). The Court pronounced:

Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances.  
[5 N.J. at 522.]

In order to assess credibility, the witness' interest in the outcome, motive or bias should be considered. Furthermore, a trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

Having considered the testimonial and documentary evidence presented, I accept the testimony offered by DuBois-Brody and Pierce to be very credible and highly persuasive. Their testimony was free of any histrionics and they exhibited no ulterior motive. They clearly described their respective roles in the search in question. All of their testimony was corroborated by the documentary evidence. Neither of them had anything to gain from testifying. Accordingly, I **FIND** the testimony of both Dubois-Brody and Pierce as **FACT**.

### **LEGAL ANALYSIS AND CONCLUSION**

The petitioners bring this action seeking "All email correspondence between myself, teachers, administrators and staff pertaining to or including reference to any of



my children, SH, SH, CH, September 2009 through present [November 21, 2017]”. Now they argue that the documents provided did not include all emails between counsel and the District relative to her three children. These were not included in their original request.

I **CONCLUDE** that based upon petitioner’s original request, the District established appropriate, detailed search parameters. I **CONCLUDE** that the District conducted a fulsome, responsive email search and that the complete fruits of that search were provided to the petitioners at no cost and that the petitioners acknowledge receipt of the same. Accordingly, I **CONCLUDE** that the petitioners failed to show that the District withheld any document that were originally requested.

### **ORDER**

Based upon the foregoing, it is hereby **ORDERED** that this matter is **DISMISSED**.

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.



September 29, 2021 \_\_\_\_\_

DATE

\_\_\_\_\_  
**JEFFREY R. WILSON, ALJ**

Date Received at Agency: \_\_\_\_\_

Date Mailed to Parties: \_\_\_\_\_

JRW/tat

**APPENDIX**

**WITNESSES**

**For Petitioner:**

C.H.

**For Respondent:**

Shannon DuBois-Brody

Christopher Pierce

**EXHIBITS**

**For Petitioners:**

None

**For Respondent:**

- R-1 Emails provided to petitioners (R0001 – R0936)
- R-2 Search parameters for email search (R0397 – R0938)
- R-3 Not in Evidence
- R-4 Not in Evidence
- R-5 Not in Evidence
- R-6 Not in Evidence
- R-7 Not in Evidence
- R-8 Prehearing Order, dated September 24, 2020, (R0947 – R0952)
- R-9 Shannon DuBois-Brody - Curriculum Vitae (R0953 – R0954)
- R-10 Christopher Pierce – Curriculum Vitae (R0955- - R0956)