

New Jersey Commissioner of Education

Final Decision

A.M., on behalf of minor child, N.M.,

Petitioner,

v.

State-Operated School District of the City of Camden,
Camden County,

Respondent.

Synopsis

Pro se petitioner sought documentation showing that his daughter was authorized to attend school outside of the school district in which she resides. Petitioner further sought to have N.M. attend school in Winslow Township where she resides. The respondent Board filed a motion to dismiss, arguing that it provided the entire student record to A.M. in November 2023. The Board further moved to dismiss the remainder of the petition, asserting that the Office of Administrative Law does not have jurisdiction over the issue of N.M.'s school enrollment.

The ALJ found, *inter alia*, that: petitioner and C.W., N.M.'s mother, have joint custody of their daughter; petitioner asserted that N.M. attends Yorkship Family in respondent's school district because her mother works at the school; petitioner seeks to have N.M. attend school in Winslow Township where she resides; the Board contends that A.M.'s request for his daughter's student record is moot, as it has previously been released to the petitioner in its entirety; N.M.'s school placement is governed under the joint custody order; petitioner acknowledges that he received some records from the respondent Board but contends that the record was incomplete and inaccurate; however, objections to the content of a school record must be raised in accord with *N.J.A.C. 6A:32-7.7*, which has not been occurred in this case; further, the custody agreement between N.M.'s parents expressly identified circumstances that, if changed, could require a review of the appropriate school for N.M., and such review would be before the Superior Court Judge who issued the custody agreement. The ALJ concluded that neither petitioner's claim regarding his daughter's school records nor the issue of what school N.M. should attend are properly before the Office of Administrative Law. Accordingly, the ALJ granted the Board's motion to dismiss the petition.

Upon review, the Commissioner concurred with the ALJ's findings and conclusions, and adopted the Initial Decision of the OAL as the final decision in this matter and dismissed the petition.

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.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

GRANTING MOTION TO DISMISS

OAL DKT. NO. EDU 08522-23

AGENCY DKT. NO. 205-7/23

A.M. ON BEHALF OF MINOR CHILD, N.M.,

Petitioner,

v.

**CITY OF CAMDEN, STATE-OPERATED
SCHOOL DISTRICT, CAMDEN COUNTY,**

Respondent.

A.M., petitioner, pro se

Caitlin Pletcher, Esq., for respondent (Florio, Perrucci, Steinhardt, Cappelli,
Tipton & Taylor, LLC, attorneys)

Record Closed: March 12, 2024

Decided: March 27, 2024

BEFORE **JUDITH LIEBERMAN**, ALJ:

STATEMENT OF THE CASE

Petitioner A.M. seeks his daughter's school records and documentation showing that his daughter was authorized to attend school outside of the school district in which she resides. He also contends that his daughter is enrolled in a school that is not located

in her home school district and seeks to have her attend school in the school district in which she resides.

Respondent, State-Operated School District of the City of Camden, Camden County (respondent or “Camden District”), filed a motion to dismiss in which it argues that petitioner’s request for documents is moot because it provided the entire student record. It also moved to dismiss the remainder of the petition because it asserts that the Office of Administrative Law does not have jurisdiction over the issue of the child’s school enrollment.

PROCEDURAL HISTORY

On July 14, 2023, petitioner filed a petition with the Commissioner of the Department of Education (Commissioner). The matter was transmitted to the Office of Administrative Law (OAL), where it was filed on August 30, 2023. The matter was assigned to me on October 11, 2023. During November 15, 2023, and December 11, 2023, status conferences, the parties discussed the voluntary production of school records to petitioner by respondent. On December 11, 2023, respondent was granted leave to file a motion to dismiss. Its motion was filed December 20, 2023. Petitioner’s brief in opposition to the motion was filed on January 24, 2024, and respondent’s reply brief was filed on February 8, 2024. Additional information was requested from respondent on March 4, 2024. That information was received on March 12, 2024.

FACTUAL DISCUSSION

The following is undisputed for the purpose of this motion.¹ I therefore **FIND** the following as **FACT**:

¹ “Because the matter arises on defendants’ motion to dismiss, [the court must] accept as true the facts alleged in the complaint. . . . Plaintiffs are entitled to every reasonable inference in their favor.” Craig v. Suburban Cablevision, Inc., 140 N.J. 623, 625–26 (1995) (citations omitted); see also Maeker v. Ross, 219 N.J. 565, 569 (2014).

1. Petitioner's daughter is N.M. Petitioner and N.M.'s mother, C.W., have joint custody of N.M.²
2. N.M. attended Yorkship Family School (Yorkship) in the Camden District at the time petitioner filed his petition. R-B ("Pet.") at 1.
3. On October 4, 2023, Hon. Frank C. Testa, J.S.C., Superior Court of New Jersey, Chancery Division, Family Part, Camden County, issued an Order that addressed issues related to A.M. and C.W.'s custody of N.M. The Order directed, in part, that N.M. "shall remain in her current school if not in conflict with school administration requirements." R-C.
4. N.M. attended Yorkship when Judge Testa issued this Order. R-A.³
5. On December 3, 2023, Samantha L. Price, Esq., general counsel and acting chief of staff for the Camden District, sent an email to petitioner in which she wrote that the District previously gave N.M.'s thirty-nine-page student file to A.M. Price wrote that the file included the following documents:
 - Parent/Guardian Emergency Contact forms
 - Parent/Guardian Media Consent Form
 - Student Acceptable Use Policy⁴

[R-D.]

² Petitioner attached emails to his petition in which he advised the principal of Yorkship Elementary School that he and N.M.'s mother share joint custody and that N.M. resides in the Winslow Township School District. He attached a document labeled "[N.M.] Joint Legal Custody doc.pdf"; however, the document was not included with the petition. The principal confirmed, via email, that N.M. was enrolled as a student at Yorkship School. See Emails of September 8, 2022, 8:00 a.m., and September 15, 2022, 11:11 a.m.

³ Respondent's Exhibit A includes N.M.'s report cards that document that she attended school there during the 2022–2023 and 2023–2024 school years.

⁴ The referenced documents were not included in the exhibit.

6. Price also attached the following documents to the email:

Non-resident tuition applications submitted for [N.M] to attend school in the District for the 2022–23 and 2023–24 school years. These records are maintained by our business officer, and that is why they were not part of the intital packet of information sent to you by the school coueselor, Ms. Sheared.

[Ibid.]

7. Ms. Price asked petitioner to advise if he believed any documents from N.M.'s file were missing. Ibid.
8. On March 11, 2024, Ms. Price certified that she is responsible for overseeing the production of students' records to parents. She also certified that the Camden District provided N.M.'s "full student record" and has not withheld any of N.M.'s records. R-E.

Parties' Arguments

Petitioner asserts in his petition that his daughter attends Yorkship even though she does not reside within its district because his daughter's mother is employed by Yorkship and his daughter's aunt was previously its principal. He further asserts that these relationships are the reason he has not received all his daughter's school records. He seeks to have his daughter attend school in her home district, Winslow Township.

Respondent argues that petitioner's request for production of N.M.'s student file is moot because it has already provided her entire record. In support of this, it cites Ms. Price's December 3, 2023, email. It supplemented the record with Ms. Price's certification, in which she explained that the District produced all records related to N.M.

Respondent also argues that the OAL does not have jurisdiction over petitioner's request that N.M. be permitted to attend school in Winslow Township, as any such relief may be granted by only the Superior Court, Family Division. Respondent asserts that

petitioner previously sought this relief from the Superior Court, Family Division. It cites the October 4, 2023, Order issued by Judge Testa as authority for its position.

In response to the motion to dismiss, petitioner contends that Judge Testa's Order is contingent upon satisfaction of school administration requirements and that the school district and State Department of Education are required to "ensure that policies are being adhered to" when a "[n]on-resident student [is] attending a school outside of the district" where she resides. Pet'r's Br. at 1. He seems to argue that N.M.'s mother improperly enrolled N.M. at Yorkship and that school personnel failed to prepare or require the appropriate documentation to permit N.M. to attend school there. He claims that the Camden District has "overlooked" violations of "school administration procedures and policies" because N.M.'s mother's sister, T.T., was the principal of Yorkship.⁵ Ibid. He seeks an investigation by the Department of Education "to determine if all school administration policies and procedures have been adhered to in order for . . . [N.M.] to remain in attendance at Yorkship Elementary School as a non-resident student." Id. at 7.

With respect to the production of N.M.'s school records, petitioner acknowledges that on November 21, 2023, the District sent records to him by email. Id. at 2; P-B.⁶ He asserts, however, that there were duplicate documents and that the following mandatory records were not included:

- Immunization records.
- Parent guardian emergency contact forms for the 2018–2019, 2020–2021, 2021–2022, and 2023–2024 school years.
- Media consent forms for the same school years.
- Forms or documents that were completed using the Genesis system and stored under the "Forms" and "Documents" tabs of the program.

⁵ Petitioner also suggests that there is a conflict of interest due to the familial relationship and "unethical behavior" because a school principal "did not know the specifics of the tuition application" and was not "truthful" about it. Id. at 4–5.

⁶ The school counselor sent the documents to petitioner and described them as "cumulative folder records for [N.M.]." Ibid.

- Tuition applications for non-resident students for the 2020–2021 and 2021–2022 school years.
- The August 29, 2022, and November 17, 2023, applications are incomplete because they are not signed and approved by the school business administrator.
- Documentation of the approval of waivers.
- Proof of N.M.’s mother’s residence.⁷

LEGAL ANALYSIS AND CONCLUSION

Pursuant to R. 4:6-2,⁸ when a motion to dismiss is made based on failure to state a claim upon which relief can be granted, if “matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment[.]” Summary decision may be granted “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.” N.J.A.C. 1:1-12.5(b).

The standard for granting summary judgment (decision) was discussed by the New Jersey Supreme Court:

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 himself [or herself] to weigh the evidence and determine the truth of the

⁷ Petitioner asserts that “[t]here is a conflict with the addresses provided by [N.M.’s] mother” and seems to contend that she used a false address to show residence within the Camden District. He further seems to allege that the District accepted improper proof of her residence. Id. at 5.

⁸ N.J.A.C. 1:1-1.3 permits the OAL to look to the court rules for guidance.

matter but to determine whether there is a genuine issue for trial.”

[Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995) (quoting Anderson v. Liberty Lobby, 477 U.S. 242, 249 (1986)).]

R. 4:46-2(c) provides further guidance:

An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.

Student Records

N.J.S.A. 18A:36-19 provides for the promulgation of regulations governing the release of students’ records:

The State Board of Education shall provide by regulation for the creation, maintenance and retention of pupil records and for the security thereof and access thereto, to provide general protection for the right of the pupil to be supplied with necessary information about herself or himself, the right of the parent or guardian and the adult pupil to be supplied with full information about the pupil, except as may be inconsistent with reasonable protection of the persons involved, the right of both pupil and parent or guardian to reasonable privacy as against other persons and the opportunity for the public schools to have the data necessary to provide a thorough and efficient educational system for all pupils.

The corresponding regulation, N.J.A.C. 6A:32-7.5, provides, in pertinent part:

(a) Only authorized organizations, agencies, or persons, as defined in this section, shall have access to student records, including student health records.

.....

(c) Each district board of education shall control access to, disclosure of, and communication regarding information

contained in student health records to assure access only to people permitted by Federal and State statute and regulations or as stated at (e) below.

(d) Access to, and disclosure of, a student health record shall meet the requirements of the Family Education Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g and 34 CFR Part 99.

(e) Organizations, agencies, and persons authorized to access student records shall include only the following:

1. The student who has the written permission of a parent and the parent of a student under the age of 18, regardless of whether the child resides with the parent, except pursuant to N.J.S.A. 9:2-4;^[9]

....

(g) In complying with this section, district boards of education and charter school and renaissance school project boards of trustees shall adhere to the requirements pursuant to the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 et seq., and the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 CFR Part 99.

Pursuant to N.J.A.C. 6A:32-7.7, parents (and adult students) have the right to examine student records and to challenge those records “on grounds of inaccuracy, irrelevancy, impermissible disclosure, inclusion of improper information, or denial of access to organizations, agencies, and persons.” N.J.A.C. 6A:32-7.7(a). Such challenges may include requests for the “[i]nsertion of additional data, as well as reasonable comments regarding the meaning and/or accuracy of the student record[.]” N.J.A.C. 6A:32-7.7(a)(2). The regulation sets the procedures for such a challenge, starting with initial communication with the chief school administration, followed by an appeal to the district board of education and then to the Commissioner of the Department of Education. Jurisdiction and ultimate decision-making authority rest with the Commissioner of Education. N.J.A.C. 6A:32-7.7(b).

⁹ Concerning determinations of child custody.

Here, petitioner does not dispute the provision of records; however, he contests the accuracy of the student file and asserts wrongdoing with respect to an alleged failure to prepare certain documents. Objections to the content of the school record must be raised in accord with N.J.A.C. 6A:32-7.7. For this reason, I **CONCLUDE** that petitioner's claims about the content of the school record is not properly before the OAL.

School Attendance

N.J.S.A. 2A:34-8 provides that the Superior Court "shall have jurisdiction of all causes of divorce . . . when either party is a bona fide resident of this State. . . . The Superior Court may afford incidental relief as in other cases of an equitable nature and by rule of court may determine the venue of matrimonial and civil union actions." This statute "gives the Superior Court jurisdiction in all causes dealing with divorce, nullity, alimony and maintenance." Tellian v. Healy, 60 N.J. Super. 539, 543 (1960).

Attempts to modify a custody arrangement, whether agreed upon by the parties or ordered by the Superior Court, require "a showing of changed circumstances, with the court determining custody in accordance with the best interests standard of N.J.S.A. 9:2-4." Bisbing v. Bisbing, 230 N.J. 309, 322 (2017). Here, Judge Testa expressly identified a category of circumstances that, if changed, could require a review of the appropriate school for N.M. This issue must thus be brought to Judge Testa. For this reason, I **CONCLUDE** the OAL does not have jurisdiction over this issue.¹⁰

ORDER

For the foregoing reasons, I **ORDER** that respondent's motion to dismiss the petition is **GRANTED**.

¹⁰ The remainder of petitioner's claims, including claims of conflicts of interest, were not pled in the petition that was transmitted by the Department of Education to the OAL. They are thus not appropriate for disposition here.


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.

March 27, 2024

DATE



JUDITH LIEBERMAN, ALJ

Date Received at Agency: March 27, 2024

Date Mailed to Parties: March 27, 2024

JL/sg/sb/mg

APPENDIX

Exhibits

For petitioner:

- P-A Order, A.M. v. C.W., Docket No. FD-04-549-15, Hon. Frank C. Testa, J.S.C., October 4, 2023
- P-B Fax cover sheet with note, “contents of [N.M.’s] cumulative folder,” with attachments. Messages between S.A. and CHOP staff, December 13, 2023, through December 14, 2023
- P-C Non-resident tuition program applications, emails, address documentation
- P-D Student records
- P-E Report by New Jersey School Boards Association, “Boundary Lines,” November/December 2017, Volume 48, No. 3

For respondent:

- R-A Grade Interim Report, Yorkship Elementary School
- R-B Petition
- R-C Order, A.M. v. C.W., Docket No. FD-04-549-15, Hon. Frank C. Testa, J.S.C., October 4, 2023
- R-D Email correspondence, Samantha Price, Esq., to A.M., December 3, 2023
- R-E Certification of Samantha Price, Esq., March 11, 2024

174-24
OAL Dkt. No. 08522-23
Agency Dkt. No. 205-7/23

New Jersey Commissioner of Education
Final Decision

A.M., on behalf of minor child, N.M.,

Petitioner,

v.

State-Operated School District of the City of
Camden, Camden County,

Respondent.

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

Upon review, the Commissioner concurs with the Administrative Law Judge (ALJ) that petitioner has already been provided with a copy of N.M.'s student records, and that any challenge to the accuracy of those records must be made in accordance with the procedures outlined in *N.J.A.C. 6A:32-7.7*, which, to date, petitioner has not complied with. The Commissioner further agrees with the ALJ that the issue of N.M.'s school enrollment is governed by a custody order and any changes must be made by the Family Division of the Superior Court.

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

IT IS SO ORDERED.¹



ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 29, 2024

Date of Mailing: May 1, 2024

¹ 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.