

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

Jennifer Bard,

Petitioner,

v.

Board of Education of the Borough of Brielle,  
Monmouth 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 that, pursuant to *N.J.S.A. 18A:6-9*, the Commissioner's jurisdiction does not include disputes concerning the conduct of school elections.

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

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

  
ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 9, 2024  
Date of Mailing: December 11, 2024

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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**

**MOTION TO DISMISS**

OAL DKT. NO. EDU 02431-24

AGENCY DKT. NO. 2-1/24

**JENNIFER BARD,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE**

**BOROUGH OF BRIELLE,**

**MONMOUTH COUNTY,**

Respondent.

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**Jennifer Bard**, petitioner, pro se

**Cherie L. Adams, Esq.**, for respondent, Board of Education of the Borough of  
Brielle (Adams Lattiboudere Croot & Herman, LLC, attorney)

Record Closed: October 7, 2024

Decided: October 30, 2024

BEFORE **JOAN M. BURKE**, ALJ:

## **STATEMENT OF THE CASE**

Petitioner, Jennifer Bard, challenges the eligibility of a member of the respondent, Board of Education of the Borough of Brielle (BOE), and its actions taken during the school board election.

## **PROCEDURAL HISTORY**

On November 7, 2023, Liam Starkey (Mr. Starkey) was elected to the local BOE. Mr. Starkey was not on the ballot but received 111 write-in votes. The Monmouth County Board of County Canvassers certified the election results, and Mr. Starkey was seated on the BOE in January 2024. On January 3, 2024, the petitioner, Jennifer Bard (Ms. Bard, petitioner) filed a pro se petition of appeal with the Department of Education asking the Commissioner of Education (Commissioner) to investigate two claims about Mr. Starkey and his election to the BOE. On February 15, 2024, the respondent, the Borough of Brielle Board of Education, filed an Answer to the petition. The contested case was transmitted to the Office of Administrative Law (OAL), where it was filed on February 21, 2024. N.J.S.A. 52:14B-1 to N.J.S.A. 52:14B-15 and N.J.S.A. 52:14F-1 to N.J.S.A. 52:14F-13. After several conference calls, respondent filed a Motion to Dismiss on July 18, 2024. Petitioner submitted her response to the motion on August 20, 2024. A status conference was held on October 7, 2024, to clarify the parties' positions, and the matter closed then.

## **FINDINGS OF FACT**

The parties do not dispute many of the background facts in this case. I, therefore, **FIND** the following **FACTS**:

On January 3, 2024, the petitioner filed a pro se petition of appeal with the Department of Education, asking the Commissioner to investigate two claims about Mr. Starkey and his election to the BOE.

The petitioner claimed it was never verified that Mr. Starkey was eligible to be a candidate on election day. The petition alleges that Mr. Starkey was seventeen years old, too young to register to vote, and therefore ineligible to serve on a school board under New Jersey law. Ms. Bard claimed this is “potentially a legitimate but unintended loophole that if nothing else the state legislature might want to review” because “it’s not an equal playing field for all write-in candidates if some of them would have been eligible to petition for the ballot and some would not have been.” (See Petitioner’s Petition.)

Ms. Bard claimed that she heard from “dozens” of Brielle residents across all political affiliations about unsolicited political text messages pertaining to the school board election. (Ibid.) Ms. Bard alleged that they all were sent around 7:31 or 7:32 a.m. on the day of the school board’s election, speculating they were likely robo-texts as “defined by the FCC.” Ms. Bard did not claim to receive one of these texts herself. (Ibid.)

The petitioner took issue with these texts because they appeared to be linked to New Jersey Senator Vin Gopal’s campaign. The core of her complaint was that these messages were “potentially illegal” and undermined the “integrity” of the non-partisan school board. (Ibid.)

Ms. Bard provided two screenshots of texts messages, both from the same number. One is an incomplete image, and the only words that can be seen are “Hi Ronald! This is Jessie volunteering with the Gopal, . . . Donlon, and Peterpaul camp . . . . We have a very important . . . Election coming up in 10 day . . . .” The second says “There are only 2 candidates on the ballot today for 3 seats on the Brielle Board of Education. Please vote for Liam Starkey as a write-in candidate for the third seat. He will provide a young voice for the students. Text Stop to opt out.” (Ibid.)

On February 15, 2024, the respondent filed an Answer to the Petition and Affirmative Defenses. On July 18, 2024, the respondent filed a motion to dismiss the petitioner’s claim for lack of jurisdiction. The respondent argues that the petition must be dismissed for lack of jurisdiction on the following grounds: “1) authority over election enforcement rests with the superintendent of Elections and the Monmouth County Board of Elections, 2) the Commissioner of Education is statutorily prohibited from ruling on this

matter, and 3) the proper powers for hearing controversies and disputes concerning school board election results are exclusively reserved for Superior Court judges.” (Respondent’s Brief in Support of Motion to Dismiss at 2.)

The respondent further argues that it

[complied] with all relevant election laws and statutes. Pursuant to applicable provisions in N.J.S.A. 19:16 through N.J.S.A. 19:19, the Board forwarded election ballots and required documentation to the Monmouth County Board of County Canvassers. Pursuant to N.J.S.A. 19:20-9, the Canvassers then certified the election results of November 7, 2023, and Mr. Starkey, a write-in candidate, as the duly elected candidate to be seated on the Board of Education of the Borough of Brielle.

[Id. at 6.]

Mr. Starkey resigned from the Brielle Board of Education for unknown reasons on August 14, 2024.

On August 20, 2024, the petitioner sent a one-page email<sup>1</sup> to the OAL. (P-1.) On August 26, 2024, this tribunal sent an email to the petitioner inquiring if the email of August 20, 2024, was the petitioner’s response to the respondent’s Motion to Dismiss, to which the petitioner responded “Yes”<sup>2</sup>. (P-2.) In the petitioner’s response to the BOE’s motion to dismiss, she stated that even though Mr. Starkey had resigned, it was still “crucial” to pursue the case “to its full resolution.” She further states:

This matter is not merely about one candidate; it highlights a potential loophole in our election laws that could undermine the fairness of future elections if left undressed. Ensuring that all candidates meet the legal requirements to stand for election is fundamental to maintaining public trust in our democratic process.”

[P-1.]

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<sup>1</sup> For ease of reference this tribunal will mark the email as P-1.

<sup>2</sup> For ease of reference this tribunal will mark this email as P-2.

## **DISCUSSION AND CONCLUSIONS OF LAW**

The first issue is whether the Commissioner of Education and the Office of Administrative Law have jurisdiction to rule on school election controversies challenging the eligibility of a member of a BOE and the actions he took during the campaign. The second issue is whether the Commissioner of Education and the Office of Administrative Law have jurisdiction over campaign communications, specifically unsolicited text messages sent by a third-party political campaign.

The Commissioner of Education has jurisdiction over all disputes arising under school laws but has no jurisdiction over the procedural process of school elections.

The commissioner shall have jurisdiction to hear and determine, without cost to the parties, all controversies and disputes arising under the school laws, excepting those governing higher education, or under the rules of the State board or of the commissioner. For the purposes of this Title, **controversies and disputes concerning the conduct of school elections shall not be deemed to arise under the school laws.**

[N.J.S.A. 18A:6-9 (emphasis added).]

All “alleged violations of the procedural process for school elections” must instead be brought in Superior Court. City of Orange Twp. Bd. of Educ. v. City of Orange Twp., EDU 01996-17, Order for Emergent Relief (February 28, 2017), <<https://njlaw.rutgers.edu/collections/oal>>, dismissed for lack of jurisdiction. When a party brings a procedural election claim to the Office of Administrative Law, it must be dismissed because the “Superior Court is the proper forum.” City of Orange Twp. Bd. of Educ. v. City of Orange Twp., 451 N.J. Super. 310, 315 (Ch. Div. 2017).

Elections can be challenged on multiple procedural grounds, including that an “incumbent was not eligible to the office at the time of the election.” N.J.S.A. 19:29-1(b). These challenges “shall be heard” by the “Superior Court assigned to the county” where the election was held. N.J.S.A. 19:29-2. Election challenges are “commenced by the

filing of a petition . . . signed by at least 15 voters of the country or by any defeated candidate.” Ibid. The petition must be “verified by the oath of at least 2 of the petitioners, or by the candidate.” Ibid.

Notably, all election challenges must be brought no later than thirty-two days after the election, even when this allows an official to hold a position for which they might not be eligible. N.J.S.A. 19:29-3; see also Davis v. City of Plainfield, 389 N.J. Super. 424, 432 (Ch. Div. 2006); Jones v. Mitchell, 194 N.J. Super. 387, 392 (Law Div. 1983).

### **Challenging Starkey’s Eligibility**

There is no statutorily enumerated age requirement to serve on a board of education; however all members must be registered to vote in the district in which they serve, and citizens must be eighteen years old to vote. U.S. Const. amend XXIV, § 2; N.J.S.A. 18A:12-1. In 1973, a sixteen-year-old’s petition to run as a candidate for the school board was denied based on his age, and the Superior Court upheld the denial, reasoning that the legislature decided candidates not old enough to vote were not “qualified to occupy the office of board member.” Vittoria v. West Orange Bd. of Educ. 122 N.J. Super. 340, 357 (App. Div. 1973). Therefore, school board members must be eighteen years old to serve, but there is no case law addressing if a candidate needs to be eighteen by election day or by the beginning of their term.

The crux of the petitioner’s complaint is that if Starkey had petitioned to be on the ballot, he would have probably been deemed ineligible based on his age, and so instead, he skirted the law by mounting a write-in campaign. The complaint argues that he was probably ineligible to run for the school board on election day but admits that he may have been eligible through an unintended, but unfair, loophole. The petitioner does not claim that the BOE or the Commissioner committed any wrongdoing or violated any rules and even goes so far as to say that this is something the “state legislature might want to review.” Therefore, this is a procedural election claim beyond the authority of the Commissioner and the Office of Administrative Law. Because this is a statutory interpretation question about state election law procedure, I **CONCLUDE** that it must be brought before the Superior Court.

Furthermore, this claim is time-barred. The election was held on November 7, 2023, and the petitioner did not file the complaint until January 3, 2024. This was fifty-seven days after the election and twenty-five days past the statutory limit. N.J.S.A. 19:29-3. For this reason, I also **CONCLUDE** that this matter is time-barred.

### **Unsolicited Campaign Text Messages**

The petitioner also claimed that the unsolicited text messages were “potentially” linked to New Jersey Senator Vin Gopal’s campaign, which she felt “in addition to being potentially illegal . . . grossly undermines the integrity of the board.” As with the first claim, she does not allege any wrongdoing by the Commissioner or the BOE but rather by the Gopal campaign and the sender of the text messages. I therefore **CONCLUDE** that this is not a claim against the Commissioner or the BOE, and jurisdiction is improper.

### **ORDER**

Accordingly, and for the reasons articulated above, it is **ORDERED** that the motion of respondent Board of Education of the Borough of Brielle for an Order Granting Dismissal pursuant to N.J.S.A. 18A:6-9 is hereby **GRANTED**, and the petition of appeal is **DISMISSED**.

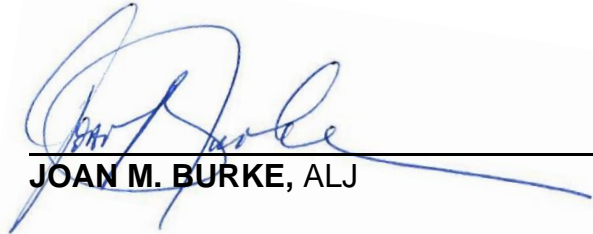
I hereby **FILE** this initial decision with the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified, or rejected by the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Acting 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 **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**. Exceptions may be filed by email to [ControversiesDisputesFilings@doe.nj.gov](mailto:ControversiesDisputesFilings@doe.nj.gov) or by mail to Office of Controversies and Disputes, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500. A copy of any exceptions must be sent to the judge and to the other parties.

October 30, 2024  
DATE

  
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**JOAN M. BURKE, ALJ**

Date Received at Agency:

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Date Mailed to Parties:

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JMB/sg/jm

**APPENDIX**

**Exhibits**

**For petitioner**

Pro se Petition of Appeal

P-1 Email Response to Motion to Dismiss, August 20, 2024

P-2 Email Response to OAL, August 26, 2024

**For respondent**

Brief in support of Motion to Dismiss with Exhibits 1–3