

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

T.B., on behalf of minor child, K.C.,

Petitioner,

v.

Board of Education of the Township of North  
Brunswick, Middlesex 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 (ALJ) that petitioner failed to file the petition of appeal within ninety days of the challenged decision as required by *N.J.A.C. 6A:3-1.3(i)*. *Kaprow v. Bd. of Educ. of Berkeley Twp.*, 131 N.J. 572, 582 (1993). Additionally, the Commissioner concurs with the ALJ that petitioner failed to state a claim upon which relief could be granted.

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.<sup>1</sup>



COMMISSIONER OF EDUCATION

Date of Decision: March 24, 2025  
Date of Mailing: March 26, 2025

<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 05918-23

AGENCY REF. NO. 134-5/23

**T.B. ON BEHALF OF MINOR CHILD K.C.,**

Petitioner,

v.

**TOWNSHIP OF NORTH BRUNSWICK  
BOARD OF EDUCATION, MIDDLESEX  
COUNTY,**

Respondent.

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**T.B.**, petitioner, pro se

**Aron G. Mandel**, Esq., for respondent (The Busch Law Group LLC, attorneys)

Record closed: February 10, 2025

Decided: February 24, 2025

BEFORE **JEFFREY N. RABIN**, ALJ:

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Petitioner T.B., on behalf of minor student K.C., appeals the decision by the respondent, Township of North Brunswick Board of Education (Board), not to accept K.C.

into its gifted and talented program and challenges the outcome of a Harassment, Intimidation and Bullying (HIB) investigation conducted by the Board in 2018–2019.

Petitioner filed a due process petition with the New Jersey Department of Education (DOE), Office of Controversies and Disputes (OCD), on May 9, 2023, which was transmitted to the Office of Administrative Law (OAL) and filed on July 3, 2023, as a contested matter. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. After a telephone conference, on or about September 23, 2023, respondent filed the within motion for summary decision. After various delays, the petitioner was given additional time to file a responsive motion brief. Petitioner failed to file a responsive brief, and the record was closed on February 10, 2025, for purposes of this motion.

### **FINDINGS OF FACT**

Based on the petitioner's petition and respondent's motion and brief, and for purposes of this motion for summary decision, I **FIND** the following to be the undisputed facts:

1. Petitioner enrolled her son, K.C., in respondent's school district for the beginning of the 2018–2019 school year. Petitioner alleged that K.C. was bullied on the first day of school in September 2018, but respondent did not receive any notice from petitioner as to any such incident, and its investigation pursuant to its HIB policy did not confirm petitioner's claim.
2. In January 2019, respondent advised petitioner that K.C. was not accepted into its gifted and talented program.

### **LEGAL ANALYSIS**

The issue is whether petitioner's due process petition should be summarily dismissed.

Petitioner failed to provide a responsive brief to respondent's motion for summary decision.

In respondent's motion brief, it was argued that petitioner's claims all failed substantively, but even if they were substantive, factually supported claims, petitioner's due process petition must be dismissed because it was filed in an untimely manner. The challenged events occurred in September 2018 and January 2019, but petitioner did not file her petition until May 2023, more than four years later.

Respondent correctly argues that the Commissioner's power to review a decision or action of a board of education is strictly limited to only those decisions or actions that are timely appealed to the Commissioner within ninety days of the challenged decision. N.J.A.C. 6A:3-1.3(i); Wise v. Bd. of Educ. of City of Trenton, 2000 N.J. AGEN LEXIS 462, \*8 (July 25, 2000); See also, N.J.S.A. 18A:37-15(b)(6)(e) (Also applying a ninety-day filing deadline to appeals of a Board's HIB investigation findings).

As petitioner filed her appeal more than four years after the challenged decisions or actions of the Board, said appeal was filed out of time, and respondent properly argued that it should be time-barred as a matter of law. Petitioner offered no explanation or good cause for her delay in filing, nor any legal exception to the ninety-day filing deadline.

I **CONCLUDE** that the within petition was filed more than ninety days after the challenged decisions and therefore is time-barred.

Second, respondent argued that this appeal should be dismissed because it failed to state a claim upon which relief could be granted by the Commissioner of Education. Petitioner's Petition of Appeal sought relief under the School Ethics Act. N.J.S.A. 18A:12-21 et seq. Yet this petition not only failed to sufficiently allege a specific violation of the School Ethics Act, but it was also not filed through the proper agency. Respondent correctly argued that only the School Ethics Commission, not the Commissioner of Education, has jurisdiction to grant relief related to alleged violations of the School Ethics Act. N.J.S.A. 18A:12-27. There are no other claims in the petition other than school ethics claims; petitioner's claim for relief under the Jacob K. Javits Gifted and Talented

Students Education Act of 1988, 20 U.S.C. 8031 et seq. (“Javits Act”) does not provide for any right to specific services or programs, much less a private right of action to enforce an alleged violation of the Javits Act in any forum, particularly in the form of a petition of appeal before the Commissioner of Education, because the Javits Act is a federal law providing funding for research and development programs.

Additionally, respondent effectively argued that even if petitioner was correct that her son should have been provided additional services as part of a program for gifted and talented students pursuant to N.J.A.C. 6A:8-3.1(5), she still would not be entitled to any relief here as a matter of law because petitioner withdrew her son from the Board’s schools in 2019. No viable claim of action for enforcement of gifted and talented education programs exists against a school from which a student has transferred, as the claim then becomes moot. Spivak v. Clark, 97 N.J.A.R.2d (EDU) 270 (N.J. Adm. 1996) (“ . . . enrollment in another school district destroys the concrete, immediate adversity necessary to sustain a justiciable controversy.”).

Finally, respondent stated that petitioner failed to state a claim for relief to have HIB records removed or modified that could be granted as a matter of law. To the extent the petitioner sought to challenge the outcome of a HIB investigation conducted by the Board in 2018–2019, that claim is time-barred. To the extent that petitioner only sought the removal of a HIB finding from her child’s student records, she has failed to state a claim under N.J.A.C. 6A:32-7.7(b), because she failed to seek such a modification of her son’s record from the Superintendent, much less to make a timely appeal of that decision to the Board, which are required as prerequisites to obtaining relief from the Commissioner of Education.

I **CONCLUDE** that petitioner failed to state a claim upon which relief could be granted.

**ORDER**

Respondent's motion for summary decision is hereby **GRANTED**, and the within 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.

February 24, 2025

DATE



JEFFREY N. RABIN, ALJ

Date Received at Agency:

Date Mailed to Parties:

JNR/cab

**APPENDIX**

**Briefs/Exhibits**

**For petitioner:**

Petition of Appeal

**For respondent:**

Motion and Brief, dated September 23, 2023