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OAL Dkt. No. EDU 17302-19

Agency Dkt. No. 287-10/19

## New Jersey Commissioner of Education

### Final Decision

T.D., on behalf of minor child, T.D.,

Petitioner,

v.

Board of Trustees of the Achieve Community  
Charter School, Essex County,

Respondent.

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

Upon such review, the Commissioner concurs with the Administrative Law Judge's determination – for the reasons stated in the Initial Decision – that the respondent's motion to dismiss should be granted. Accordingly, the Initial Decision is adopted as the final decision in this matter and the petition of appeal is dismissed.

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

COMMISSIONER OF EDUCATION

Date of Decision: 3/27/2020

Date of Mailing: 3/30/2020

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<sup>1</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36 (N.J.S.A 18A:6-9.1)*.



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

**INITIAL DECISION**

OAL DKT. NO. EDU 17302-19

AGENCY DKT. NO. 287-10/19

**T.D. ON BEHALF OF MINOR T.D.,**

Petitioner,

v.

**BOARD OF TRUSTEES OF THE  
ACHIEVE COMMUNITY CHARTER  
SCHOOL, ESSEX COUNTY,**

Respondent.

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T.D., petitioner, pro se

**Thomas O. Johnston**, Esq., for respondent (Johnston Law Firm, attorneys)

Record Closed: January 31, 2020

Decided: February 28, 2020

BEFORE **SUSANA E. GUERRERO**, ALJ:

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Petitioner filed a Petition with the New Jersey Department of Education, Office of Controversies and Disputes on October 24, 2019. Respondent, Board of Trustees of the Achieve Community Charter School (respondent or Board) filed a Motion to Dismiss In Lieu of an Answer on December 5, 2019. The matter was transferred to the Office of

Administrative Law (OAL), where it was filed on December 10, 2019 as a contested case.

A prehearing conference was held on January 15, 2020, at which time a briefing schedule was established to allow petitioner an opportunity to file an opposition to the respondent's Motion to Dismiss. During the prehearing conference, petitioner was given until January 24, 2020 to file an opposition to respondent's Motion to Dismiss. While he was offered additional time to file an opposition, he declined and insisted on the January 24, 2020 deadline. Respondent was given until January 31, 2020 to file a reply to any opposition to the motion. As of the date this order was signed, petitioner has not filed an opposition to the respondent's Motion to Dismiss and never contacted the undersigned to request additional time to file an opposition.

### **FACTUAL DISCUSSION**

Respondent filed a Motion to Dismiss in Lieu of an Answer seeking to dismiss the Petition on the basis that the Commissioner of Education lacks jurisdiction to address petitioner's claims.

Petitioner's son, T.D., is a student at Achieve Community Charter School (Achieve). Petitioner alleges that the Board improperly filed in T.D.'s school record a custody order dated April 17, 2019. According to respondent, this custody order was provided to the Board by T.D.'s mother, D.Q. Petitioner essentially alleges in the Petition that respondent improperly filed the custody order in T.D.'s school record "without due process and not with probable cause." The Petition asserts that the respondent's handling of the child custody order (referenced in the petition as "a petition") violates "New Jersey State and Supreme Law 18 U.S.C. § 241 as well as NJ Judiciary Rules of court." The Petition also appears to allege that the custody order is invalid and "excluded validated proof of registry of a certified issuance of a lawful judicial order furnished and stamped by an Essex County New Jersey clerk, a court issued affidavit signed by an Hon. Essex County Superior Court Judge in Support of such issuance in a court of record to be used after due process of law as probable cause for filing of such a claim."

The April 17, 2019 custody order attached to respondent's motion was signed by a New Jersey Superior Court Judge and reads in part: "NF shall not remove minor child from school or after school program without the consent of NM. NM shall notify the school on the day that NF can pick-up or remove the minor child from school."<sup>2</sup> The Order indicates that petitioner did not present to the hearing that resulted in the Order but was properly notified.

Respondent moves to dismiss this Petition on the basis that the Commissioner of Education lacks jurisdiction over this matter because the school laws do not bestow on the Commissioner authority to decide child custody matters, or to enforce child custody orders, and petitioner's claim is that the Board is not correctly complying with a child custody order. Moreover, the Board does not have the authority to disregard a custody order that is valid on its face, and the Commissioner does not have the authority to enforce or amend an order issued by the Superior Court. Respondent, therefore, asserts that the Petition should be dismissed.

### **LEGAL ANALYSIS AND CONCLUSION**

N.J.A.C. 3:1.10 provides, in relevant part:

At any time prior to transmittal of the pleadings to the OAL, in the Commissioner's discretion or upon motion to dismiss filed in lieu of answer, the Commissioner may dismiss the petition on the grounds that the petitioner has advanced no cause of action even if the petitioner's factual allegations are accepted as true or for lack of jurisdiction, failure to prosecute or other good reason. Id.

"To exercise jurisdiction over a dispute, an administrative agency must have specific legislative authority." Dolan v. Centuolo, Nos. A-2470-10T4, A-2710-10T4, at \*11 (App. Div. July 9, 2012), <http://njlaw.rutgers.edu/collections/courts/> (citing Archway Programs, Inc. v.

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<sup>2</sup> Respondent maintains that NF refers to petitioner and NM refers to the student's mother, D.Q. A copy of the custody order was attached to respondent's Motion to Dismiss.

Pemberton Twp. Bd. of Educ., 352 N.J. Super. 420, 426 (App. Div. 2002)). Pursuant to N.J.S.A. 18A:6-9, the Commissioner of Education

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 . . .

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

The issue here is whether the Petition advances a cause of action that falls within the Commissioner's jurisdiction if I accept petitioner's factual allegations (as expressed in the Petition) as true. Here, the Petition challenges respondent's handling of, and compliance with, a child custody order that, in part, limits his ability to pick up or remove his son, T.D., from school. The legal controversy here is not one that arises under the school law or State Board regulations, and the Petition does not cite to any school law that governs custody orders. While the Commissioner has broad authority over school-related matters, he does not have jurisdiction over child custody disputes, nor the authority to interpret, enforce, or determine the validity of child custody orders. Therefore, based on my review of the Petition, respondent's Motion to Dismiss, and applicable law, I **CONCLUDE** that, even if accepting as true all of petitioner's factual allegations, the Petition does not suggest any claim for which relief can be granted by the Commissioner of Education. For the foregoing reasons, I, therefore, **CONCLUDE** that the respondent's Motion to Dismiss should be **GRANTED**.

### **ORDER**

It is hereby **ORDERED** that respondent's Motion to Dismiss should be **GRANTED**. It is further **ORDERED** that the Petition 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.

February 28, 2020  
\_\_\_\_\_  
DATE

  
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**SUSANA E. GUERRERO, ALJ**

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

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

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