52-22

New Jersey Commissioner of Education

Final Decision

Brian Jasey,

Petitioner,

v.

Board of Education of the City of Newark, Essex County,

Respondent.

Synopsis

Pro se petitioner filed a petition of appeal against the respondent Board concerning the "Newark Enrolls" admission and enrollment policy for Newark's Science Park High School (Science Park). Petitioner alleged that the admissions process discriminates against male student applicants, in violation of the New Jersey Law Against Discrimination (NJLAD), *N.J.S.A.* 10:5-1 et seq. and *N.J.A.C.* 6A:7. Petitioner argued that the process unfairly denies male applicants admission to the school and sought, *inter alia*, to permit students previously denied admission the opportunity to transfer into Science Park. The Board filed a motion for summary decision, which was opposed by the petitioner.

The ALJ found, *inter alia*, that: there are no material facts at issue here, and the matter is ripe for summary decision; petitioner has twice previously challenged the "Newark Enrolls" centralized enrollment process, under which students are permitted to apply for admission to up to eight public schools in the district, after his son was not accepted to Science Park for seventh grade in the 2016-17 school year; a 2016 challenge by petitioner was dismissed on the merits, and a 2018 challenge – this time alleging that an unauthorized algorithm violated the transition plan for the return of local control to the Newark Public School District – was dismissed for failure to state a cause of action upon which relief could be granted; the instant petition is barred by the doctrine of *res judicata*; petitioner lacks standing to bring this action; and petitioner's claims should be dismissed as a matter of law because he has failed to demonstrate that the admissions policy is discriminatory or that the Board acted arbitrarily, capriciously or unreasonably in determining who to admit to Science Park. Accordingly, the ALJ granted the Board's motion for summary decision and dismissed the petition.

Upon review, the Commissioner, *inter alia*, agrees with the ALJ that this matter is barred by the doctrine of *res judicata*; petitioner's 2016 case had the same parties, cause of action, and issues as this matter, and *res judicata* therefore prevents re-litigation here. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter. The petition was dismissed.

52-22

OAL Dkt. No. EDU 10181-20
Agency Dkt. No. 201-9/20

New Jersey Commissioner of Education

Final Decision

Brian Jasey,

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v.

Board of Education of the City of Newark, Essex County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C.* 1:1-18.4 by the petitioner and the Board's reply thereto.

In this matter, petitioner challenges the Board's admissions and enrollment process for the Science Park High School (Science Park), alleging that the process discriminates against male applicants who are unfairly being denied admission, and seeks to permit them the opportunity to transfer into the school. Petitioner also requests that the Newark Enrolls admissions and enrollment policy be changed to guarantee that all available seats at Science Park are filled and awarded in accordance with an equity plan. Under Newark Enrolls, all students may apply for admission to up to eight public schools in the district, including charter schools. Criteria for admissions in the six magnet schools includes student grades, test scores, and attendance.

Students are provided with a "match letter," which indicates which school they will be enrolled in for a given school year.

In 2016, petitioner filed a petition on behalf of his son, alleging that his son was unfairly denied admission in the school due to racial and gender discrimination in the admissions process, as well as the failure of the school to apply sibling preference. Following a hearing on the merits, the Administrative Law Judge (ALJ) dismissed the petition, finding that petitioner failed to prove discrimination on the basis of race or gender. *B.J., on behalf of minor child, T.J. v. State-Operated School District of the City of Newark, Essex County, and Gabrielle Ramos-Solomon, Executive Director, Office of Student Enrollment*, Initial Decision, EDU 08133-16, dated April 23, 2018, *adopted by* Commissioner's Decision No. 166-18, dated June 1, 2018 (*Jasey I*). The ALJ found that while there was a higher percentage of girls than boys at Science Park, the admissions process is gender neutral and is reasonably based on grades, standardized test scores, and attendance. *Ibid.* The ALJ emphasized that petitioner did not present any reason beyond enrollment numbers and relative percentages of girls and boys in the student population to demonstrate the allegation of discrimination, which was not sufficient to support his claim. *Ibid.*

In 2018, petitioner filed another petition challenging the admissions process for Science Park, alleging that an unauthorized algorithm violated the transition plan for the return of local control to the Newark Public School District. The Commissioner dismissed this petition prior to transmittal to the OAL on the basis that it failed to state a cause of action upon which relief could be granted. *B.J. v. State-Operated School District of the City of Newark,*

Essex County, A. Robert Gregory, Angelica Allen McMillan, Kathleen Tierney, Commissioner's Decision No. 223-18LM, dated July 27, 2018 (*Jasey II*).

In the instant matter, the ALJ granted the Board's motion for summary decision and dismissed the petition. The ALJ found that: (1) the petition was barred by the doctrine of *res judicata*; (2) petitioner lacked standing to bring this action; and (3) petitioner's claims should be dismissed as a matter of law because he has failed to demonstrate that the admissions policy is discriminatory or that the Board acted arbitrarily, capriciously or unreasonably in determining who to admit to Science Park.[1]

In his exceptions, petitioner argues that the ALJ failed to address why 23 seats were left vacant at Science Park in both the 2019-20 and 2020-21 school years. Petitioner contends that since there was no "cutoff disqualifying admission criteria" that precludes students – such as student attendance, student GPA or student standardized test scores – the Board has committed acts of misfeasance or malfeasance by systematically victimizing students who were denied admission when seats were still available, without providing justification as to why seats were left vacant. Petitioner argues that the Superintendent and Board President have recognized that the failure to admit the allotted number of students in previous years was wrong and have since ensured that all seats were filled for the 2021-22 school year; additionally, the administration has instituted a waitlist policy for the magnet schools. In order to remedy past wrongdoing, petitioner urges the Commissioner to order that the Board identify and offer admission to 23 ninth grade applicants from both the 2019-20 and 2020-21 application pools so that those eligible students may transfer into Science Park.

[1] The ALJ relaxed the 90-day limitations period set forth in *N.J.A.C.* 6A:3-1.3(i) due to the nature of petitioner's claims.

In reply, the Board argues that petitioner's exceptions fail to address the reasons why the petition was dismissed by the ALJ: the doctrine of *res judicata*, petitioner's lack of standing, and his failure to provide any evidence of gender discrimination. Instead, the Board maintains that petitioner simply rehashes the points made in his petition and filings at the OAL and expresses disagreement with the Initial Decision. The Board also contends that petitioner's arguments regarding the Superintendent and Board President fail to demonstrate that the ALJ's grounds for dismissal of this matter were incorrect. Accordingly, the Board asks the Commissioner to adopt the Initial Decision.[2]

Upon review, the Commissioner[3] agrees with the ALJ that this matter is barred by the doctrine of *res judicata*. The doctrine prevents re-litigation of a case when there is "(1) a final judgment by a court of competent jurisdiction, (2) identity of issues, (3) identity of parties and (4) identity of the cause of action." *Selective Insurance Company v. McAllister*, 327 *N.J. Super.* 168, 172-73 (App. Div. 2000). The Commissioner is in accord with the ALJ that *Jasey I*, decided by the Commissioner in 2018, had the same parties, cause of action, and issues as this matter. In both cases, petitioner challenged the Newark Enrolls admissions and enrollment process as discriminatory. *Jasey I* determined that petitioner failed to present evidence of actual discrimination. In the instant matter, the ALJ addressed the merits and again found that the petition and moving papers fail to set forth evidence that the Board has discriminated against male Science Park applicants, and that petitioner instead bases this allegation solely on the

[2] The Board argues that the ALJ erred in relaxing the 90-day statute of limitations. The Commissioner notes, however, that the Board did not file exceptions to the Initial Decision, so such argument will not be further addressed.

[3] This matter has been delegated to the undersigned Assistant Commissioner pursuant to *N.J.S.A.* 18A:4-34.

number of female students enrolled at Science Park as opposed to male students. *Jasey I* found that such evidence is not sufficient to support a claim of discrimination because the admissions criteria – standardized test scores, grades, and attendance – are gender neutral, and such reasoning applies equally here.

The Commissioner does not find petitioner's exceptions to be persuasive. The ALJ addressed petitioner's argument regarding vacant seats in the Initial Decision, finding that the determination of the number of students to be enrolled is a discretionary one, and the Board is entitled to a presumption of validity. The Commissioner agrees with the ALJ that petitioner has failed to demonstrate that the Board's decisions concerning who to admit to Science Park, which are based on consideration of grades, standardized test scores, and attendance, are arbitrary, capricious, or unreasonable.[4]

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

IT IS SO ORDERED.[5]

ASSISTANT COMMISSIONER OF EDUCATION

Date of Decision: March 14, 2022
Date of Mailing: March 15, 2022

[4] The Commissioner will not address the issue of standing.

[5] 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 DECISON
OAL DKT. NO. EDU 10181-20
AGENCY DKT. NO. 201-9/20

BRIAN JASEY,
Petitioner,
v.
BOARD OF EDUCATION OF THE CITY OF NEWARK, ESSEX COUNTY,
Respondent.

Brian Jasey, petitioner, pro se

Brenda C. Liss, Esq., (General Counsel, Newark Board of Education), for respondent.

Record Closed: November 4, 2021 Decided: January 27, 2022

BEFORE **JULIO C. MOREJON**, ALJ:

STATEMENT OF THE CASE

Petitioner, Brian Jasey, (Jasey) a taxpaying resident of Newark, New Jersey, files a Petition of Appeal (petition), against Respondent, the Board of Education of the City of Newark, (Board) challenging the admission and enrollment policy of the Board concerning the Science Park High School (SPHS) and alleging that the same discriminates against

male students in violation of the New Jersey Law Against Discrimination (NJLAD), N.J.S.A. 10:5-1 et seq. and N.J.A.C. 6A:7.

PROCEDURAL HISTORY

On September 20, 2020, Jasey filed petition with the Commissioner of the Department of Education ("Commissioner"). The Board filed its answer on October 26, 2020. The matter was transferred to the Office of Administrative Law (OAL) and filed at the OAL on October 27, 2020, as a contested matter.

After transmittal to the OAL, with the Board's consent, Jasey filed an amended petition on January 21, 2021 and filed another amended petition on July 7, 2021.[1] The factual allegations and legal claims in the amended petitions are the same as those in the petition; only the requested relief is changed.

An initial telephone conference was held on December 10, 2020. A Prehearing Order was issued on December10, 2020. Telephone conferences were held on January 8, 2021. An Amended Prehearing Order was issued on January 15, 2021.

Telephone conferences were held again on March 2, 2021 and August 11, 2021, while the parties continued with pre-trial discovery and an attempt to settle the matter.

On August 11, 2021, the Board then asked for leave to file a motion for summary decision, which they filed on September 24, 2021. Jasey filed his opposition on October 15, 2021, and the Board filed its reply on October 22, 2021. Oral argument was held on November 4, 2021. A hearing is scheduled for February 10, 2022.

The underlying Initial Decision is submitted within the time allowed by Executive Order No. 127, as extended by N.J.S.A.26:13-32.

FACTUAL SUMMARY AND FINDINGS

[1] The initial petition and the two amended petitions will be referred to herein as "petition".

Jasey's alleges in the petition that the local, state, and federal tax dollar school funding received by the Board is being managed with misfeasance or malfeasance by Board administrators. Specifically, Jasey asserts that as a taxpayer, for the 2019-2020 and 2020-2021 academic years, the Board has committed acts of discrimination in admission and enrollment decisions against male students through its Newark Enrolls process and through the prejudicial admissions policy of the SPHS Principal Angela Mincy, in violation of the New Jersey Law Against Discrimination (NJLAD), N.J.S.A. 10:5-1 et seq. and N.J.A.C. 6A:7. Accordingly, Jasey alleges that qualified Newark male applicants that meet the criteria for admission to SPHS for 9th grade are being unfairly denied admission.

The Board filed its answer on October 26, 2020, in which it admitted that the Board's budget for the 2019-2020 and 2020-2021 school years assumed 200 and 240 seats for SPHS 9th graders, respectively. It denied most other allegations in the petition, including the allegation of discrimination.

The Board is a pre-K to 12 District. For the past several years, the Board has allowed all students to apply for admission to any public school in the district, including participating charter schools. Through its "Newark Enrolls" centralized enrollment process, students are permitted to apply for admission to up to eight public schools in the district. Jasey and his son, T.J., participated in this enrollment process in the 2015-2016 school year. At the time, T.J. was a sixth grader at Philips Academy Charter School. They applied for admission to only one school, SPHS, for his seventh-grade year, 2016-2017. T.J. was not accepted to SPHS.

Jasey filed a petition, caption, T.J. v. State-operated School District of Newark et al., OAL Dkt. EDU 08133-16 ("Jasey I") with the Commissioner seeking an order to compel the Board to enroll his minor son, T.J., in SPHS. Jasey contended that T.J. should be admitted to Science Park based on the sibling preference, because his brother, K.J., attended the school. Further, Jasey maintained that T.J. was denied admission to SPHS as the result of racial and gender discrimination in violation of N.J.S.A. 18A:36-20.

On April 23, 2018, following a hearing, an Administrative Law Judge (ALJ), dismissed the petition of Jasey I on the merits. Specifically, the ALJ concluded that Jasey failed prove by a preponderance of the evidence that the Board discriminated against T.J. on the basis of race or gender. With respect to gender, while the ALJ agreed that there was a higher percentage of girls than boys at SPHS, he held that the Board "demonstrated that [SPHS]'s admission criteria [were] gender neutral and reasonable in considering grades, standardized test scores and attendance." In contrast, the ALJ found that Jasey had failed to advance "any reason beyond the percentage of girls and boys to believe that there is actual discrimination." The Commissioner issued a final decision adopting the initial decision in full on June 1, 2018.

Jasey then filed a new petition, captioned B.J. v. State-Operated School District of the City of Newark et al., Agency Ref. No. 126-5/18 ("Jasey II") again challenging the SPHS admissions process. In this matter, Jasey alleged that the algorithm used in the Board's admissions process for the 2018-2019 violated the Transition Plan for the Return of Local Control to the Newark Public Schools ("Transition Plan"). The Board filed a motion to dismiss the action with the Commissioner prior to transmittal to the OAL, and the Commissioner granted the Board's motion and dismissed the petition with prejudice on July 27, 2018 for failure to state a cause of action upon which relief could be granted. Ibid.

Jasey now alleges that for the 2019-2020 and 2020-2021 school years, the Board has committed acts of discrimination in admission and enrollment decisions against male students through its Newark Enrolls process and through the prejudicial admissions policy of the SPHS Principal Angela Mincy, in violation of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq. and N.J.A.C. 6A:7. Accordingly, Jasey alleges that qualified Newark male applicants that meet the criteria for admission to SPHS for 9th grade are being unfairly denied admission.

The Board has now filed a motion for summary decision. At issue in the Board's motion for summary decision is whether (1) Jasey's petition is barred by the doctrine of *res judicata*; (2) Jasey lacks standing to present his claim; (3) the petition should be

dismissed as untimely; and (4) the petition should be dismissed because, as a matter of law, his claim must fail.

I FIND that the Board is a pre-K to 12 District. For the past several years, the Board has allowed all students to apply for admission to any public school in the district, including participating charter schools. Through its "Newark Enrolls" centralized enrollment process, students are permitted to apply for admission to up to eight public schools in the district.

I FIND that Jasey does not assert any claim on behalf of his son T.J., and that Jasey files this petition as a "tax paying resident of Newark, New Jersey, that is a member of Newark citizens that vote the BOE [Board of Education] members into their elected positions to carry out the will of the community in the public-school education of our children." (Brenda Liss Certification, Exhibit G).

I FIND the Board does not dispute that that there is a higher percentage of girls than boys admitted to SPHS. **I FIND** that Jasey's claim of gender discrimination is based on enrollment numbers and percentages. (Liss Certification, Exhibit H). **I FIND** that SPHS admitted 177 students for the 200 available spaces 9th grade seats in academic year 2019-2020; and 217 students for the 240 available 9th grade seats in academic year 2020-2021. (Id.)

I FIND that the Newark Enrolls universal enrollment system is governed by a Memorandum of Understanding ("MOU") between the Board and all charter schools participating in the system (known as "local education agencies" or "LEAs"). (Rochanda Jackson Certification, Exhibit A). The MOU in effect for the 2019-2020 and 2020-2021 school years (and, upon information and belief, all prior years in which the Newark Enrolls system has been in effect) describes the shared policies underlying the system. (Id.)

I FIND that students were informed of their school assignments for the 2019-2020 school year, by way of "match letters" issued in the Newark Enrolls enrollment process, on April 15, 2019. (Jackson Certification, ¶9); and they were informed of their school

assignments for the 2020-2021 school year, by way of "match letters," on May 20, 2020. (Id., ¶10).

DISCUSSION

A Motion for Summary Decision shall 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(a). If "a Motion for Summary Decision is made and supported, an adverse party in order to prevail, must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding." Ibid. A Motion for Summary Decision before the OAL must be analyzed, "in accordance with the principles set forth by the New Jersey Supreme Court in Brill v. Guardian Life Insurance Company of America, 142 N.J. 520, 540 (1995)." Nat'l Transfer v. New Jersey Dep't of Envtl. Prot., 347 N.J. Super. 401, 408 (App. Div. 2002). A determination that there is a genuine issue of material fact 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. Brill, 142 N.J. at 540-41.

In order to defeat the motion, the opposing party must establish the existence of genuine disputes of material fact relevant to the case. The facts upon which the party opposing the motion relies to defeat the motion must be something more than "facts which are immaterial or of an insubstantial nature, a mere scintilla, 'fanciful, frivolous, gauzy or merely suspicious.'" Brill. at 529 (citations omitted).

For the reasons discussed below, this matter is ripe for Summary Decision because the facts 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(a). Specifically, Jasey's Petition is barred by *res judicata*; he lacks standing as a taxpayer, and his claims fail as a matter of law. Jasey's Petition will not be dismissed for

untimeliness under N.J.A.C. 6A:3-1.3(i) because he has demonstrated that his claims implicate a compelling public interest which justifies relaxation of the 90-day rule.

The Board's motion alleges the following points as reasons for dismissal of the petition:

I. Jasey's Petition is Barred by the Doctrine of Res Judicata.

In support of its motion for summary decision, the Board first asserts that the petition must be dismissed on the basis of res judicata because Jasey is attempting to re-litigate the same claims alleging gender discrimination in enrollment decisions at SPHS, which were fully litigated and decided in Jasey I. In opposition, Jasey asserts that the current petition is not an attempt to re-litigate this claim, as he argues that he filed Jasey I as a parent, alleging that his son was entitled to enrollment based on an existing policy of sibling preference and that there was gender and race discrimination used in the SPHS admissions process that resulted in the low enrollment of Black males at SPHS. In contrast, Jasey now argues that the current petition, which he filed as a "taxpaying resident" of Newark, alleges wrongdoing by the Board administrators in the mismanagement of taxpayer funds as it relates to the enrollment of students at SPHS.

Res judicata "refers broadly to the common-law doctrine barring re-litigation of claims or issues that have already been adjudicated." Velasquez v. Franz, 123 N.J. 498, 505 (1991).; see also Selective Insurance Co. v. McAllister, 327 N.J. Super. 168, 172 (App.Div.), certif. denied, 164 N.J. 188 (internal quotations and citations omitted). At its core, the doctrine provides "that a cause of action between parties that has been finally determined on the merits by a tribunal having jurisdiction cannot be relitigated by those parties or their privies in a new proceeding." Velasquez, 123 N.J. at 505 (citing Roberts v. Goldner, 79 N.J. 82, 85 (1979)).

New Jersey courts have recognized that the judicial principles underlying collateral estoppel and other doctrines of issue preclusion, such as res judicata, serve important policy goals in both administrative law and judicial settings. See Hackensack v. Winner, 82 N.J. 1, 31-33 (1980); Ensslin v. Tp. of N. Bergen, 275 N.J. Super. 352, 369

(App.Div.1994) (noting that preclusion applies if agency decision was "rendered in proceedings which merit such deference"), certif. denied, 142 N.J. 446, (1995). The many benefits that flow from preclusion doctrines, such as "finality and repose; prevention of needless litigation; avoidance of duplication; reduction of unnecessary burdens of time and expenses; elimination of conflicts, confusion and uncertainty; and basic fairness" also "have an important place in the administrative field." Hackensack, 82 N.J. at 32-33.

Accordingly, **I CONCLUDE** that the doctrine of res judicata is clearly applicable to the within matter as to the decisions made by the Commissioner in Jasey I. For res judicata to apply, however, there must be "(1) a final judgment by a court of competent jurisdiction, (2) identity of issues, (3) identity of parties, and (4) identity of the cause of action." McAllister, 327 N.J. Super. at 172-173 (citing T.W. v. A.W., 224 N.J. Super. 675, 682 (App.Div.1988)).

As a threshold matter, **I CONCLUDE** here, a final judgement was rendered in Jasey I. After a three-day hearing and presentation of a full evidential record, the ALJ dismissed Jasey I, finding that Jasey failed to prove by a preponderance of the evidence that the Board discriminated against T.J. on the basis of race or gender in violation of N.J.S.A. 18A:36-20. With respect to gender discrimination, the ALJ in Jasey I specifically found, while it was clear that there was a higher percentage of girls than boys at SPHS, the Board "demonstrated that [SPHS]'s admission criteria [were] gender neutral and reasonable in considering grades, standardized test scores and attendance. In contrast, [Jasey did] not advance any reason beyond the percentage of girls and boys to believe that there is actual discrimination." Initial Decision. The Commissioner adopted the decision in its entirety.

I CONLUDE that there is also an identity of issues between Jasey I and the present action. Jasey I alleged the following two issues:

> (1) that Jasey's son, T.J., was denied rightful admission to SPHS despite a sibling preference entitlement that was afforded to all Newark families with a child already enrolled in the district. TJ's sibling was enrolled at SPHS at the time of TJ's application; and

(2) that T.J. was denied admission to SPHS as the result of racial and gender discrimination in violation of N.J.S.A. 18A:36-20.

Jasey, now asserts that the within petition "uniquely and independently revealed malfeasance or misfeasance by administrators in their dereliction of duty in denying qualified highly ranked Newark students their rightful admission entitlement to 23 budgeted SPHS 2019-2020 9th grader seats and 23 budgeted SPHS 2020-2021 9th grade seats, seats that were paid for by federal, state, and local taxpayer dollars." He now asserts these claims not on behalf of his son T.J., who has spent the last four years at a private high school and is preparing for college, but rather as a tax-paying resident of Newark.

I **CONCLUDE** that despite Jasey's characterization of the present claims, the crux of the issues in the two cases remain substantially the same: that SPHS's admissions and enrollment policies and practices discriminate against students based on gender. Jasey himself notes that the Board's wrongful acts in denying 46 qualified highly ranked Newark students to SPHS, with no legitimate explanation ever being offered, "is an identifiable means by which males were allowed to be systematically victimized and not considered for SPHS enrollment." (Jasey Opposition to the Board's Motion for Summary Decision ("Jasey Opp.") at 2.

I **CONCLUDE** that the parties here remain the same, and the causes of action remain substantially similar to the Jasey I matter. In Jasey I, Jasey sought an order, on behalf of his son to compel the Board to enroll his son, T.J., in SPHS, as well as other male students in the Newark school district who he alleged had been wrongfully denied admission based on the Newark Enrolls process. The current petition again seeks an order that requires the Board to enroll eligible male students at SPHS, now for the 2019-2020 and 2020-2021 school years, which does not include Jasey's son T.J.

In sum, I **CONCLUDE** that all the factors that must be present to apply res judicata are present here -- there was (1) a final judgment made by the Commissioner, (2) identity

of issues, (3) identity of parties, and (4) identity of the cause of action. As such, **I CONCLUDE** Jasey should be barred from bringing this petition by res judicata.

II. Jasey Lacks Standing to Bring The Withing Petition.

The Board argues that Jasey lacks standing because Jasey has brought this action solely based on his status as a taxpayer, rather than on behalf of his son, to challenge the SPHS admissions process, which is not enough to confer standing. In response, Jasey argues that he has standing to present this action because Newark taxpayers have a vested interest in the public education of the children of Newark.

New Jersey has “a venerable tradition of liberal application of standing criteria.” Crescent Park Tenants Ass'n v. Realty Equity Corp. of N.Y., 58 N.J. 98, 101, 107-11 (1971). N.J.S.A. 52:14B-8, the provision of New Jersey’s Administrative Procedure Act that permits any interested person to challenge the applicability of any statute or rule enforced or administered by an agency, is grounded in this long tradition. Further, unlike the Federal Constitution, there is no express language in New Jersey's Constitution which confines the exercise of the state’s judicial power to “actual cases and controversies.” See U.S. Const. art. III, § 2; N.J. Const. art. VI, § 1. As such, New Jersey "remains free to fashion its own law of standing consistent with notions of substantial justice and sound judicial administration." Salorio v. Glaser, 82 N.J. 482, 491 (1980). Individual justice must be weighed against the public interest, “always bearing in mind that throughout our law we have been sweepingly rejecting procedural frustrations in favor of just and expeditious determinations on the ultimate merits.” Crescent Park, 58 N.J. at 107-08 (internal quotations and citations omitted)

The "essential purpose" of the standing doctrine in New Jersey is to:

> …assure that the invocation and exercise of judicial power in a given case are appropriate. Further, the relationship of plaintiffs to the subject matter of the litigation and to other parties must be such to generate confidence in the ability of the judicial process to get to the truth of the matter and in the integrity and soundness of the final adjudication. Also, the standing doctrine serves to fulfill the paramount judicial

> responsibility of a court to seek just and expeditious determinations on the ultimate merits of deserving controversies.

[N.J. State Chamber of Commerce v. N.J. Election Law Enforcement Comm'n, 82 N.J. 57, 69, 411 A.2d 168 (1980).]

Despite New Jersey's liberal approach, courts nonetheless "[confine] litigation to those situations where the litigant's concern with the subject matter evidenced a sufficient stake and real adverseness." Crescent Park., 58 N.J. 98 at 107-108. The Supreme Court has made clear that it will not render advisory opinions or function in the abstract, nor will it entertain petitions by plaintiffs "who are 'mere intermeddlers,' or are merely interlopers or strangers to the dispute." Id. at 107. Courts are "required to balance conflicting considerations and weigh questions of remoteness and degree." Al Walker, Inc. v. Stanhope, 23 N.J. 657, 661 (1957). Litigants must have "a clear, identifiable, substantial, and real interest in the outcome of [a legal] challenge." Jen Elec., Inc. v. Cty. of Essex, 197 N.J. 627, 647 (2009). Furthermore, there must be a measurable, detrimental impact on the complaining party's personal rights (see Salorio, 82 N.J. at 491) and a substantial likelihood that the plaintiff will experience some harm if the court returns an unfavorable decision (N.J. State Chamber of Commerce, 82 N.J. at 67).

In this calculus, a "plaintiff's particular interest in the litigation in certain circumstances need not be the sole determinant. That interest may be accorded proportionately less significance where it coincides with a strong public interest." N.J. State Chamber of Commerce, 82 N.J. at 68 (citing Elizabeth Fed. Sav. & Loan Assn. v. Howell, 24 N.J. 488, 499 (1957)). As a result, New Jersey courts have held consistently that "slight private interest, added to and harmonizing with the public interest," sufficient to give standing to seek judicial review of official action. Elizabeth Federal S & L Ass'n v. Howell, 24 N.J. 488, 499 (1957) (internal quotations and citations omitted).

New Jersey's liberal application of standing is particularly salient in taxpayer suits. See Bell v. Stafford Tp., 110 N.J. 384, 390-91 (1988); Walker v. Stanhope, 23 N.J. 657, 130 A.2d 372 (1957). This is especially true with regards to exercises of legislative or quasi-legislative authority. New Jersey Turnpike Auth. v. Parsons, 3 N.J. 235, 239-41

(1949). This is based, in part, on the rationale that "taxpayers' suits [are] an effective means for restraining official misconduct." Haines v. Burlington Cty Bridge Comm., 1 N.J. Super. 163, 172 (App. Div. 1949. The New Jersey Supreme Court has long recognized "a broad right in taxpayers and citizens of a municipality to seek review of local legislative action without proof of unique financial detriment to them." Kozesnik v. Montgomery, 24 N.J. 154, 177 (1957)

New Jersey courts have found taxpayer intervention appropriate for certain government acts or alleged wrongdoing. See Driscoll v. Burlington Bridge Co., 8 N.J. 433, 474-476, cert. denied, 344 U.S. 838 (1952) (standing appropriate in cases "fraught with fraud and corruption"); Matlack v. Bd. of Chosen Freeholders, 191 N.J. Super. 236 (Super. Ct. 1982) (standing to challenge bond ordinance that improperly gave county discretion to purchase land development credits and illegally authorized the proceeds to be used for land purchases outside county); Koons v. Bd. of Comm'rs of Atlantic City, 134 N.J.L. 329 (Sup.Ct.1946),aff'd, 135 N.J.L. 204, 50 A.2d 869 (E. & A.1947)(standing appropriate ultra vires acts); Kozesnik, 24 N.J. at 177 (for zoning matters, landowners permitted to seek review of local legislative or quasi-judicial action without proof of unique financial detriment); L. Pucillo & Sons, Inc. v. Tp. of Belleville, 249 N.J. Super. 536, 592 A.2d 1218 (App.Div), certif. denied, 127 N.J. 551, 606 A.2d 364 (1991)(standing to challenge illegal billing procedures).

Courts have distinguished situations in which a taxpayer seeks to challenge government expenditures, for which standing has been conferred, versus cases in which the taxpayer seeks additional government expenditures, for which standing is not appropriate. See Nolan v. Fitzpatrick, 9 N.J. 477, 484, 89 A.2d 13 (1952) (standing to challenge wrongful expenditures by governing body). In Loigman v. Township Committee of the Tp. of Middletown, 297 N.J. Super. 287, 296 (App. Div. 1997), the Appellate Division examined whether a plaintiff taxpayer had standing to bring an action to enforce a collective negotiation agreement between a public employer and a public employee union. The court held that, "[w]hile permissible taxpayer suits generally seek to prevent municipalities from disbursing funds," the plaintiff taxpayer had no standing to sue because they were not a party to the labor contract and because they sought to enforce a contractual provision and require governmental expenditures. Id. at 296. In so holding,

the court contrasted the plaintiff's position to a case in which a taxpayer was deemed to have standing to challenge the legitimacy of the referendum which authorized salary increases of government employees. Ibid. (citing Theurer v. Borrone, 81 N.J. Super. 188, 193 (Law Div.1963)). The Court also expressed its concern that "[i]f individual taxpayers with multiple competing interests were able to bring suit in such situations, they could cripple the government's ability to function properly." Ibid.

In contrast, in Ridgewood Educ. Ass'n v. Ridgewood Bd., 284 N.J. Super. 427, 665 A.2d 776 (N.J. Super. 1995) the Appellate Division addressed whether two tenured part-time supplemental teachers employed by the local board of education, who were also residents and taxpayers of the city, had standing to challenge a newly adopted board policy. The board's policy limited employment of supplemental teachers to two consecutive years, and the two teachers sought a declaration from the Commissioner that the policy was arbitrary, capricious, and unreasonable. The ALJ found that the two teachers lacked standing as persons directly affected by the policy because they had acquired tenure and would be unaffected. These findings were adopted by the Commissioner and affirmed by state board.

The Appellate Division reversed, holding that the teachers had standing to challenge the new policy. The court found that, even to the extent their status as residents and taxpayers of the district was alone not sufficient to afford standing, which the court found to be "of questionable validity," they had standing by reason of their professional status and involvement. Ridgewood Educ. Ass'n, 284 N.J. Super. at 432. The court found that the teachers "must be seen as having satisfied any additional requirement that may exist for a 'slight private interest, added to and harmonizing with the general public interest.'" Id. at 433 (quoting Hudson Bergen County Retail Liquor Stores Ass'n v. Hoboken Board of Comm'rs, 135 N.J.L. 502, 510 (E. & A.1947)). The court found no reason "why this State's historic liberal approaches to the issue of standing in general should not apply to taxpayer suits challenging the quasi-legislative actions of local boards of education." Ibid. (internal citations omitted).

Finally, in People For Open Gov't v. Roberts, 397 N.J. Super. 502 (App. Div. 2008), the Appellate Division addressed whether plaintiff taxpayers, as individuals and as

members of an organization, had standing to challenge what they claimed to be a lack of enforcement of a city ordinance designed to curtail the nefarious practice of "pay to play," where individuals and companies are awarded municipal contracts as a reward for having made political contributions to municipal officials.

The court held that each of the individual plaintiffs had standing because they had clearly established "an abiding interest in the effective enforcement ordinance." Id. at 510. The court noted that the individual plaintiffs had been "personally involved" with the unsuccessful effort to have the city council enact meaningful pay-for-play legislation as well as the initiative which resulted in forcing the matter onto the ballot where it was overwhelmingly approved by the voters. Id. at 510-511. Under these circumstances, the court found that the individual plaintiffs had that "slight additional private interest coupled with the great public interest, in enforcement of the "pay to play" ordinance to provide the required standing to bring this action." Id. at 511 (internal quotations and citations omitted). The court noted that, under these circumstances, it did not need to decide whether "mere taxpayer" status alone would suffice.

Here, as the Board argues, Jasey seeks to implement a "better" and "less impactful" SPHS admission process. Jasey also seeks to compel the Board to fill all the "budgeted seats" at SPHS, which I **CONCLUDE** amount to Jasey inserting himself in the Board's right to administer its admissions policy through its Newark Enrolls process. As discussed in Loigman, I **CONCLUDE** Jasey is not merely challenging a district-wide policy and seeking to prevent the Board from disbursing funds, which would be sufficient to confer standing as a taxpayer, but rather, Jasey urges the undersigned to enter an order compelling SPHS to admit "qualified Newark male applicants that meet the criteria for admission to SPHS for 9th grade", which I **CONCLUDE** is not appropriate.

I CONCLUDE that if Jasey were deemed to have standing, the concerns expressed in Loigman would be present here, namely that this claim and similar ones could "cripple the government's ability to function properly." Loigman, 297 N.J. Super. at 296.

I CONCLUDE further, that Jasey lacks standing by nature of his taxpayer status alone. While Jasey I was filed on behalf of his son, a Newark public school student, his son has now spent the last four years at a private high school in preparation for college. Jasey now files this case as a taxpaying resident of Newark, with a "vested interest in the education of the children of [his] Newark community[.]" Jasey's petition seeks to vindicate the rights of all male student applicants to SPHS.

I CONCLUDE, that while Jasey alleges that Board administrators have committed "fraudulent waste . . . by their dereliction of duty by not appropriately allocating taxpayer dollars for their intended purpose in academic years 2019-2020 and 2020-2021, by leaving 46 budgeted SPHS freshman seats vacant at a cost to Newark residents of approximately $1,000,000 (46 x $22,000 cost per pupil), with no legitimate justification." Ibid; Jasey has failed to set forth any factual support for these allegations, as is required to challenge a motion for summary decision. Brill, 142 N.J. at 537.

Finally, despite New Jersey's liberal approach. Jasey's relationship to these allegations are too remote to confer standing. Al Walker, Inc. 23 N.J. 657 at 661, **I CONCLUDE** Jasey lacks the "clear, identifiable, substantial, and real interest in the outcome of [a legal] challenge." Jen Elec. 197 N.J. at 647. **I CONCLUDE** that while there is arguably a strong public interest in the admissions decisions of Newark's magnet schools, Jasey must still possess some "slight" private interest to afford him standing. See People For Open Gov't, 397 N.J. Super. at 511.

Jasey's motion opposition submitted herein, reveals that there is no measurable, detrimental impact on Jasey's personal rights (Salorio, 82 N.J. at 491), nor is there a substantial likelihood that Jasey will experience even some harm if an unfavorable decision is made (N.J. State Chamber of Commerce, 82 N.J. at 67), and I therefore **CONCLUDE**, as a result, that Jasey lacks standing, and the Board's motion maybe granted on that basis alone.

III. Jasey has demonstrated some compelling circumstances that justify relaxation of the ninety-day rule under N.J.A.C. 6A:3-1.3(i), despite the petition being untimely filed.

The Board asserts that Jasey's petition is untimely pursuant to N.J.A.C. 6A:3-1.3(i), which provides in pertinent part:

> The petitioner shall file a petition no later than the 90th day from the date of receipt of the notice of a final order, ruling, or other action by the district board of education, individual party, or agency, that is the subject of the requested contested case hearing. This rule shall not apply in instances where a specific statute, regulation, or court order provides for a period of limitation shorter than 90 days for the filing of a particular type of appeal.

[N.J.A.C. 6A:3-1.3(i)]

The Board alleges that for enrollment for the 2019-2020 school year, Newark Enrolls match letters were sent out on April 15, 2019, and for enrollment in the 2020-2021 school year, they were sent out on May 20, 2020. Jasey filed the within petition in this matter on September 17, 2020, which the Board asserts is well over 90 days from the date of each match letter and "therefore well out of time." Accordingly, the Board asserts that the petition is barred. In opposition, Jasey responded that the petition was filed "as soon as it became apparent to the Petitioner that an identifiable pattern of NBOE administrator misconduct had occurred."

The ninety-day period "gives school districts the security of knowing that administrative decisions regarding the operation of the school cannot be challenged after ninety-days." Nissman v. Bd. of Educ. of Twp. of Long Beach Island, Ocean Cty., 272 N.J. Super. 373, 380 (App. Div. 1994) (alteration in original) (quoting Kaprow v. Bd. of Educ. of Berkeley Twp., 131 N.J. 572, 582 (1993)). The purpose of the ninety-day rule is to stimulate litigants to pursue a right of action within a reasonable time, so that the opposing party may have a fair opportunity to defend. Id. at 587.

The rule furthermore exists to "penalize dilatoriness and serve as a measure of repose by giving security and stability to human affairs." Id. (quoting Farrell v. Votator Div. of Chemetron Corp., 62 N.J. 111, 115 (1973) (internal quotation marks omitted)). The notice requirement should effectuate concerns for individual justice by not triggering the

limitations period until a petitioner has been alerted to the existence of facts that may equate with a legal cause of action. Burd v. New Jersey Tel. Co., 76 N.J. 284, 291 (1978). At the same time, it should further considerations of repose by establishing an objective event to trigger the limitations period in order "to enable the proper and efficient administration of the affairs of government." Borough of Park Ridge v. Salimone, 21 N.J. 28, 48 (1956).

Under the rule, "[a]dequate notice must be sufficient to inform an individual of some fact that he or she has a right to know and that the communicating party has a duty to communicate." Kaprow, 131 N.J. 572 at 588; Notice that is "unofficial and informal" is "sufficient to trigger the ninety-day limitations period." Burd, at 281. It has been firmly recognized that attempts to resolve a claim through negotiations with the local board do not negate the receipt of adequate notice, nor do they toll the running of the limitations period. Kaprow, at 588; see also Giannetta v. Bd. of Educ. of the Twp. of Egg Harbor, OAL Dkt. EDU 357-10-04 Initial Decision, adopted, Comm'r (April 25, 2005).

In order for the 90-day period to run, a petitioner must have knowledge of their firm position, and of the respondent's "equally firm disagreement" with it. Bd. of Twp. of Waterford v. Bd. of Educ. of Twp. of Hammonton, OAL Dkt. Nos. EDU 6798-07 & EDU 8091-07, Comm'r of Educ. (March 24, 2008). The parties must be "undeniably at impasse" in which the aggrieved party has "no entitlement to subsequent intervention by the County Superintendent or Department [of Education]…" Bd. of Educ. of Mountainside v. Bd. of Educ. of Twp. of Berkeley Heights, OAL Dkt. No. 9700-06, Comm'r (January 17, 2008), affirmed at Bd of Educ. of Mountainside v. Bd of Educ. of Berkeley Heights, 2010 N.J. Super. Unpub. LEXIS 545.

Finally, the limitations period begins to run once a petitioner receives notice of the firm rejection of its claims, whether communicated formally or informally. Gloucester Bd. of Educ. v. Lenape Bd. of Educ, OAL Dkt. EDU 10120-98, Initial Decision, adopted and modified, Comm'r (Dec. 16, 1999)(rejecting the ALJ's recommendation and dismissing the petitioner's appeal as untimely after determining that the limitations period began when the respondent directed clear communications that it had no intention of paying the tuition of its resident students attending the petitioner's academy, and rejecting the ALJ's

contentions that a board's final action must be made formally by a resolution, minutes or otherwise).

The ninety-day rule may only be relaxed under exceptional circumstances or if there is a "compelling" reason to do so. Kaprow, 131 N.J. at 590. Certain cases are excepted from the rule, which include "cases involving (1) important and novel constitutional questions; (2) informal or ex parte determinations of legal questions by administrative officials; and (3) important public rather than private interests which require adjudication or clarification." Brunetti v. Borough of New Milford, 68 N.J. 576, 586 (1975).

Further, rules may be relaxed where strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice. See N.J.A.C. 6A:3-1.16. Although rare, relaxation of the 90-day rule has been deemed appropriate in situations for which there is a compelling public interest. Seitz v. Bd. of Educ. of Parsippany-Troy Hills, OAL Dkt. EDU 12821-11, Initial Decision (May 30, 2013), adopted, Comm'r (July 15, 2013), <http://njlaw.rutgers.edu/collections/oal/> (relaxing the ninety-day rule where a superintendent challenged whether his employment contract with the Board was lawfully approved and executed before a regulatory amendment capping superintendents' salaries came into effect); Bd. of Educ. of Mountainside v. Bd. of Educ. of Berkeley Heights, OAL Dkt. EDU 9700-06, Initial Decision (July 20, 2007), modified, Comm'r (January 17, 2008), <http://njlaw.rutgers.edu/collections/oal/> (relaxing the ninety-day rule where one school district which sent its students to another district pursuant to a sending-receiving relationship contended that it was overcharged for tuition over the years); Bey v. Bd. of Educ. of Newark, 93 N.J.A.R.2d (EDU) 288, 294 (finding that the ninety-day rule should be relaxed in an action certifying tenure charges against a teaching staff member who had been accused of mismanaging and misappropriating school funds entrusted to him in his capacity as school treasurer). However, the expenditure of public funds alone is not a sufficient public interest to justify a waiver or relaxation of the ninety-day rule. Elmwood Park Bd. of Educ. v. Farrell, 95 N.J.A.R.2d (EDU) 375, 378.

In the within matter, students and parents were notified of admissions decisions on April 15, 2019 for the 2019-2020 school year, and on May 20, 2020 for the 2020-2021

school year. Jasey initiated this matter on September 20, 2020, when his petition was filed with the Commissioner, which is beyond the ninety-day time frame that is required by law.

Jasey asserts that "[s]everal attempts were made . . . through normal channels of communication to alert [Board] officials of the miscarriage of justice that was jeopardizing the enrollment of qualified high ranking entitled Newark students admission to SPHS." Jasey Opp. at 5. He asserts further that when he did not receive a response or acknowledgement by Board officials, he "immediately filed this Petition as a whistleblower's last resort." Ibid. However, the Board has not adjusted its admission policies or practices since a decision was handed down in Jasey I , and I **CONCLUDE** that Jasey was thus on notice after admissions decisions were made for the 2019-2020 and 2020-2021 school years.

I **CONCLUDE** that Jasey's attempts to resolve his allegations with the Board do not negate the fact that he received adequate notice on both April 15, 2019 and May 20, 2020, at which time the tolling of the limitations period began. Kaprow at 587 (1993); Riely v. Hunterdon Central Bd. of Educ., 173 N.J. Super. 109 (App.Div.1980). I **CONCLUDE** that Jasey does not allege any facts that would have triggered the ninety-day period, other than the April 15, 2019 or May 20, 2020 dates, and I **CONCLUDE** that on that day, or at least soon thereafter, Jasey learned from the Board the existence of facts (i.e., the enrollment statistics) that would enable him to file a timely claim.

I **CONCLUDE** that despite Jasey's failure to comply with the requirements of the 90-day rule, under N.J.A.C. 6A:3-1.3(i), some conditions are present here that may warrant relaxation of the same. Namely, as discussed above, the expenditure of public funds alone is not a sufficient public interest to justify a waiver or relaxation of the ninety-day rule. Elmwood Park Bd., 95 N.J.A.R.2d (EDU) at 378, and the admissions policies and decisions of the Board's public schools are unquestionably an issue of compelling public interest that go beyond the interests of the two parties. Bogart v. Bd. of Educ. of East Orange, OAL Dkt. No. EDU 6248-02 (Jan. 26, 1983) adopted, Comm'r (March 14, 1983) (The ninety-day rule will be relaxed "only where there is come compelling reason

for the same, such as the presence of a substantial constitutional or other issue of fundamental public interest beyond that of concern only to the parties themselves.").

For these reasons, I **CONCLUDE** that since allegations of gender discrimination in admissions decisions and malfeasance of Board administrators are situations which arguably warrant the relaxation of the ninety-day rule, I will deny the Board's motion for summary decision on this claim.

IV. Jasey's Petition Should be Dismissed because as a Matter of Law, His Claims Fail.

Jasey first asserts that SPHS has committed acts of discrimination in the admission and enrollment process against qualified male applicants through the Newark Enrolls admission process and policy. In response, the Board argues that Jasey's claims are insufficient to sustain his claims of discrimination and must fail as a matter of law.

In addressing a claim of racial discrimination in public schools in Booker v. Bd. of Educ., 45 N.J. 161, 180 (1965), the New Jersey Supreme Court emphasized that:

> [T]he goal here is a reasonable plan achieving the greatest dispersal consistent with sound educational values and procedures. This brings into play numerous factors to be conscientiously weighed by the school authorities. Considerations of safety, convenience, time economy and the other acknowledged virtues of the neighborhood policy must be borne in mind. Costs and other practicalities must be considered and satisfied. And trends towards withdrawal from the school community by members of the majority must be viewed and combatted, for if they are not, the results may be as frustrating as the inaction complained about by the minority.

The same principles apply to allegations of discrimination under NJLAD, which has been interpreted to allow reasonable restrictions which promote important governmental objectives. In re Katherine Frey Dickerson, 193 N.J. Super. 353 (Ch.Div.1983). Similarly, the New Jersey Supreme Court has construed the law to "simply extend the New Jersey constitutional bases of proscribed discrimination in respect to student opportunities to

include gender in the education system." Hinfey v. Matawan Bd. of Educ., 147 N.J. Super. 201 (App.Div.1977), rev'd on other grounds 77 N.J. 514 (1978).

I **CONCLUDE** that Jasey's petition and his moving papers fail to set forth any evidence that the Board has and continues to discriminate against male SPHS applicants. Jasey bases this allegation purely on the number of female students enrolled at SPHS, as opposed to the number of male students. When presented with this issue in Jasey I, the ALJ found that the Board had demonstrated that its admission criteria are gender neutral, and that Jasey failed to advance any reason beyond stating the percentage of girls versus boys to prove that there was actual discrimination at play in SPHS' admission process. Initial Decision.

Further, Jasey I held that the Board had demonstrated that it utilized sound educational values and procedures in it admission criteria for magnet schools, including SPHS. Ibid. The Commissioner adopted the ALJ's findings in their entirety.

The material facts of the admissions process, Newark Enrolls, as outlined in detail in the ALJ's Initial Decision, remained true for the 2019-2020 and 2020-2021 school years. (Jackson Certification).

Jasey himself admits that admission to SPHS is a "merit-based system where all student applicants were ranked by a formula weighing each student's admission criteria of grades, standardized test scores, attendance record and high school entrance examination score." (Jasey Opp. at 2). I **CONCLUDE** that given the extensive findings in Jasey I together with the fact that the SPHS admissions process has not changed since Jasey I, I **CONCLUDE** that Jasey's claims must fail as a matter of law.

Jasey continues to rely solely on the number of female students enrolled at SPHS, as opposed to the number of male students, which I **CONCLUDE**, Jasey I made clear is simply not enough to sustain a claim of reverse gender discrimination. In his opposition, Jasey now denies that he is making a case for quotas or reverse discrimination – rather, he is "demanding fair and equal access to SPHS enrollment for all Newark students, regardless of gender, that applied to SPHS based on student merit, the NBOE Board

Member budgets, Superintendent approvals and documented SPHS ranking admission policies that were in place during the mentioned academic years." Jasey argues that by leaving 46 vacant seats the Board "unfairly created an arbitrary SPHS admissions "cutoff enrollment" that unjustifiably denied highly ranked qualified SPHS male applicants to their entitled admission in academic years 2019-2020 and 2020-2021. Ibid.

Jasey's argument fails to recognize that with respect to discretionary actions by any board of education, the scope of the Commissioner's review is not to substitute her judgment but rather to determine whether there was a reasonable basis for such action. Kopera v. Bd. of Educ., 60 N.J. Super. 288, 295-96 (App. Div. 1960), and therefore, I **CONCLUDE** that as permitted by N.J.S.A. 18A:38-4, the Board established its own rules and regulations relative to admission. Policy determinations made by local boards of education enjoy a presumption of validity that will not be disturbed absent a showing of arbitrary, capricious, or unreasonable action on the part of the board. Bd. of Educ. of Colts Neck v. Bd. of Educ. of Freehold Reg'l High Sch. Dist., 270 N.J. Super. 497, 505 (App. Div. 1994). An "'action of the local board which lies within the area of its discretionary powers may not be upset unless patently arbitrary, without rational basis or induced by improper motives.'" Parsippany-Troy Hills Educ. Ass'n v. Bd. of Educ. of Parsippany-Troy Hills, 188 N.J. Super. 161, 167 (App. Div. 1983) (quoting Kopera, 60 N.J. Super.at 294)).

For these reasons, I **CONCLUDE** that the Board may utilize its discretion when dealing with matters involving magnet school admission, curriculum, attendance, and other related areas so long as it is rationally based and free from any arbitrary action. The record reveals that the process here is governed by a MOU between the Board and the local educational agencies. (Jackson Cert. at 2).

I **CONCLUDE** that the proofs presented herein reveal that the Board followed its Newark Enrolls process in determining who to admit to SPHS for the 2019-2020 and 2020-2021 school years by considering grades, standardized test scores and attendance, and that Jasey has failed to set forth any new evidence that the Board's decisions were arbitrary or capricious, as is his burden. As such, I **CONCLUDE** that Jasey's claims fail as a matter of law.

ORDER

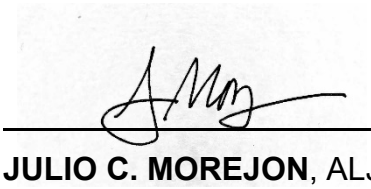
IT IS hereby **ORDERED** that for the reasons set forth herein, the Board's motion for summary decision is **GRANTED** and Jasey's petition filed herein are **DISMISSED**, as to the following issues: 1) Jasey's petition is barred by the doctrine of res judicata; (2) Jasey lacks standing to present his claim; and (3) the petition should be dismissed as a matter of law, as Jasey will fail in his claim.

IT IS hereby **ORDERED** that for the reasons set forth herein, the Board's motion for summary decision is **DENIED** as to the issue that Jasey did not file the petition in a timely manner.

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.



January 27, 2022
DATE

JULIO C. MOREJON, ALJ

Date Received at Agency: January 27, 2022

Date E-Mailed to Parties: January 27, 2022

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APPENDIX

LIST OF WITNESSES

For Petitioner:

None

For Respondent:

None

LIST OF EXHIBITS

For Petitioner:

P-1 Opposition Brief to Summary Decision Motion and exhibits

For Respondent:

R-1 Notice of Motion and Certification of Service
R-2 Brief in support of motion for summary decision
R-3 Certification of Brenda C. Liss, Esq., with exhibits
R-4 Certification of Rochanda Jackson with exhibits
R-5 Sur-reply