

294-23

OAL Dkt. No. EDU 03234-23

Agency Dkt. No. 99-4/23

New Jersey Commissioner of Education

Final Decision

T.H., on behalf of minor child, A.E.,

Petitioner,

v.

Board of Education of the City of Jersey City,
Hudson County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), and the exceptions filed by petitioner pursuant to *N.J.A.C. 1:1-18.4*, have been reviewed and considered. The Jersey City Board of Education (Board) did not file a reply.

This matter involves petitioner's request for her daughter, A.E., to be transferred to the Bayonne school district at the Board's expense because the Board allegedly failed to comply with A.E.'s 504 Plan.¹ Petitioner initially sought relief on an emergent basis, which was denied by the Commissioner in May 2023. Subsequently, the Board filed a motion to dismiss the underlying petition for failure to state a claim upon which relief may be granted.

After reviewing the parties' submissions, the Administrative Law Judge (ALJ) granted the Board's motion upon concluding that petitioner's request lacked legal support. Citing

¹ "504 Plan" refers to Section 504 of the Rehabilitation Act of 1973 as amended, codified at 29 U.S.C. § 794, a federal law that protects qualified individuals from discrimination based upon their disability.

N.J.S.A. 18A:38-1(a), which entitles persons between ages five and twenty to attend public school free of charge in the school district where they are domiciled, the ALJ found that it was undisputed that petitioner and A.E. are domiciled in Jersey City. Therefore, the ALJ concluded that A.E. is entitled to attend public school free of charge in Jersey City, not in Bayonne. In addition, the ALJ concluded that there is no legal basis to compel the Board to pay for A.E. to attend school in Bayonne.

In her exceptions, petitioner argues—as she did before the ALJ—that the Board should pay for A.E. to attend school in Bayonne because it has failed to comply with A.E.’s 504 Plan. However, her claims regarding the Board’s violation of the 504 Plan are unsubstantiated.² Furthermore, she does not dispute the fact that she and A.E. are domiciled in Jersey City.

Upon review, the Commissioner adopts the ALJ’s Initial Decision as the final decision in this matter. The Commissioner concurs with the ALJ that there is no legal basis under State school laws to compel the Board to pay for A.E. to attend school in Bayonne.³

² In connection with the May 1, 2023, order denying petitioner’s application for emergent relief, adopted by the Commissioner, the ALJ found as undisputed fact that petitioner agreed to an initial 504 Plan for A.E. on November 2022, and agreed to revisions on February 17, 2023, and March 15, 2023. *T.H., on behalf of minor child, A.E. v. Board of Education of the City of Jersey City, Hudson County*, OAL Dkt. No. EDU 03234-23, Agency Dkt. No. 99-4/23, Order on Emergent Relief (May 1, 2023), at 2. In addition, the ALJ found as undisputed fact that the only recent incident alleging a health and safety issue involved A.E. visiting the nurse on March 31, 2023, due to dizziness and nausea. *Id.* at 3. Petitioner expressed concern that the nurse did not call her directly on that date, but instead told A.E. to call her. *Ibid.* In any event, while on speaker phone with A.E., petitioner directed the nurse to administer A.E.’s medication. *Ibid.* The ALJ concluded that “[t]he only genuine 504 Plan health safety issue was resolved without hospitalization or apparently any medical follow-up.” *Id.* at 5. Finally, the ALJ held that “[t]here is no support for petitioner’s assertions that A.E.’s schoolwork or grades have been impacted by violation of her 504 Plan.” *Id.* at 5-6. The ALJ incorporated these factual findings into the Initial Decision presently before the Commissioner. *T.H., on behalf of minor child, A.E. v. Board of Education of the City of Jersey City, Hudson County*, OAL Dkt. No. EDU 03234-23, Agency Dkt. No. 99-4/23, Initial Decision (August 18, 2023), at 2.

³ As petitioner continues to rely upon various federal laws to support her position, she is reminded that the Commissioner’s jurisdiction is limited to the hearing and deciding of controversies and disputes arising under State school laws in accordance with *N.J.S.A.* 18A:6-9.

Accordingly, the Board's motion is granted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.⁴


ANGELINA ALLEN McMILLAN, J.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 29, 2023

Date of Mailing: October 2, 2023

⁴ 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.

New Jersey Commissioner of Education

Final Decision

T.H., on behalf of minor child, A.E.,

Petitioner,

v.

Board of Education of the City of Jersey City,
Hudson County,

Respondent.

Synopsis

Pro se petitioner sought emergent relief against respondent, the Jersey City Board of Education (Board or Jersey City), demanding a “federal audit” of her daughter’s school records to verify the appropriateness of A.E.’s academic placement, as well as an out of district placement for her at Bayonne High School at the Board’s expense. Petitioner alleged that Jersey City failed to implement and execute A.E.’s “Section 504 Plan” (Section 504 of the Rehabilitation Act of 1973 as amended, codified at 29 U.S.C. § 794, a federal law that protects qualified individuals from discrimination based upon their disability). Emergent relief was denied, and thereafter the Board filed a motion to dismiss for failure to state a claim upon which relief may be granted.

The ALJ found, *inter alia*, that: there is no dispute that petitioner and her daughter are domiciled in Jersey City; pursuant to *N.J.S.A.* 18A:38-1, A.E. is entitled to a free public education in Jersey City schools; there is no factual basis to show that petitioner is a resident of Bayonne or falls within any exception, such as a choice school district, that would allow A.E. to attend Bayonne High School at Jersey City’s expense; the Bayonne Board of Education is not party to this case and there is nothing to indicate that Bayonne has agreed to allow A.E. to attend as a non-resident student pursuant to *N.J.A.C.* 6A:22-2.2. The ALJ concluded that there is simply no legal support for petitioner’s demand that A.E. be allowed to attend school in Bayonne at Jersey City’s expense because of the Board’s alleged failures regarding her 504 Plan. Accordingly, the ALJ granted the Board’s motion and dismissed petitioner’s appeal with prejudice.

Upon review, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter. In so doing, the Commissioner concurred with the ALJ that there is no legal basis under state school laws to compel the Board to pay for A.E. to attend school in Bayonne. The petition was dismissed.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION ON

MOTION TO DISMISS

OAL DKT. NO. EDU 03234-23

AGENCY DKT. NO. 99-4/23

T.H. ON BEHALF OF A.E.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE
CITY OF JERSEY CITY, HUDSON COUNTY,**

Respondent.

T.H., on behalf of A.E. petitioner pro se

Cherie L. Adams, Esq., for respondent Board of Education of the City of Jersey City
(Adams, Gutierrez and Lattiboudere, attorneys)

Record Closed: August 7, 2023

Decided: August 18, 2023

BEFORE **GAIL M. COOKSON**, ALJ:

Petitioner T.H. (petitioner or T.H.) filed a Petition of Appeal with the Department of Education on or about April 14, 2023, seeking emergent relief against the Board of Education of the City of Jersey City (Jersey City or District) in the form of a (1) “federal audit” of her fourteen-year-old daughter A.E.’s records to verify proper academic placement; and, (2) an out-of-district placement for her at Bayonne High School with tuition paid for by Jersey

City for alleged failure to implement and execute A.E.'s Section 504 Plan, 34 C.F.R. §104.36.

The New Jersey Department of Education, Office of Controversies and Disputes, transmitted only the Application for Emergent Relief to the Office of Administrative Law (OAL) on or about April 17, 2023. The matter was assigned to the undersigned for oral argument and was scheduled for April 24, 2023. On that date, discussions were held off-the-record, and the matter was continued until April 28, 2023, in order to allow counsel for the District the opportunity to consult with her client because the prior week had been spring break. Oral argument was held on April 28, 2023, and thereafter, I issued an Order denying the requested emergent relief on May 1, 2023. The Commissioner affirmed that denial and returned the case to the OAL for a hearing on the underlying merits petition.

Thereafter, the District filed a Motion to Dismiss for the failure of petitioner to state a claim upon which relief may be granted. Briefs and other submissions have been presented and the motion is now ripe for adjudication. I adopt and incorporate my earlier findings as if set forth at length herein. While petitioner is not represented and did not present legal arguments opposing the motion, I have carefully reviewed the applicable law.

LEGAL DISCUSSION AND CONCLUSIONS OF LAW

For the reasons set forth below after due consideration of the written submissions, I **CONCLUDE** that petitioner's request for her daughter to be transferred to a different public school at District expense must be **DENIED**.

On a motion to dismiss for failure to set forth a claim upon which relief may be granted, I must accept all the allegations as true and decide whether they are sufficient as a matter of law. I must grant such a motion where the petition fails to properly assert a cause of action upon which the Commissioner may grant relief. N.J.A.C. 6A:3-1.10(a). See Bank Leumi USA v. Kloss, 243 N.J. 218, 229 (2020); R. 4:6-2. These same principles are applicable at the OAL. City of Hackensack v. Winner, 82 N.J. 1, 29 (1980). A motion

to dismiss or for summary decision constitutes a hearing on the papers; i.e., stands in place of an evidentiary hearing.

Petitioner asserts that the District's alleged failures as to her daughter's 504 Plan entitles A.E. to attend school in Bayonne at the expense of the Jersey City Board of Education. I **CONCLUDE** that there is no legal support for this demand.

N.J.S.A. 18A:38-1 states in relevant part:

Public schools shall be free to the following persons over five and under 20 years of age: a. Any person who is domiciled within the school district; . . .

There is no dispute that the petitioner and A.E. reside at 271 4th Street, Jersey City, New Jersey. There is also no dispute that Jersey City is petitioner's domicile. Accordingly, there are simply no facts presented that show the petitioner is a resident of Bayonne or falls within any exception that would allow A.E. to attend Bayonne at Jersey City's expense (such as a choice school district). While a local board of education has the discretion to admit non-resident students with or without payment of tuition with the consent of the board of education of that district, N.J.A.C. 6A:22-2.2, there is no indication that the Bayonne Board of Education has agreed to allow A.E. to attend as a non-resident student either with or without tuition. This regulation also establishes that acceptance of non-resident students is voluntary on the part of the other district. Further, Bayonne Board of Education is not a party hereto.

Petitioner may seek to obtain tuition-free enrollment from Bayonne; she may pay for out-of-district tuition for her daughter in Bayonne; or, she is free to move into that District. But she is not free and has no legal basis to force this District to provide a free public education in a separate and distinct public school district.

ORDER

For the reasons set forth above, it is **ORDERED** that petitioner's petition is and the same is hereby **DENIED** and the matter 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.



August 18, 2023
DATE

GAIL M. COOKSON, ALJ

Date Received at Agency:

8/18/23

Date Mailed to Parties:
id

8/18/23