

New Jersey Commissioner of Education

Final Decision

W.D., on behalf of minor child, O.L.,

Petitioner,

v.

Board of Education of the Township of
Montgomery, Somerset County,

Respondent.

Synopsis

Pro se petitioner W.D. sought to have her son, O.L., a rising sophomore in respondent Board's school district, enrolled in Advanced Placement Calculus BC (AP Calculus BC) for the 2023-2024 school year. Petitioner asserted that the decision of the Board to place O.L. in Advanced Placement Calculus AB (AP Calculus AB) instead of the desired course was a violation of the Strengthening Gifted and Talented Education Act, *N.J.S.A. 18A:35-34 et seq.* Petitioner filed a motion for emergent relief in this matter but withdrew the motion at the hearing on July 7, 2023; the case proceeded on a non-emergent basis. 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 in this case, and the matter is ripe for summary decision; O.L. has taken advanced math courses since the fifth grade, took Honors Precalculus as a ninth grader, and qualified for AP Calculus in tenth grade; and O.L. does not meet the prerequisites for enrollment in the AP Calculus BC class, which require that the student be a rising junior or senior who has earned an honors precalculus grade average above 94%, as well as a teacher recommendation to enter the course. The ALJ concluded that the Board is entitled to prevail in this matter as O.L. does not meet the prerequisites for the desired class, and petitioner has failed to show that the Board's decision was arbitrary, capricious, or induced by any improper motive. Accordingly, the ALJ granted summary decision to the Board and dismissed the petition.

Upon review, the Commissioner concurred with the ALJ's findings and conclusions. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, for the reasons stated therein. The petition was dismissed.

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

New Jersey Commissioner of Education

Final Decision

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v.

Board of Education of the Township of
Montgomery, Somerset County,

Respondent.

The record of this matter and the 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 that the Montgomery Board of Education's decision to enroll O.L. into the Advanced Placement Calculus AB course rather than the Advanced Placement Calculus BC course was not arbitrary, capricious, or unreasonable.

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

IT IS SO ORDERED.¹


ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 8, 2023
Date of Mailing: December 8, 2023

¹ 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 GRANTING

SUMMARY DECISION

OAL DKT. NO. EDU 05614-23

AGENCY DKT. NO. 170-6/23

W.D. ON BEHALF OF MINOR

CHILD O.L.,

Petitioner,

v.

BOARD OF EDUCATION OF

THE TOWNSHIP OF MONTGOMERY,

Respondent.

W.D., petitioner, pro se

Stephen R. Fogarty, Esq., for respondent (Fogarty & Hara, attorneys)

Record Closed: August 30, 2023

Decided: November 6, 2023

BEFORE **KIM C. BELIN**, ALJ:

STATEMENT OF THE CASE

W.D., the petitioner, (W.D. or petitioner) seeks to have her son, O.L., enrolled in Advanced Placement Calculus BC (AP Calculus BC) for the 2023-24 school year and asserts that the decision of the respondent, the Board of Education of the Township of

Montgomery, Somerset County (respondent or Board) not to do so violates the Strengthening Gifted and Talented Education Act, N.J.S.A. 18A:35-34 et seq.

PROCEDURAL HISTORY

Petitioner filed a petition seeking emergent relief dated, June 16, 2023, to have her son enrolled in the respondent's AP Calculus BC class for the 2023-24 school year. The matter was transmitted as a contested case to the Office of Administrative Law (OAL) where it was filed on June 22, 2023. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The respondent filed its answer, dated June 29, 2023. A hearing was held on July 7, 2023, where the petitioner voluntarily withdrew her emergent petition and elected to proceed as a non-emergent contested matter.

Respondent submitted its answer, dated July 17, 2023, to petitioner's due process petition. Respondent submitted a motion for summary decision (motion) on August 21, 2023, and the petitioner submitted her opposition to the respondent's motion on August 22, 2023. Oral Argument on the motion was held on August 30, 2023, where the respondent renewed its motion at the end of the petitioner's case in chief. This tribunal issued an oral decision granting respondent's motion on August 30, 2023.

FACTUAL DISCUSSION AND FINDINGS

The following **FACTS** are undisputed and I, therefore **FIND**:

1. W.D. and O.L. reside in Montgomery Township. O.L. is a rising sophomore at high school. He has taken advanced math courses starting in the fifth grade.
2. Respondent oversees the operation of the Montgomery Township School District. (Certification of Mary E. McLoughlin, dated August 14, 2023, ¶4.)
3. O.L. took Honors Precalculus as a ninth grader, and qualified for AP Calculus class in tenth grade.

4. The respondent offers three AP Calculus courses: AP Calculus AB, C and BC. (Exhibit E, McLoughlin Certification.)
5. For the 2023-24 school year, O.L. was registered for the AP Calculus AB course. (Exhibit D, McLoughlin Certification.)
6. The respondent's Program of Studies describes the AP Calculus AB course in this manner:

This course is essentially calculus Advanced Placement AB as described in the course outline published by the College Entrance Examination Board. It covers limits, derivatives, and applications of both algebraic and transcendental functions as well as methods and applications of integration. The approach used is that of combining the essentials of the theory with practical applications. A strong background in Honors Precalculus will be required from the beginning of the course, and students will be expected to understand the concepts taught in class, as well as to transfer them to novel applications and problem-solving situations. This course is equivalent to a first semester college calculus course. Graphing calculators are required.

Prerequisite: 85% in full school year Precalculus Honors course OR 95% in full school year Precalculus course OR 80% in full school calculus course. (Exhibit E, McLoughlin Certification.)

7. The respondent's Program of Studies describes the AP Calculus BC course in this manner:

This course is essentially the College Board Calculus BC curriculum. Students will master material covering two semesters of a college calculus program. Students selected to take this course may elect to take an AP test in math with the possibility of earning one or two semesters' credit at colleges and universities that participate in the College Board program. The course outline is the combination of the Calculus AB description and Calculus C listed above. Students will be expected to understand the

concepts taught in class as well as transfer them to novel application[s] and problem-solving situations. Graphing calculators are required.

Prerequisite: open to students in grades 11 and 12 with Precalculus Honors average over 94% and teacher recommendation. (Ibid.)

8. The respondent's Program of Studies describes the AP Calculus C class in this manner:

"Taught as a continuation of Calculus AB, this course covers additional techniques of integration, polar coordinates, series, applications of integrals, parametric graphing and differential equations. The emphasis is on theory and problem-solving techniques. A strong background in AP calculus AB will be required from the beginning of the course, and students will be expected to understand the concepts taught in class, as well as to transfer them to novel applications and problem-solving situations. This course is equivalent to a second semester college calculus course. Graphing calculators are required.

Prerequisite: 80% in AP Calculus AB, taken over a full school year. (Ibid.)

9. O.L. is a high-achieving student in math but does not qualify for the respondent's gifted and talented education program (GATE).
10. O.L. earned a final grade average of 93.6 in Honors Precalculus, which was rounded up to 94%. (Id. at ¶24; Exhibit J.)
11. O.L. does not have a teacher recommendation to take the AP Calculus BC course as required. (Id. at ¶26.)
12. Enrollment in the AP Calculus AB course is intended to be followed up by taking the AP Calculus C class in the following year which affords the student a two-year sequence of in-depth study of calculus. (Respondent's Brief in Support of its Motion for Summary Decision, p. 7.)

13. The AP Calculus AB – C sequence is intended for students seeking high-level post-secondary educational opportunities and ultimately, careers in science, technology, engineering and math (STEM)-related fields. (McLoughlin Certification, ¶14.)
14. Students enrolled in the AP Calculus BC course will not cover all the topics included in the AP Calculus AB – C sequence of classes. (Id. at ¶13; Exhibit F, McLoughlin Certification.)
15. The respondent offers only one section of the AP Calculus BC class. (McLoughlin Certification, ¶12.)
16. There are additional opportunities for O.L. to enhance his calculus studies beyond the AP Calculus AB class through independent projects with teachers and/or other activities offered by the respondent. (McLoughlin Certification, ¶21; Exhibit I.)

LEGAL ANALYSIS AND CONCLUSIONS

A motion for summary decision may be granted if the papers and discovery presented, as well as any affidavits which may have been filed with the application, show that there is no genuine issue of material facts, and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). If the motion is sufficiently supported, the non-moving party must demonstrate by affidavit that there is a genuine issue of fact which can only be determined in an evidentiary proceeding, to prevail in such an application. (Ibid.)

These provisions mirror the summary judgment language of R. 4:46-2(c) of the New Jersey Court Rules.

The motion judge must “consider whether competent evidential materials presented, when viewed in the light most favorable to the non-moving party . . . are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party.” Brill v. Guardian Life Insurance Company of American, 142 N.J. 520, 523 (1995). And even if the non-moving party comes forward with some evidence,

this forum must grant summary decision if the evidence is “so one-sided that [the moving party] must prevail as a matter of law.” Id. at 536.

The issue presented is whether the respondent’s decision not to enroll O.L. in the AP Calculus BC class was arbitrary, capricious and unreasonable. The respondent filed the motion contending there is no genuine issue of material fact that O.L. does not meet any of the prerequisites for the AP Calculus BC class. The prerequisites are: honors precalculus grade average over 94%, a teacher recommendation and be a rising junior or senior. It is undisputed that O.L.’s grade average in honors precalculus is 94%; he is not a rising eleventh or twelfth grade student and he does not have a teacher recommendation. Accordingly, the respondent avers that its decision not to enroll him in that class was appropriate. Indeed, the respondent contends that the two-year sequence of AP Calculus AB and C, is the most rigorous program for high achieving students like O.L. who are interested in pursuing calculus in college and ultimately a career in a STEM-related area. The AP Calculus BC class is taught at a faster pace because the class does not cover all the topics comprehensively. Moreover, the respondent contends there are additional opportunities for O.L. to engage in independent projects with the teachers if he does not feel sufficiently challenged in the AP Calculus AB class.

Conversely, the petitioner contends that the respondent’s decision violates the Strengthening Gifted and Talented Education Act, which provides:

- a. A board of education shall ensure that appropriate instructional adaptations and educational services are provided to gifted and talented students in kindergarten through grade 12 to enable them to participate in, benefit from, and demonstrate knowledge and application of the New Jersey Student Learning Standards at the instructional level of the student.
- b. A board of education shall:
 - (1) ensure that appropriate instructional adaptations are designed for students who are gifted and talented;
 - (2) make provisions for an ongoing kindergarten through grade 12 identification process for gifted and

talented students that includes multiple measures in order to identify student strengths in intellectual ability, creativity, or a specific academic area. School districts shall ensure equal access to a continuum of gifted and talented education services. The identification process shall include consideration of all students, including those who are English language learners and those with Individualized Education Plans or 504 plans;

(3) develop and document appropriate curricular and instructional modifications used for gifted and talented students indicating content, process, products, and learning environment, and including, but not limited to, additional education activities such as academic competitions, guest speakers, and lessons with a specialist;

(4) take into consideration the Gifted Programming Standards, Position Statements, and White Papers of the National Association for Gifted Children in identifying and serving gifted and talented students;

(5) provide the time and resources to develop, review, and enhance instructional tools with modifications for helping gifted and talented students acquire and demonstrate mastery of the required knowledge and skills specified by the standards at the instructional level of the student; and

(6) actively assist and support professional development for teachers, educational services staff, and school leaders in the area of gifted and talented instruction.

[N.J.S.A.18A:35-36.]

With this law as the backdrop, the petitioner assails the respondent's prerequisites for the AP Calculus BC class. She contends that these prerequisites prevent gifted tenth grade students from equal access to the AP Calculus BC class. She asserts that "over 94%" includes 94% and thus her son qualifies. She believes the teacher recommendation requirement is arbitrary because it does not apply to eleventh grade students. She also believes her son will be bored in the AP Calculus AB class because the class goes into greater depth with the topics and thus is taught at a slower pace. She believes that the two-class sequence (AB and C) will deprive her son of an additional year of advanced

calculus that can be taken at Princeton University. She declares it unfair that her son has been in advanced math classes since fifth grade but is now restricted to learning with his chronological peers instead of his intellectual peers.

All parties agree that O.L. is a high-achieving student who is gifted in math and W.D., as a parent, wants the best for her son. She believes that the AP Calculus BC course is a better fit for son because it is faster paced and keeps him with his academic peers. She disagrees that the design of the two-year sequence is appropriate for gifted tenth grade students with a proclivity for calculus. However, the authority to design the course of study for students has been assigned to the local school district. Specifically, N.J.S.A. 18A:33-1 mandates that each local school district must “provide courses of study suited to the ages and attainments of all pupils between the ages of five and 20 years.”

In addition, it is axiomatic that the discretionary decision of the local board of education as to which courses to offer and the contents of such courses is entitled to a presumption of correctness and will not be upset unless there is an affirmative showing that such decision was arbitrary, capricious or unreasonable. Parsippany-Troy Hills Ed. Assn v. Bd. of Ed. of Parsippany-Troy Hills Tp., 188 N.J. Super. 161 (App. Div. 1983), certif. den., 94 N.J. 527 (1983). The general rule is that 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." Id. at 167, quoting Kopera v. West Orange Bd. of Ed., 60 N.J. Super. 288, 294 (App. Div.1960). I **FIND** the respondent's decision to create the AP Calculus AB, C and BC classes was a discretionary decision and W.D. must prove that the respondent acted in either bad faith or in disregard of the circumstances.

Here, it is undeniable that the petitioner strongly disagrees with the respondent's decision to enroll her son into the AP Calculus AB class. However, she has not presented any credible evidence that the respondent's standards were established in bad faith or in disregard to O.L.'s circumstances. For example, W.D. did not present testimony from other parents or an educational expert to support her allegations that limiting the AP Calculus BC class to juniors and seniors, requiring a teacher recommendation and having a grade average over 94% was in bad faith. Her disagreement with the requirements does

not establish bad faith. To the extent that the respondent has engaged in mixed messaging from staff and board members about whether the eligibility standard is 94% or over 94%, the program of studies document plainly states that students must have a grade average over 94%. And even assuming arguendo that the petitioner is correct in interpreting that “over 94%” includes 94%, her son lacks the other two requirements.

The Strengthening Gifted and Talented Education Act, (citations omitted) requires equal access to a *continuum* of gifted and talented education *services*. There is no supporting evidence that a classroom experience is the only type of educational service that the respondent can provide. Indeed, in fulfillment of this mandate, the respondent allows gifted students to work on a project with other students or independently to enhance their educational experience. In addition, at the high school level, “academic contests and competitions, groups, clubs, and as well as leadership activities are made available to students through the Media Specialist, supported by supervisors and advisors.”¹ I **CONCLUDE** these opportunities comply with the law’s continuum requirement.

Petitioner contends that the decision to limit the AP Calculus BC class to juniors and seniors is irresponsible and disregards the needs of gifted tenth graders. She asserts that the neighboring districts offer the AP Calculus BC class to tenth grade students who achieve a 90% grade average. She contends her son and other gifted tenth graders are being held back on purpose by the respondent.

The respondent’s decision to restrict access to the AP Calculus BC class to juniors and seniors was based upon the respondent’s educational professionals and faculty which included staff with knowledge about the educational characteristics that colleges are seeking. Moreover, there is no mandate that the respondent’s class requirements or calculus course of study mirror neighboring districts. The petitioner provided no credible proof that her son and other gifted tenth grade students taking the AP Calculus AB class

¹ <https://sites.google.com/mtsd.us/giftedservices/programming?authuser=0>

will be at a disadvantage. This is pure speculation.² Accordingly, I **CONCLUDE** the petitioner has failed to prove that the respondent's grade restriction is arbitrary, capricious, or induced by improper motive.

Petitioner asserts that her son will miss the opportunity to participate in the high school program at Princeton University by following the respondent's two-year sequence of AP calculus classes. However, the respondent denied any relationship with Princeton University. Thus, this claim is unsubstantiated and must fail. The petitioner asserts in her post-hearing submission that she was not informed about the course selection by school personnel in violation of Board policy #2464. However, this was not raised in the original petition, and thus, will not be addressed here.

The petitioner asserts that there is no clear link to the complaint appeal process on the respondent's website homepage. This tribunal was able to find a link to an overview of the GATE program on the respondent's homepage³ and a link to appeal the school's decision and an informational video on the respondent's Assessment, Curriculum and Instruction page.⁴ The respondent's policy on gifted and talented was also accessible and contained information on appealing to the board of education.⁵ However, the policy was not linked to the respondent's website homepage as required. Accordingly, I **FIND** that the petitioner has substantiated her claim that the complaint process is not on the respondent's homepage. However, this does not impact whether the respondent's decision to register O.L. for the AP Calculus AB class was arbitrary, without rational basis or induced by improper motive.

For the reasons stated above, I **CONCLUDE** there is no genuine issue of any material fact and respondent is entitled to prevail as a matter of law because O.L. does not meet the prerequisites for the desired class and the petitioner has not proven that the respondent's decision is arbitrary, capricious or induced by an improper motive.

² Petitioner is not precluded from filing a new petition if O.L. experiences a quantifiable disadvantage by being in the AB class.

³ <https://www.mtsd.k12.nj.us/>

⁴ <https://www.mtsd.k12.nj.us/Page/19829>

⁵ <https://www.straussesmay.com/seportal/Public/DistrictPolicy.aspx?policyid=2464&id=d098afc5c43b49698c600454bc274af6>

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the respondent's motion for summary decision is **GRANTED**; however, the respondent is instructed to put a link to Board Policy 2464 on its website homepage. The petitioner's petition is **DISMISSED**.

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.

November 6, 2023

DATE



Kim C. Belin

KIM C. BELIN, ALJ

Date Received at Agency:

Date Mailed to Parties:

KCB/am/lam

APPENDIX

EXHIBITS

Joint

- J-5 2023-24 Program of Studies
- J-6 Form Letter to Tenth Grade Students
- J-12 Unit Calendar by Year
- J-21 YouTube video of March 28, 2023 School Board Meeting
- J-22 Email from School Counselor, dated December 13, 2022 and Calculus options

For petitioner

- Petitioner's Response Opposing Respondent's Motion for Summary Decision with certification and exhibits, dated August 22, 2023

For respondent

- Motion for Summary Decision with certification and exhibits, dated August 15, 2023
- Reply Letter Brief in further support of Respondent's Motion for Summary Decision, dated August 25, 2023