

New Jersey Commissioner of Education
Final Decision

Allegra Seidler,

Petitioner,

v.

Board of Education of the Township of East
Brunswick, Middlesex County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by petitioner, Allegra Seidler (Seidler), pursuant to N.J.A.C. 1:1-18.4, and the reply thereto filed by respondent, East Brunswick Board of Education (Board), have been reviewed and considered.

Seidler is a parent of a minor child attending school in the district. Seidler filed a petition of appeal with the Commissioner, alleging that the Board had not complied with its obligations under the Strengthening Gifted and Talented Education Act (SGTEA), *N.J.S.A. 18A:35-34 et seq.* Specifically, Seidler alleges that (1) the Board is identifying K-4 grade students eligible for gifted and talented services based only on their performance on the Naglieri test, rather than by using multiple measures as required by SGTEA; (2) that the Board has failed to meet the SGTEA requirement that students be compared to the chronological peers in the school district; (3) that twice-exceptional students – those with a disability and high IQ – are not properly

accommodated in the evaluation process in violation of SGTEA; (4) the Board's website is inadequate for failing to include a process for filing complaints regarding SGTEA; (5) the Board uses budget constraints to justify its failure to observe all requirements of SGTEA; and (6) any procedural issue is the result of the Board's unwillingness to respond to Seidler's complaints in writing.

In response, the Board moved to dismiss Seidler's complaint for (1) failure to state a claim for which relief can be granted, contending that the Board is in full compliance with the requirements under SGTEA and (2) failure to comply with procedures provided for by SGTEA and by the Board in Policy and Regulation 9130 – Public Complaints and Grievances. Specifically, the Board argues that Seidler did not submit a written complaint with the district's Board of Education, as required under SGTEA, and therefore the Board has not issued a formal written decision affirming, rejecting, or modifying the district's actions. The Board also contends that Seidler did not adhere to the Board's Regulation 9130, which required Seidler to have submitted a written request to the Superintendent for a conference to discuss her complaint.

At the OAL, upon deeming admitted all facts alleged in the petition, the Administrative Law Judge (ALJ) concluded that Seidler had made a claim for which relief could be granted. The ALJ reasoned that Seidler's allegations support a cause of action for the Board's failure to adhere to its obligations under SGTEA. Despite this, the ALJ ultimately dismissed the petition, concluding that the matter was not yet ripe for review. In reaching her decision, the ALJ found that the Board has yet to conduct a hearing, during which Seidler and the administration would have had the opportunity to present their positions. The ALJ further found that the Board has yet to issue a determination on whether the district's gifted and talented program is appropriate under

SGTEA or whether the district must modify its program. Given the lack of a formal determination, the ALJ concluded that the Commissioner is unable to assess whether the Board's decision was arbitrary, capricious, or unreasonable. The ALJ also determined that Seidler's notice of an official complaint to the Board, sent on October 24, 2024, was premature because she had not appealed the matter through the successive levels of authority as required under Policy 9130.

In her exceptions, Seidler contends that she acted in good faith to exhaust the administrative remedies but was met with inaction from the Board. Specifically, Seidler argues that on October 24, 2024, she submitted a written complaint to the Supervisor of Social Studies and Gifted Education, Dr. Daniel Moran, who "never followed up to that extent." Petitioner's Exceptions, at 1. Seidler contends that from there, she escalated her complaint to Dr. Joyce Boley, Dr. Victor Valeski, and finally to the Board, in accordance with the process outlined on the Board's webpage. Seidler argues that the Board's lack of a response to her complaint should not prevent review by the Commissioner as it unfairly penalizes a parent for the Board's inaction.

Seidler also asserts that while Policy and Regulation 9130 were accessible on the Board's website when she filed her appeal with the Commissioner in April 2025, they were not linked to or referenced in any of the gifted and talented identification materials or in any of the information outlining the complaint process available to parents. Seidler further asserts that on October 24, 2024, the day she filed her written complaint, Policy and Regulation 9130 was neither referenced nor accessible on the Board's gifted and talented webpage, nor were they referenced in the Board's Policy 2464 – Gifted and Talented Students; as such, Seidler argues that she was unaware that Policy and Regulation 9130 applied to complaints concerning the gifted and talented program. Furthermore, Seidler argues that New Jersey case law has long recognized

that the exhaustion of administrative remedies is not required when an agency fails to respond or fails to make the process reasonably accessible. Lastly, Seidler contends that the Board is in violation of SGTEA for failing to explicitly identify Policy and Regulation 9130 “as the applicable complaint pathway” on its gifted and talented webpage. *Id.* at 5.

In reply, the Board reiterates that this matter is not ripe for review. Specifically, the Board asserts that under SGTEA, Seidler had two administrative remedies available to her: (1) she may file a complaint with the Board claiming the Board is not complying with SGTEA; and (2) she may appeal the Board’s written decision to the Commissioner, who will review the Board’s decision to evaluate whether it was arbitrary, capricious, or unreasonable. Regarding the first administrative remedy, the Board contends that the method to appeal administrative decisions regarding the Gifted and Talented program is described on the Board's website. First, concerns must be addressed with the Supervisor in charge of Gifted Education, Dr. Daniel Moran. If not resolved, the second point of contact is the Assistant Superintendent of Academics, Dr. Joyce Boley. Third, after these avenues have been exhausted, a parent may file a complaint with the Superintendent of Schools, Dr. Victor Valeski. The Board argues that this process is “entirely consistent” with Policy and Regulation 9130. Board’s Reply Exceptions, at 3.

The Board explains that the complaint process under Regulation 9130 is as follows: first, the complaint should be addressed to the department head or administrator, Dr. Moran and Dr. Boley. “The administrators will make every reasonable effort to explain the difficulty and take appropriate action.” *Ibid.* Second, if unresolved, the complainant may submit a written request to the Superintendent for a conference. Within seven days of receiving the request, the Superintendent shall hold a conference. The Superintendent must record their disposition of the

complaint within ten working days of the conference. Third, if the complaint is still unresolved, the complainant, within three working days of receiving the Superintendent's written disposition, may submit a written request for a Board hearing.

The Board contends that Seidler submitted a complaint to the Supervisor in charge of Gifted Education, Dr. Daniel Moran, and that Dr. Moran made every reasonable effort to communicate with Seidler and take appropriate action. Next, the Board argues that Seidler failed to make a written request to Superintendent Dr. Valeski for a conference, as required under Regulation 9130. The Board further argues that Seidler repeatedly refused to speak with Dr. Valeski until she received his responses to her concerns in writing. The Board contends that Dr. Valeski sent written responses to Seidler on November 20, 2024, and that Seidler had three days upon her receipt of Dr. Valeski's responses to submit a written request for a hearing before the Board. The Board contends that Seidler did not submit a written request for a conference with the Superintendent, as required under Regulation 9130. The Board further contends that Seidler failed to submit to the Superintendent a written request for a hearing before the Board. The Board argues that because Seidler refused to speak with Dr. Valeski about her concerns and failed to request a hearing, it has not issued a written decision that Seidler may appeal.

In addition, the Board argues that (1) the compliance-related, broad remedies sought by Seidler that are not specific to her child are unavailable under SGTEA; (2) Seidler failed to plead factual allegations that suggest that the Board has failed to comply with SGTEA; and (3) that the Board's website is in compliance with SGTEA.

Upon review, the Commissioner concurs with the ALJ that Seidler has made a claim for which relief could be granted. The Commissioner further concurs with the ALJ that this matter is

not ripe for review and therefore must be dismissed. As the ALJ correctly found, the Board's website includes a description for lodging a complaint concerning a Board's alleged failure to comply with the legal requirements for the Gift and Talented Program. The description mirrors the language of SGTEA, *N.J.S.A.* 18A:35-38, and provides that:

An individual who believes that a school district has not complied with the provisions of this act may file a complaint with the board of education. The right to file a complaint shall be set forth in the board's policy on gifted and talented education. The policy shall be linked to the homepage of the board's Internet website. The board shall issue a decision, in writing, to affirm, reject, or modify the district's action in the matter.

Please direct all inquiries to Dr. Victor Valeski, Superintendent of Schools.

Exhibit F, Petitioner's Opposition to Motion to Dismiss.

Included on the same webpage is a link to the Board's Policy #9130 – Public Complaints and Grievances. *Ibid.* Policy 9130 provides that:

The Superintendent shall establish procedures for the hearing of requests and complaints regarding . . . instructional, and resource materials. . . Procedures will be governed by the following guidelines:

1. The matter will be resolved initially, wherever possible, by informal discussions between or among the interested parties.
2. A matter that cannot be resolved informally may be appealed at successive levels of authority, up to and including the Board of Education.
3. The complaint and its immediate resolution will be reduced to writing at the first and at each successive level of appeal.

Exhibit A, Policy 9130, Board's Motion to Dismiss.

Also included on the same webpage is a link to the Board's Regulation 9130. As the Board correctly contends, the applicable section of Regulation 9130 for this matter is Section D – "Complaints About a Program, Practice, or Operation" – because Seidler's complaint involves an entitlement program established by New Jersey law. Exhibit A, Regulation 9130, Board's Motion to Dismiss. Accordingly, the appropriate complaint procedure is as follows: first, the complaint must be directed to the administrator or department head in accordance with section A1 of Regulation 9130. Section A1 provides, in part, that this "staff member will be directed to discuss the matter directly with the complainant and to make every reasonable effort to explain the difficulty and/or take appropriate action in accordance with district regulations and within his/her authority." *Id.* Second, if the matter remains unresolved, the complainant may submit a written request to the Superintendent for a conference. The Superintendent must conduct the conference within seven working days of receiving the claimant's request. The Superintendent must record their decision in writing and provide the claimant with a copy within 10 working days. Third, if the matter is still unresolved, the claimant may, within three working days of her receipt of the Superintendent's written decision, submit a written request for a hearing before the Board. *Id.*

Here, Seidler appropriately directed her concerns to the head of Gifted Education, Dr. Moran, in her email on October 23, 2024. In that same email, Seidler made two requests regarding the Gifted and Talented Program. Dr. Moran responded by email the same day and requested to speak with Seidler over the phone. The following day, Seidler responded to Dr. Moran by email, refusing to speak with him until she received from him and reviewed the previously requested information. Later that day, Dr. Moran provided Seidler with information

in response to her requests, including information on programming for K-4 grade students. He also asked if Seidler had contacted her daughter's teachers and requested that Seidler submit her concerns to him so that they could be shared with the administrative team. Seidler responded, informing Dr. Moran that "[i]n addition to my previous emails, I am filing the above as an official complaint." Exhibit A, at 8, Petitioner's Opposition to Motion to Dismiss. Given Dr. Moran's replies to Seidler's emails and requests to speak, the Commissioner agrees with the Board that Dr. Moran made every reasonable effort to communicate with Seidler and take appropriate action as required under Regulation 9130.

Since the matter was still unresolved, the next step under Regulation 9130 required Seidler to submit a written request to Superintendent Dr. Valeski for a conference. There is no evidence in the record indicating that Seidler submitted such a request. There is no evidence in the record that such a conference occurred. Seidler did email Superintendent Valeski on November 19, 2024, to discuss her allegations that the Board was not compliant with SGTEA. In response, Superintendent Valeski informed Seidler that he would send responses the following day and offered to meet face-to-face to discuss her concerns.

On November 20, 2024, Superintendent Valeski and Assistant Superintendent of Academics, Dr. Boley sent Seidler an email stating that she and Valeski had discussed Seidler's concerns and to find their responses in the attachment. According to Regulation 9130, Seidler had three working days upon receipt of Dr. Valeski's response to submit a written request for a hearing before the Board. There is nothing in the record indicating that Seidler made such a request within the requisite time period. On February 6, 2025, Seidler sent an email to the Board seeking a written response to her allegations that the Board was not compliant with SGTEA. Even

if Seidler's email could be considered a written request for a Board hearing, her request is untimely under Regulation 9130. For all of these reasons, the Commissioner concludes that Seidler failed to follow the required procedures to pursue her complaint.

The Commissioner does not find Seidler's exceptions to be persuasive. Seidler argues that Policy and Regulation 9130 were not linked to or referenced in any of the gifted and talented identification materials or in any of the information outlining the complaint process available to parents; however, screenshots of the Board's Gifted and Talented webpage, submitted by Seidler, show links to both Policy 9130 and Regulation 9130. Furthermore, the links explicitly state that the Policy and the Regulation concern "Public Complaints and Grievances." Next, Seidler contends that the Board's lack of a response to her complaint should not prevent review by the Commissioner as it unfairly penalizes a parent for the Board's inaction. However, email threads submitted by Seidler show members of the administration, such as Superintendent Valeski, Dr. Moran, and Supervisor of Integrated Language Arts, Ms. Becourtney, requesting to meet face-to-face or over the phone to discuss Seidler's concerns. The email threads also show Seidler repeatedly refusing to confer with these school officials until they provided written responses to her questions. Seidler's refusals are inconsistent with the guidelines of Policy 9130, which call for a matter to "be resolved initially, whenever possible, by informal discussions between . . . the interested parties." Exhibit A, Board's Motion to Dismiss.

It is undisputed that the Board has yet to issue a determination on Seidler's allegations. The parties have not had the opportunity to present their respective positions to the Board. Moreover, there is no decision from the Board for the Commissioner to review to determine whether the Board's behavior was arbitrary, capricious, or unreasonable; as such, this matter is

not ripe for review. Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹



COMMISSIONER OF EDUCATION

Date of Decision: October 20, 2025
Date of Mailing: October 20, 2025

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

MOTION TO DISMISS

OAL DKT. NO. EDU 07171-25

AGENCY DKT. NO. 103-4/25

ALLEGRA SEIDLER,

Petitioner,

v.

**BOARD OF EDUCATION OF THE TOWNSHIP
OF EAST BRUNSWICK, MIDDLESEX COUNTY,**

Respondent.

Allegra Seidler, petitioner, pro se

Alessia M. Alkhoury, Esq., for respondent (Cleary, Giacobbe, Alfieri, and Jacobs,
LLC, attorneys)

Record Closed: July 7, 2025

Decided: July 23, 2025

BEFORE **TRICIA M. CALIGUIRE**, ALJ:

STATEMENT OF THE CASE

Petitioner Allegra Seidler alleges that respondent Board of Education of the Township of East Brunswick, Middlesex County (Board), has not complied with its obligations under the Strengthening Gifted and Talented Education Act, N.J.S.A. 18A:35-

34 to -39 (SGTEA), and seeks an order requiring the Board to establish appropriate gifted and talented services; to publish on the Board website multiple measures and criteria for qualification for gifted and talented services; and to update the regulations implementing the gifted and talented program used by the East Brunswick Township School District. Seidler also seeks examination by the Commissioner of the New Jersey Department of Education (Department) of the Board's October 1, 2024, New Jersey Quality Single Accountability Continuum (NJQSAC)¹ District Performance Review (DPR) for kindergarten through fourth grade. By motion, the Board seeks to dismiss the petition.

PROCEDURAL HISTORY

On April 2, 2025, Seidler filed a pro se petition of appeal (Petition) with the Department, Office of Controversies and Disputes. On April 28, 2025, the Board filed a motion to dismiss in lieu of an answer. The Commissioner did not act on the motion, and pursuant to N.J.A.C. 6A:3-1.6(c)(3), on April 30, 2025, the motion to dismiss and the Petition were transmitted to the Office of Administrative Law (OAL).

On May 30, 2025, this matter was assigned to me. By letter dated June 5, 2025, I set a schedule for responsive briefing. On June 25 and 30, 2025, Seidler responded to the motion; on July 7, 2025, the Board filed its reply, and the motion is ripe for review.

FACTUAL DISCUSSION AND FINDINGS

The New Jersey Supreme Court explained that the analysis required when considering a motion to dismiss is "whether a cause of action is suggested by the facts." Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988) (citations omitted). Further:

Because the matter arises on defendants' motion to dismiss, [the court must] accept as true the facts alleged in the complaint. . . . Plaintiffs are entitled to every reasonable inference in their favor. A reviewing court must 'search the complaint in depth and with liberality to ascertain whether the

¹ The NJQSAC DPR is a self-assessment tool that measures a district's compliance and effectiveness in instructions and program, personnel, fiscal management, operations, and governance. N.J.A.C. 6A:30-2.1(a).

fundament of a cause of action may be gleaned even from an obscure statement of claim[.]’

[Craig v. Suburban Cablevision, Inc., 140 N.J. 623, 625–26 (1995) (citations omitted); see also Maeker v. Ross, 219 N.J. 565, 569 (2014).]

A motion to dismiss should only be granted in the rarest of instances. Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 772 (1989).² In reviewing the complaint, the question is not whether the petitioner can prove the allegations, but whether the facts alleged are sufficient to state a cause of action. Id. at 746. Accordingly, for the purposes of the motion, all facts alleged by the Petition will be deemed admitted.³

Accordingly, I **FIND** as **FACTS**:

The Board administers operations of the East Brunswick Township School District (District), a public school district serving students in preschool through twelfth grade. Included within the District are nine schools serving students in elementary grades, those being preschool through sixth grade. Seidler is a resident of the District and her minor child is enrolled in a District elementary school

In 2019, the New Jersey Legislature enacted the SGTEA, which requires school districts to adopt and implement “appropriate instructional adaptations” for gifted and talented students in grades kindergarten through twelve, effective in the 2020–2021 school year. The SGTEA further required school districts to identify eligible students using “multiple measures in order to identify student strengths in intellectual ability, creativity, or a specific academic area,” including students for whom English is a second language and students with individualized education programs and/or 504 plans. N.J.S.A. 18A:35-36.

Information about the District’s gifted and talented program is found on the District website, consistent with the requirements of the SGTEA. The identification measures are

² See also F.G. v. MacDonell, 150 N.J. 550, 556 (1997) (“If a generous reading of the allegations merely suggests a cause of action, the complaint will withstand the motion.”).

³ The email correspondence described below is duplicated in the attachments and/or exhibits filed with the Petition, the Board’s briefs, and Seidler’s response brief.

described on the website; these measures include scores from the Naglieri General Ability Tests,⁴ teacher identification through surveys, and comparison to same-age peers.

The District's website also includes a description of the process for lodging a complaint regarding an alleged failure of the District to comply with legal requirements for the gifted and talented program.⁵ This process tracks the language of the SGTEA, N.J.S.A. 18A:35-38:

An individual who believes that a school district has not complied with the provisions of this act may file a complaint with the board of education. The right to file a complaint shall be set forth in the board's policy on gifted and talented education. The policy shall be linked to the homepage of the board's Internet website. The board shall issue a decision, in writing, to affirm, reject, or modify the district's action in the matter.

Please direct all inquiries to Dr. Victor Valeski, Superintendent of Schools.

[<https://www.ebnet.org/academics/gifted-education> (with link to Dr. Valeski's email address) (last visited July 17, 2025).]

On the same webpage, there are links to the Board policies on Gifted and Talented Students, Policy # 2464, and Public Complaints and Grievances, Policy # 9130 (Complaint Policy). The latter policy provides, in pertinent part:

The Superintendent shall establish procedures for the hearing of requests and complaints . . . [and] will be governed by the following guidelines:

1. The matter will be resolved initially, wherever possible, by informal discussions between or among the interested parties.
2. A matter that cannot be resolved informally may be appealed at successive levels of authority, up to and including the Board of Education.

⁴ This test purportedly provides an accurate assessment of gifted students by assessing general ability without (a) test questions that require knowledge, (b) the use of a specific language, (c) instructions that demand verbal comprehension, and (d) without requiring a student to respond verbally.

⁵ Seidler included the cited pages from the District website in attachments to the Petition.

3. The complaint and its immediate resolution will be reduced to writing at the first and at each successive level of appeal.

4. A reasonable period of time, not to exceed ten working days, will be permitted for the filing of an appeal in writing at each successive level. A decision at each level of appeal must be rendered in writing no later than fifteen working days after the appeal is filed, except that the Board shall have thirty calendar days to make its decision.

. . . .

6. A complainant shall be notified that a decision of the Board may be appealed to the Commissioner of Education.

[<https://www.straussesmay.com/seportal/Public/DistrictPolicy.aspx?PolicyID=9130&id=84d05e65e6894462a30f3195857be2c5> (last visited July 17, 2025).]

Further, at the bottom of the page describing “Gifted Services” are frequently asked questions and answers, including, “Can I appeal the district’s determination about whether my child is eligible for gifted services?” The following process is described:

Any concerns regarding the district’s Gifted and Talented Program should first be addressed with Daniel Moran, the Supervisor of Social Studies and Gifted Education, at dmoran@ebnet.org. If the concern is not resolved, parents/guardians should contact Joyce Boley, Assistant Superintendent of Academics, at jboley@ebnet.org.

After these avenues have been exhausted, students or parent/guardians who wish to file a written complaint with the Board of Education may send correspondence to Victor Valeski, Superintendent of Schools, at 760 Route 18, East Brunswick, NJ 08816 or via email to vpvaleski@ebnet.org

An individual who believes the district has not complied with the provisions of N.J.S.A. 18A:35-34 et seq. (Strengthening Gifted & Talented Act) may file a complaint with the Board of Education. The Board shall issue a decision, in writing, to affirm, reject, or modify the district’s action in the matter. The individual may then file a petition of appeal of the Board’s written decision to the Commissioner of Education through the Office of Controversies and Disputes in accordance with N.J.S.A. 18A:6-9 and the procedures set forth in State Board of Education regulations.

[\[https://www.ebnet.org/academics/gifted-education\]](https://www.ebnet.org/academics/gifted-education) (last visited July 17, 2025).]

On October 23, 2024, Seidler introduced herself to Dr. Daniel Moran, Supervisor of Social Studies and Gifted Education, by email, stating that her daughter, then in first grade, had “consistently performed above grade level, and is becoming bored and unenthusiastic.” In researching “alternative schooling,” Seidler learned “that the district is required to identify and appropriately educate Gifted and Talented Students.” Letter Br. of Pet’r in Opp’n to Mot. to Dismiss (June 24, 2025) (Pet’r’s Br.), Ex. A at 1. Seidler made two requests: to be directed “to the appropriate resources to ensure [children are receiving] the deserved level of education [and for the] written district plans to conform with” the SGTEA. Id. at 2. Dr. Moran responded by email the same day and asked to speak with Seidler by telephone. Ibid. Dr. Moran’s request was consistent with the “informal discussion” mandated by the Complaint Policy, subparagraph (1).

On October 24, 2024, Seidler emailed Dr. Moran, refusing to speak with him until she received and “reviewed the previously requested information.” Id. at 5. That same day, Dr. Moran provided Seidler information regarding programming for students in kindergarten through fourth grade, asked if she had contacted her daughter’s teachers, again offered to speak by telephone, and requested that Seidler submit any complaints to him so that they could be shared “with the administrative team.” Id. at 7. Dr. Moran’s response was again consistent with the “informal discussion” mandated by the Complaint Policy, subparagraph (1), and his written response to Seidler’s request for information was consistent with subparagraph (3) of the Complaint Policy.

On October 24, 2024, Seidler replied to Dr. Moran by email. She asked for the “official means of filing a complaint,” because “as per the law it is to be reviewed and ruled on by the board before it is eligible to be addressed at the state level.” Id. at 8. Further, she stated, “[i]n addition to my previous emails, I am filing the above as an official complaint.” Ibid. In sum, Seidler’s complaint was that the District’s gifted and talented program for students in kindergarten through fourth grade did not comply with the SGTEA and the District did not have detailed information on its website regarding the identification of eligible children nor regarding the programming available for such children. Ibid. At

this stage, Seidler's notice of an official complaint to the Board was premature, as she had not appealed the matter through successive levels of authority, as required under the Complaint Policy, subparagraph (2).

On October 24, 2024, Seidler emailed Meryl Becourtney, Supervisor of Integrated Language Arts (ILA) K–6, with specific questions regarding the adoption of the ILA curriculum. This email did not reference the gifted and talented program. After Becourtney replied with an offer to discuss Seidler's concerns, Seidler copied Dr. Joyce Boley, Assistant Superintendent of Academics, on another email to Becourtney, refusing to meet unless Seidler received a written response to her questions. Seidler's action in elevating her complaint regarding the ILA program to Dr. Boley is consistent with the appeal process outlined in the Complaint Policy, subparagraph (2), but her rejection of the offer of an informal discussion with Becourtney prior to receipt of a written response is inconsistent with the appeal process outlined in the Complaint Policy, subparagraphs (1) and (2).

On October 28 and 29, 2024, Dr. Boley responded to Seidler's questions in writing. Suppl. Letter Br. of Pet'r (June 30, 2025) (Pet'r's Supp Br.), at 17-18, 20. Seidler responded each time with additional questions, and on October 30, 2024, Seidler wrote, "I will be filing an official complaint in regard to the harmful, outdated, unproven and non-evidence-based ILA curriculum in addition to the complaint regarding district noncompliance with the [SGTEA]." Id. at 17. Seidler copied Dr. Victor Valeski, Superintendent, and the Board on this email. Dr. Boley and Seidler both acted consistent with the appeal process outlined in the Complaint Policy, subparagraphs (2) and (3).

On November 19, 2024, Seidler emailed Dr. Valeski, Superintendent, alleging that the District is out of compliance with the SGTEA. Dr. Valeski replied by email the same day, offering to meet to discuss Seidler's concerns, and on November 20, 2024, Dr. Boley sent an email to Seidler to address her concerns regarding the gifted and talented screening process. Pet'r's Br., Ex. E at 1 and 11. Drs. Valeski and Boley both acted consistent with the appeal process outlined in the Complaint Policy, subparagraphs (1–3).

On February 6, 2025, Seidler emailed the Board of Education, requesting “a written response email to [her] complaint of non-compliance,” which she intended “to eventually appeal to the state, if necessary.” As of the day of this email—February 6, 2025—Seidler stated that her complaints were:

1. Multiple measures [for identification of eligible students] are not clearly outlined, specifically for K–4;
2. There are no qualifications (i.e., a rubric) for the multiple measures, specifically for K–4, but this is lacking across all levels;
3. There are no clearly defined services, specifically for K–4;
4. The timeline remains ambiguous; and
5. Those complaints already made to Drs. Moran and Valeski.

[Pet’r’s Br., Ex. E at 11.]

The February 6, 2025, “complaint of non-compliance” was sent to the Board more than ten working days after Dr. Boley’s written response of November 20, 2024, which is beyond the deadline for an appeal to the Board under the Complaint Policy, subparagraph (4).

There is no evidence that Seidler requested a hearing before the Board, and there is no dispute that the Board has not issued a decision to Seidler regarding the claims she made in her February 6, 2025, email.

POSITIONS OF THE PARTIES

In the Petition, Seidler makes six specific claims.⁶ First, she contends that the District identifies students in kindergarten through fourth grade who are eligible for gifted and talented services based only on their performance on the Naglieri test, rather than by using multiple measures as required by the SGTEA. Ltr. to Comm’r of Educ. from Seidler (April 2, 2025) (attachment to Petition), at 1.

⁶ Although it is not clear from the correspondence provided by the parties, Seidler’s concerns regarding the ILA Program may have been addressed by the District as she makes no claims regarding the program in the Petition.

Second, while the SGTEA requires comparison of students to their “chronological peers in the school district,” the District uses national norms for students in grades one and three, and same school (but not district-wide) norms for students in kindergarten, second and fourth grades. Id. at 2.

Third, twice-exceptional students – those with a disability and high IQ – are not adequately accommodated in the evaluation process in violation of the SGTEA. Id. at 2-3.

Fourth, the District webpage is inadequate, including that it fails to include a process for complaints. Id. at 3.

Fifth, the District uses budget constraints to improperly justify its failure to observe all requirements of the SGTEA. Id. at 3-4.

Sixth, any procedural issues are the result of the District’s unwillingness to respond to Seidler’s complaints in writing even though she spoke at Board meetings and specified “the requirements for official responses to be in writing.” Id. at 4.

In its motion to dismiss the Petition, the Board argues that Seidler did not submit a written complaint with the Board, as required under the SGTEA, and the Board has not issued a written decision affirming, rejecting or modifying the action of the District. More specifically, Seidler did not request a conference with Dr. Valeski, refused to meet with Dr. Valeski unless and until he responded to her questions in writing, and upon receipt of his written response, Seidler did not request a hearing before the Board. Letter Br. of Resp’t in Supp. of Mot. to Dismiss (Ap. 28, 2025), at 1-2. Because Seidler did not file a formal complaint with the Board, there is no Board action to review. Further, the Board claims that Seidler fails to state a claim for which relief can be granted, as the Board is in full compliance with its obligations under the SGTEA.

LEGAL ANALYSIS AND CONCLUSIONS

Motion-to-Dismiss Standards

The Uniform Administrative Procedure Rules (UAPR), N.J.A.C. 1:1-1.1 to -21.6, do not address the standards for a motion to dismiss. However, the UAPR, which “shall be construed to achieve just results, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay,” state that, “[i]n the absence of a rule, a judge may proceed in accordance with the New Jersey Court Rules, provided the rules are compatible with these purposes.” N.J.A.C. 1:1-1.3(a). In this situation, the court rule that fills the void is R. 4:6-2, as it allows for motions for judgment on the pleadings. R. 4:6-2 serves the interests of time and expense and may help achieve just results, thus it is compatible with the UAPR’s purposes, and it is appropriate to assess the respondent’s motion to dismiss under the standards of this court rule.

As an initial matter, with respect to the specific allegations in the Petition, Seidler makes claims based on the requirements of the SGTEA and the action (or alleged inaction) of the District in implementing the statutory mandate. That respondent can defend against Seidler’s claims is no reason to prevent her from pursuing those claims. Using the above-described standards, Seidler’s allegations support a cause of action for failure of the District to comply with its obligations under the SGTEA and I therefore **CONCLUDE** that she has made a claim for which relief can be granted.

Notwithstanding the foregoing, the Board also moves to dismiss Seidler’s complaint on procedural grounds. Throughout the extensive correspondence attached to the Petition—only a portion of which is summarized above—Seidler clearly states her understanding that the Board must act on her complaint for her to appeal that action to the Commissioner of Education. The Board contends that the absence of a formal Board decision proves that Seidler has failed to exhaust her administrative remedies and therefore, her complaint must be dismissed. Letter Br. of Resp’t in Reply to Opp’n to Mot. to Dismiss (July 1, 2025), at 4–5.

The Commissioner addressed a similar issue in M.M. v. Board of Education of the Township of Lafayette, where she explained that the issue preventing jurisdiction was that the dispute was not ripe, rather than that the petitioner did not exhaust administrative remedies:

Although the Commissioner has jurisdiction to hear all controversies arising under the school laws, the criteria for determining the ripeness of a controversy for judicial determination are “the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.” Abbott Labs v. Gardner, 387 U.S. 136, 149 (1967). In assessing fitness, the court must determine if a legal question suitable for judicial resolution has crystallized and whether the ruling or action that is the subject of the complaint is final. Ibid.

[OAL Dkt. No. EDU 05225-20, Final Decision, Comm’r (Nov. 5, 2020).]

Here, Seidler is accusing the District of failing to comply with its obligations under the SGTEA and is asking for wholesale changes in the process of identifying and teaching eligible children. The Board has yet to conduct a hearing at which both the administration and Seidler can present their positions. Moreover, the Board has yet to issue a decision on whether the District must modify its gifted and talented program or whether that program is appropriate under the SGTEA.

The SGTEA requires the Board to “ensure that appropriate instructional adaptations are designed for students who are gifted and talented [and to] make provisions for an . . . identification process . . . that includes multiple measures [and to] develop and document appropriate curricular and instructional modifications[.]” N.J.S.A. 18A:35-36(b)(1)–(3). This broad grant of authority provides for discretion by the local school board and, therefore, any decision by the Board regarding the implementation of the SGTEA would be “entitled to a presumption of correctness and will not be disturbed unless there is an affirmative showing that the decision was ‘patently arbitrary, without rational basis or induced by improper motives.’” J.C. & M.C. ex rel. M.C. v. Bd. of Educ. of the Twp. of Randolph, 2025 N.J. AGEN LEXIS 223 (Apr. 17, 2025) (quoting Kopera v.

W. Orange Bd. of Educ., 60 N.J. Super. 288 (App. Div. 1960)), remanded on other grounds, Comm'r (June 27, 2025).⁷

Petitioner admits that her extensive criticism of the District's gifted and talented program has been shared with the Board but has yet to garner a response from the Board. See Pet'r's Supp Br. at 1-2. Notwithstanding that the Board did not assist Seidler in perfecting her appeal, what remains is that the Commissioner is unable to evaluate whether the Board's decision was arbitrary, capricious, or unreasonable because the Board has yet to issue a decision.⁸ For this reason, I **CONCLUDE** that the matter is not ripe for review and must be dismissed.

ORDER

It is hereby **ORDERED** that the motion to dismiss of respondent Board of Education of the Township of East Brunswick is **GRANTED**, and the petition of Andrea Seidler is **DISMISSED WITHOUT 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.

⁷ In this matter, the parents challenged a written decision of the Board regarding the action of the District in finding the petitioners' child ineligible for the gifted and talented program.

⁸ The parties are advised to consider the following statement of the Commissioner in Randolph:

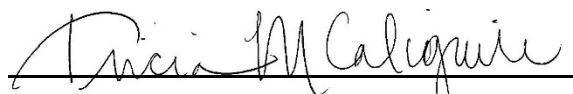
[B]road compliance-related remedies sought by petitioners that are not specific to their child, *i.e.*, requiring the district to establish a legally compliant identification process for gifted and talented students, public dissemination of the process, appointment of a district gifted and talented coordinator, and professional development for school leaders, are. . . unavailable to them under the Act.

[Final Decision at 6.]

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**. Exceptions may be filed by email to ControversiesDisputesFilings@doe.nj.gov or by mail to Office of Controversies and Disputes, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500. A copy of any exceptions must be sent to the judge and to the other parties.

July 23, 2025

DATE


TRICIA M. CALIGUIRE, ALJ

Date Received at Agency:

Date Mailed to Parties:

TMC/kl