

223-26
OAL Dkt. No. EDU 00849-26
Agency Dkt. No. 425-12/25

New Jersey Commissioner of Education
Final Decision

Janet Aponte-Pagan, Arthur Pinkney, Bernadette
Pinkney, Karina Olivier, Angel Hernandez, and
Hansel Perez,

Petitioners,

v.

Board of Trustees of the Robert Treat Academy
Charter School, Essex County,

Respondent.

The record of this matter and the Initial 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 (ALJ) that the Commissioner lacks jurisdiction to address petitioners' claims because they arise under municipal traffic ordinances and not New Jersey's school laws.

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: June 25, 2026
Date of Mailing: June 25, 2026

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 ON

MOTION TO DISMISS

OAL DKT. NO. EDU 00849-26

AGENCY DKT. NO. 425-12/15

**JANET APONTE-PAGAN, ARTHUR PINKNEY,
BERNADETTE PINKNEY, KARINA OLIVIER,
ANGEL HERNANDEZ, AND HANSEL PEREZ,**

Petitioners,

v.

**BOARD OF TRUSTEES OF THE ROBERT
TREAT ACADEMY CHARTER SCHOOL,
ESSEX COUNTY,**

Respondent.

**Janet Aponte-Pagan, Arthur Pinkney, Bernadett Pinkey, Karina Olivier, Angel
Henandez, and Hansel Perez, *pro se*, petitioners**

**Courtney M. Gaccione, Esq. (Chiesa, Shahinian & Giantomasi, PC, attorneys),
for respondent**

Record Closed: April 2, 2026

Decided: May 8, 2026

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

STATEMENT OF THE CASE

Janet Aponte-Pagan, Arthur Pinkney, Bernadette Pinkney, Karina Olivier, Angel Hernandez, and Hansel Perez (collectively “Petitioners”), all residents of Clifton Avenue in Newark, initiated the instant action against the Board of Trustees (the “Board”) of the Robert Treat Academy Charter School (“RTA”), seeking to compel compliance with local municipal traffic and safety ordinances.

The Board filed a Motion to Dismiss the instant action, arguing that the New Jersey Department of Education lacks jurisdiction over City of Newark ordinances.

PROCEDURAL HISTORY

On December 8, 2025, Petitioners, initiated this matter by filing a Pro Se Petition of Appeal (“petition”) with the New Jersey Department of Education, Office of Controversies and Disputes (“NJDOE”). Therein, Petitioners allege that RTA’s Stephen N. Aduato Campus, located at 443 Clifton Avenue, Newark, has failed to comply with Newark Ordinance §23:5-16.

Specifically, Petitioners allege that: (1) during drop-off and pick-up, RTA permits unsafe practices such as illegal parking, double parking, and excessive idling; (2) RTA only utilizes a Class 2 Officer during pick-up on weekdays, while §23:5-16 requires a Class 3 Officer during all pick-up and drop-off hours; (3) RTA’s Traffic Safety Plan is out of date and is not actively enforced; and (4) RTA’s Traffic Safety Plan continues to erroneously assert that a portion of Clifton Avenue is closed to through traffic during pick-up hours when this practice ceased in 2022. (Pro Se Petition, Section II).

On January 5, 2026, the Board filed a Motion to Dismiss with the NJDOE in response to the petition. Therein, the Board argues that: (1) RTA is in full compliance with municipal traffic laws; (2) pursuant to N.J.S.A. 18A:6-9, NJDOE jurisdiction is limited to controversies and disputes arising under the school laws; and (3) the appropriate forum for the instant action is the municipal authority (of Newark) and not the NJDOE.

On January 6, 2026, the NJDOE transferred this matter to the Office of Administrative Law (OAL), as a contested matter. On January 9, 2026, the within matter was filed at the OAL, and the parties were notified therein.

A prehearing conference was held on February 19, 2026, which resulted in the filing of a Prehearing Order, providing among other things, a motion briefing schedule herein.

On February 25, 2026, Petitioners filed a brief in opposition to the Board's motion. Therein, Petitioners argue that: (1) disputes regarding municipal ordinances that govern school-based safety procedures, traffic management, and the hiring of law enforcement personnel for school operations fall within NJDOE jurisdiction; (2) the requirements of Ordinance §23:5-16 create legally enforceable duties; (3) Ordinance §23:5-16 is functionally similar to mandatory safety and operational duties under Title 6A; and (4) the Board misstates the Department of Education's jurisdiction pursuant to N.J.S.A. 18A:6-9, which includes controversies arising under "the rules of the State board or of the commissioner" in addition to the school laws. (Pet. Opp. Br. at 1-3).

On April 2, 2026, the Board filed a reply brief to Petitioners' opposition. Therein, the Board argues that: (1) NJDOE jurisdiction does not extend to all issues involving schools or school personnel, only those arising under the school laws; (2) there is no overlap between N.J.S.A. 18A:6-9 and Newark Ordinance §23:5-16, as Petitioners contend; and (3) the Newark City Code specifies that violations for parking or traffic offenses require appearance before the Newark Municipal Court. (Resp. Reply Br. at 2-6).

The Board seeks to have the instant matter dismissed with prejudice. Petitioners seek to have the instant Motion to Dismiss denied, and proceed with their Petition.

FINDINGS

Upon reviewing the petition and exhibits attached therein, and reviewing the moving papers submitted, I **FIND** the following as **FACT** herein:

Petitioners all reside on Clifton Avenue, in the City of Newark, New Jersey. The RTA is located at 443 Clifton Avenue, Newark, New Jersey. Parents having students attend RTA drop-off and pick up their children at or near the RTA school campus, during school hours. RTA's Traffic Safety Plan states that a portion of Clifton Avenue is closed to traffic during pick-up hours when this practice ceased in 2022. (Petition, Section II). RTA only utilizes a Class 2 Officer during pick-up on weekdays, while local municipal Ordinance §23:5-16 requires a Class 3 Officer during all pick-up and drop-off hours. Id.

LEGAL ANALYSIS AND CONCLUSIONS

A Motion to Dismiss is not specifically enumerated under the Administrative Code; however, administrative law judges are explicitly granted the discretion to use procedures that are not expressly granted, and to relax rules in the interest of justice. The Administrative Code explicitly directs 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 [the] purposes” of achieving “just results, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.” N.J.A.C. 1:1-1.3(a).

An administrative law judge may relax or disregard “procedural rules ... if the judge determines that adherence would result in unfairness or injustice.” N.J.A.C. 1:1-1.3(b). The New Jersey Court Rules state that a motion to dismiss based on “lack of jurisdiction over the subject matter” shall be made “by motion, with briefs” and “before pleading if a further pleading is to be made.” R. 4:6-2. Such motion “shall be heard and determined before trial.” R. 4:6-3. Furthermore, while generally applicable prior to transmittal to the OAL, the Administrative Code provides that petitions before the Commissioner may be dismissed “on the grounds that the petitioner has advanced no cause of action even if the petitioner’s factual allegations are accepted as true or for lack of jurisdiction, failure to prosecute, or other good reason.” N.J.A.C. 6A:3-1.10.

I **CONCLUDE** that the Board’s motion to dismiss filed with the NJDOE may be heard before the OAL as the same pertains to a request for the dismissal of the petition based upon the NJDOE’s lack of jurisdiction regarding the allegations contained in the petition.

The NJDOE Commissioner's jurisdiction is defined by statute and is limited to "controversies and disputes arising under the school laws, excepting those governing higher education, or under the rules of the State board or of the commissioner." N.J.S.A. 18A:6-9. Our courts have held that, "[w]here the controversy does not arise under the school laws, it is outside the Commissioner's jurisdiction even though it may pertain to school personnel." Bd. of Educ. of E. Brunswick v. Twp. Council of E. Brunswick, 48 N.J. 94, 102 (1966).

It is further recognized that "the sweep of the Department's interest and the Commissioner's jurisdiction does not extend to all matters involving boards of education." Archway Programs, Inc. v. Pemberton Twp. Bd. of Educ., 352 N.J. Super. 420, 424–25 (App. Div. 2002). In this regard, the Appellate Division has held that claims against a local board of education that "do not arise under the school laws but rather from statutory or common law [are] typically and appropriately adjudicated in the courts." Id. at 425; see Picogna v. Bd. of Educ. of Cherry Hill, 249 N.J. Super. 332, 335 (App. Div. 1991) (holding that the "contract claim of a nontenured school employee does not arise under the school laws simply because its outcome may later enable him to attain tenure under the school laws," and "[w]hether petitioner's employment was wrongfully terminated under the contract . . . is for the court, not the Commissioner, to decide"); S. Orange-Maplewood Educ. Ass'n v. Bd. of Educ. of the Sch. Dist. of S. Orange and Maplewood, 146 N.J. Super. 457, 463 (App. Div. 1977) (holding that the Commissioner did not have jurisdiction over a dispute involving the interpretation of a sabbatical-leave provision set forth in an agreement between the board of education and the teachers' association).

Similar to the contract disputes described above, the NJDOE Commissioner does not have jurisdiction to review a board of education's hiring decisions. See Farmer v. Bd. of Educ. of Camden, EDU 6789-01 & 6790-01, Initial Decision, (November 17, 2003), adopted, Comm'r. (December 20, 2003) <<http://njlaw.rutgers.edu/collections/oal/>>. In Farmer, two unsuccessful applicants sought to have the successful candidate's appointment rescinded and demanded to be awarded both the position and backpay as damages. Id. The tribunal found that while the petitioners could have appropriately requested that the Commissioner review the appointment to determine if the board of

education had acted in an arbitrary, capricious or unreasonable manner, the fact that they instead sought to “have the Commissioner usurp the power of the Board and award appointment” meant that the “authority of the Commissioner [did] not comport with the relief sought.” Id. at 7-8.

The NJDOE Commissioner likewise does not have jurisdiction over all conflict-of-interest disputes involving schools. See Gardner v. Bd. of Educ. of Hackensack, EDU 09421-12, Initial Decision, (May 1, 2013) <<http://njlaw.rutgers.edu/collections/oal/>> adopted, Comm’r. (June 7, 2013) <<http://www.nj.gov/education/legal/commissioner/>>. “The scope of the Commissioner’s jurisdiction regarding conflict-of-interest disputes is limited to those involving N.J.S.A. 18A:12-2” and does not extend to “a conflict of interest under the School Ethics Act, a violation of the Code of Ethics for School Board Members established by that Act, or claims concerning a common-law-grounded conflict of interest” as such matters would “fall within the jurisdictional ambit of either the School Ethics Commission or the Superior Court.” Id. at *4. The ALJ in Gardner granted the respondent’s jurisdiction-based motion to dismiss after concluding that the claims raised in the petition “do not sufficiently implicate the school laws or necessitate an interpretation of the school laws, requiring the expertise of the Commissioner, to warrant the exercise of the Commissioner’s dispute-resolution jurisdiction.” Id. at *5.

Under the Uniform Administrative Procedure Rules, “pleading requirements are governed by the agency with subject matter jurisdiction over the case.” N.J.A.C. 1:1-6.1. The Administrative Code dictates that a petition before the Department of Education shall include, *inter alia*:

[A] statement of the specific allegation(s) and essential facts supporting the specific allegation(s) that have given rise to a dispute pursuant to the school laws; the relief petitioner is seeking; and a statement of verification or certification in lieu of affidavit for each petitioner. The petition should also cite, if known to petitioner, the section(s) of the school laws under which the controversy has arisen.

[N.J.A.C. 6A:3-1.4.]

While not a strict requirement, especially for *pro se* petitioners, the petition in this matter does not reference any portion of the school laws under Title 18A of the New Jersey Annotated Statutes or any regulation promulgated thereto under Title 6A of the New Jersey Administrative Code. Instead, the petition is premised exclusively on a Newark Municipal Traffic Ordinance. (Petition, Section II at 1).

In their Brief in Opposition to the motion to dismiss, Petitioners' reference N.J.S.A. 18A:6-9 specifically and Title 6A generally. (Pet. Opp. Br. at 1). Petitioners argue that "because the ordinance governs school-based safety procedures, traffic management, and the hiring of law enforcement personnel for school operations, disputes arising from its implementation fall within the Commissioner's jurisdiction." Id. This argument is premised on a misunderstanding of the NJDOE's jurisdiction. Merely pertaining to schools or involving schools is insufficient to transform a dispute arising under statutory or common law (or in this case, municipal law) into one of school law. RTA's alleged failure to comply with a municipal traffic ordinance neither sufficiently implicates the school laws nor necessitates an interpretation thereof requiring the expertise of the Commissioner.

In an appendix to their Brief in Opposition, Petitioners reference three specific regulations and one entire chapter from Title 6A: N.J.A.C. 6A:11, 6A:32-12.1, 6A:27-11.1, and 6A:16-5.1. The same will be addressed below.

N.J.A.C. 6A:11

In raising Chapter 11, Petitioners allege that it "establishes that charter schools are not exempt from municipal safety ordinances and must adhere to the same operational standards as district schools." (Pet. Opp. Br. at 5). Chapter 11 nowhere contains a reference to "municipal safety ordinances." The only provision even remotely related to Petitioners' contention merely states that a "charter school shall operate in accordance with its charter and the provisions of law and regulation that govern other public schools." N.J.A.C. 6A:11-4.13(a). This is essentially a reference to the school laws and in no way "provides the legal bridge [to] Newark Ordinance 23:5-16" as Petitioners contend. (Pet. Opp. Br. at 5).

N.J.A.C. 6A:32-12.1

Petitioners contend that this regulation “defines the [chief school administrator’s] overarching duty to implement all applicable statutes, administrative code provisions, and State Board rules.” *Id.* Instead, this regulation is titled “Kindergarten programs” and describes the obligations for school districts offering such programs. *See* N.J.A.C. 6A:32-12.1. Further exploration of Chapter 32 shows that the defined term “chief school administrator” only includes “charter school . . . lead persons” at “N.J.A.C. 6A:32-7, 8, and 13.” N.J.A.C. 6A:32-2.1. Those chapters deal with student records, student attendance and accounting, and virtual or remote instruction respectively and nowhere contain the “central provision . . . making failure [to] implement [Newark Ordinance 23:5-16] a controversy ‘arising under the school laws.’” (Pet. Opp. Br. at 5).

N.J.A.C. 6A:27-11.1

Petitioners contend that this regulation “governs student transportation safety, including safe loading and unloading, traffic flow, pedestrian safety, and supervision during arrival and dismissal.” *Id.* This regulation nowhere addresses these topics and is instead exclusively devoted to school bus transportation operations¹ and requirements such as driver licensure, vehicle registration/insurance, and bus inspections. N.J.A.C. 6A:27-11.1(a-c).

N.J.A.C. 6A:16-5.1

Petitioners contend that this regulation requires schools to “develop, implement, and maintain a comprehensive school safety and security plan” inclusive of “safety procedures during arrival and dismissal.” (Pet. Opp. Br. at 5). This regulation does mandate that schools have written plans and procedures which, at a minimum, provide for “the protection of the health, safety, security and welfare of the school population.” N.J.A.C. 6A:16-5.1(a)(1). It further directs that the requisite plans “be reviewed annually

¹ This regulation is particularly inapposite to the instant proceeding given Petitioners acknowledgement that RTA does not provide bus transportation to pupils. (Petition, Ex. F).

and updated as appropriate.” N.J.A.C. 6A:16-5.1(b)(2). However, instead of the “traffic related procedures” that Petitioners seek, this regulation is instead concerned with the prevention of, response to and recovery from emergencies and crises “ranging from bomb threats, fires and gas leaks, to an active shooter situation.” NJDOE, School Preparedness and Emergency Planning, < <https://www.nj.gov/education/security/plan>>; see also School Safety and Security Plan Annual Review Statement of Assurance, <<https://www.nj.gov/education/security/plan/SSSPAnnualStatementofAssurance-QSAC.pdf>>.

While NJDOE guidance on the minimum requirements of the regulatory mandate does include discussion of “parent drop-off and pick-up zones” and “Student Transportation Security,” these are discussed exclusively as “Target-Hardening Initiatives.”² The fact that student transportation may be relevant to both municipal traffic ordinances and school emergency response initiatives simply does not render the two synonymous and does not provide the jurisdictional grant that Petitioners seek.

Petitioners premised their petition on a municipal ordinance and framed their requested relief as matter of traffic congestion. They raised no school laws or regulations in their petition and, when they did eventually raise such, it was in a mere appendix in their opposition, and none of the cited regulations stood for the premises contended. To now argue that their dispute is a matter of student safety and welfare is disingenuous and still premised on a misapplication of the relevant school regulations.

The specific allegations, which are required, similarly demonstrate that this dispute is one of traffic regulation and not school law. Petitioners’ primary allegation is that RTA “has failed to fully comply with the City of Newark’s most basic traffic and safety ordinances.” Id. Even the specific complaint regarding RTA’s failure to update its Traffic Safety Plan and Agreement in the most recent edition of the Parent Handbook exclusively premises that action as violating “fundamental traffic regulations and safety ordinances,

² Target hardening is a principle of crime and terrorism prevention wherein “the goal is to strengthen the defenses of a school site and deter criminal activity by increasing the perceived risk to an offender.” New Jersey School Boards Association, Final Report: School Security Task Force, “What Makes Schools Safe?”, <<https://www.njsba.org/wp-content/uploads/2016/02/news-security-task-force-VI-Physical-Security.pdf>>.

thereby compromising established ordinances designed to ensure public safety and order on the roads.”

The relief requested in the petition exclusively consist of an order compelling RTA to “comply[] with municipal ordinances and regulations” and “address the high volume of traffic.” *Id.* at 2. Viewed in concert, the specific allegations stated, relief requested, and citations made in the petition clearly demonstrate that this dispute is one of municipal law and not school law. As such, I **CONCLUDE** that the NJDOE lacks jurisdiction in this matter, as the petition fails to articulate a basis for dispute that arises under the school laws, and Board’s motion to dismiss the petition is **GRANTED**.

ORDER

IT IS hereby **ORDERED** that for the reasons set forth herein, the Board’s motion to dismiss Petitioners petition filed herein is **GRANTED** and the 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.

May 8, 2026
DATE

Julio Morejon
JULIO C. MOREJON, ALJ

Date Received at Agency: May 8, 2026

Date E-Mailed to Parties: May 8, 2026
JCM/lr