

New Jersey Commissioner of Education
Decision

Nicholas Hernandez,

Petitioner,

v.

Highland Park Board of Education, Middlesex
County,

Respondent.

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

In this matter, petitioner alleges that the Board committed five violations of *N.J.A.C. 6A:32-7.1* between September 2025 and March 2026 by failing to provide access to student records within the mandatory 10-day window. He requests various forms of relief, including production of unredacted surveillance footage and the investigation file from March 19, 2026, regarding an incident during which a custodian gave his child and other students rubber gloves while they were in the cafeteria; a formal censure against the Superintendent and Interim Supervisor of Educational Services for administrative bad faith and improper use of law enforcement to intimidate a parent; appointment of an independent monitor to oversee the

¹ The Commissioner did not consider petitioner's additional submissions because they are not permitted by *N.J.A.C. 1:1-18.4*.

district's records and safety departments for no less than one calendar year; referral to the Department of Education's Office of Fiscal Accountability and Compliance (OFAC) for a full audit of the district's safety, custodial, and records management protocols; and sanctions against respondent for the willful and bad-faith obstruction of petitioner's parental rights.

The Board filed a motion to dismiss in lieu of answer, arguing that petitioner failed to state a claim upon which relief can be granted. The Board contended that the petition sets forth "general parental complaints" against the district which do not constitute a controversy or dispute arising under school laws. The Board also emphasized that the Commissioner's review of final board actions does not include the power to investigate claims, and that petitioner is essentially demanding an investigation and a policy audit. In addition, the Board contended that petitioner's request for production of documents and video pertaining to the March 19, 2026, rubber gloves incident is moot because it does not exist. As for the other remedies sought by petitioner, the Board contended the requests were misplaced and unsupported by the facts, relevant law, or regulations.

Petitioner opposed the motion to dismiss, claiming that the Board's argument relied upon contested facts — i.e., that the requested records do not exist. He also argued that the Board cannot rely upon a mootness argument when it failed to preserve evidence either due to an inadvertent or automatic deletion of the requested video footage. He insisted that he is entitled to discovery to determine how the footage was deleted. He added that he was only shown a "stagnant image" from the hallway video footage that the Board admits existed before it was deleted. Finally, he contended that the independent monitor, OFAC referral, and sanctions were necessary and authorized in the interest of student safety and preservation of student records.

The Administrative Law Judge (ALJ) granted the Board's motion to dismiss upon concluding that petitioner failed to state a claim upon which relief may be granted. The ALJ concluded that the information sought by petitioner — the surveillance footage and an investigative file regarding the rubber glove incident — were not mandated student records under *N.J.A.C. 6A:32-7.1* because they did not contain information relevant to the education of the student. The ALJ further concluded that the petition of appeal does not include sufficient facts to support allegations of administrative malfeasance and that, therefore, the remaining remedies petitioner sought — including a censure, OFAC referral, and sanctions — were unavailable to him.

In his exceptions, petitioner argues: (1) the ALJ made a factual error about the contents of the petition and mischaracterized its scope; (2) the ALJ's treatment of the litigation hold violation (based on the erasure of the hallway video footage) is legally erroneous and internally inconsistent; (3) the ALJ's conclusions regarding the improper use of law enforcement directly contradicts her own findings of fact; (4) the ALJ failed to consider whether leave to amend the petition was appropriate; and (5) the ALJ's narrow reading of the petition violated the *Printing Mart* standard.

In response, the Board argues: (1) the ALJ accurately characterized the petition's claims; (2) petitioner's alleged "litigation hold" does not create a cause of action under the school laws; (3) the ALJ's treatment of the law enforcement allegation is not internally inconsistent; (4) petitioner never sought to amend the petition, and amendment would be futile; and (5) the ALJ correctly applied the standard governing the Board's motion to dismiss for failure to state a claim.

Upon review, the Commissioner is constrained to remand this matter for further proceedings. Petitions are subject to dismissal “on the grounds that the petitioner has advanced no cause of action even if the petitioner’s factual allegations are accepted as true.” *N.J.A.C. 6A:3-1.10*. This standard also appears in *New Jersey Court Rule 4:6-2(e)*. See *Jonathan Wadley v. N.J. Dep’t of Educ., Office of Student Prot.*, OAL Dkt. No. EDU 09223-22, Initial Decision at 4-5 (Mar. 10, 2023), *adopted*, Commissioner Decision No. 110-23 (Apr. 11, 2023) (assessing *N.J.A.C. 6A:3-1.10* motions like *Rule 4:6-2* motions seeking dismissal for failure to state a claim).

Motions to dismiss are rarely granted and “must be evaluated in light of the legal sufficiency of the facts alleged” in the petition. *Sickles v. Cabot Corp.*, 379 *N.J. Super.* 100, 106 (App. Div. 2005) (quoting *Donato v. Moldow*, 374 *N.J. Super.* 475, 482 (App. Div. 2005)). If information beyond the facts asserted in petitioner’s pleadings is considered by the tribunal — including respondent’s competing version of facts as set forth in certifications — the granting of a motion to dismiss is not appropriate. See *Donato*, 374 *N.J. Super.* at 483 (explaining that if “matters outside the pleadings are presented to and not excluded by the court, the motion [to dismiss] shall be treated as one for summary judgment . . . and all parties shall be given reasonable opportunity to present all material pertinent to such a motion”) (quoting *N.J. Ct R. 4:6-2*).

A “student record” is “information related to an individual student gathered within or outside the school district and maintained within the school district, regardless of the physical form in which it is maintained.” *N.J.A.C. 6A:32-2.1*. The regulatory scheme further provides that parents may request access to student records. *N.J.A.C. 6A:32-7.5(e)(1)*. If the school district disagrees with the request, the chief school administrator or designee shall meet with the parent

to resolve the issues set forth in the request. *N.J.A.C. 6A:32-7.7(b)(1)*. If the matter is not resolved, the parent has 10 school days to appeal the school district's decision to the district board of education, and the board shall render a decision within 20 school days. *N.J.A.C. 6A:32-7.7(b)(2), (3)*. If the board seeks to deny a request, then the reasons for the denial should be explained in the board's written decision. The board's final decision may be appealed to the Commissioner pursuant to *N.J.S.A. 18A:6-9* and *N.J.A.C. 6A:3*. See *A.M., on behalf of minor child, N.M. v. State-Operated School District of the City of Camden*, OAL Dkt. No. EDU 08522023, Initial Decision at 8-9 (Mar. 27, 2024) (explaining that student records claims must be raised in accordance with the procedures set forth in *N.J.A.C. 6A:32-7.7*), *adopted*, Commissioner Decision No. 174-24 (Apr. 29, 2024); *N.J.A.C. 6A:3-1.3(i)* (explaining that a petitioner may appeal a "notice of a final order, ruling, or other action by the district board of education").

Upon careful review of the record, the Commissioner is unable to ascertain whether petitioner appealed his denial of access claims to the Board as required by *N.J.A.C. 6A:32-7.7*. Moreover, the record does not contain a final ruling from the Board for the Commissioner to review. Accordingly, the Initial Decision is rejected, the motion to dismiss is denied, and the matter is remanded for further proceedings to determine at the outset whether petitioner appealed his denial of access claims to the Board as required by *N.J.A.C. 6A:32-7.7*, and whether the Board issued a decision within 20 days in accordance with *N.J.A.C. 6A:32-7.7*.

IT IS SO ORDERED.


COMMISSIONER OF EDUCATION

Date of Decision: September 15, 2026
Date of Mailing: September 15, 2026



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 06220-26

AGENCY DKT. NO. 155-04-26

NICHOLAS HERNANDEZ,

Petitioner,

v.

HIGHLAND PARK BOARD OF EDUCATION,

MIDDLESEX COUNTY,

Respondent.

Nicholas Hernandez, petitioner, pro se

Jordan Lambdin, Esq., for respondent (Busch Law Group, LLC, attorneys)

Record Closed: May 19, 2026

Decided: June 26, 2026

BEFORE **BINDI MERCHANT**, ALJ:

STATEMENT OF THE CASE

Petitioner Nicholas Hernandez (“Hernandez”) alleges that respondent Highland Park Board of Education (“Board”) violated the school laws governing student records, N.J.A.C. 6A:32-7.1 to -7.8, by failing to maintain or provide him with camera footage and investigation materials of an incident in which a janitor gave his daughter a rubber glove

at school. Must the case be dismissed for failure to state a claim upon which relief may be granted? Yes, since N.J.A.C. 6A:32-7.3(b) identifies a list of student records the district is required to maintain, and the materials sought are not such records.

PROCEDURAL HISTORY

On April 10, 2026, Hernandez filed a petition of appeal and petition for emergent relief with the Commissioner of Education. According to Hernandez, his appeal arises under “N.J.S.A. 18A:6-9, N.J.A.C. 6A:3-1.3, and N.J.A.C. 6A:32-7.1.” On April 20, 2026, the Commissioner transmitted Hernandez’s petitions to the Office of Administrative Law (“OAL”) under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23.

On April 27, 2026, Hernandez’s emergent relief application, by which he sought “to prevent the spoilation of evidence” of the rubber glove incident, was heard, and on April 28, 2026, the application was denied.

On April 30, 2026, the Board filed a motion to dismiss in lieu of an answer, arguing that Hernandez failed to state a claim upon which relief can be granted. Hernandez filed an opposition brief that same day. On May 7, 2026, the Board filed a reply to Hernandez’s opposition brief. Hernandez filed a response the same day. On May 19, 2026, I heard oral arguments on the motion to dismiss and closed the record.

On May 29, 2026, the Commissioner of Education adopted the emergent relief order.

FINDINGS OF FACT

For purposes of the Board’s motion to dismiss, the facts alleged by Hernandez in his April 10, 2026, petition of appeal are deemed admitted; therefore, I **FIND** the following allegations on which Hernandez bases his claims for relief in his petition of appeal as **FACT**:

At all relevant times, Hernandez's daughter attended the Board's Irving Primary School.

On March 19, 2026, a custodian employed by respondent distributed rubber gloves to petitioner's child.

On March 22, 2026, petitioner e-mailed the principal of Irving Primary School, Ms. Megan McNally, and Highland Park Superintendent, Dr. Kristina Susca, a request to access all educational records and to meet regarding the March 19, 2026, incident.

On March 23, 2026, Ms. McNally met with petitioner.

On March 26, 2026, Ms. McNally followed up on her meeting with petitioner and indicated that the March 19, 2026, incident involved a custodian, during the course of his duties, in the cafeteria, providing several students with rubber gloves, from a box he brought in, after the students asked if they could have them. Petitioner's daughter was among those students, and no harm was experienced by any student who received the rubber gloves. Shortly thereafter, Ms. McNally asked the custodian to refrain from providing rubber gloves to students in the future. Ms. McNally also updated petitioner with an e-mail stating that the matter was resolved with the custodian. Petitioner responded to Ms. McNally and Dr. Susca with several follow-up questions.

On March 27, 2026, Dr. Susca responded to petitioner stating that a thorough review of the situation was completed, and that the matter was fully addressed and there was no further information to provide.

On April 6, 2026, petitioner requested a litigation hold on all records, data, and communications related to this matter.

On April 7, 2026, petitioner sent another e-mail regarding preservation steps.

On April 8, 2026, petitioner requested from the respondent access to inspect the March 19, 2026, video surveillance of the Irving Primary School cafeteria under the statutory 10-day window. Additionally, petitioner confirmed his arrival at the office at 9:00 a.m. on April 9, 2026. The school secretary coordinated with the main office to facilitate his review of the video recordings. While the Irving Primary School did not have video cameras located within the cafeteria, petitioner was invited to observe a recording of video surveillance capturing the “ingress and egress areas” of the cafeteria.

On April 9, 2026, petitioner met with Angelo Odat, Highland Park IT Technician, to review the video recordings. Petitioner agreed not to record the meeting. As Mr. Odat showed petitioner the best view of the hallway outside of the cafeteria, petitioner became upset. The petitioner requested to view the physical cameras outside of the cafeteria. While petitioner attempted to walk through the school, he was stopped and informed he was not permitted to walk through the school. The parties returned back to the conference room to resume watching the video recordings. Petitioner requested the whereabouts of the principal and was advised that she would not be able to meet with him. Petitioner became upset again after he was told that he had viewed all the available video surveillance. The meeting ended and petitioner was asked to leave the school voluntarily, otherwise he would be escorted out by police. The meeting lasted approximately twenty-five (25) to thirty (30) minutes.

At some point, within the ordinary course of the district’s video retention system, the video recording of the ingress and egress areas of the school cafeteria at Irving Primary School were erased. The data retention program installed can retain only a certain amount of data, therefore, when an appropriate data threshold is met, the previous data is erased to preserve more recent video surveillance.

For relief, Hernandez seeks the production of “all surveillance footage from March 19, 2026,” and any communications or notes related to the rubber glove incident. He asks the Commissioner of Education to censure school officials for “administrative bad faith and the improper use of law enforcement to intimidate a parent,” to appoint an independent monitor to oversee the Board’s operations, and to refer the district to the Office of Fiscal Accountability and Compliance for an audit of record management

procedures. Finally, Hernandez requests that the Board be sanctioned “for the willful and bad-faith obstruction of [his] parental rights.”

CONCLUSIONS OF LAW

The procedural rules governing petitions of appeal before the Commissioner permit a respondent to file a motion to dismiss in lieu of an answer “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:3-1.5(g); N.J.A.C. 6A:3-1.10. Such a motion is assessed under the same standards used by the courts in applying R. 4:6-2, the court rule allowing for motions to dismiss.

Under these standards, if the basis for a motion to dismiss is that the petition has advanced no cause of action, or failed to state a claim upon which relief may be granted, “the test for determining the adequacy of [the] pleading [is] whether a cause of action is ‘suggested’ by the facts,” such that the “inquiry is limited to examining the legal sufficiency of the facts alleged on the face of the complaint.” Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989) (citing R. 4:6-2(e); Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988); Rieder v. Dep’t of Transp., 221 N.J. Super. 547, 552 (App. Div. 1987).

Importantly, for purposes of the motion, it does not matter whether a petitioner can ultimately “prove the allegation contained in the complaint” because “all facts alleged in the complaint and the legitimate inferences drawn therefrom are deemed admitted.” Ibid. (citing Somers Constr. Co. v. S. Gloucester Cnty. Reg’l High Sch. Dist. Bd. of Educ., 198 F. Supp. 732, 734 (D.N.J. 1961)); Smith v. City of Newark, 136 N.J. Super. 107, 112 (App. Div. 1975) (citing Heavner v. Uniroyal, Inc., 63 N.J. 130, 133 (1973); J.H. Becker, Inc. v. Marlboro Twp., 82 N.J. Super. 519, 524 (App. Div. 1964). While “[a] complaint should not be dismissed . . . where a cause of action is suggested by the facts,” “a dismissal is mandated where the factual allegations are palpably insufficient to support a claim upon which relief can be granted.” Rieder, 221 N.J. Super. at 552.

For the following reasons, Hernandez has failed to state a claim upon which relief may be granted by the Commissioner under the student record laws or otherwise.

The crux of Hernandez's petition of appeal is that the Board violated the school laws governing student records, N.J.A.C. 6A:32-7.1 to -7.8, in responding to his requests for information regarding the rubber glove incident. The problem with his claim that the Board violated these regulations, by denying him access to security camera footage and an investigative file regarding the rubber glove incident, is that these materials are not "student records." N.J.A.C. 6A:32-7.1(b) mandates that each school district "compile and maintain student records and regulate access in accordance with the Family Educational Rights and Privacy Act" Ibid. The records "shall contain only information that is relevant to the education of the student" N.J.A.C. 6A:32-7.1(c); see also N.J.A.C. 6A:32-7.3(b) (providing a list of mandated student records). Hernandez alleges that the school district failed to maintain student records, but security camera footage is not relevant to the education of the student and is not among the records required to be maintained under N.J.A.C. 6A:32-7.3. Therefore, Hernandez has not advanced a valid claim that the Board must provide camera footage or other non-student record materials, simply because he has not articulated a basis under the law for such an entitlement. Put another way, the petition of appeal does not explain an "unlawful suppression of mandatory student records" because it never mentions mandatory records described in N.J.A.C. 6A:32-7.3. Compare N.J.A.C. 6A:16-7.7 (requiring school district to provide "information . . . in writing to the parents or guardians of students who are party to a harassment, intimidation, or bullying investigation.").

Second, and even assuming the Commissioner has jurisdiction over Hernandez's claim of "administrative malfeasance," the petition of appeal does not include sufficient facts to support any such allegations. For a claim to exist, "the essential facts supporting [petitioner's] cause of action must be presented . . . ; conclusory allegations are insufficient in that regard." Scheidt v. DRS Techs., Inc., 424 N.J. Super. 188, 193 (App. Div. 2012). Here, Hernandez only provides conclusory remarks about a school district's administration, namely that a failure to preserve camera footage, which is not required to be preserved as "student records," somehow constitutes a failure to maintain student records. Since no student records are identified in the petition, it is also conclusory to

suggest that school officials engaged in malfeasance for failing to allow Hernandez to inspect his child's records when they ultimately restricted access to the camera footage. Hernandez has also provided insufficient facts or a legal basis to "censure" the Board for "the improper use of law enforcement to intimidate a parent."

Finally, Hernandez's factual allegations are palpably insufficient to support a claim to appoint an "independent monitor" to oversee the Board's operations, to refer the district to the Office of Fiscal Accountability and Compliance for an audit of record management procedures, or to sanction the Board "for the willful and bad-faith obstruction of [his] parental rights."

For the reasons stated, I **CONCLUDE** that Hernandez has failed to state a claim upon which relief can be granted.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the Board's motion to dismiss is **GRANTED** and that this case 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**. 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.

June 26, 2026

DATE



BINDI MERCHANT, ALJ

Date Received at Agency:

June 26, 2026

Date Mailed to Parties:

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APPENDIX

For Petitioner:

Petitioner's Opposition to Respondent's Motion to Dismiss dated April 30, 2026.

Petitioner's Reply to Respondent's May 7, 2026, Reply dated May 7, 2026.

For Respondent:

Respondent's Motion to Dismiss in Lieu of an Answer dated April 30, 2026.

Respondent's Reply to Petitioner's April 30, 2026, Opposition dated May 7, 2026.