

101-18

N.C., on behalf of minor child, J.C., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
CITY OF OCEAN CITY,
CAPE MAY COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner challenged the respondent Board's decision to expel J.C. pursuant to *N.J.S.A.* 18A:37-2 for repeated violations of the Code of Student Conduct and failure to abide by Ocean City School District Policies. Specifically, J.C. was expelled by the Board following an incident wherein he brought several items to school, including two knives, a choke cord, drugs, and drug paraphernalia. Petitioner maintained that the Board's determination to expel petitioner was arbitrary, capricious, or unreasonable.

The ALJ found, *inter alia*, that: school board decisions are entitled to a presumption of correctness and will not be disturbed unless there is an affirmative showing that the decision was arbitrary, capricious or unreasonable; where board actions are challenged, the challenger bears the burden of proving that such actions were unlawful, arbitrary, capricious or unreasonable; in matters involving the exercise of a local board of education's discretion, the Commissioner's role is not to substitute his judgment for that of the board, but to determine whether there was a reasonable basis for the board's conclusions; in the instant case, the Board's decision to expel J.C. was based upon the seriousness of an off-campus incident depicted on video and J.C.'s possession of weapons and drugs on school property, and cannot be considered to be arbitrary, capricious or unreasonable; however, J.C. is entitled to a free public education from Ocean City School District in accordance with the parameters set forth in *N.J.S.A.* 18A:38-1. Accordingly, the ALJ concluded that the Board's determination to expel J.C. must be affirmed, but that the Board must continue to provide J.C. with educational services pursuant to *N.J.S.A.* 18A:38-1.

Upon comprehensive review, the Commissioner modified the Initial Decision. In so doing, the Commissioner found, *inter alia*, that the Board's decision to remove J.C. from the general education program was not arbitrary, capricious or unreasonable, however the Board was not authorized to expel J.C., i.e. discontinue all educational services, as he had never served a long-term suspension for any other incident; it is well recognized that while school districts have the authority to expel and suspend students, that authority is not unlimited as the regulations provide for sufficient safeguards to protect a student's fundamental rights to an education. Accordingly, the Commissioner found that, although it may not be appropriate to ever return J.C. to the general education program, the Board must continue to provide him with educational services.

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

April 5, 2018

OAL DKT. NO. EDU 2346-17
AGENCY DKT. NO. 14-1/17

N.C., on behalf of minor child, J.C., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
CITY OF OCEAN CITY, :
CAPE MAY COUNTY, :
RESPONDENT. :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the Ocean City Board of Education (Board). This case involves a student, J.C., who was expelled by the Board following an incident on October 13, 2016, wherein he brought several items to school including: two knives; a choke cord; drugs; and drug paraphernalia.¹ The Administrative Law Judge (ALJ) found that the Board’s decision to expel J.C. was not arbitrary, capricious or unreasonable. The ALJ, however, also found that the Board must continue to provide J.C. with educational services.

Upon a comprehensive review of the record in this matter, the Commissioner finds that the Board’s decision to remove J.C. from the general education program was not arbitrary, capricious or unreasonable. However, the Board was not authorized to formally expel J.C. from the School District. Although it may not be appropriate for J.C. to ever return to the general education program, the Board is still required to provide J.C. with educational services.

¹ The school administrators became concerned that J.C. might have brought unauthorized items to school based on an off-site incident that occurred the previous day.

It is well recognized that school districts have the authority to expel and suspend students. *N.J.S.A.* 18A:37-2. That authority, however, is not unlimited, as the regulations provide for sufficient safeguards to protect the student’s fundamental right to an education. Under *N.J.A.C.* 6A:16-7.4(a)(1), “a district board of education may expel a general education student from school, pursuant to *N.J.S.A.* 18A:37-2, only after the district board of education has provided ... [t]he procedural due process rights set forth at *N.J.A.C.* 6A:16-7.1(c)3 and 7.3 [and] subsequent to a long-term suspension, pursuant to *N.J.A.C.* 6A:16-7.3 ...” Expulsion is not simply the removal of a student from school, but rather, it is defined as “the discontinuance of educational services or the discontinuance of payment of educational services for a student.” *N.J.A.C.* 6A:16-1.3. In contrast, a long-term suspension is defined as the “removal of a student for more than 10 consecutive school days from the general education program, ... but not the cessation of the student’s educational services.” *N.J.A.C.* 6A:16-1.3. Additionally, prior to expelling a student, *N.J.A.C.* 6A:16-7.3(a)5iv requires the Board to provide written notification to the student’s parents that further engagement by the student in conduct warranting expulsion shall amount to a knowing and voluntary waiver of the student’s right to a free public education.

In this case, it is undisputed that J.C. has never served a long-term suspension for any other incident, thereby precluding the Board from expelling J.C. from the District.² *See, M.R., v. Board of Trustees of the Hoboken Charter School*, Commissioner Decision No. 89-10, decided March 22, 2010 (The Commissioner found that, under *N.J.A.C.* 6A:16-7.5, expulsion can only take place after a student has “engaged a second time in conduct warranting possible suspension or expulsion, after having first served a duly imposed long-term suspension for an earlier infraction.”). Moreover, there is no evidence in the record indicating that – subsequent to

² In February 2016, J.C. received a ten-day suspension stemming from an incident where he sent a threatening email to a teacher. J.C.’s discipline record also included a five-day suspension for possession of a knife in eighth grade, chronic absenteeism and tardiness, and infractions for smoking on school property and cutting class.

his previous infractions – J.C. and his parents were ever provided notification, in accordance with *N.J.A.C.* 6A:16-7.3(a)5iv, that further engagement in conduct warranting expulsion would amount to a waiver of J.C.’s right to a free public education. See, *D.L.G. and B.B.-G., on behalf of minor child, O.G. v. Board of Education of the Township of Millburn, Essex County*, Commissioner Decision No. 489-10, decided November 12, 2010.

Although the Board’s decision to expel J.C. – i.e. discontinue all educational services – was contrary to the law, the Commissioner finds that J.C. did have an opportunity to appear before the Board after the October 2016 incident, and he was afforded the requisite due process required by *N.J.A.C.* 6A:16-7.1(c)3 and 7.3. Moreover, there is no question that J.C.’s conduct in October 2016, coupled with his history of continued and willful defiance of school rules, was sufficiently serious to warrant a long-term suspension. Therefore, the appropriate discipline in this case would have been to remove J.C. from the general education program; impose a long-term suspension on J.C.³; and to provide him with the appropriate educational program or services consistent with *N.J.A.C.* 6A:16-7.3(a)9ii.⁴ In light of the severity of J.C.’s conduct, the appropriate services are homebound instruction, which is consistent with the services that J.C. has received in the past.⁵

³ Local boards of education must follow the applicable regulatory provisions governing the process for determining whether long-term suspensions should continue and/or when a student should return to the general education program, i.e., *N.J.A.C.* 6A:16-7.3(d)-(f).

⁴ Presumably the Board has been providing J.C. with educational services during the pendency of this appeal. *N.J.A.C.* 6A:16-7.4(b)1 provides that when there is an appeal of a school district’s decision to expel a student, the school district shall continue to provide appropriate educational services until a final decision is reached by the Commissioner.

⁵ J.C. was in a homebound program that consisted of online instruction that was provided by an outside provider.

Accordingly, the Initial Decision is modified in so far as the Board's decision to expel J.C. was contrary to law. The Board must continue to provide J.C. with educational services, although it may never be appropriate to return J.C. to the general education program.

IT IS SO ORDERED.⁶

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 5, 2018

Date of Mailing: April 5, 2018

⁶ This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 02346-17

AGENCY DKT. NO. 14-1/17

N.C. ON BEHALF OF J.C.,

Petitioner,

v.

**OCEAN CITY BOARD OF
EDUCATION OF THE CITY
OF OCEAN CITY,**

Respondents.

Douglas K. Walker, Esq., for petitioner (Law Office of Douglas K. Walker, P.C., attorney)

Michael P. Stanton, Esq., for respondent (McCrosson & Stanton, P.C., attorneys)

Record Closed: November 28, 2017

Decided: January 12, 2018

BEFORE **KATHLEEN M. CALEMMO**, ALJ:

STATEMENT OF THE CASE

Petitioner N.C., on behalf of minor child J.C., appeals respondent Ocean City Board of Education's (Board's) decision to expel J.C. for good cause pursuant to N.J.S.A. 18A:37-2, for repeated violations to the Code of Student Conduct, and failure to abide by

Ocean City School District Policies. Petitioner maintains that the Board's determination to expel petitioner was arbitrary, capricious, or unreasonable.

PROCEDURAL HISTORY

By letter dated October 14, 2016, Matthew Jamison, Ed.D., principal of Ocean City High School, notified the parents of J.C. that due to the seriousness of the incident, J.C. was being suspended pending a formal Board disciplinary hearing. The hearing was originally scheduled for November 8, 2016. At the request of the petitioner, the next two hearing dates were adjourned and the hearing was held on December 12, 2016. At its December 19, 2016 meeting, the Board voted to expel J.C. By letter dated, December 22, 2016, the Board issued a written statement of its decision and notified petitioner of the right to appeal. On January 23, 2016, petitioner filed the appeal with the Department of Education's Bureau of Controversies and Disputes. On February 13, 2017, the Board filed its answer. The Director of the Bureau of Controversies and Disputes of the New Jersey Department of Education transmitted the matter to the Office of Administrative Law (OAL), where it was filed for hearing as a contested case on February 16, 2017. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

The hearing was scheduled for July 28, 2017, but adjourned at the request of the petitioner so he could appear before the Board at its next meeting and request reconsideration due to his progress. Prior to the hearing date of October 2, 2017, the Board heard and considered petitioner's presentation and decided not to rescind the expulsion. I heard the case on October 2, 2017, and after allowing for post-hearing submissions, closed the record on November 28, 2017.

STATEMENT OF FACTS

At the hearing, the Board presented two witnesses: Principal Matthew Jamison, Ed.D., and Assistant Principal Michael Mattina. Petitioner offered testimony from J.C., his mother N.C., and father M.C. Certain facts regarding this matter are not disputed. Based upon a review of the testimony and the documentary evidence presented, I **FIND** the following preliminary **FACTS**:

On October 13, 2016, Assistant Principal Michael Mattina (Mattina) received an email and video attachment from an Ocean City High School student. I reviewed the video at the hearing. The scene showed four males. J.C. and an unidentified youth were faced-off, each holding a knife, and exchanging heated words. During that exchange, the unidentified youth is struck in the back of the head with a pole from behind by another male. The unidentified male on the video is an Ocean City High School student receiving homebound instruction. He was present at the high school on October 13, 2016 and spoke to Mattina about the incident. Mattina shared the video with the Ocean City Police Department as required by an open communication policy between the school and police. N.J.A.C. 6A:16-6.2.

J.C. was an eleventh grade student in the Ocean City High School Extension School. The school day for Extension students is from 2:00 p.m. until 6:00 p.m. When J.C. arrived on the afternoon of October 13, 2016, he was immediately escorted by the security aide, Mr. Macomb, to the Assistant Principal's office. Mattina told J.C. that he had seen the video and asked J.C. to open his backpack and empty his pockets. J.C. complied. Mattina photographed the items (R-5) and typed a contemporaneous statement listing the items (R-6). J.C. was in possession of a locking blade knife, short blade kitchen knife, choke/strangulation cord, drugs (believed to be marijuana), drug paraphernalia, and cigarettes. Mattina testified that he asked J.C. why he brought those items to school. J.C. testified that Mattina told him he was being suspended and that his parents would be notified. J.C. was then escorted from the building by a member of the Ocean City Police Department who also took custody of the contents of J.C.'s backpack. (R-4.)

Mattina discussed the particulars of the incident with the principal, Dr. Jamison, who immediately drafted a letter to J.C.'s parents. The letter dated October 14, 2016, listed the items confiscated from J.C.; identified the sections of the Code of Student Conduct that were violated; and advised them that J.C. was suspended pending a formal Board disciplinary hearing and evaluation by the Child Study Team (CST). (R-2.) Jamison sent a second letter dated October 19, 2016 to inform J.C.'s parents of the Board's hearing date and provide pertinent information about the nature of the hearing. (R-3.)

As part of the CST evaluation, J.C. was referred to Thomas O'Reilly, M.D. for a psychiatric evaluation on December 5, 2016.

The formal hearing was held on December 12, 2016, pursuant to N.J.S.A. 6A:17-7.3(a)(10), before a four-member Board committee. Two members of the committee recused themselves. The committee presented a report to the full Board in closed session. On December 19, 2016, the Board voted during public session to expel J.C. By letter dated December 22, 2016, the Board drafted a detailed letter to J.C.'s parents outlining the charges that the Board considered against J.C.; summarizing the evidence presented to the Board by both sides; and stating the reasons for the Board's determination to accept the administration's recommendation of expulsion.

In addition to the evidence that forms the foundation of the above findings of fact, a summary of pertinent testimony follows.

Testimony of Dr. Jamison, Principal

Dr. Jamison testified that he made the recommendation for expulsion based on the severity of the incident and many other factors. On October 13, 2016, there were clear violations of the Code of Conduct that occurred on school property, including Level B violations for possession of nicotine products and Level C violations, considered the most serious, for possession of weapons, including two knives and a strangulation cord, and possession of marijuana and drug paraphernalia. In addition, Jamison reviewed the video of the fight that occurred off premises. Although the incident occurred off school property, the student who had been victimized was present in the building on October 13, 2016, when the weapons were confiscated from J.C. In addition to the Code of Conduct, Jamison reviewed the statute that defines the causes for suspension and expulsion of pupils and felt that J.C.'s behavior fell within the parameters outlined therein. N.J.S.A. 18A:37-2.

Jamison expressed that there had been multiple interventions with J.C. He felt that past remediation and progressive disciplinary actions had no impact on changing behavior. Eight months earlier, in February 2016, the school administration made the

determination to have J.C. evaluated by the CST to determine if he was eligible for special services because of his behavior. The CST determined that he did not meet the criteria for special services. That incident involved a threatening email sent by J.C. to a teacher. Jamison found the email incident to be disturbing on two fronts. It was a threat against a teacher, but it also raised concerns that J.C. exhibited signs associated with domestic dating violence and violations of the school's dating violence policy. (R-1.) J.C. received a ten-day suspension and was placed in the Extension School upon his return to school in mid-February 2016 of his sophomore year. According to Jamison, the Extension School is not a structured environment. It is an alternative education setting where the children attend school from 2:00 p.m. to 6:00 p.m. each day and are given more freedom and movement. The students have an individualized program plan and the program is run by counselors. It is geared to students who struggle in the regular high school setting.

A review of J.C.'s discipline record by Jamison showed a five-day suspension for possession of a knife in eighth grade, chronic absenteeism and tardiness, and infractions for smoking on school property and cutting class. The issues with attendance and smoking continued after J.C. was placed in the Extension Program. Jamison testified that he did not make the recommendation for expulsion lightly. From what he saw on the video, J.C. exhibited a willingness to use a weapon against another student. This was compounded by the fact that J.C. was in possession of weapons on the same day that this particular student was in the building. Jamison stated that J.C. exhibited a continued progression of willful disobedience of the Code of Conduct despite multiple interventions.

On cross-examination, Jamison stated that from 2007 until the present date, he had not expelled any other student. He also stated that J.C.'s grades from his interim report for October 2016 had no bearing on his consideration of expulsion. In discussing the Code of Conduct, it was noted that a first offense for fighting is a three-day suspension. J.C. had no record of assaultive behavior on school property.

Testimony of Michael Mattina, Assistant Principal

Mr. Mattina testified that he received the video of the incident on October 13, 2016 by email and spoke to the student who was struck in the head prior to J.C. arriving for

school. He contacted Officer Elias from the Ocean City Police Department, who was assigned to the school, and they met in his office where he played the video of the fight for her. Mattina testified that due to his concern to create a safe environment, he asked the security aid, Mr. Macomb, to escort J.C. to his office as soon as he arrived.

After J.C. was brought to his office, Mattina stated that they had a conversation about the video footage. Afterward, Mattina asked J.C. to open his backpack and empty his pockets. Although Mattina stated that J.C. consented to the search, Mattina testified that he conducted the search to ensure the safety of the school population and because based on the presence of the knife in the video he had a reasonable suspicion to investigate. J.C.'s backpack contained two knives, a strangulation cord, cigarettes, a substance believed to be marijuana, and drug paraphernalia. Mattina documented the contents in J.C.'s possession. (R-5 and R-6.) When he asked J.C. why he had the weapons, he testified that J.C. forgot the knives were in his bag, but that he had no idea about the cord, claiming he had never seen it before. Mattina also stated that J.C. admitted that he was selling marijuana, but not to Ocean City students.

The Ocean City Police were summoned. They escorted J.C. from the premises and took possession of the contents from his backpack. As a result of the incident, Officer Elias prepared a police report. (R-4.)

Mattina testified that he called J.C.'s parents from school about the suspension. He stated that it is his practice to always call the parents and he believed that he reached one of J.C.'s parents by telephone that same day.

After the suspension, Mattina testified that homebound instruction was set up for J.C. Mattina was asked on cross-examination about the homebound program and stated that it was an on-line course provided by an outside provider known as "Educere." He admitted that the students receive no human contact, but performance is monitored. The reports generated for J.C. were not good and showed bad work attempt. J.C. performed poorly and was failing his course work mainly due to lack of effort.

On cross-examination, Mattina testified that the video was very disturbing. He admitted that J.C. had no prior disciplinary actions for assaultive behavior or contraband except the email against the teacher six months earlier. He also testified that J.C.'s grades were good while he was in the Extension Program. Mattina acknowledged that there were students attending Ocean City High School despite having been adjudicated delinquent. However, he felt that J.C.'s circumstances of bringing weapons to school was a unique circumstance.

Dr. Jamison was recalled to testify about the Educere homebound instruction program. He stated that Ocean City contracts with Educere, which is a state-approved program for homebound instruction.

Testimony of J.C.

J.C. testified on cross-examination that after having failed five drug tests while serving his Intensive Outpatient Program (IOP) as part of his juvenile probation, he went to Daytop.⁷ J.C. started at Daytop in July 2016. As part of the program, J.C. was required to write a self-evaluation. J.C. wrote his on September 27, 2017. It is a heartfelt account of his journey, including his struggles with addiction, lying to his parents, and encounters with the law. (P-2.) J.C. admitted that he did not believe he had a problem with addiction, but after being in treatment, he is able to face life sober. He learned coping skills and is able to enjoy life without turning to drugs. He reported that his transition at Daytop was difficult at first, but now that he has accepted his problems, he is thriving both academically and personally.

At Daytop, J.C. was enrolled in a full schedule of core classes. (P-3.) Emails from his teachers contained glowing reports about his behavior, work effort, and progress. (P-5.) J.C. was awarded the Student of the Month certificate for October 2017 and he expressed his pride in that accomplishment. (P-4.) His monthly progress report for September 2017 was positive and showed that J.C. was on track to complete treatment

⁷ Daytop Village of NJ, Inc. is a residential treatment facility in Pittsgrove, New Jersey that provides treatment to adolescents with addiction, substance use and co-occurring mental health disorders within a unique continuum of accredited programs and a recovery-based day school.

by the end of October 2017. (P-7.) On cross-examination, J.C. admitted that his progress was not as good in July and August. He had an infraction for a minor fight and was sanctioned. (R-7.) His refusal to participate in group activities was noted on his August report. (R-8.) However, it was clear that J.C. made progress as the program continued.

J.C. also testified about the incident that occurred in the parking garage. He stated that the other boy involved had his knife out so J.C. pulled his knife. J.C.'s friend hit the boy in the head with the pole. On cross-examination, J.C. stated that he had lured the boy to the garage under a false pretense arranged by J.C. and his friends.

After the incident, J.C., through a referral from the CST, received a psychiatric evaluation from Thomas O'Reilly, M.D. Dr. Reilly evaluated J.C. and prepared a written report for Ocean City School District, Office of Special Services dated December 5, 2016. (P-6.) During the evaluation, Dr. O'Reilly and J.C. discussed the incident and the events at school on October 13, 2016. In the report, Dr. O'Reilly wrote that he was concerned about the recent incidents, but that J.C. could return to the Extension Program because of its small size and structure. He stated that an alternative would be homebound instruction. (P-6.)

J.C. expressed his desire to go back to the Extension Program. He stated that he wanted to continue his supportive services through Cape Counseling and meetings to keep him in recovery.

With regard to the events that happened on October 13, 2016, J.C. stated that he never intended to harm anyone. He claimed that he uses the knives for whittling and he had no idea how the strangulation cord got into his backpack.

Testimony of N.C., J.C.'s mother

N.C. testified that the months at Daytop changed her son. She stated that she accompanied her son to Dr. O'Reilly's evaluation and agrees with his assessment that J.C. does not pose a danger and should be returned to the Extension Program. She stated that her son's grades improved in the program and he did very well.

On October 13, 2016, N.C. received a telephone call from the Ocean City Police Department about her son's arrest. She stated that no one from the high school called her. However, N.C. also could not recall whether she received the certified letter dated October 14, 2016 that was mailed to the house after the incident.

N.C. testified that when J.C. was suspended a teacher from the school would bring work to the house once a week. She stated that once the Board voted to expel J.C. everything stopped and J.C. was expected to work on-line without teacher assistance.

Testimony from M.C., J.C.'s father

M.C. also testified about the positive change in his son's behavior since his stay at Daytop. M.C. graduated from Ocean City High School. His older son graduated in 2017; therefore, he wanted J.C. to continue the family tradition.

On the day of the incident, he testified that he did not receive a call from the high school, only the police department.

ANALYSIS AND ADDITIONAL FINDINGS OF FACT

Credibility contemplates an overall assessment of the story of a witness in light of its rationality, internal consistency, and manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F. 2d 718 (9th Cir. 1963). Additionally, the witness' interest in the outcome, motive or bias should be considered.

A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

Given the forgoing, I found Assistant Principal Mattina to be a credible witness. His testimony was detailed about the events of the day and consistent with the testimony of J.C. Mattina testified that it is his practice to always call the parents whenever a student

is suspended. Mattina stated that he reached one of J.C.'s parents that day. However, both parents stated that they did not receive a telephone call from the high school on October 13, 2016. They both testified that they were called by the police department. N.J.A.C. 6A:17-7.3(a)(3) requires notification to the student's parents of the student's removal from school. Although the parents dispute receiving a telephone call from the Assistant Principal on October 13, 2016, there is no dispute that the parents were notified of their son's removal from school that day as required by statute. Accordingly, I **FIND** that despite the different recollections regarding a telephone call from Mr. Mattina, there was no violation of N.J.S.A. 6A:17-7.3(a)(3) because the parents of J.C. received notice that their son had been removed from school on October 13, 2016. It is clear that the spirit and intent of the statute was satisfied.

Petitioner claims violation of his due process rights pursuant to N.J.A.C. 6A:16-7.3(a)(2), because J.C. was not granted an informal hearing and the opportunity to present his version of the events. J.C. was present when Assistant Principal Mattina searched his backpack and found the weapons, marijuana, and drug paraphernalia. When Mr. Mattina asked J.C. why he had those items, J.C. did not deny ownership or possession. In this situation, I **FIND** the petitioner was given the opportunity to explain to Mr. Mattina why he brought weapons and drugs to school but he provided no explanation that justified his possession of prohibited and dangerous items on school grounds.

I further **FIND** that the letters dated October 14, 2016 (R-2) and October 19, 2016 (R-3) by Principal Jamison satisfy the requirements set forth in N.J.A.C. 6A:16-7.3(a)(5)(6)(8).

Petitioner claims that the board committee was tainted by the recusal of two of the four members and that his rights were jeopardized by a committee of two. Petitioner has provided no evidence to support this accusation. N.J.A.C. 6A:16-7.3(10) provides as follows:

A formal hearing before the district board of education that shall, at a minimum:

- i. Be conducted by the district board of education or delegated by the board to a board committee, a school administrator, or an impartial hearing officer for the purpose of determining facts or making recommendations.

In accordance with the above statute, I **FIND** that the board committee had the authority to conduct the hearing and there is no prohibition against the committee having two members. There are no facts to support petitioner's contention that the recusal by a board member for a conflict of interest amounts to a tainted board.

Petitioner claims a violation of N.J.A.C. 6A:16-7.3(9) because he was not provided adequate educational services after the suspension. The testimony from Dr. Jamison was that the homebound work is contracted to a state-approved vendor. The program is on-line and no teachers are provided to the home. Performance is monitored by the provider and email reports are sent to the school. However, the administration also provided for a behavioral assessment and psychological evaluation of J.C. There is no dispute that J.C. put no effort into the homebound course after the suspension. Therefore, I **FIND** that there was no evidence to support a finding that the out-of-school educational services provided to J.C. after the suspension did not meet the statutory requirements.

Finally, I **FIND** that on December 12, 2016, J.C. had the opportunity to fully participate in the formal hearing and present his own defense to the Board, but the Board voted to expel. Petitioner was given a second opportunity to appear before the Board and this time present documentation of the progress he made during his time at Daytop, but the Board decided not to rescind the expulsion.

CONCLUSIONS OF LAW

School Board policies are entitled to a presumption of correctness and will not be upset by the courts unless there is an affirmative showing that such decision is arbitrary, capricious or unreasonable. Thomas v. Bd. of Educ. of Morris Twp., 89 N.J. Super. 327, 332 (App. Div. 1965), affirmed, 46 N.J. 581 (1966). In general, a board of education's actions are entitled to a presumption of lawfulness and good faith. Where board actions are challenged, the challenger bears the burden of proving that such actions were

unlawful, arbitrary, capricious or unreasonable. Schuster v. Ed. of Educ. Montgomery Twp., 96 N.J.A.R.2d (EDU) 670, 676 (citing Schnick v. Westwood Ed. of Educ., 60 N.J. Super. 448 (App. Div. 1960), and Quinlan v. Bd. of Educ. of North Bergen Twp., 73 N.J. Super. 40 (App. Div. 1962)).

In matters involving the exercise of a local board of education's discretion, the scope of the Commissioner's review is "not to substitute his judgment for that of those who made the evaluation but to determine whether they had a reasonable basis for their conclusions." Kopera v. West Orange Bd. of Educ., 60 N.J. Super. 288, 296 (App. Div. 1960). Therefore, petitioner must demonstrate much more than simply a difference of opinion over the action taken by respondent. In order to satisfy the arbitrary and capricious standard, petitioner must prove that respondent acted in either bad faith or in disregard to the circumstances.

N.J.S.A. 18A:37-2 states that, "Conduct which shall constitute good cause for suspension or expulsion of a pupil guilty of such conduct, shall include but not be limited, to any of the following: . . . (j) Knowing possession . . . without legal authority of . . . controlled dangerous substances on school premises" Here, J.C. brought drugs to school and the paraphernalia used in the sale of marijuana but he also had two knives and a strangulation cord in his backpack. Given the seriousness of the incident depicted on the video, and the possession of weapons and drugs on school property, I cannot say that the Board was arbitrary, capricious, or unreasonable in its determination that J.C. should be expelled from school. Therefore, I **CONCLUDE** that the Board's determination to expel J.C. must be affirmed.

Although I affirmed the Board's decision to expel J.C., Ocean City School District has a continuing duty to educate J.C. under N.J.S.A. 18A:38-1. Petitioner made a compelling case that his time spent at Daytop was positive and made a major difference in his life. It was noted by Dr. O'Reilly that J.C. could return to school but in a structured program. The program J.C. received at Daytop was highly structured and effective. J.C. is now seventeen years old and doing twelfth grade course work. Dr. Jamison testified that the only educational option available to J.C. is homebound instruction through Educere.

Although J.C. would like the opportunity to return to the Extension School, that is no longer possible. It is well established that participation in extra-curricular activities and ceremonies such as graduation are privileges, not rights, and no longer available to J.C. The Board reconsidered J.C.'s appeal for reinstatement based on his progress made through Daytop, but the Board did not rescind its decision to expel. This tribunal cannot substitute its opinion for that of the Board. Whether J.C. may be better served pursuing his High School Equivalency examination and continuing his education at the college level, that is a decision for him to make. However, he is entitled to a free public education from Ocean City School District in accordance with the parameters set forth in N.J.S.A.18A:38-1. Therefore, I **CONCLUDE** that Ocean City Board of Education must continue to provide educational services to J.C. under N.J.S.A.18A:38-1.

DECISION AND ORDER

It is hereby **ORDERED** that the decision by Respondent Board of Education of Ocean City expelling J.C. as a student at Ocean City High School and its Extension School is hereby **AFFIRMED**.

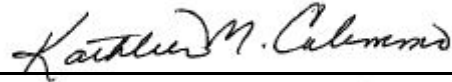
I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

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.

January 12, 2018

DATE



KATHLEEN M. CALEMMO, ALJ

Date Received at Agency:

Date Mailed to Parties:

cmo

APPENDIX
WITNESSES

For Petitioner:

J.C.
N.C.
M.C.

For Respondent:

Matthew Jamison, Ed.D, Principal
Michael Mattina, Assistant Principal

EXHIBITS

For Petitioner:

P-1 2017-2018 Code of Conduct
P-2 Self-Evaluation
P-3 Class Schedule
P-4 Student of the Month Award
P-5 Email teacher recommendations
P-6 Psychiatric Evaluation
P-7 September 2017 Monthly Progress Report

For Respondent:

R-1 Email threatening teacher
R-2 October 14, 2016 Letter
R-3 October 19, 2016 Letter
R-4 Police Report
R-5 Pictures of items in backpack

R-6 Contents of backpack

R-7 Daytop report

R-8 Daytop report