260-22

New Jersey Commissioner of Education

Final Decision

K.P., on behalf of minor children, J.P. and J.P.,

Petitioner,

v.

Board of Education of the Borough of North Arlington, Bergen County,

Respondent.

Synopsis

Petitioner appealed the decision suspending her two eighth-grade children for violations of the Board's student conduct policies based on their alleged involvement with a Google slideshow and Snapchat conversations which contained racial slurs, anti-Semitic and anti-LGBTQ+ comments, personal student information, explicit photos and videos, and threats of physical and sexual violence. J.P. and J.P. denied responsibility for the postings. The suspension determination followed an investigation by the North Arlington Police Department, which traced the Internet Protocol (IP) address associated with the postings to the petitioner's home, and a disciplinary hearing before the Board. Petitioner sought to have the suspension decisions reversed and removed from her children's school records.

The ALJ found, *inter alia*, that: the parties relied on the record of the disciplinary hearing before the Board; the witnesses in that proceeding had not been sworn or affirmed; further, the screenshots from Snapchat and the Google slideshow presented as evidence by the Board had not been marked as exhibits during the disciplinary hearing; since no specific images were marked as exhibits at that hearing and attorneys on both sides of the case cannot attest that the screenshots presented in the OAL were the same documentary evidence that was considered by the Board at its disciplinary hearing, there was no foundation to allow these exhibits to be admitted into evidence. Based on the foregoing, the ALJ concluded that the Board's actions were arbitrary, capricious and unreasonable. Accordingly, the ALJ overturned the suspensions and ordered the discipline removed from the children's student records.

On review, the Commissioner disagreed with the ALJ's finding that the Board's decision to suspend J.P. and J.P. was arbitrary, capricious or unreasonable. The Commissioner found, *inter alia*, that decisions of a local board of education acting within its discretionary authority are entitled to a presumption of correctness; the evidence presented at the Board hearing complied with the statute governing disciplinary hearings, even if the manner of presenting that evidence would not meet the evidentiary rules of other forums; there was no basis for the ALJ to exclude the proffered testimony or screenshots from evidence; and the record shows that the conduct of J.P. and J.P. at issue here did materially and substantially interfere with the requirements of appropriate discipline in the operation of the school. Based on the threats of violence contained in the postings, the Commissioner concludes that it was not arbitrary, capricious, or unreasonable for the Board to find that there was good cause for suspension pursuant to *N.J.S.A.* 18A:37-2. Accordingly, the Initial Decision was rejected, and the petition dismissed.

260-22
OAL Dkt. No. EDU 04249-21
Agency Dkt. No. 74-5/21

New Jersey Commissioner of Education

Final Decision

K.P., on behalf of minor children, J.P. and J.P.,

Petitioner,

v.

Board of Education of the Borough of North Arlington, Bergen County,

Respondent.

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

Petitioner's minor children were accused of violations of the Board's student conduct policies based on their involvement with a Google slideshow and Snapchat conversations (collectively, the "postings") that contained racial slurs, anti-Semitic and anti-LGBTQ+ comments, personal student information, explicit photos and videos, and threats of physical and sexual violence. The incidents occurred throughout the fall of 2021 and winter of 2022, but the Board waited to impose discipline while the North Arlington Police Department (NAPD) was investigating the source of the postings. After issuing subpoenas to Google and Verizon, the NAPD traced the the Internet Protocol (IP) address associated with the postings to petitioner's

[1] Petitioner did not file a reply to the Board's exceptions.

home. The administration recommended that J.P. and J.P. be suspended, and the Board held a disciplinary hearing in March 2022. Principal Nicole Russo testified about the early steps of the investigation, the effect that the postings had on the school, and the decision to suspend J.P. and J.P. NAPD Detective Nayda testified about the subpoenas and stated that charges had been filed against J.P. and J.P. Counsel for petitioner cross-examined both witnesses. J.P. and J.P. then testified, denying that they were responsible for the postings.

On March 19, 2022, the Board issued a decision suspending J.P. and J.P until they were cleared by a psychiatrist to return to school.[2] Petitioner appealed, seeking to have the decision to suspend her children reversed and the suspensions removed from their records.[3] At the OAL, the parties relied on the record of the disciplinary hearing before the Board. The Administrative Law Judge (ALJ) excluded the witness testimony, finding that the witnesses had not been sworn or affirmed. The ALJ also excluded all of the screenshots, finding that they had not been marked as exhibits during the disciplinary hearing. The ALJ concluded that the Board's actions were arbitrary, capricious, and unreasonable and overturned the suspensions.

In its exceptions, the Board argues that all of the documentary evidence presented at the disciplinary hearing was provided to petitioner and, in the absence of any evidence that those materials were withheld,[4] there was no legal prerequisite for counsel to lay a fresh evidentiary foundation for the ALJ to consider the record of what occurred before the Board.

[2] Separate decisions were issued for each student, but given their similarities, they will be referred to herein as a single decision for ease of reference.

[3] The petition of appeal initially included a request for emergent relief to return J.P. and J.P. to school, but when they children were cleared to return, petitioner withdrew her request for emergent relief.

[4] The Commissioner notes that petitioner has not argued that any material was withheld. Petitioner's arguments have focused on the sufficiency of the evidence.

The Board notes that petitioner's counsel provided the materials to the ALJ as hearing exhibits and agreed that they should be considered by the ALJ, such that it was improper for the ALJ to refuse to consider them. The Board also notes that petitioner's counsel cross-examined the Board's witnesses during the disciplinary hearing. According to the Board, the ALJ misconstrued an appeal from a disciplinary action as a trial de novo and improperly disregarded the law governing disciplinary hearings before boards of education, which sets forth specific standards for the conduct of hearings that do not require witnesses to be sworn or documents to be identified and formally admitted into evidence. Finally, the Board argues that the ALJ erroneously substituted his judgment for the Board's, contrary to the standard of review that applies to discretionary decisions of boards of education.

Upon review, the Commissioner disagrees with the ALJ that the Board's decision was arbitrary, capricious, and unreasonable. When a local board of education acts within its discretionary authority, its decision is 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." *Kopera v. W. Orange Bd. of Educ.*, 60 *N.J. Super.* 288, 294 (App. Div. 1960). Furthermore, "where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration[,]" and the Commissioner will not substitute her judgment for that of the board. *Bayshore Sewerage Co. v. Dep't. of Envtl. Prot.*, 122 *N.J. Super.* 184, 199 (Ch. Div. 1973), *aff'd*, 131 *N.J. Super.* 37 (App. Div. 1974).

Pursuant to *N.J.A.C.* 6A:16-7.3(a)(10), when a board of education imposes a long-term suspension on a student, the board must provide a formal hearing that affords certain

procedural due process protections. Students must have the opportunity to 1) confront and cross-examine witnesses if there is a question of fact and 2) present their own defense, which includes the opportunity to produce oral testimony or written supporting affidavits. The record is clear that the Board complied with these requirements. It was not arbitrary, capricious, or unreasonable for the Board to rely on evidence that complied with the statute that governs disciplinary hearings, even if the manner of presenting that evidence would not meet the evidentiary rules of other forums. Therefore, there was no basis for the ALJ to exclude the testimony or screenshots.

The Commissioner must next determine whether the Board's decision was arbitrary, capricious, or unreasonable in light of the evidence presented to the Board during the disciplinary hearing. The evidence presented in support of the suspension included Detective Nayda's testimony that the IP address associated with the postings was traced to petitioner's house. The record reflects that the only other residents of the house were petitioner, her husband, and an older child who was in college, none of whom were believed to be responsible for the postings. The NAPD found the evidence sufficiently compelling to proceed with charges against J.P. and J.P.[5] J.P. and J.P.'s defense at the hearing consisted primarily of their denials. Additionally, counsel for petitioner pointed out to the Board that Detective Nayda had not brought documentation related to the subpoenas or examined the family's Wifi or computers, and argued that tracing the IP address associated with the postings to petitioner's house is insufficient to conclude that J.P. and J.P. were responsible for the postings. While the

[5] The Board found that the testimony of Detective Nayda and Principal Russo was credible. While the Commissioner is not obligated to defer to a board of education's credibility findings, based on the applicable standard of review, the Commissioner concludes that there is nothing in the transcript of either witness's testimony that would suggest that it was arbitrary, capricious, or unreasonable for the Board to find their testimony credible.

testimony and arguments may leave room for different opinions regarding whether J.P. and J.P. were responsible for the postings, a difference of opinion is insufficient to overturn the Board's decision. *Bayshore Sewerage Co., supra,* 122 *N.J. Super.* at 199. Based on the evidence, the Commissioner finds that it was not arbitrary, capricious, or unreasonable for the Board to conclude that J.P. and J.P. were responsible for the postings. Additionally, given the disrespectful, obscene, and violent nature of the postings, the Commissioner also concludes that it was not arbitrary, capricious, or unreasonable for the Board to find that J.P. and J.P.'s conduct was in violation of the student conduct policies.

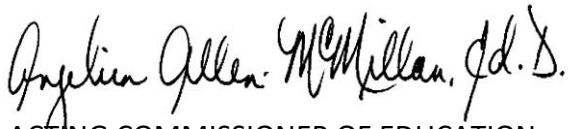
Under *N.J.A.C.* 6A:16-7.5, discipline for conduct that occurred away from school grounds must be reasonably necessary for reasons relating to the safety, security, and well-being of other students, staff, or school grounds, and the conduct must materially and substantially interfere with the requirements of appropriate discipline in the operation of the school. Principal Russo testified that the postings caused a substantial disruption at school, with effects lasting for months. Many students visited the guidance office for counseling and some students reported that they were afraid to return to school. Multiple students were so affected by the postings that they contacted the NAPD. Parents repeatedly contacted the administration seeking answers and action. Based on that information, the Commissioner concludes that it was not arbitrary, capricious, or unreasonable for the Board to conclude that discipline was appropriate under *N.J.A.C.* 6A:16-7.5.[6] Furthermore, based on the threats of violence contained in the postings, the Commissioner concludes that it was not arbitrary, capricious, or

[6] The Commissioner notes that the level of disruption caused by the postings far exceeds the circumstances of *Mahanoy Area School District v. B.L.*, 594 *U.S.* ____ (2021), in which the Supreme Court held that brief class discussions for a couple of days and some students being upset about social media postings did not rise to the level of substantial disruption.

unreasonable for the Board to find that there was good cause for suspension pursuant to *N.J.S.A.* 18A:37-2.

Accordingly, the Initial Decision is rejected, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[7]



ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 4, 2022
Date of Mailing: October 4, 2022

[7] 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
OAL DKT. NO. EDU 04249-21
AGENCY DKT. NO. 74-5/21

K.P. ON BEHALF OF MINOR CHILDREN,
J.P. AND J.P.,
Petitioner,
v.
BOARD OF EDUCATION OF THE BOROUGH OF NORTH ARLINGTON, BERGEN COUNTY
Respondent.

S. Emile Lisboa, IV Esq**.,** (Galantucci and Patutuo, attorneys) for petitioner

Eric L. Harrison, Esq., (Methfessel and Werbel, attorneys) for respondent

Record Closed: May 23, 2022 Decided: July 15, 2022

BEFORE **ERNEST M. BONGIOVANNI**, ALJ:

STATEMENT OF THE CASE

Petitioner, K.P. on behalf of minor children, a daughter, J.P. and son, J.P. (petitioner or K.P.) filed a Petition of Appeal, N.J.A.C. 6A: -3-1.5 and alleged that respondent, the Board of Education of the Borough of North Arlington, Bergen County (BOE), violated her children's rights in their handling of disciplinary proceedings against

the two students, then attending 8th grade at their middle school in North Arlington (School), which resulted in an indefinite period of suspension during which time the children had to see a psychiatrist and could not return to school until he or she "cleared" them.

The BOE made findings of fact that the children violated Policies and Regulations Nos. 5500 (Expectations for Pupil Conduct), 5600 (Student Discipline/Code of Conduct), 5620 (Expulsion), N.J.S.A. 18A:37-2 (causes for Suspension or Expulsion of a Student), N.J.S.A. 2C:12-3 (Terroristic Threats), and the Middle School's 2020-2021 Handbook. Petitioner's request for a Fair Hearing was transmitted to the Office of Administrative law on My 14, 2021. The petitioner initially sought relief from the suspensions imposed on the two children. However, after the conditions of the suspension were lifted, and before the Emergent Hearing could be conducted, petitioner withdrew her application for emergent relief. [1]

BACKGROUND AND PROCEDURAL HISTORY

A disciplinary hearing at the North Arlington BOE concerning the charges against J.P. and J.P. took place at the School on March 15, 2021. Although the alleged facts were somewhat complicated, essentially, one child was accused of creation of a Google slideshow, and posing as another student while making racial slurs anti-Semitic comments, posting student personal information, posting explicit sexual pictures and videos, and the other child, on another occasion, creating at least two fake Snapchat accounts, posing as another student, using the "N" word, making anti-LGBTO+ comments, threatening to rape and shoot another student, making claims of sexual contact with another student's mother and "other inappropriate and disrespectful statements." Although some of the postings and images concerned "students," no particular students were targeted or named in them. None of these violations of school policy took place on school grounds; nor was school property involved. Both children denied committing any of the offenses.

[1] Several months after the emergent proceedings, respondent moved for summary decision, arguing that with the lifting of the suspension against the children, the issues raised in the petition seeking a Fair Hearing at the Office of Administrative Law were moot. This motion was denied, in a decision dated, February 2, 2022.

Although the suspensions were eventually lifted after the children met the demands of the school, the suspensions remain on record. Petitioner seeks to have the decision of the North Arlington BOE reversed and her children's names and school records be cleared. Respondent believes their decision to suspend the children was reasonable and ask that their decision be affirmed.

Hearings were held via Zoom April 20, 2022 and April 26, 2022. The record was left open until May 23, 2022 for receipt of post hearing briefs at which time the record closed.

FACTUAL DISCUSSION AND FINDINGS OF FACT

The parties agreed to rely on the record of the disciplinary hearing before the BOE which consisted mostly of a transcript of said proceeding. They added to that record a Certification by the Principal concerning the suspensions (R-4). They also added photocopies of images that purportedly were seen on the Snapchat and Google slideshow. (Joint Exhibits K-M). No specific images on these exhibits were specifically identified at the hearing before the BOE.

The allegations against the two children brother and sister were serious. The essential findings made by the BOE as stated in Exhibits J-1 and J-2, J.P. (female) wee that between September 23, 2020 and November 23, 2020 and again between December 22, 2020 and January 15, 2021, J.P.(female) was allegedly involved in the creation of a Google Slideshow, in which he posed as another student "while making racial slurs, anti-Semitic comments posting personal student information and posting explicit sexual pictures and videos." During the same time, J.P. also created at least two fake Snapchat accounts, posing as another student, "using the 'N' word, making anti-LGBTQ+comments, threatening to rape and shoot another student, making claims of sexual contact with a student's mother, amount other inappropriate and disrespectful statements." (J-1, Summary of the Evidence Presented.) J.P. (male) was charged with the virtually identical conduct. The sole evidence consisted of statements made by

Detective Nayda, the juvenile detective for the North Arlington Police Department, and by Principal Russo. The two children completely denied the allegations.

The BOE found "credible" the statements by Detective Nayda, the juvenile detective for the North Arlington Police Department. He "issued a subpoena to Snapchat and learned that the [faked Snapchat accounts] were accessed from the IP address of" J.P. (female) and J.P. (male)'s household." The Detective "also learned that the email used to create the accounts" came back to a J.P. (female) account.

As noted in the post hearing brief of respondent, which recounts as "testimony" the unsworn "evidence" at the school hearing, Detective Nayda, in order to trace who was connected to the Google slideshow, also created and sent a subpoena to Google who responded with an IP address of Verizon. Subsequently, the respondent states (in its post hearing brief) "a subpoena to Verizon yielded an IP address that was traced directly to J.P. (male) and J.P. (female)'s household." As further evidence that J.P. (male) was actually "behind" the Google slideshow, the BOE relied on Principal Russo's recounting of a Google meet session, regarding the Google slideshow during which J.P. shut off his camera after which Principal Russo then received an electronic message that the slideshow had been deleted.[2]

There were several questionable practices in the methodology of the BOE's decision making, at least as can be discerned in its decision. Under "II, Summary of the Evidence Presented," it states that before the hearing the accused were "provided with a *list* of potential witnesses and documentary evidence." (emphasis supplied). Thus, it would appear that the children (and their mother and attorney) were only given prior to the hearing a "list" of documentary evidence intended to be introduced. A list is not the same as having a copy of all the documents on the list. Further and more disturbing, during the hearing, "the BOE had the documentary evidence on Chromebooks for their

[2] It is interesting that this described incident occurred in October 2020. J.P. (female) and J.P. (male) were charged as a 'result of the actions that occurred (emphasis supplied) on or about September 23, 2020 through on or about November 23, 2020 and from *on or about December 22, through on or about January 15, 2021 which time she was alleged to be in the creation of a Google slideshow* (emphasis added). What does a deleted Google slideshow have to do with the actions that occurred between November 2020 and January 15, 2021, if it was deleted in October 2020?

review." Included were "many screenshots taken of the Snapchat accounts and the Google Slideshows." Based on the certified transcript of the proceedings, it appears that the children, their mother, their lawyer were not given the same Chromebooks and thus could not effectively examine the documentary evidence being used against them. Worse. regarding said images, none of them were identified, marked, or entered as evidence. Further, the BOE's decision does not describe any of images except in the most general way, e.g., "the level of threats in the posts was extreme and other posts were very sexual and very graphic." It appears obvious that it was of the utmost importance that the actual images that were on the Snapchat accounts and the Google slideshow be marked into evidence so that the witnesses could effectively attempt to prove their innocence, as they maintained throughout the proceedings.

More problematically, the hearing consisted entirely of statements or conversations by witnesses who, according to the Transcript, were never given, and never took the oath nor affirmed as to the truthfulness of anything they said. Consequently, J.P. and J.P. were effectively deprived of the right to cross examine witnesses against them, as those witnesses were not under oath nor affirmation, and not speaking under penalty of possible punishment for failing to tell the truth. Thus the "hearing" was fundamentally unfair.

As noted, none of the screenshots from the Google slideshow or snapchats were sufficiently identified in the record of the proceeding before the BOE to know what images the BOE were reviewing on the Chromebooks. It is clear from the hearing that no particular screenshots were entered into evidence, so we only have the BOE's witnesses and their vague characterizations as to what was contained on the Google Slideshow and Snapchat accounts rather than the copies of the actual evidence they reviewed. Whatever value the unsworn to evidence contained in the transcript has, it shows that none of the specific screenshots were entered as evidence. The Exhibits identified in the hearing before me were, both parties agreed, were received in Discovery, but they are very possibly not the same screenshots that the BOE considered in making its decision. There is simply no way of knowing.

At the BOE hearing, the Detective admitted that the images being shown to the BOE on the date of the hearing had been altered from the way he had seen them on the actual devises when he was in process of obtaining the subpoenas. Furthermore, the Detective did not produce for anyone copies of the Google Verizon and Snapchat subpoenas that he created nor the actual written response by those companies to the subpoenas. Instead, he just recounted what these documents from these three companies said. Even if Detective Nayla had been under oath, the BOE should not have simply accepted his statement as to what was on the subpoena's responses, and they should not have accepted his statements as evidence without his providing the documents.

Finally, the parties now appear to agree that the creation of Google slideshow does not prove who placed what information or images on the slideshow at any given time because those to whom the slideshow was sent can edit it or add to it. Further ,one cannot tell who made which statements on the Snapchat account. Clearly, some others than the creators of these two fakes snapchat account seemed to have created similar offensive comments and were not investigated or disciplined for it.

LEGAL ANALYSIS AND CONCLUSION OF LAW

The burden is on the petitioner to overcome the "presumption of correctness" by providing by a preponderance of the evidence that the BOE's action was arbitrary capricious and unreasonable. The BOE stated in its decision that it relied on the lay opinion of Detective Nayda that he believed J.P. (female) was responsible for creating the false and offensive Snapchat accounts, and that J.P. (male) was, in the BOE's words "behind" the creation of the Google slideshow.

While I agreed to allow the parties to rely on the record below, I did not know until I read the BOE certified transcript , that would that none of the "witnesses" who spoke at the hearing were ever sworn in nor affirmed. Regarding any documentary evidence, I was also unaware that no specific images from the Snapchats or Google slideshow were marked as exhibits at the hearing.

I cannot sustain guilty verdicts resulting in serious disciplinary action that are not based on sworn or affirmed testimony nor on documents for which no foundation has been supplied. Again, both attorneys agree that they cannot attest that the screenshots in Joint Exhibit P-K are the same documentary evidence that was considered by the BOE. I therefore cannot allow them to be admitted to evidence, for lack of foundation. I also cannot admit the full transcript consisting mostly of unsworn and unaffirmed testimony.

When I agreed to allow the parties to rely on the record below, I did not know until I read the BOE certified transcript, that none of the "witnesses" who spoke at the hearing were ever sworn in, nor did they affirm. N.J.A.C. 1:1-5.8 (d) provides that "A witness may not testify without taking an oath or affirming to tell the truth under the penalty provided by law." I cannot admit the full transcript consisting almost entirely of unsworn testimony.

Regarding any documentary evidence, I was also unaware that no specific images from the Snapchat or Google slideshow were marked as exhibits at the hearing. Both attorneys agree that they cannot attest that the screenshots in Joint Exhibit P-K are the same documentary evidence that was considered by the BOE. I therefore cannot allow them to be admitted to evidence, for lack of foundation

Regarding the testimony at the hearing, although the BOE's decision specified the dates in which these activities took place, it did not state what specific offensive material was available (or when it was available) for others to see. They did not rule out that others could have edited and changed whatever J.P. (male) and/or J.P. (female) may have posted. They did however provide credible uncontested evidence that J.P. (male) and J. P. (female) were good students whom they would not, I believe, normally suspect to be responsible for such behavior, and that the children were at least consistent in steadfastly denying they were responsible for the actions for which they were charged.

Further, the detective wasn't made to bring the subpoena data with him to the BOE, so it could be entered as evidence. In his investigation, the Detective ignored threats that has been made to J.P. and J.P. he didn't know whether any content was added or deleted from the slideshow, did not seem to know that IP addresses can periodically change, and did not know how many students had participated in the Snapchat.

Finally, as stated in the BOE's decision, Principal Russo relied on her interviews with "several, several, students" but never bothered to say which students and what they actually said, to conclude J.P. and J.P. were guilty. This is even more egregious and fundamentally unfair given that her own statements were not made under oath or affirmation.

I agree with petitioner that this was an instance of a rush to judgement which required a truly expert investigation and plausible expert testimony, in order to attempt to determine who made the offensive comments on the slideshow and Snapchats. At a very minimum, the hearing should have been conducted so that there was certainly that the evidence the BOE had (on their Chromebook) was given to J.P. and J.P. to know the evidence they would be confronted with as no specific documents were entered into evidence on the record. Because of the failure to do so, we are uncertain even today what evidence the BOE considered. Accordingly in making my decision, I exclude all the alleged screenshots in the exhibits or described from the exhibits in the briefs because of the lack of foundation as to whether that evidence was used at the hearing. I also exclude any so called testimony which attempts to describe the content of the images, as they were mostly double hearsay and especially because they were not sworn or affirmed to.

While it is true that both parties had a right to call witnesses and have a fresh and Fair Hearing as provided for by our rules, here the parties chose to rely on the record below, which in this case is terribly inadequate and unreliable to justify the severe punishment these two then eight graders were handed out after being rather hastily accused.

Accordingly, I **FIND** that no other conclusion can be drawn but that the BOE's actions were unfair, unreasonable, and the essence of arbitrariness and capriciousness, and that its decision to find J.P. (female) and J.P. (male) of the alleged conduct and the consequent suspension which lasted 73 days should be **OVERTURNED**, and that this record of punitive disciplinary action be removed permanently from their records.

CONCLUSION

I **CONCLUDE** the finding that the offensive Snapchat comments and images, and images and statements on a Google slideshow account allegedly committed by petitioners was not proven, and that any presumption of validity the BOE's decision had was easily overcome by a preponderance of evidence showing the investigation and especially the proceedings before the BOE, and thus its conclusions to be unfair, arbitrary, capricious, and unreasonable. Therefore, the disciplinary action of suspension or any other disciplinary action cannot be sustained.

ORDER

It is therefore **ORDERED** that the decision of suspension for J.P. (male)'s conduct and J.P. (female)'s conduct be **OVERTURNED,** and the disciplinary history heretofore imposed as a result of the BOE's decision be removed from the school's records.

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.

July 15, 2022
DATE

ERNEST M. BONGIOVANNI, ALJ

Date Received at Agency: July 15, 2022

Date Mailed to Parties: July 15, 2022

id

APPENDIX

LIST OF WITNESSES

For Petitioner:

None[3]

For Respondent:

None[4]

LIST OF EXHIBITS IN EVIDENCE

Joint Exhibits:

R-1[5] BOE Decision on Disciplinary Hearing on J.P. (female) dated March 19, 2021
R-2 BOE Decision on Disciplinary Hearing on J. P (male) dated March 19, 2021
R-3 Transcript of Proceeding March 15, 2021
R-4 Certification of Stephen M. Yurchak Ed. D, Superintendent of BOE
R-5 Pro Se Petition of Appeal by K.P., dated May 11, 2021
R-6 Emails by K.P. to NJ DOE Commissioner, dated May 11, 2021
R-7 Emails concerning withdrawal of emergent application.

P-A BOE District Policy 5500
P-B BOE District Policy 5600
P-C BOE District Policy 5610
R-D BOE District Policy 5620
R-E N.J.S.A.18A:37-2 Causes for suspension or expulsion of students

[3] J.P. (male) and J.P. (female) identified as "G.P." spoke at the hearing; however, as they were never placed under oath, their statements do not constitute admissible "testimony".
[4] Nicole Russo, Principal at Veterans Middle School, and Detective Jeramiah Nayda spoke at the hearing; however, as they were never placed under oath, their statements do not constitute admissible "testimony".
[5] These exhibits were pre-marked and petitioner's and respondent's exhibits however all agreed with my suggestion they could be listed as Joint Exhibits.

R-F N.J.S.A. 23:12-3 Terroristic Threats

R-G Middle School Handbook

R-H Discipline Log for J.P. (female) 2018-2021

R-I Attendance Record for J.P. (female) 2018-2021

R-J Interim Reports and grades for J.P. (female) 2018-2021

R-K Images reportedly from computers/screenshots of Google slideshow and snapchats (80 pages) (Not in Evidence-no foundation)

R-l Parent Portal questions responses (Not in Evidence)

R-M Notice that psychiatric eval has not been received