

New Jersey Commissioner of Education

Final Decision

D.S., on behalf of minor child, M.S.,

Petitioner,

v.

Board of Education of the Township of Hamilton,
Mercer County,

Respondent.

Synopsis

Petitioner challenged the decision of the respondent Board to deny her request that her daughter, M.S., be permitted to participate in activities with the Class of 2023 at Hamilton High School-West (HHS-West), specifically to attend the HHS-West senior prom and to receive her high school diploma in the HHS-West graduation ceremony – even though M.S. currently attends Steinert High School, another of the three high schools operated by the Board. The instant case is the latest in a series of challenges brought by the petitioner against the Board since 2021 involving demands that M.S. be allowed to finish her high school education at HHS-West despite the fact that M.S. was subject to discipline and removed from school at HHS-West on nine occasions for fighting and acts of harassment, intimidation and bullying against fellow students.

The ALJ found, *inter alia*, that: in order to prevail, the petitioner must show that the decision of the Board to deny her request to permit M.S.'s participation in the HHS-West 2023 prom and graduation ceremony was arbitrary, capricious, unreasonable, and/or in violation of Board policy; petitioner failed to present any such evidence; actions within a school board's authority, including the adoption and implementation of policies for assignment of students, are entitled to a presumption of correctness and will not be upset without an affirmative showing that a decision is arbitrary, capricious or unreasonable; based on the factual record in this case, the Board had a strong basis for its decision to refuse to permit M.S. to participate in 2023 prom and graduation activities at HHS-West. Accordingly, the ALJ denied petitioner's request for M.S. to attend the HHS-West senior prom and to walk in the HHS-West graduation ceremony and dismissed the petition.

Upon a comprehensive review, the Commissioner concurred with the findings and conclusions of the ALJ and adopted the Initial Decision of the OAL as the final decision in this matter. The petition was dismissed.

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.

New Jersey Commissioner of Education
Final Decision

D.S., on behalf of minor child, M.S.,

Petitioner,

v.

Board of Education of the Township of
Hamilton, Mercer County,


Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered. The parties did not file exceptions.

Upon review, the Commissioner concurs with the Administrative Law Judge, for the reasons detailed in the Initial Decision, that the Hamilton Township Board of Education's decision to deny petitioner's request for her minor child to participate in the senior prom and graduation ceremony of a different high school within the school district was not arbitrary, capricious, or unreasonable.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹


ANGELINA ALLEN McMILLAN, J.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 9, 2023
Date of Mailing: May 10, 2023

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 07264-22

AGENCY DKT. NO. 194-7/22

D.S. ON BEHALF OF M.S.,

Petitioner,

v.

**HAMILTON TOWNSHIP BOARD
OF EDUCATION, MERCER COUNTY,**

Respondent.

D.S. petitioner, pro se

Rita F. Barone, Esq., for respondent (Flanagan Barone O'Brien, LLC, attorneys)

Record Closed: March 13, 2023

Decided: March 30, 2023

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

STATEMENT OF THE CASE

Petitioner D.S. on behalf of M.S. challenges the decision of respondent Hamilton Township Board of Education, Mercer County (Board) to deny her request that M.S. be permitted to participate in activities with the Class of 2023 at Hamilton High School-West (HHS-West), specifically to attend the HHS-West senior prom and to receive her high school diploma in the HHS-West graduation ceremony.

PROCEDURAL HISTORY

On July 18, 2022, D.S. on behalf of M.S. filed a petition of appeal with the New Jersey Department of Education, Office of Controversies and Disputes (DOE). On August 16, 2022, respondent Board filed an answer and motion for dismissal. The Commissioner of Education did not rule on the motion but transmitted it with the petition to the Office of Administrative Law (OAL) on August 22, 2022, for hearing as a contested case, pursuant to N.J.S.A. 52:14B-1 to -15, and N.J.S.A. 52:14F-1 to -13.

The matter was scheduled for a telephone prehearing conference on October 17, 2022. Prior to the telephone conference, respondent sent notice of a change in counsel, but respondent failed to appear. The telephone prehearing conference was rescheduled for November 2, 2022, during which a briefing schedule for respondent's motion to dismiss was issued. On December 16, 2022, the motion to dismiss was denied and the due process hearing was scheduled to coincide with the hearing in a related case between these parties, EDU 10144-22.¹

As described in the summary of undisputed facts, below, since early 2021, I have presided over six matters involving these parties and prior to this hearing, had issued decisions in four of the matters. Based on the documents filed in both this matter and in EDU 10144-22, and the testimony and arguments made by both parties in prior matters over which I presided, I understood that the basis for petitioner's current requests for relief, and the grounds by which respondent denied both requests, were similar. In the interest of judicial economy and in an attempt to provide petitioner with resolution prior to the end of the current school year,² the hearings in both matters were conducted on March 6, 2023, at the OAL.³ Following the hearing, petitioner submitted a handwritten letter accusing opposing counsel of specific improper conduct, which was vehemently denied by return letter of counsel. This correspondence was forwarded to Candice Hendricks,

¹ See also D.S obo M.S. v. Hamilton Twp. Bd. of Educ., OAL Dkt. No. 10144-22, Initial Decision (March 30, 2023).

² M.S. is on track to graduate in June 2023.

³ All other hearings involving these parties over which I presided were conducted by Zoom due to the restrictions on public gatherings initiated during the COVID-19 emergency.

OAL Assistant Director of Judicial Standards. The record remained open for simultaneous post-hearing submissions and on March 13, 2023, the record closed.⁴

FACTUAL DISCUSSION AND FINDINGS

The following background **FACTS** are not in dispute and accordingly, I **FIND**:

The Hamilton Township School District (District) operates three high schools and assigns students residing within the District to a specific high school based on pre-determined residential boundary lines. When M.S. began high school, in September 2019, she lived with her mother, D.S., at an address within the HHS-West zone and attended HHS-West.

During the 2019–2020 school year, M.S. was subject to discipline and removed from school on nine occasions.⁵ She was charged with seven acts of harassment, intimidation and bullying (HIB) toward another HHS-West student. On July 27, 2020, D.S. filed a due process petition to challenge the Board’s decision finding M.S. guilty of seven counts of HIB. After transmittal to the OAL, this matter was docketed as EDU 07830-20, and was assigned to the Honorable Jeffrey N. Rabin, ALJ.

On September 25, 2020, D.S. filed an emergent petition to challenge one of the seven findings of HIB and to also charge HHS-West Principal Brian Smith with harassment. The harassment charge triggered a separate internal investigation by the Board and therefore, the DOE transmitted only the HIB challenge, docketed at the OAL

⁴ In all the proceedings before me, D.S. showed a complete lack of propriety and disregard for civility, insulted and denigrated witnesses, opposing counsel, my judicial support specialist, and myself, in correspondence, telephone conferences, and during hearings. One final example follows. After receiving respondent’s post-hearing submission, D.S., apparently having forgotten my instructions from the bench, sent the following email to my chambers: “With all due respect; what is this? More testimony in cases that were already heard on 3/6/2023. If Judge Claigure [sic] permits this after me being verbally threatened by Rita Barons [sic] after Judge Caligula [sic] left the bench, I will be filing a reply[.] It saddens me that the HTSD is continuing to waste taxpayers money purposely continuing fighting for something that will cause absolutely NOONE any harm instead increases the moral and positive influence in My child’s life and education. Isn’t that what we should be focusing on and not continually try and break [M.S.] down even more[.] You disgust me[.]”

⁵ See D.S. obo M.S. v. Hamilton Twp. Bd. of Educ., OAL Dkt. No. 07830-20, Transmittal Documents (August 14, 2020).

as EDU 09096-20, and assigned to Judge Rabin. Before the emergent hearing, D.S. filed a motion for Judge Rabin's recusal, which was denied. On October 6, 2020, Judge Rabin issued a ruling denying emergent relief.

On October 21, 2020, D.S. filed a second motion for Judge Rabin to recuse himself in EDU 07830-20, which motion was also denied.

On March 2, 2021, while EDU 07380-20 was pending, D.S. filed a related emergent petition charging Principal Smith with continuing harassment of both D.S. and M.S. and appealing the decision of respondent to bar D.S. from HHS-West property due to her allegedly inappropriate behavior. The emergent matter, EDU 02205-21, was assigned to Judge Rabin, who conducted the emergent hearing and on March 10, 2021, issued a ruling denying emergent relief.⁶ In his order on emergent relief, Judge Rabin found as fact that:

[D.S.] had spoken derogatory and accusatory language against Principal Smith during the public portion of public school board meetings and in correspondence to various parties, included publicly accusing Principal Smith of being a racist. Because of these issues, and because of the litigation between the parties, Dr. James Altobello (the Board's Director of Secondary Education), in conjunction with the Board superintendent, created interventions to ensure that D.S. and Smith did not have direct interaction.

[D.S. on behalf of M.S. v. Hamilton Twp. Bd. of Educ., OAL Dkt. No. EDU 02205-21, Order (March 11, 2021), at 3, aff'd, Final Decision (April 20, 2021).]

On March 10, 2021, D.S. on behalf of M.S. brought a lawsuit in Mercer County, New Jersey Superior Court against certain administrators and staff of HHS-West, alleging racial profiling, discrimination, harassment, and bullying.⁷ This matter was resolved prior to trial.

⁶ To date, the Board's decision to bar D.S. from the HHS-West facilities stands.

⁷ Somma on behalf of M.S. v. Smith, et al., MERL-L-528-21 (Mercer County Super. Ct. 2021).

On March 30, 2021, D.S. filed a third motion for Judge Rabin to recuse himself in EDU 07830-20, which motion was also denied.

M.S. withdrew from HHS-West in March 2021, and began the 2021–2022 school year (in eleventh grade) at Gateway High School in Florida. On or before November 1, 2021, M.S. moved with her mother, D.S., back to New Jersey and took up residence in Hamilton Township within the geographic zone assigned by the District to Hamilton High School-East (also known as Steinert).

On October 28, 2021, D.S. applied to the District for an attendance zone waiver by which M.S. would attend high school at HHS-West rather than Steinert. By letter dated October 29, 2021, the District denied petitioner’s application. The District stated that its decision was supported by the earlier allegations made by D.S. on behalf of M.S. regarding HHS-West administrators and staff, the litigation that ensued, and D.S.’s conduct during the 2020–2021 school year (as described more fully in the order issued by Judge Rabin in EDU 02205-21).

On or about February 1, 2022, M.S. was suspended by the Steinert administration for fighting with another student and posting video of the fight on social media. M.S. is eligible for special education and related services but, after a manifestation determination meeting, respondent concluded that the conduct of M.S. constituted a disciplinary infraction neither related to nor caused by her disability. D.S. sought an expedited ruling overturning that decision and the discipline imposed on M.S. The expedited matter, EDS 01033-22, was assigned to me. Before the expedited hearing, D.S. filed an emergent petition directly with the OAL; on February 23, 2022, following a hearing, I issued an order denying emergent relief. The expedited hearing was held on March 4, 2022, and on March 15, 2022, I issued a final decision in favor of the respondent and D.S.’s petition was dismissed. D.S. obo M.S. v. Bd. of Educ. of the Twp. of Hamilton, OAL Dkt. No. EDS 01033-22, Final Decision (March 15, 2022).

On March 8, 2022, petitioner filed an appeal with the DOE of the first zone waiver denial. The matter was transmitted to the OAL, assigned to me, and on July 5, 2022, I issued an initial decision granting summary decision in favor of the District, which was

affirmed by the Commissioner of Education. D.S. on behalf of M.S. v. Hamilton Township Board of Education, OAL Dkt. No. EDU 02521-22, Initial Decision (July 5, 2022), aff'd., Final Decision (August 15, 2022).

Before the decision on the first zone waiver appeal was issued, petitioner asked respondent if M.S. could participate in end-of-year activities at HHS-West with the rest of the HHS-West Class of 2023 and, on June 13, 2022, respondent denied that request. This appeal followed.

After this matter was filed, D.S. informed respondent that she had contracted to purchase (but not yet closed on) a home within the geographic zone assigned to HHS-West. Had the District permitted M.S. to enroll at HHS-West after moving to the new home, this matter (EDU 07264-22) would have been moot but on November 9, 2022, respondent stated that it would not permit M.S. to enroll at HHS-West in the event of a permanent change in residency. In making this decision, respondent relied on its November 5, 2021, letter to D.S. from counsel explaining the basis for respondent's denial of petitioner's first request for a zone waiver. This letter stated in pertinent part:

[Y]ou, individually, and on behalf of [M.S.], have accused multiple administrators, including the Principal and the Athletic Director, and multiple certified staff members assigned to [HHS-West] of harassment and discrimination toward [M.S.] and you arising from [bullying], disciplinary incidents, and other circumstances. . . It is confounding that you would insist on having [M.S.] assigned to a school against which you have made such allegations. Nevertheless, while the District denies those allegations and avers that it has engaged in unbiased decisions toward you and [M.S.], those claims and past circumstances justify [M.S.'s] assignment to a high school other than [HHS-West] which is in the best educational interest of [M.S.] and the [HHS-West] staff.

[(R-8) (Ltr. of Patrick F. Carrigg, Esq., to D.S. (November 5, 2021), at 2.)]

On November 10, 2022, petitioner filed an appeal of her second zone waiver request. That matter was transmitted to the OAL by the DOE on November 10, 2022; the OAL docketed it as EDU 10144-22, and assigned it to me.

On December 21, 2022, petitioner filed a request for emergent relief, seeking the immediate transfer of M.S. from Steinert to HHS-West on the grounds that M.S. is unsafe at Steinert due to allegedly being the victim of HIB on or about December 19, 2022, and as a result of allegedly being subjected to excessive force by the school resource officer immediately following the December 19, 2022, incident. This emergent matter was docketed as EDU 11614-22, and assigned to me. The emergent hearing was held on January 4, 2023, and on January 5, 2023, I issued an initial decision denying emergent relief. D.S. on behalf of M.S. v. Hamilton Twp. Bd. of Educ., OAL Dkt. No. 11614-22, Initial Decision (January 5, 2023), aff'd, Final Decision (February 24, 2023).

Disputed Issue

To prevail in this matter, petitioner must show that the decision of respondent to deny her request to permit M.S. to participate in the HHS-West senior prom and graduation ceremony with the same rights and privileges as the other members of the HHS-West Class of 2023, was arbitrary, capricious, unreasonable, and/or in violation of Board policy.

Testimony

Petitioner testified and presented the testimony of her daughter, M.S. Respondent called one witness for the limited purpose of identifying pre-marked exhibits for introduction. The following is not a verbatim recitation of the testimony but a summary of the documentary and testimonial evidence I found relevant to the above-described dispute.

M.S. is an eighteen-year-old female in her senior year of high school. She started her testimony with a general description of the mental health issues she experienced while a middle school student in the District. Based on her testimony, it appears that incidents occurring outside of school contributed to M.S.'s condition.

M.S. described two incidents during the 2019–2020 school year, when she was a freshman, which resulted in her being disciplined by the HHS-West administration. The first occurred at a football game at which she participated as a cheerleader. M.S. stated that she was “jumped” from behind by another female student and she fought back. The next day, M.S. was told that she was removed from the cheer team for fighting while wearing her cheer uniform.

In the second incident, M.S. stated that she was trying to “de-escalate” a fight between other students when a security guard attempted to grab her by the wrists. She was sent to the nurse’s office.

While at HHS-West, M.S. stated that she had problems with the cheerleading director, the athletic director, and the football coach. Further, she described her relationship with Principal Smith as “rocky,” noting that he suspended her “a couple times,” and that she did not want him involved in any disciplinary matters affecting her. M.S. stated that she was very upset about how she was treated at HHS-West by administrators and teachers. At the time, she told her mother, who took her complaints to the Board. M.S. also knows that her mother filed a lawsuit against Principal Smith and others in the administration, accusing them of racial discrimination.

M.S. recalled moving with her mother to Florida, where she completed tenth grade and started eleventh grade. She could not recall the reason her family moved to Florida and gave an incomplete explanation as to why they returned to New Jersey.

M.S. enrolled at Steinert in November 2021, and has since attended Steinert. She stated that she has no friends there and no relationship with her guidance counselor or other staff. On cross-examination, M.S. admitted that she has made a positive connection with her Steinert art teacher, Mr. Cooper, who she described as a sort of “older sibling.” She also has a positive relationship with Ms. Leon, her support counselor. She stated that she continues to meet (by Zoom and in-person) with her HHS-West counselor, Edward Belfiore (Belfiore), who she has known since she was a young child. She described Belfiore as a mentor and the most significant adult presence in her life.

Shortly after M.S. enrolled at Steinert, she started the Black Students' Union (BSU) because no such extracurricular organization existed at Steinert. M.S. wanted to learn more about her culture. In the BSU, she has "cordial relationships," but no friends.

M.S. recalled being suspended for fighting in school on February 1, 2022. She stated that then-Steinert Principal Bridget O'Neil was not doing her job, evidence of which is the excessive suspension M.S. was given for fighting. M.S. stated that she was suspended for forty-five days and claimed that other male students were also suspended (for an unrelated fight), but for a much shorter period. This, she said, was proof of racial discrimination at Steinert, as the male students are white.

M.S. acknowledged that her actions in ninth and tenth grade, while at HHS-West, were the result of her own poor decision-making and were "not worth it." She stated that she has come a long way, has made the Honor Roll for the first time this past semester, and has applied to four colleges (for August 2023 admission). M.S. said that for the first time, she is proud of herself. She understands that respondent will not permit her to return to HHS-West because of her actions there, but it is important for her to walk the stage with the HHS-West graduating class because her older brother (who died prior to graduating high school) did not get that opportunity.

D.S. testified briefly on her own behalf.⁸ She spoke of ongoing issues with the District and more than once, accused Superintendent Scott Rocco of denying her current requests for personal reasons. She and M.S. are tired, emotionally drained, and want to move on from the past.

D.S. stated that after respondent denied her request for M.S. to participate in end-of-year activities with the HHS-West Class of 2023, she attended the June 2022 regular meeting of the Board. While there, D.S. stated that she spoke with three Board members

⁸ Petitioner was not initially sworn in as she stated that she would be presenting arguments in favor of her position, but when she began to describe incidents involving her daughter, she was asked to take the oath. Her testimony was still relatively brief as I recognized that M.S., who was present, would have first-hand knowledge of the incidents being described.

regarding the decision to deny her request and that these Board members were not aware of the request, which is evidence of Superintendent Rocco's bad faith.

Dr. James Altobello, Director of Administration, testified on behalf of respondent. Among his other duties for the District, Dr. Altobello is responsible for administering requests such as to participate in events at other than the school of enrollment, and for students to change schools within the District, such as the zone waiver requests made by petitioner (and described above). He has communicated with petitioner regarding the request involved in this matter (and the zone waiver appeal involved in EDU 10144-22).

Dr. Altobello identified District Policy 5120, which provides in pertinent part:

The Board of Education directs the assignment of pupils to the schools, programs, and classes of this district consistent with the best interests of pupils and the best uses of the resources of this district.

Pupils shall generally attend the school located in the attendance area of their residence. The Superintendent may assign a pupil to a school other than that designated by the attendance areas when such an exception is justified by circumstances and/or is in the best interests of the pupil. (Every effort will be made to exercise sensitivity and reasonable judgment regarding student placement.)

[R-15.]

Dr. Altobello stated that Board Regulation 5120 describes how Board Policy 5120 will be administered. He identified Board Regulation 5120, which provides in pertinent part:

The Superintendent or Designee will review all requests for an "attendance zone waiver." Approval of all zone waivers is based upon the following criteria:

1. Legal mandates (court order, parental custody);
2. Child Study recommendations;

3. Homelessness, Department of Child Protection and Permanency interventions and
4. Students in good standing having attend Hamilton Township Schools for two consecutive years and entering 5th, 8th, or 11th grade who move within the Hamilton Township borders, may petition for a zone waiver to remain in their current school through graduation or promotion.

[R-16.]

On October 25, 2021, and June 13, 2022, D.S. submitted zone waiver requests. (R5; R-12.) Dr. Altobello stated that both were denied as none of the specific criteria (shown above) were met. (R-6; R-14.)

Dr. Altobello stated that Policy 5120 does not specifically prohibit a student attending one of the District high schools from participating in graduation activities held at another of the three high schools. He stated his understanding that the right to participate in graduation activities is based on attendance, pursuant to N.J.A.C. 6A:8-5.2.⁹.

Finally, Dr. Altobello stated that Principal Smith will personally hand diplomas to the members of the HHS-West Class of 2023 as they cross the stage. He could, but has yet to, compel a principal at any of the District high schools to give a diploma to a student who does not attend that specific high school. Further, given the accusations that petitioner has leveled at Principal Smith, both personal and professional, in public and in the course of litigation, Dr. Altobello is not comfortable directing Principal Smith to award a diploma to M.S. He stated that such an order would not be appropriate.

Credibility Analysis and Additional Findings

For testimony to be believed, it must not only come from the mouth of a credible witness, but it also has to be credible in itself. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the

⁹ At the hearing, Dr. Altobello could not recall the regulatory cite; it was provided by counsel post-hearing.

circumstances. See, Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witness's story in light of its rationality, internal consistency, and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Also, "[t]he interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

The most important witness, M.S., is no longer a minor child, having turned eighteen prior to the hearing. In the past, M.S. had shown herself to me to be less than credible, but at this hearing, I found her to present an honest, if somewhat biased, account of her high school experience in the Hamilton Township school system. She is very soft spoken and appears shy.¹⁰

Most of M.S.'s testimony was coached by her mother, despite numerous attempts to direct D.S. to avoid leading questions and/or not to use questions to present her own testimony. Much of what M.S. stated on direct examination she willingly contradicted on cross. For example, she complained of no positive adult relationships at Steinert, making her relationship with Belfiore all the more important. She then spoke highly of Steinert teachers Cooper and Leon and how much they have helped her. She admitted to poor academic performance while at HHS-West and improved academic performance at Steinert, and I so **FIND**. Further, M.S. stated that had she stayed on the path she was on at HHS-West, she doubts she would be where she is today—on the Honor Roll, headed to college in the fall.

Significantly, M.S. understands that the decision made by respondent to keep her at Steinert rather than permitting her enrollment at HHS-West (the subject of EDU 10144-22), is the result of the actions she took while a student at HHS-West, and I so **FIND**. While M.S. admits that such actions were not worth it, she did not acknowledge as untrue

¹⁰ While on the witness stand, M.S. was repeatedly asked to speak up.

the claims of racial discrimination, bigotry, bullying, and harassment brought on her behalf against teachers and administrators of HHS-West.

Between them, D.S. and M.S. only presented evidence of one incident in which a decision of respondent could be classified as unfair, that being M.S.'s testimony that in February 2022, she received greater discipline for the same violations of school policy than was given to other male, white students. But there was no evidence introduced to corroborate her hearsay statement, no certification, no eyewitnesses, not even cross-examination of respondent's witness. Further, a review of the record in EDS 01033-22, shows that M.S. was suspended in February 2022, for twenty-two days, not forty-five days (as she now recalls).

Similarly, on multiple occasions, D.S. stated that Superintendent Rocco acted out of personal spite when he denied the request to permit M.S. to participate in senior year activities at HHS-West but presented no evidence to support those speculative statements.¹¹ Though petitioner pointed out that the Board policy and regulation on which respondent based the decision in this matter does not specifically prohibit a student enrolled at one high school from walking in the graduation ceremony at another, she failed to present evidence that the Board has permitted other students to do so.¹²

Dr. Altobello appeared credible, and I believe that he is truly uncomfortable asking Principal Smith to hand a diploma to a student who has made very serious allegations of improper conduct against him, allegations that resulted in a Board investigation, civil litigation, and multiple administrative proceedings. As petitioner notes, the regulation Dr. Altobello cited to support his decision does not prohibit the award of diplomas based on residency and attendance at a particular high school. The regulation, N.J.A.C. 6A:8-5.2, addressed academic requirements for graduation that must be followed by district boards of education. Board Policy 5410, however, states in pertinent part:

¹¹ Petitioner did not name the Board members who allegedly support her request, and did not secure their testimony or introduce affidavits in which they confirmed their alleged statements.

¹² Petitioner's argument that both she and M.S. were welcomed to the stage at HHS-West in 2005 to receive the diploma of her deceased son is touching but is not evidence that respondent routinely makes exceptions to the stated policy.

School attendance shall be a factor in the determination of a pupil's promotion or retention. In high school, only extenuating circumstances should permit the promotion of a pupil who has been in attendance fewer than ninety percent of the days during the school year.

That Dr. Altobello failed to identify the above policy while on the witness stand is not evidence that he violated it. His explanation for his decisions regarding where M.S. completes high school and receives her diploma are within the discretion afforded him by Board Policy 5120 and Board Regulation 5120. I **FIND** as **FACT** that petitioner presented no evidence to prove that the decision of respondent to deny her request for M.S. to participate in the prom and graduation ceremony at HHS-West was arbitrary, capricious, unreasonable, and/or in violation of Board policy.

LEGAL ANALYSIS AND CONCLUSIONS

Actions within a school board's authority, including the adoption and implementation of policies for the assignment of students, are entitled to a presumption of correctness and will not be upset by the courts unless there is an affirmative showing that a decision is arbitrary, capricious or unreasonable. Thomas v. Bd. of Educ. of Morris Twp., 89 N.J. Super. 327, 332 (App. Div. 1965), aff'd., 46 N.J. 581 (1966). In general, a board of education's actions are entitled to a presumption of lawfulness and good faith.

D.S. argues that the Board did not meet its burden of proving that its decision was not arbitrary and capricious,¹³ but where board actions are challenged, the challenger—D.S., not the Board—bears the burden of proving that such actions were unlawful, arbitrary, capricious or unreasonable. Schuster v. Bd. of Educ. of the Twp. of Montgomery, 96 N.J.A.R.2d (EDU) 670, 676 [citing Schnick v. Westwood Bd. of Educ., 60 N.J. Super. 448 (App. Div. 1960), and Quinlan v. North Bergen Twp. Bd. of Educ., 73 N.J. Super. 40 (App. Div. 1962)].¹⁴

¹³ See Ltr. Br. of Petitioner (March 13, 2023), at 1.

¹⁴ D.S. is critical of respondent for relying on cases which were decided as much as sixty years ago, calling such "insanity." See Br. of Petitioner at 3. Though dated, all cases cited here were determined to still be good law.

In matters involving the exercise of a 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). Our courts have held that "[w]here there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached." Bayshore Sewage Co. v. Dep't of Env'tl. Prot., 122 N.J. Super. 184, 199–200 (Ch. Div. 1973), aff'd., 131 N.J. Super. 37 (App Div. 1974). To satisfy the arbitrary and capricious standard, petitioner must prove that respondent acted in either bad faith or in disregard to the circumstances and I **CONCLUDE** that she has done neither.

As the factual record detailed above makes clear, respondent has a strong basis for its decision to refuse to permit M.S. to participate in graduation activities at HHS-West. Those privileges are reserved for students who attend school at HHS-West and respondent will not permit M.S. to finish her senior year at HHS-West.¹⁵

Notwithstanding that M.S. claims to be more mature now, has maintained a productive relationship with her HHS-West guidance counselor, and has reconsidered her prior claims against Principal Smith,¹⁶ respondent has decided that it is in the best interest of M.S. and the staff and administration of HHS-West for M.S. to finish her senior year at Steinert. It is not lost here that petitioner made seven separate claims against staff and administrators of HHS-West, alleging that those staff members bullied, harassed, and discriminated against, M.S. Even at the hearing in this matter, M.S. repeated her claims of racial discrimination by HHS-West administrators (and added a claim against the former Steinert principal), an unintentional reminder of the hardship to its employees that respondent seeks to prevent:

¹⁵ The decision of the Board in EDU 10144-22 has been upheld by initial decision issued March 30, 2023, pending a final decision by the DOE.

¹⁶ Petitioner attempts in her closing to reframe her history of litigation as actions against the District, Dr. Altobello and Superintendent Rocco, and not the HHS-West administration. Br. of Petitioner at 3. As set forth above, however, not counting the three recusal motions, of the ten claims filed by D.S., seven were against HHS-West staff and administrators.

Placement [of M.S.] at West would invite a resurgence of the claims of harassment and conflict between D.S., M.S., and the school officials. It would be a hardship to the district administration and staff members at West, previously defendants against allegations of racism that they vehemently dispute, to have to scurry to accommodate M.S. with a program as she moves toward graduation all the while on eggshells that any decision to discipline M.S. or conflict between M.S. and her peers would again result in their professional reputations being attacked as they have been numerous times before.

[Ltr. Br. of Respondent (March 13, 2023), at 6.]

Though petitioner may disagree with the decision made by Dr. Altobello, disagreement alone is not sufficient to prove that his decision was arbitrary, capricious and/or in violation of Board policy.

ORDER

For the reasons set forth above, I **ORDER** that the appeal of petitioner D.S on behalf of M.S. of the decision of respondent Hamilton Township Board of Education to deny her request for M.S. to attend the HHS-West senior prom and to walk in the HHS-West graduation ceremony is hereby **DENIED** and the petition is hereby **DISMISSED**.

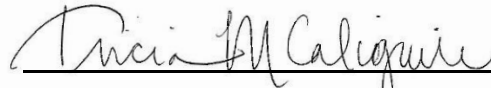
I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

March 30, 2023

DATE



TRICIA M. CALIGUIRE, ALJ

Date Received at Agency:

Date Mailed to Parties:

TMC/nn

APPENDIX

WITNESSES

For petitioner

M.S.

D.S.

For respondent

Dr. James Altobello

EXHIBITS

For petitioner

P-1 Email from M.H. (now M.S.) to Dr. James Altobello, dated September 21, 2022

For respondent

- R-1 Petition of Appeal, dated July 18, 2022
- R-2 Answer of Board, dated August 15, 2022
- R-3 Not introduced
- R-4 Not introduced
- R-5 Zone Waiver Request Email, dated October 20, 2021
- R-6 Zone Waiver Denial, dated October 29, 2021
- R-7 Emails, dated October 29, 2021, through November 3, 2021
- R-8 Letter from Board Counsel to Petitioner, dated November 5, 2021
- R-9 Email from E. Gonzalez to Petitioner, dated October 29, 2021
- R-10 Emails from Petitioner, dated May 3 through May 5, 2022
- R-11 Email from Dr. Altobello, dated May 3, 2022
- R-12 Zone Waiver Request, dated June 13, 2022
- R-13 Not introduced
- R-14 Email from Board Counsel to Petitioner, dated June 21, 2021
- R-15 District Policy 5120

R-16 District Regulation 5120

R-17 Not introduced