

478-25
OAL Dkt. No. EDU 09625-24
Agency Dkt. No. 174-5/24

New Jersey Commissioner of Education
Final Decision

D.H., on behalf of minor child, H.H.,

Petitioner,

v.

Board of Education of the City of Cape May,
Cape May County,

Respondent.

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

Petitioner appeals the Board's four-day, out-of-school suspension of his minor child, H.H. The suspension arises from a conversation between H.H. and another student while riding the bus to Cape May City Elementary School (school) on February 8, 2024. The two discussed using dynamite to blow up the school on a weekend rather than on a weekday, so that no one would get hurt. H.H. believed that the conversation was a joke but began to feel uncomfortable. When the bus arrived at school, H.H. tried to get away from the other student but could not because their classrooms were in the same direction. Simultaneously, the other student proceeded to point to places in the building where he could place a bomb.

Mrs. Varades, a paraprofessional, was in the hallway when she overheard the other student discuss placing the bombs in the school hallway. She reported what she overheard to the Supervisor of Early Childhood Education and coordinator for the Intervention and Referral Services, Leann Tarr. Tarr spoke to H.H., who confirmed Mrs. Varades's account. Tarr returned H.H. to his classroom and then spoke with the other student. After returning him to his classroom, Tarr approached school psychologist Shawna Mulford with what she had learned. Tarr then called Superintendent Zachary Palombo and read him the notes she took during her conversations with Varades, H.H., and the other student. Palombo, who was not present at the school, hung up, called the police, and drove to the school. Next, Tarr took H.H. and the other student from their classes and brought them to her office for a threat assessment.

Pursuant to *N.J.S.A. 18A:17-43.4*, districts are required to establish a threat assessment team at each school. Mulford is a member of the school's Behavior Threat Assessment Team (TEAM). The purpose of TEAM is to provide administrators, teachers, and staff with assistance in identifying students with behaviors of concern; assessing those students' risk for engaging in violence or other harmful activities; and delivering intervention strategies to manage the risk of harm for students who pose a potential safety risk. (*N.J.S.A. 18A: 17-43.4*; Exhibit J-1). Mulford administered H.H.'s risk assessment along with school social worker and fellow TEAM member Allison Crowther. Tarr was also present for the assessment, but as an observer.

Mulford questioned H.H. using the Behavioral Threat Assessment and Management (BTAM)'s model questions and paraphrased his responses. Mulford noted that H.H. admitted to the conversation on the bus and that he had said that the best time to blow up the school would be on a weekend, so no one would get hurt. Mulford wrote that H.H. "displayed remorse,

compassion” and noted that H.H. had not engaged in attack-related behavior. Exhibit J-4, at 42. Regarding H.H.’s potential for violence, she wrote, “[t]here has not been a pattern of behavior preceding this event/Not at this time.” *Id.* at 43. Mulford wrote that H.H. “described the incident as ‘all a joke’” and that he “[s]howed remorse for the discussion and compassion for people that could potentially be hurt if the actions discussed were to come to fruition.” *Ibid.*

Superintendent Palombo is a member of TEAM; however, he recused himself from both students’ threat assessments. When Palombo returned to the school, he conducted his own inquiry regarding the incident. First, he searched H.H.’s and the other student’s bookbags and found nothing of concern. Then Palombo met with each student separately, during which H.H. admitted to having had the conversation on the bus about blowing up the school using dynamite on a weekend. Following Palombo’s questioning and the TEAM’s risk assessment, Palombo met with H.H.’s parents, whom he had contacted earlier that morning. Mulford and two members of law enforcement were also present at the meeting.

At the meeting, petitioner asked if the matter would be treated as a bomb threat. Palombo responded that it would likely be considered a terroristic threat, but additional information would be provided via mail. On or about the following day, H.H.’s parents received a letter from the Board, dated February 8, 2024, that stated the following:

This letter is to inform you that [H.H.] is suspended from school today, Thursday, February 8, 2024 through tomorrow [sic], Tuesday, February 13, 2024 due to making comments that could be potentially dangerous to others. A re-entry meeting must be held prior to his return to school on Wednesday, February 14, 2024. Additional incidents will result in further disciplinary consequences.

Exhibit J-2, at 25.

Palombo was the sole disciplinarian in this matter. He did not consult TEAM or review the results of the threat assessment before issuing H.H.'s suspension.

The re-entry meeting was held on February 14, 2024. H.H., his parents, Palombo, Mulford, Crowther, and the Supervisor of Student Services, Alexis Cartagena, were in attendance. After confirming with Palombo that he had an "anchor" (or a support system) in the school, H.H. was returned to class. Prior to the meeting, petitioner requested all documentation regarding H.H.'s disciplinary record and suspension. At the meeting, Palombo provided petitioner with a copy of H.H.'s disciplinary report. Listed under the "Incident Code" is "205 – High Five Rule #2: Be Responsible (Bomb Threat)." The report's "Incident Description (internal)" includes the following statement: "Student was overheard speaking about placing bombs in the school with another student and coming up with a plan to blow up the school." Exhibit J-3 at 26. Palombo drafted the incident report using the Board's online reporting system.

Several hours after the re-entry meeting, petitioner sent Palombo an email seeking clarification about H.H.'s suspension "because he now has multiple reasons for being suspended." Exhibit J-3 at 36. Petitioner also took issue with statements in H.H.'s discipline report, specifically that H.H. was overheard speaking about placing bombs in the school and that he came up with a plan to blow up the school. Petitioner asked Palombo what factors listed in the School Handbook's Disciplinary Guide (e.g. the severity of the offense, the development level of the student offender, his age, and the student's history of inappropriate behavior) were considered when he made the decision to suspend.

On February 19, 2024, Palombo responded to petitioner's request for clarification on the reason for suspension with the following sections from the Handbook: "A pupil whose presence

poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process, may be suspended or expelled following the process.” Exhibit J-5, at 28. In addition, Palombo clarified that H.H.’s behavior was considered by School Administration to be a Type Four Offense “because they encompassed: (1) terrorist threats and (2) other student behaviors that most seriously disrupt the school environment or seriously endanger the welfare or safety of other students or school personnel.” *Ibid.*¹ Lastly, Palombo wrote that he considered H.H.’s “age, development, history of discipline, severity of the offense at issue, the actual impact and potential impact of [H.H.’s] statements and actions, and the need to enforce the School’s policies and disciplinary code.” Exhibit J-5, at 28.

Petitioner appealed Palombo’s determination to the Board, who affirmed the suspension. Petitioner then appealed the matter to the Commissioner of Education. Following a contested hearing at the OAL, during which petitioner, Palombo, Tarr, Mulford, Crowther, and Cartagena testified, the Administrative Law Judge (ALJ) concluded that the Board’s decision was arbitrary, capricious, and unreasonable as “the charges that H.H. committed a Terrorist Threat – Type Four Offense, constituted a continuing danger or a disruptive presence, or made a bomb threat are unfounded.” Initial Decision at 16. The ALJ found that Palombo did not provide a satisfactory explanation as to why he relied on his discretionary authority and not the Handbook in imposing discipline.

As to the charge that H.H. committed a Terrorist Threat – Type Four Offense, the ALJ determined that while it was reasonable to conduct a threat assessment, it was unreasonable for

¹ The specific offense in the Student Handbook is “Terroristic threats (pending a threat assessment).” Exhibit J-20, at 361.

Palombo to ignore the results of the threat assessment and arbitrarily impose discipline. In reaching her determination, the ALJ cited the fact that under the Student Handbook, a terrorist threat is a Type Four offense pending a threat assessment. The ALJ found that the evidence from the threat assessment established that H.H. did not have the capacity to carry out an act of targeted violence; that H.H. was not violent; and that he did not pose an immediate threat or a continuing danger to other people or property. As such, the ALJ concluded that Palombo had contradicted the Handbook by continuing to refer to H.H.'s behavior as a Type Four Offense despite the threat assessment proving otherwise.

Regarding the charge that H.H. was a disruptive presence, the ALJ relied on the testimonies of Tarr, Mulford, and Crowther, whom she deemed provided "honest assessments" of the events of February 8, 2024. *Id.* at 11. The ALJ found that other than the time it took them to conduct the threat assessment, there was no disruption to the school environment as there was no lockdown or other extraordinary measure taken. In doing so, the ALJ rejected Palombo's assertion that H.H.'s actions seriously disrupted the school environment. Ultimately, the ALJ concluded that the credible evidence shows that H.H. did not pose a threat or a disruption to the school environment.

As to the charge that H.H. made a bomb threat, the ALJ deemed it unfounded. In her analysis, the ALJ found that despite drafting H.H.'s discipline report, Palombo could not credibly explain why the February 8th incident was given the incident code, "205 – High 5 Rule #2: Be Responsible (Bomb Threat)" in the report. Specifically, the ALJ found that Palombo could not explain why this section of the Student Code of Conduct was applicable or why the words, "bomb

threat” were added.² Furthermore, citing to the Handbook, the ALJ found that the penalty for a violation of a High 5 Rule is detention, not a suspension, and noted that Palombo provided no explanation for the discrepancy in H.H.’s punishment. The ALJ further found that Palombo initially told H.H.’s parents that he did not consider the matter to be a bomb threat but changed course without notifying the parents or providing an explanation.

Lastly, the ALJ concluded that Palombo’s testimony – that he was mandated to recuse himself from the TEAM because his role as a disciplinarian must be separate from the threat assessment – is inconsistent with the District’s Student Safety Assessment Guidebook (Student Safety Guidebook) and the Student Handbook. Accordingly, the ALJ reversed the suspension and ordered that the Board expunge from H.H.’s record any disciplinary record regarding the February 8, 2024, incident.

In its exceptions, the Board contends that the ALJ erred in relying on the BTAM process as a benchmark for evaluating the appropriateness of H.H.’s suspension. The Board argues that in doing so, the ALJ erroneously conflated the BTAM process and the disciplinary process. The Board further argues that this conflation undermines the legislative intent of the BTAM process, which is to maintain a non-adversarial mechanism used to manage potential safety risks, rather than to impose student discipline. Second, the Board takes exception to the ALJ’s determination that Palombo’s recusal from the TEAM was inappropriate given the Student Handbook and the Student Safety Guidebook. The Board contends that the plain language of *N.J.S.A. 18A: 17-43.4* provides districts with discretion in the composition of threat assessment teams. Furthermore,

² The District’s Student Code of Conduct’s High 5 Rule #2 does not mention bomb threats. See Exhibit J-20, at 358.

the Board argues that as the disciplinarian in this matter, Palombo correctly recused himself from the TEAM to preserve impartiality in the disciplinary process. Third, the Board contends that even if the Superintendent's recusal was inappropriate, such an error should be excused under the Doctrine of Substantial Compliance. Lastly, citing case law, the Board argues that its suspension decision was not arbitrary, capricious, or unreasonable.

In response, petitioner contends that the ALJ correctly determined that the Board's decision to suspend H.H. was arbitrary, capricious, or unreasonable because (1) Palombo did not consider H.H.'s age, development, or grade level when rendering the suspension determination; (2) Palombo did not consider imposing disciplinary action at the lowest level possible in accordance with the Student Handbook; (3) H.H. never admitted to making a threat or plan to blow up the school; rather, he admitted to participating in an inappropriate bus conversation; and (4) Palombo provided petitioner with several different justifications for the suspension, thereby depriving the petitioner of an opportunity to understand the accusation in time and to prepare a meaningful defense. Lastly, petitioner contends that the case law cited by the Board in support of its determination is distinguishable from the instant matter.

Upon review, the Commissioner concurs with the ALJ's determination that the Board's suspension of H.H. was arbitrary, capricious, and unreasonable, as the charges that H.H. committed a Terroristic Threat – Type Four Offense or made a bomb threat are unfounded.³ With respect to the charge that H.H.'s behavior disrupted the school environment, the Commissioner

³ The Commissioner acknowledges the seriousness of H.H.'s behavior. However, a student facing discipline is entitled to procedural protections even for serious offenses, and a board of education's decision to impose discipline must not be arbitrary, capricious, or unreasonable.

agrees with the ALJ's conclusion that the Board was arbitrary, capricious, and unreasonable in issuing the four-day suspension, but disagrees with the ALJ as to the reasoning.

One of Palombo's justifications for suspension was the catchall provision from the Student Handbook – "Other student behaviors that most seriously disrupt the school environment or seriously endanger the welfare or safety of other students or school personnel." Contrary to the ALJ's finding, the evidence on the record indicates that the February 8th incident seriously disrupted the school environment. Mulford and Crowther were pulled away from their daily responsibilities to conduct H.H.'s threat assessment; Palombo, who was providing coverage for a senior administrator in the West Cape May School District on the day of the incident, had to return to the school to search the students' bags and to question them. Nonetheless, although the incident might have caused a substantial disruption, the suspension must be overturned given the Board's many procedural deficiencies in imposing H.H.'s suspension.

The record confirms that on or about February 9, 2024, H.H.'s parents received a letter in the mail identifying the date of the suspension and the charge – "making comments that could be potentially dangerous to others" – as mandated by *N.J.A.C. 6A:16-7.2 (a)(3)(i)*. However, the facts upon which the charge was based, the provisions of the code of student conduct that H.H. was accused of violating, and the articulation of H.H.'s due process rights (*see N.J.A.C. 6A:16-7.2 (a)(3)(ii), (iii) and (iv)*) were not included in the notice, contrary to regulatory requirements. Also missing from the letter were the terms and conditions of H.H.'s suspension. *N.J.A.C. 6A:16-7.2 (a)(3)(v)*.

Palombo further contributed to the impact of these procedural deficiencies when he provided petitioner with various justifications for the suspension in the days following the

incident. First, the charge was “making comments that could be potentially dangerous to others,” a charge not found in the Student Handbook; next it was categorized as a “High 5 Rule #2: Be Responsible (Bomb Threat);” lastly, on February 19, 2024, over a week and a half after the incident, Palombo identified the charge as a Type Four Offense (pending threat assessment) even though the threat assessment had already been completed and had determined that H.H. was not a threat.

Palombo could not credibly explain why he kept changing the reason for suspension. Palombo also could not credibly explain why H.H.’s behavior constituted a terroristic threat after the threat assessment had been completed, nor could he credibly explain why he chose to suspend H.H. for four days. The ALJ found that Mulford’s, Tarr’s, and Crowther’s testimonies undermined Palombo’s explanation as to why a four-day suspension was warranted. Palombo testified that the purpose of the four-day suspension was to provide H.H. a cooling-off period, and to give the school the time needed to plan for H.H.’s return; however, there was no testimony indicating that a plan for H.H.’s return or his need for services was considered. The ALJ also noted that no services were offered to H.H. during the re-entry meeting, and although Palombo asked H.H. if he had an “anchor” of support at the school, nothing further was discussed.

The Commissioner does not find the Board’s exceptions to be persuasive. While the Board is correct that the BTAM and disciplinary processes are separate and distinct under *N.J.S.A. 18A:17-43.4* and the School’s Student Safety Guidebook, the Commissioner notes that the Board, by its own terms, made the threat assessment relevant to the disciplinary process when it created a category for “Terroristic threats (pending threat assessment)” in its Handbook. Once H.H.’s threat assessment was complete, Palombo should have reviewed the results to determine if H.H.

was, in fact, a threat. The Commissioner acknowledges that it would not have been unreasonable for Palombo to have considered the incident a “Terroristic threat, pending threat assessment” initially; however, it was unreasonable for Palombo disregard the outcome of the assessment once it was no longer pending.

The Board also argues that the ALJ erred in determining that Palombo’s recusal from the TEAM was inappropriate given the Student Handbook and the Student Safety Guidebook which, according to the ALJ, provide a role for the School Administrator on the threat assessment team. The Board contends that the BTAM statute offers schools flexibility in structing their threat assessment teams. The Board also cited the text of the BTAM statute, which states, “A threat assessment team established by a board of education . . . shall be multidisciplinary in membership and, to the extent possible, shall include . . . (3) a school principal or other senior administrator.” *N.J.S.A. 18A:17-43.4(b)*. The Commissioner agrees with the Board that the statute does not require Palombo’s membership specifically. The Student Safety Guidebook also requires the membership of a “school principal or other senior school administrator.” This means that a senior school administrator must be on the TEAM; however, this person did not have to be Palombo. As such, Palombo was not unreasonable in recusing himself from the TEAM. Although the Commissioner disagrees with the ALJ regarding the appropriateness of Palombo’s recusal, the Commissioner agrees with the ALJ that Palombo was unreasonable in ignoring the results of the threat assessment, for the reasons described above.

Lastly, in support of its contention that Palombo exercised discretion appropriately to maintain school safety, the Board cites to case law wherein suspensions were upheld for students who committed various disciplinary infractions. Even if those students were suspended, the

Commissioner reviews each matter carefully on a case-by-case basis and does not find that the outcomes of other matters involving student discipline require a particular result here.

Accordingly, the Initial Decision, as modified, is adopted as the final decision in this matter. The Board's decision to suspend H.H. for the February 8, 2024, incident is reversed, and all references thereto shall be expunged from H.H.'s student records.

IT IS SO ORDERED.⁴



COMMISSIONER OF EDUCATION

Date of Decision: October 10, 2025
Date of Mailing: October 10, 2025

⁴ 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 09625-24

AGENCY DKT. NO. 174-5/24

D.H. ON BEHALF OF MINOR CHILD, H.H.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE CITY OF
CAPE MAY, CAPE MAY COUNTY,**

Respondent.

D.H., petitioner/parent, pro se on behalf of H.H.

Christopher Barrett, Esq., for respondent (Barton Gilman, LLP, attorneys)

Record Closed: May 5, 2025

Decided: June 10, 2025

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

STATEMENT OF THE CASE

The petitioner D.H. challenged the decision by respondent Board of Education of the City of Cape May (Board) imposing a four-day out-of-school suspension on his son, H.H. Petitioner alleged that the suspension was unwarranted. Petitioner further alleged that the suspension was invalid because it contravened the regulation for short term suspensions, N.J.A.C. 6A:17-7.2, the State of New Jersey Guidance on the Establishment of Behavioral Threat Assessment and Management Teams (BTAM) 2023, and the Cape May City Elementary School Student/Parent Handbook (Handbook). On

February 8, 2024, Chief School Administrator, Zachary Palombo (Palombo) suspended H.H. for “making comments that could be potentially dangerous to others.” (J-2.) The issue is whether the Board’s decision in upholding the suspension was arbitrary, capricious, or unreasonable.

PROCEDURAL HISTORY

On May 31, 2024, the petitioner filed a petition with the Commissioner of the Department of Education (Commissioner) contesting discipline entered by the Board against his minor son, H.H. while he was a sixth-grade student at Cape May City Elementary School (Cape May).

In lieu of an Answer, the Board filed a Motion to Dismiss on July 12, 2024, with the New Jersey State Department of Education (DOE). On July 16, 2024, the Office of Controversies and Disputes within the DOE transmitted the case to the Office of Administrative Law (OAL) under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

At the initial telephone conference, the Board withdrew its Motion to Dismiss and the matter proceeded. I entered the Prehearing Order on November 7, 2024, with the original hearing date scheduled for January 15, 2025. During a telephone conference on December 27, 2024, the parties advised they were not able to resolve their discovery dispute, so I allowed petitioner to file a motion to compel discovery. After reviewing the motion and opposition, I entered an Order on January 23, 2025, denying the motion.

The hearing was held on March 12, 2025. I granted the parties request to obtain a transfer of the hearing and to submit written summations. I closed the record on May 5, 2025, after receiving the summation briefs.

FINDINGS OF FACT

Based on the unrefuted testimony of the parties and the joint documents in evidence, I **FIND** the following as **FACT**:

H.H. was a sixth grade student at Cape May during the 2023-24 school year. While riding the bus to school on February 8, 2024, H.H. engaged in a conversation with a classmate. (J-21.) The discussion involved using dynamite to blow up the school on a weekend, so no one would get hurt. H.H. thought the conversation was a joke, but as they continued to talk, he started to feel uneasy. When the bus arrived at school, H.H. wanted to distance himself from this classmate but he could not because they were headed in the same direction to their classrooms. Ibid. The other student kept talking and pointed to places in the building where he could put a bomb. (J-14, at 68.)

Mrs. Varades is a paraprofessional in the first grade classroom. She was not on the bus. She overheard the student talking about placing bombs in the school hallway and she told him not to talk that way in school. The student talking about placing bombs was walking with H.H.

Leeann Tarr (Tarr) was in her preschool classroom welcoming students when Mrs. Varades approached her to report what she had overheard. First, Tarr spoke to H.H., who confirmed what Mrs. Varades overheard. After their brief discussion, Tarr took H.H. back to gym class and met with the other student. Tarr took notes of what Mrs. Varades reported and of her conversation with each of the students. (J-14.)

After taking the other student back to his classroom, Tarr reported what she learned to the school psychologist, Shawna Mulford (Mulford). She then called the Superintendent, Palombo, who was not present in the building, and read him her notes. After verifying from Tarr that the reporting was from a reliable source, Palombo hung up the phone and called the Cape May City Police Department. At Palombo's request, police were dispatched to the school and a search warrant was obtained to search petitioner's home. Palombo also called H.H.'s parents and requested they come to school.

Mulford, as the school psychologist, was a member of the Behavior Threat Assessment Team (TEAM). She sent Tarr to get the students and bring them to her office for a threat assessment. Next, Mulford contacted Allison Crowther, the school social worker, who was also a designated member of the TEAM. Mulford assembled the guidance paperwork from the BTAM, which she used as a framework when questioning H.H. She utilized the BTAM's model questions known as the "Eleven Key Questions." (J-6, 42-43.) The stated purpose of these questions is as follows:

The goal of a Threat Assessment Team is to ultimately keep all students safe, including those who may have intent on doing harm. The Team will navigate through questions such as the eleven below (posed in varied methods) to help identify students of concern, assess the risk for their engagement with violence and/or other potential harmful activities, and identify intervention strategies to manage that risk. These have been compiled through multiple databases and resources and most commonly used by Threat Assessment Teams when gathering information regarding a reported concern or evaluating a potential risk, as there are follow up questions paired with each of these eleven areas of inquiry.

[Ibid.]

Mulford administered the guidance questions and took notes, recording H.H.'s answers. Ibid. She paraphrased H.H.'s responses and noted that he said that the best time to "blow up the school would be on a weekend" because "during the week everyone would die." She noted that H.H. "displayed remorse, compassion." (J-6, 42.) As noted on the form, in Mulford's opinion, H.H. did not have the capacity to carry out an act of targeted violence. She noted no concerning behaviors. Ibid. She also did not believe there was a likelihood that H.H. would engage in or resort to violence. (J-6, 43.) In her notes, Mulford wrote: "Showed remorse for the discussion and compassion for people that could potentially be hurt if the actions discussed were to come to fruition." Ibid.

Upon arriving at school, Mr. Palombo met with the students in his office. He searched their backpacks and found nothing concerning. This was H.H.'s first time in the principal's office. Palombo met with each student separately. H.H. admitted his

involvement in the bus conversation to blow up the school using dynamite on a weekend. Palombo believed that H.H. showed remorse.

Palombo is the sole disciplinarian; he was not part of the TEAM that assessed the risk. He believed the conduct warranted a suspension and he imposed a four day suspension because anything longer would have required home instruction.

After meeting with H.H., Palombo met with H.H.'s parents, Mulford, and two police officers. At the conclusion of the meeting, Palombo handed the parents the suspension letter:

This letter is to inform you that [H.H.] is suspended from school today, Thursday, February 8, 2024 through tomorrow [sic] Tuesday, February 13, 2024 due to making comments that could be potentially dangerous to others. A re-entry meeting must be held prior to his return to school on Wednesday, February 14, 2024. Additional incidents will result in further disciplinary consequences.

[J-2, 25.]

The above letter became part of H.H.'s student file. Palombo also created a Discipline Report that listed the offense under the "Incident Code 205-High Five Rule #2 – Be Responsible (Bomb Threat)." (J-3, 26.) The Discipline Report could be disclosed if it was specifically requested.

The Discipline Report contained an internal description of the incident that was different from the public description of the incident. "Incident Description (internal)" stated:

Student was overheard speaking about placing bombs in the school with another student and coming up with a plan to blow up the school. Crisis Team contacted for investigation. Student admitted to having conversation and complied fully with administration and crisis team. CMCPD contacted as per state code/mandatory reporting. Parent contacted. Parent Meeting 02/08/24 10:30 a.m. Student suspended 4 days OSS; re-entry meeting 9:30 a.m. 021424.

[Ibid.]

The “Incident Description (Public)” stated that “Student was overheard speaking about actions potentially dangerous to others in the school with another student.” Ibid.

The re-entry meeting occurred on February 14, 2024. Palombo, Mulford, Crowther, and Alexis Cartagena, Supervisor of Student Services, were present along with H.H. and his parents. After a brief exchange between Palombo and H.H. wherein H.H. confirmed that he had trusted teachers in the school as support, Palombo released him to class.

Prior to the meeting, D.H. requested all documentation concerning his son’s suspension and his entire disciplinary record. At the meeting Palombo gave D.H. a copy of the internal disciplinary report. (J-3.) After a tense but calm exchange, Palombo advised the parents that they could appeal the discipline to the Board of Education.

Following the re-entry meeting a series of emails were exchanged between D.H. and Palombo. On February 14, 2024, D.H. sent an email asking for clarification about his son’s suspension and questioning whether the School’s Disciplinary Guide was considered. (J-5, 35-36.) On February 19, 2024, Palombo responded and advised D.H. that pursuant to his request for an appeal, the Board of Education would consider his appeal at their February 22, 2024, meeting. (J-5, 27.) In response to D.H.’s request for clarification, Palombo cited to sections of the Handbook which referred to a “pupil whose presence poses a continuing danger to persons or property, or an ongoing threat of disrupting the academic process, may be suspended.” Referencing the Handbook, Palombo further clarified that H.H.’s statements were considered “to be a Type Four Offense because they encompassed: (1) terrorist threats and (2) other student behaviors that most seriously disrupt the school environment or seriously endanger the welfare or safety of other students or school personnel.” (J-5, 28.) In closing, Palombo stated that prior to imposing discipline, he considered H.H.’s “age, development, history of discipline, severity of the offense at issue, the actual impact and potential impact of your son’s statements and actions, and the need to enforce the School’s policies and disciplinary code were all considered.” Ibid.

H.H. is a gifted student with no prior disciplinary history. He is chronologically younger than his classmates. While attending school in North Carolina, H.H. was able to complete second and third grade work requirements during his second grade and he advanced to fourth grade, skipping the third grade.

D.H. objected to the short notice for his appeal to the Board. By letter, dated February 26, 2024, Palombo notified D.H. that the meeting would be adjourned until March 21, 2024. (J-5, 39-41.) After another adjournment, the meeting occurred on April 18, 2024. By letter, dated April 19, 2024, John Thomas, Business Administrator/Board Secretary, notified petitioner that the Board voted to affirm the School Administrator's decision with respect to his son's disciplinary matter. (J-10, 55.)

Testimony

The following is not a verbatim recitation of the testimony, but a summary of pertinent testimony in areas of dispute.

D.H. believed his son's punishment for his role in the incident of February 8, 2024, was excessive and without support in the school's literature or New Jersey regulation, or legislation. He reviewed the Cape May City School District Student Safety Assessment Support Guidebook (Guidebook) (J-1), the Cape May City Elementary School District Safety and Security Plan (Safety and Security Plan) (J-15), Threat Assessments in Schools: A Guide to Managing Threatening Situations and to Creating Safe School Climates (J-17), the BTAM 2023 (J-19), and the Handbook (J-20). He also reviewed the regulation for short term suspension, N.J.A.C. 6A:17-7.2 and the legislation reciting the causes for suspension under N.J.S.A. 18A:37-2.

After finding no support to justify Palombo's decision to suspend H.H. for four days, D.H. questioned Palombo in a series of emails. D.H. believed that Palombo's answers were contradictory or non-responsive.

At the time of the incident, H.H. was ten years old, attending sixth grade at Cape May Elementary School. After this incident, H.H. finished his sixth-grade year at Cape May, without incident.

For seventh grade, H.H.'s parents tried to enroll him as a non-resident tuition student in the Avalon School District. When Avalon did not accept H.H.'s application, the parents decided to home school their son for the 2024-2025 school year. The petitioner is very concerned about how Cape May's discipline decision will adversely affect H.H. and prevent him from attending the schools of his choice in the future.

Leeanne Tarr is the supervisor for early childhood education, the coordinator for the intervention and referral services, and the liaison for the partners in education program. Tarr is familiar with H.H. because he was in her social and emotional learning class when he was in fifth grade.

On the morning of February 8, 2024, Tarr was in her preschool classroom welcoming students when she was approached by a staff member, who overheard a student in the hallway saying where he would put bombs. H.H. was not the student talking, he was identified as the other student involved. Tarr believed that H.H. responded to her questions and provided information in a forthcoming and willing manner.

Shawna Mulford, as the school psychologist was an integral part of the TEAM. All TEAM members participated in mandatory training under the BTAM. Beginning in November 2022, Mulford attended seven different training sessions in this field.

Mulford recalled that H.H. repeated that he did not intend this to happen and he was sorry. Regardless, Mulford still had to go through the protocol and treat the situation seriously. She felt her questioning was thorough and was confident that the situation was handled appropriately.

In this case, Mulford was not consulted as to discipline. Palombo informed her of the four-day suspension. She transcribed her personal notes, but did not share them with Palombo prior to his decision to suspend H.H.

In her experience, the school's disciplinary code is separate from a threat assessment. The purpose of the TEAM is to mitigate potential threats to the school or student body. The TEAM also deploys interventions to avoid anything from happening in the future.

Allison Crowther is a social worker for Cape May and part of the TEAM. Crowther knew H.H. as a sixth-grade student at Cape May and she would see him at lunch. She starts her day by standing in the hallway and greeting the students as they arrive.

She learned of this incident from Mulford and Tarr, when they asked for her help in conducting the threat assessment. Her role was to provide support to the students, if needed. Although she jotted notes on a single sheet of paper, she had no recollection of what she had written. (J-13, 67.) Her recollection was that H.H. was upset. To reassure him, she talked to H.H. about dogs and things that would interest him.

Zachary Palombo is the shared Superintendent or Chief School Administrator for the Cape May and West Cape May School Districts. He serves as the Principal and the Director of Special Education at both buildings. He is also a trained member of the TEAM. Palombo determines appropriate discipline when it involves a potentially dangerous situation or involves harm. He is the sole decision maker when removing a student from school.

Upon receiving the information from Tarr about a bomb threat he immediately notified the Cape May City Police Department, as a mandatory reporter. Palombo contacted the police before the student's bags were searched. He testified that he would always err on the side of caution and contact the police if there was a potential that explosives could be in the building.

At his initial meeting with the parents, Palombo told them he did not see this as a bomb threat. He considered it to be more of a terroristic threat and he would investigate it more closely.

Palombo believed that H.H.'s conduct required suspension. H.H. was a smart boy, who admitted to participating in the conversation. The details of the conversation showed that there was a plan. The Student Code of Conduct in the Handbook is used as a guide, but Palombo has the ultimate authority and discretion in determining appropriate discipline.

Palombo recused himself from the TEAM because he believed discipline is a separate matter. He viewed the purpose of the TEAM was to gain information and be prepared to offer services when the student returns to school.

After giving H.H. due process, wherein he admitted to having the conversation about potentially using explosives to blow up the school, Palombo imposed the four-day suspension to teach H.H. a lesson. All suspensions must be reported to the Department of Education. Palombo viewed the incident as causing a disturbance in his educational environment.

Palombo administered the same four-day suspension to both students.

Additional Factual Findings

It is the obligation of the fact finder to weigh the credibility of the witnesses before making a decision. In determining credibility, I am aware that the Board employees were motivated to ensure the safety of their students and school. I am also aware that D.H. loves his son and wants to protect him from being unfairly impacted by the Board's decision. In addition to considering each witness' interest in the outcome of the matter, I observed their demeanor, tone, and physical actions. I also considered the accuracy of their recollection; their ability to know and recall relevant facts and information; the reasonableness of their testimony; their demeanor, willingness, or reluctance to testify;

their candor or evasiveness; any inconsistent or contradictory statements; and the inherent believability of their testimony.

When challenged for an answer to justify the suspension, Palombo continuously relied on his discretionary authority to impose discipline. During cross-examination, Palombo was cavalier in his responses and his demeanor was dismissive when petitioner questioned why he deviated from the Handbook. Palombo did not supply a satisfactory response explaining why he relied on his discretionary authority and not the Handbook in imposing discipline.

Tarr, Mulford, and Crowther provided honest assessments of the unusual events of February 8, 2024, to their best recollection. They acted appropriately in swiftly investigating this incident. Any language involving a plan to blow up a school must be taken seriously. They were professional and unbiased in their demeanor. They expressed legitimate concern but not panic. Other than the time it took to conduct the threat assessment; there was no disruption to school services. There was no lockdown or any other extraordinary measures taken. Thus, there was no credible evidence to support Palombo's bold assertions that H.H.'s behaviors seriously disrupted the school environment.

The testimony from the Board's witnesses about the re-entry meeting contradicted Palombo's justification for the need for a four-day suspension. The witnesses seemed to recall D.H.'s frustration rather than focusing on the purpose and intent of the meeting. Palombo explained the purpose of a four-day suspension by saying that the student needed a cooling off period, and the school needed time to plan for his return. There was no testimony about any consideration of a plan for H.H.'s return or his need for services. The school social worker, Crowther, and the school psychologist, Mulford, were present at the meeting but provided no input. Palombo asked H.H. about "anchors" but there was nothing further discussed and no services offered. This lack of attention to the re-entry meeting undermined Palombo's assessment of the need for planning to accommodate H.H.'s return to school.

Petitioner questioned Palombo about the internal discipline report that referred to the incident as a “bomb threat.” (J-3.) Palombo created the discipline report that assigned the incident code “205 - High 5 Rule #2,” to this incident. However, he could not articulate why this section of the Student Code of Conduct was applicable, or why the words “bomb threat” were included. (J-20, 358.) Under the Handbook, the discipline for students who do not adhere to the District High Five Rules is detention. (J-20, 368.) In imposing suspension, contrary to the Handbook, Palombo relied on his discretionary authority to impose discipline as he deemed appropriate without any explanation why he assigned alternative consequences.

Based on the credible testimony and the documentary evidence, I **FIND** the following as **ADDITIONAL FACTS**:

Cape May acted appropriately when it immediately questioned the two students involved and assembled the TEAM to conduct a threat assessment. The TEAM’s assessment showed that H.H. did not pose an immediate threat or a continuing danger to persons or property.

From the interviews conducted by Tarr, Palombo, and Mulford of H.H. a consistent description of the incident was determined. H.H. was visibly upset, forthcoming, and remorseful. H.H.’s involvement was limited to an inappropriate bus conversation about an inflammatory topic. H.H. admitted his role in the conversation and plausibly revealed that at first the conversation was meant as a joke but when he realized the other student might be serious, he started to feel uneasy.

Palombo’s testimony that he was required to recuse himself from the TEAM because discipline must be separate from the threat assessment is inconsistent with the Guidebook and the Handbook (J-1.) Under the Guidebook, the School Administrator has a role on the TEAM to consult with the School Psychologist, assist in conducting interviews, and determine discipline when appropriate. (J-1, at 4.) The Handbook also provides a role for the Superintendent because a terrorist threat is only a Type Four Offense, pending a threat assessment. In contradiction to the Handbook, Palombo

continued to refer to H.H.'s conduct as a Type Four Offense after the threat assessment proved otherwise. (J-5, 28.)

Palombo imposed the suspension without considering the Handbook's discipline ladder. (J-20, 362-364.) He made no effort to consider interventions or impose discipline at the lowest level possible.

Under N.J.A.C. 6A:16-7.1(b)(6), at a minimum Palombo's disciplinary response should have considered the severity of the offense, the developmental age of H.H., and his history of inappropriate behaviors. When pressed, Palombo disciplined H.H. solely based on the offense. He did not consider that H.H. was a gifted ten-year-old sixth grader with no disciplinary history, who posed no continuing threat.

On the date of suspension, February 8, 2024, Palombo provided petitioner with written notification of his son's four-day suspension for "making comments that could be potentially dangerous to others" without identifying any code provision in the Handbook. (J-2 and J-20.) The required notification under N.J.A.C. 6A:17-7.2(a)3.iii, must include the "provision(s) of the code of student conduct the student is accused of violating." On February 8, 2024, Cape May prepared an internal discipline report that contained "Incident Code 205- High Five Rule #2: Be Responsible (Bomb Threat)." (J-3.) Palombo told the parents that he did not consider the incident to be a bomb threat but reversed course without informing the parents or providing an adequate explanation.

Under the Handbook, a student who does not adhere to the High Five Rules may receive detention. (J-20, 368.) Suspension is reserved for a student who "shows disregard or defiance to authority, purposely violates school rules and regulations, brings weapons or weapon-like objects to school, engages in unsafe practices, uses obscene language or gestures, or violates the rights of others and interferes with the normal classroom routine." (J-20, 369.) N.J.S.A. 18A:37-2 provides examples of conduct which constitute good cause for suspension. The testimony did not support that H.H.'s conduct met those parameters.

DISCUSSION AND CONCLUSIONS OF LAW

The Commissioner of Education will not overturn the decision of a local school board in the absence of finding that the board's decision was arbitrary, capricious, or unreasonable. T.B.M. v. Moorestown Bd. of Educ., EDU 2780-07, Initial Decision (February 6, 2008) (citing Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965), aff'd, 46 N.J. 581(1966)), adopted, Comm'r (April 7, 2008), <<http://njlaw.rutgers.edu/collections/oal/>>. Further, the Commissioner will not substitute his judgment for that of the board of education, whose exercise of its discretion may not be disturbed unless shown to be "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). New Jersey 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). Thus, to prevail, the petitioner must demonstrate that the Board acted in bad faith, or in utter disregard of the circumstances before it. T.B.M., EDU 2780-07, Initial Decision (February 6, 2008), <<http://njlaw.rutgers.edu/collections/oal/>>.

Here the Board solely relied upon the discretionary authority of the Superintendent and Chief School Administrator to assign alternative consequences for student infractions.

The conduct was described as a conversation between two sixth grade students about blowing up the school on a weekend with dynamite. They chose the weekend so no one would get hurt. They allegedly wanted to steal the computers to play video games and not have to go to school. The other student was also overheard planning where he would put the bombs, after the students arrived at school. This was a concerning communication.

Cape May appropriately investigated the conversation and determined that H.H. did not have the capacity to carry out the plan. While the threat assessment established

that there was no immediate or potential threat to the school, it was entirely appropriate for Palombo to search the students' backpacks. As Palombo initially viewed this communication as a threat to his school, his decision to refer the matter to law enforcement will not be disturbed or second-guessed.

The bus communication between the students did not fit neatly into any of the enumerated causes for suspension under N.J.S.A. 18A:37-2. In any attempt to justify suspension, Palombo determined that H.H. was a "pupil whose presence poses a continuing danger to persons or property, or an ongoing threat of disrupting the academic process." (J-4, 28, and J-20, 359.) The Handbook's language corresponded to N.J.S.A. 18A:37-2(c), "[c]onduct of such character as to constitute a continuing danger to the physical well-being of other pupils." In referencing the Handbook's disciplinary ladder, Palombo labeled that offense as a "Type Four Offense – Terrorist threats." (J-4, and J-20, 361.) Despite Palombo's characterizations, the evidence from the threat assessment established that H.H. did not "have the capacity to carry out an act of targeted violence, . . . , was not violent, . . . [showed] no pattern of behavior, . . . and no likelihood of following up on this instance." (J-6, 42-43.)

Petitioner demonstrated that respondent acted in disregard of the circumstances before it, and that its decision was not supported by credible evidence. While it was legitimate to conduct a threat assessment, it was unreasonable for respondent to ignore the results of the threat assessment and arbitrarily impose discipline.

By all accounts, H.H. was a remorseful, scared, ten-year-old, who did not fully understand the ramifications of engaging in a conversation, serious or not, about blowing up a school. There was no proof that H.H. was a disruptive or dangerous student. Moreover, the evidence showed that H.H. did not pose a continuing threat.

The practical wisdom in the Guidebook (J-1) was not heeded in this instance. "The central question in a threat assessment inquiry or investigation is whether a student poses a threat, no whether the student has made a threat." I **CONCLUDE** based on the credible evidence that H.H. did not pose a threat or a disruption to the school environment.

The absence of substantial, credible evidence in this case renders the Board's decision unreasonable. Accordingly, I **CONCLUDE** that respondent acted in a manner that is arbitrary, capricious, and unreasonable. I **FURTHER CONCLUDE** that the charges that H.H. committed a Terrorist Threat - Type Four Offense, constituted a continuing danger or a disruptive presence, or made a bomb threat are unfounded.

Based upon the foregoing, I **CONCLUDE** that the respondent's actions in suspending H.H. were improper. I further **CONCLUDE** that the petitioner has met his burden and is entitled to expungement and removal of disciplinary action in H.H.'s school records regarding the incident date of February 8, 2024.

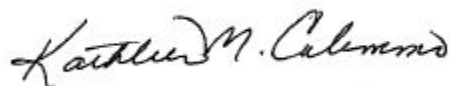
ORDER

I **ORDER** that the respondent's decision to impose a four-day out-of-school suspension upon H.H. for the incident that occurred on February 8, 2024, is **REVERSED**. I further **ORDER** that respondent expunge from H.H.'s student records the following: the letter, dated February 8, 2024, from Zachary Palombo, CSA, to the parents and guardians of H.H.; the Cape May City Elementary School District Discipline Report; and any other disciplinary record pertaining to the incident of February 8, 2024. Petitioner's appeal is **GRANTED**.

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

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

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**. Exceptions may be filed by email to ControversiesDisputesFilings@doe.nj.gov or by mail to Office of Controversies and Disputes, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500. A copy of any exceptions must be sent to the judge and to the other parties.



June 10, 2025

DATE

KATHLEEN M. CALEMMO, ALJ

Date Received at Agency:

Date Mailed to Parties:

KMC/tat

APPENDIX

Witnesses

For Petitioner:

D.H., father of H.H.

For Respondent:

Leeanne Tarr
Shawna Mulford
Allison Crowther
Alexis Cartagena
Zachary Palombo

Exhibits

Joint:

J-1 Guidebook
J-2 Letter, dated February 8, 2024
J-3 Internal Discipline Report
J-4 Emails
J-5 Letter, dated February 26, 2024
J-6 Threat assessment – Eleven Key Questions
J-7 Request under OPRA
J-8 Letter, dated May 16, 2024
J-9 Appendix B: Threat Assessment case Worksheet
J-10 Letter, dated April 16, 2024
J-11 Petitioner's Answers to Interrogatories

- J-12 School Security Incident Report
- J-13 Handwritten Notes
- J-14 Tarr's Notes
- J-15 Safety and Security Plan
- J-16 Certification of Palombo
- J-17 Threat Assessment in Schools (Guide)
- J-18 Security Drill Form
- J-19 BTAM
- J-20 Handbook
- J-21 Stipulation of H.H.

Petitioner:

None

Respondent:

- R-1 Letter, dated March 15, 2024
- R-2 Email, dated March 18, 2024
- R-3 Emails from February 14, 2024, to February 21, 2024, between D.H. and Palombo