

New Jersey Commissioner of Education
Final Decision

K.F., on behalf of minor child, M.F.,

Petitioner,

v.

Board of Education of the Township of Cherry
Hill, Camden County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), and the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by petitioner K.F. and by respondent Cherry Hill Board of Education (Board) have been reviewed.

Petitioner appeals several out-of-school suspensions imposed by the Board on her minor child, M.F., during the 2021-2022 and 2022-2023 school years. M.F. was an eighth-grade student at John A. Carusi Middle School (Carusi) during the 2021-2022 school year. The Board issued her ten short-term suspensions that year for various infractions. M.F. was a freshman at Cherry Hill West High School (Cherry Hill West) during the 2022-2023 school year. The Board issued her a three-day suspension for an incident on September 23, 2022. It is undisputed that M.F. has had an Individualized Education Program (IEP) since September of 2018; it was updated on October 20, 2021.

On November 3, 2022, K.F. emailed Superintendent Dr. Joseph Meloche, requesting that someone from the district send her the Board policy that provides for due process. Additionally, she asked, “[W]ho does the appeal go to, how long does the district have to review the appeal, what happens if the initial decision is upheld – who is the next level of appeal, etc.” On November 4, 2022, Dr. Meloche responded, stating that “[w]hile the Code of Student Conduct and District Policy and Regulation 5600¹ (as well as Policy 5610)² include references to student due process rights, they do not specify the District’s appeal process for short-term suspensions.” He also explained that a parent can appeal to the Assistant Superintendent of the student’s school; if a parent is dissatisfied with that decision, she may appeal to the Superintendent and then to the Commissioner, which must be filed within 90 days.

Petitioner alleges that the Board violated M.F.’s due process rights by failing to provide her with an informal hearing, as required by *N.J.A.C. 6A:16-7.2(a)(2)*, before imposing short-term suspensions. Petitioner also alleges that the Board’s suspension letters do not provide notice of students’ due process rights. Lastly, petitioner contends that the Board violated M.F.’s due process rights by failing to follow the procedures it established and adopted for disciplinary matters. The Board asserts that its policies are appropriate and that it did not violate M.F.’s due process rights.

The Administrative Law Judge (ALJ) determined that the Board committed due process violations against its students, including M.F., when it (1) failed to train its employees on the Middle School Code of Conduct and High School Code of Conduct in violation of *N.J.A.C. 6A:16-*

¹ District’s Student Discipline/Code of Conduct.

² District’s Suspension Policy.

7.1(a)(4); (2) failed to provide parents, including K.F., with notice of appeal procedures, whether it be the district's internal appeal process or an appeal to the Commissioner of Education pursuant to *N.J.A.C. 6A:16-7.1(c)(3)(v)*; and (3) failed to include in its suspension letters the facts upon which the charges are based and notice of the right to appeal the suspension, which includes the District's internal appeal process and the option to appeal the decision to the Commissioner.

Next, the ALJ overturned two of M.F.'s two-day suspensions — one resulting from an incident on November 17, 2021, and the other resulting from an incident on November 29, 2021. Regarding the November 17, 2021, suspension, the ALJ found that M.F. was not given an informal hearing wherein she could present her version of what occurred, as required under *N.J.A.C. 6A:16-7.2(a)(2)*. The ALJ further found that there was no informal hearing because school representatives had initially told K.F. to come to the school to pick up M.F. for touching a staff member. However, when she arrived, Principal Dr. Neil Burti informed K.F. that the original charge against M.F. had not been substantiated and that a new issue had since arisen; however, M.F. had left his office. The ALJ found that Dr. Burti did not give M.F. an opportunity to explain why she left his office before issuing an out-of-school suspension for insubordination toward staff and administration; as such, the Board violated her due process rights. The ALJ also reversed the suspension because M.F.'s manifestation determination meeting, which was held after M.F. served her two-day suspension, determined that M.F.'s behavior was a manifestation of her disability. The ALJ expressed concern over this result, stating that "[t]he practical implication is that M.F. served a two-day out-of-school suspension that she should not have received in the first place." Initial Decision at 34.

Regarding the November 29, 2021, suspension, the ALJ found that there was no evidence presented indicating that M.F. was allowed to explain her version of the events giving rise to the suspension. In addition, the ALJ noted that the Board did not hold a manifestation meeting for this incident, and that Michelle Smith, the Carusi Assistant Principal who issued the suspension, did not testify at the hearings. Accordingly, the ALJ overturned the November 29, 2021, suspension and ordered it expunged from M.F.'s record, along with the November 17, 2021, suspension.

In her exceptions, petitioner contends that all of M.F.'s suspensions should have been expunged since the ALJ had found that the Board violated M.F.'s rights each time it issued her a suspension.

In its exceptions, the Board contends that it did not violate M.F.'s due process rights when it issued the November 17, 2021, and November 29, 2021, suspensions. The Board maintains that the due process owed to M.F. is as follows:

In cases involving short-term suspension (less than ten days), minimum due process requirements dictate that (1) the student be given oral or written notice of the charges against him; (2) if the student denies the charges, the student is entitled to an explanation of the evidence that forms the basis for the charges; and (3) the student is to be given the opportunity to present his side of the story. *Gross v. Lopez*, 419 U.S. 565, 581 (1975).

Board's Exceptions at 16.

Regarding the November 17, 2021, suspension, the Board asserts that four white cards³ were submitted by Carusi staff on November 17, 2021, concerning M.F.'s inappropriate behavior.

³ At Carusi, when staff members and teachers were unable to handle a disciplinary issue with a student on their own, they would complete a white card that included an account of the incident, the student or

The Board argues that one of the cards referenced an incident where M.F. left the lunchroom without permission and tried to get into the bathroom. The Board explains that M.F. cursed at a teacher and refused to return to the lunchroom. The Board argues that Dr. Burti reviewed the white card and assigned the suspension in accordance with the Code of Conduct. The Board further argues that M.F. was sent to Dr. Burti's office and was asked to remain there as there was a safety concern between M.F. and another student; however, M.F. failed to follow this instruction and left.

The Board contends that it provided M.F. due process. It asserts that Dr. Burti had an informal hearing with M.F. wherein he provided her with the opportunity to share her version of events. The Board further asserts that M.F. had a second opportunity to share her version of events at the manifestation meeting held on November 22, 2021. The Board argues Dr. Burti provided K.F. a suspension letter on November 17, 2021, informing her that M.F. had been issued a two-day suspension on November 18 and 19, 2021, for violating the Code of Conduct for "Insubordination towards Staff" and "Insubordination toward Administration." The Board further argues that the discipline was issued in a progressive manner and that the two-day suspension was appropriate given M.F.'s previous violations of the Code of Conduct. Lastly, the Board asserts that petitioner was provided information on how to appeal the suspension, stating, "K.F. was provided notice of the manifestation meeting on November 22, 2021 . . . Therein, K.F. was notified of her rights for special education services set forth in the Parental Rights of Special Education, which provides disciplinary appeal information on page 33." As such, the Board

faculty involved, and any steps the faculty member took to resolve the issue. Assistant principals at Carusi would utilize the white cards in their investigation of a disciplinary matter.

asserts that Petitioner has not met her burden of establishing that it acted in bad faith regarding this suspension; therefore, the ALJ's reversal of the November 17, 2021, suspension should be rejected. Board's Exceptions at 15.

In addition, the Board contends that it did not violate M.F.'s due process rights by holding the manifestation determination meeting after M.F. had served her suspension because it was not required to provide a manifestation meeting at that point in time. The Board argues that pursuant to *N.J.A.C. 6A:14-2.8(a)*, a manifestation determination is required only when a suspension is for more than 10 consecutive school days. The Board asserts that prior to November 17, 2021, M.F. had only been issued six out-of-school suspensions, and therefore they were not obligated to hold a manifestation meeting prior to the suspension.

Regarding the November 29, 2021, suspension, the Board argues that petitioner has provided no evidence demonstrating that M.F. was not given the opportunity to present her side of the story during an informal hearing and, therefore, the ALJ's decision to reverse the suspension should be rejected. The Board further argues that under *N.J.A.C. 6A:14-2.8(a)*, it was not required to hold a manifestation meeting before issuing the November 29, 2021, suspension; as such, the ALJ's determination should be reversed.

Next, the Board takes exception to the ALJ's conclusion that the Board failed to train its staff on the code of conduct and argues that petitioner's petition is void of any allegations that the staff were improperly trained. Furthermore, the Board asserts that petitioner did not provide any testimony regarding the Board's training on the Code of Conduct, nor did petitioner produce documentary evidence to support a claim that the Board failed to train its staff.

The Board also takes issue with the ALJ's conclusions that the Board violated its students due process rights by (1) failing to notify parents of the District's internal appeal procedures and (2) failing to include students' appeal rights in its suspension letters to parents pursuant to *N.J.A.C. 6A:16-7.1(c)(3)(v)*. The Board contends that there are no facts on the record to support the ALJ's determinations. The Board also asserts that its Suspension Policy 5610 mimics *N.J.A.C. 6A:16-7.2* and that it followed both Policy 5610 and *N.J.A.C. 6A:16-7.2* when issuing M.F.'s suspensions. Regarding the ALJ's conclusion that the suspension letters did not provide notice of students' due process rights, the Board argues that parents are given notice that disciplinary determinations can be appealed to the Commissioner. Specifically, the Board argues that every parent in the district, including petitioner, is given a copy of the Code of Conduct annually through Genesis, an electronic student management system. The Board contends that both the middle school and high school codes of conduct include language informing parents of their right to appeal a disciplinary decision to the Commissioner. The Board further contends that petitioner executed a form acknowledging receipt of these policies every school year; therefore, she was aware of her right to appeal to the suspensions to the Commissioner. Lastly, the Board asserts that the ALJ properly upheld the Board's suspensions issued on January 10, 2022, March 21, 2022, May 4, 2022, June 16, 2022, and September 23, 2022.

Upon review, the Commissioner adopts the ALJ's Initial Decision in part and rejects it in part, as explained herein. First, the Commissioner adopts the ALJ's conclusion that the Board violated M.F.'s due process rights by failing to include in its suspension letters the facts upon which the charges were based and notice of the right to appeal the suspension, which includes the option to appeal the decision to the Commissioner. The Commissioner, however, rejects the

ALJ's conclusion that the Board's notice of the right to appeal must include an explanation of the district's internal appeal process. As an initial matter, the Board is not required to have an internal appeal procedure for short-term suspensions; therefore, the Board did not violate M.F.'s due process rights by not including an explanation of said procedures in its suspension letters.

Nonetheless, the Board was required by regulation to include in its suspension letters an explanation of M.F.'s "due process rights, pursuant to *N.J.A.C. 6A:16-7.1(c)3*," but failed to do so. *N.J.A.C. 6A:16-7.2(a)(3)(iv)*. Despite these procedural deficiencies, the ALJ upheld all of M.F.'s suspensions except for two, which she overturned for other procedural reasons. The Commissioner rejects the ALJ's recommendation to reverse only the suspensions from November 17, 2021, and November 29, 2021, and concludes that all of the suspensions must be overturned due to the Board's procedurally deficient suspension letters.

The record confirms that the Board's suspension letters dated October 5, 2021 (Exhibit R-44), October 15, 2021 (Exhibit R-45), November 2, 2021 (Exhibit R-46), November 10, 2021 (Exhibit R-33), November 17, 2021 (Exhibit J-3), November 29, 2021 (Exhibit J-4), January 10, 2022 (Exhibit J-5), March 21, 2022 (Exhibit J-6), May 6, 2022 (Exhibit J-7), June 16, 2022 (Exhibit J-8), and September 28, 2022 (Exhibit J-9), identified the charge, the terms and conditions of the suspension, and the provisions of the code of student conduct that M.F. was accused of violating – as mandated by *N.J.A.C. 6A:16-7.2(a)(3)(i),(iii), and (v)*. However, the facts upon which the charge was based and an articulation of M.F.'s due process rights (*see N.J.A.C. 6A:16-7.2(a)(3)(ii) and (iv)*) were not included in the notice, contrary to regulatory requirements.

The suspension letters also contravene the Board's own policies. For example, both the middle school and high school codes of conduct state that "[d]isciplinary action shall be applied

consistently and uniformly with necessary due process in accordance with the regulations of the New Jersey Administrative Code,” and that “[s]taff shall comply with the regulations of the New Jersey Administrative Code when dealing with discipline and/or suspension of classified pupils.” Exhibit J-1 at 3; Exhibit R-30 at 3. The Board’s Policy 5600 states that “[a]ny student to be disciplined shall be provided the due process procedures for student and their families as set forth in Policy and Regulation 5600 and *N.J.A.C. 6A:16-7.2* through 7.4.” Exhibit R-30 at 21. District Regulation 5600 provides that students have a right to “[p]arent notification consistent with the policies and procedures established pursuant to . . . *N.J.A.C. 6A: 16-7.1* through 7.8.” Exhibit R-30 at 24. The Board’s Policy 5610 states that, “[t]he district will comply with the requirements of *N.J.A.C. 6A:16-7.2* and 7.3, in addition to all the procedural protections set forth in *N.J.A.C. 6A:14*, for each student with a disability who is subject to a short-term or long-term suspension.” Exhibit R-29 at 2. The “Administrative Procedure Suspension and Expulsions” section of the Middle School Code of Conduct states that after a building principal determines that a short-term suspension is warranted, the student’s parent shall be provided with written notice “which shall state that the student has been suspended, the reason(s) for and terms of the suspension, the length of the suspension and the student’s/parents’ right to appeal the suspension in accordance with law.” Exhibit J-1 at 24. In addition, the suspension “letter shall provide notice that further engagement by the student in conduct warranting suspension or expulsion shall amount to a knowing and voluntary waiver of his/her right to a free public education.” *Ibid.* Despite state regulations and the Board’s own policies providing explicit instructions on what information must be included in a written notice, the Board’s suspension

letters failed to include the facts upon which the charges were based and an explanation of M.F.'s due process rights.

The Commissioner will not uphold a suspension that fails to comply with the requisite due process requirements. See *D.H. o/b/o H.H. v. Bd. of Educ. of City of Cape May, Cape May Cty.*, Commissioner Decision No. 478-25 (Oct. 10, 2025) (overturning a short-term suspension in part because the Board violated *N.J.A.C. 6A:16-7.2(a)(3)*). Moreover, the Commissioner notes that Board Policy 5610 acknowledges that “even the temporary exclusion of a student from the educational program of this district is a severe sanction and one that cannot be imposed without due process.” Exhibit R-29 at 1. Accordingly, M.F.'s suspensions must be overturned.

Notably, the Board does not argue that its suspension letters included the requisite due process information; rather, the Board contends that during the 2021-2022 school year, K.F. received a Disciplinary Action Manifestation Determination from the Board before each manifestation meeting, which set forth information on how to appeal the determination. The Board's argument fails for two reasons. First, as the ALJ correctly noted, the language of *N.J.A.C. 6A:16-7.2* concerning the Board's obligations to provide its students with due process is mandatory rather than permissive, as evidenced by the word “shall.” The regulations are clear that the oral or written notification to the student's parent shall include an explanation of the student's due process rights. The Disciplinary Action Manifestation Determinations were not the written notifications that the Board provided to K.F pursuant to *N.J.A.C. 6A:16-7.2(a)(3)*. Moreover, neither the Disciplinary Action Manifestation Determination documents, nor the Manifestation Determination Form documents, include an explanation of M.F.'s due process rights. The Disciplinary Action Manifestation Determination documents state that as a parent of

a student who is deemed eligible for special education services, “you have rights regarding identification, evaluation, classification, the development of an IEP, placement and the provision of a free, appropriate public education under the New Jersey Administrative Code for Special Education, N.J.A.C. 6A:14.” The documents further state that, “A description of these rights, which are called procedural safeguards, is contained in the document *Parental Rights in Special Education (PRISE)*” and includes information on how to attain a copy of *PRISE* and the contact details for individuals and organizations who can “help in understanding your rights.” Nowhere does the Disciplinary Action Manifestation Determination explain that a parent has the right to appeal the decision to the Commissioner. *N.J.A.C. 6A:16-7.2(a)(3)*.

Second, K.F. was not provided with a Disciplinary Action Manifestation Determination each time M.F. received an out-of-school suspension. The Board contends that K.F. received a Disciplinary Action Manifestation Determination document before every manifestation determination meeting was held; the record indicates that the Board held five manifestation determination meetings for M.F. during the 2021-2022 school year. The Board issued M.F. ten out-of-school suspensions during that school year. Therefore, even if the Commissioner accepted the Board’s argument that the Disciplinary Action Manifestation Determinations satisfied requirements under *N.J.A.C. 6A:16-7.2(a)(3)(iv)*, at least five suspensions, for which no manifestation determination meeting was held, remain. Since *N.J.A.C. 6A:16-7.2(a)(3)* requires a district to provide oral or written notice each time a student is suspended, those remaining suspensions would still have to be overturned for failure to include an explanation of M.F.’s due process rights in its suspension letters.

Nonetheless, each out-of-school suspension from October 5, 2021, to September 2022, must be overturned due to the Board's insufficient suspension letters. The Board seems to suggest that because annually, K.F. acknowledged that she received the code of conduct (which informs parents of a student's right to appeal to the Commissioner), K.F. was given notice of her due process rights pursuant to *N.J.A.C. 6A:16-7.2(a)(3)(iv)*. The Commissioner is not persuaded by the Board's argument. The requirements under *N.J.A.C. 6A:16-7.2(a)(3)* must be satisfied whenever a district imposes a short-term suspension and regardless of whether the parent may have known of her right to appeal through other means. As such, the Board violated M.F.'s due process rights when it failed to include in its suspension letters an explanation of her due process rights as well as the facts upon which the charges were based.

The Commissioner rejects the ALJ's conclusion that the Board committed due process violations against its other students by failing to include in its suspension letters the facts upon which the charge is based and an explanation of the student's due process rights. There is nothing in the record allowing the Commissioner to make a determination about whether the suspension letters sent to students other than M.F. complied with *N.J.A.C. 6A:16-7.2(a)(3)*. M.F.'s suspension letters are the only suspension letters in the record. In addition, the record is devoid of evidence or testimony that provides insight into the suspension letters sent to the parents of other students. The Commissioner accepts the Board's argument that a disciplinary determination is tailored specifically to each student's history and the facts of the incident. Without this information, the Commissioner cannot conclude that the Board's suspension letters to other students violated those students' due process rights.

The Commissioner also rejects the ALJ's conclusion that the Board violated its students' due process rights by failing to provide parents, including K.F., with notice of appeal procedures in its codes of conduct pursuant to *N.J.A.C. 6A:16-7.1(c)(3)(v)*. The regulation requires a district's code of conduct to include a description of students' rights to "[d]ue process appeal procedures and policies, pursuant to *N.J.A.C. 6A:3- 1.3 through 1.17*; *N.J.A.C. 6A:4*; and, where applicable, *N.J.A.C. 6A:14- 2.7 and 2.8*, and *N.J.A.C. 6A:16-7.2 through 7.5*." Specifically, the ALJ took issue with the fact that none of the District's relevant documents, from Policy 5610 to the Middle School Code of Conduct to the High School Code of Conduct, mention the Board's internal appeal procedure. However, since the Board is not required by the applicable statutes and regulations to have an internal appeal process for short-term suspensions, the Board did not violate M.F.'s due process rights by not including its internal appeal procedures in the district's codes of conduct, policies, and regulations.⁴

The Commissioner also rejects the ALJ's determination that the Board violated its students' due process rights by failing to include the appeal procedures to the Commissioner in its relevant documents, in violation of *N.J.A.C. 6A:16-7.1(c)(3)(v)*. The "Student Rights" section of both the middle school and high school codes of conduct state that a student has the right to "appeal disciplinary determinations of District officials or the Board of Education to the New Jersey Commissioner of Education, and, where applicable, to pursue the due process rights established *NJAC 6A:14* for pupils classified as eligible for special education." Exhibit J-1 at 6; Exhibit R-30 at 6. The "Administrative Procedure Suspension and Expulsions" section of the

⁴ However, the Commissioner notes that if the Board has established an internal appeal process that it wants parents to follow, it would likely be best practice to make that information more readily available to the school community.

Middle School Code of Conduct references *N.J.A.C. 6A:16-7.2(a)* and outlines the regulatory requirements for a suspension letter. Exhibit J-1 at 24. Board Policy 5610 also states that the district will comply with the requirements under *N.J.A.C. 6A:16-7.2* and 7.3, and where applicable, *N.J.A.C. 6A:14*. Exhibit R-29 at 2. The Board's Policy 5600 states that "Any student to be disciplined shall be provided the due process procedures for student and their families as set forth in Policy and Regulation 5600 and *N.J.A.C. 6A:16-7.2* through 7.4." Exhibit R-30 at 21. Lastly, District Regulation 5600 provides that students have a right to "[p]arent notification consistent with the policies and procedures established pursuant to . . . *N.J.A.C. 6A: 16-7.1* through 7.8." Exhibit R-30 at 24. As such, the Board's policies are sufficient under *N.J.A.C. 6A:16-7.1(c)(3)(v)*.

Lastly, the Commissioner disagrees with the ALJ's conclusion that the Board violated the due process rights of its students, including M.F., by failing to train its employees on the Middle School Code of Conduct and High School Code of Conduct in violation of *N.J.A.C. 6A:16-7.1(a)(4)*. The regulation requires each district board of education to provide its employees with an "annual training on the code of student conduct, including training on the prevention, intervention, and remediation of student conduct that violates the district board of education's code of student conduct." *N.J.A.C. 6A:16-7.1(a)(4)*. The record does not support the conclusion that the Board failed to provide its employees with the annual training on the codes of student conduct. The burden of proof in the instant matter rests with the petitioner, but she has not met her burden. K.F. did not provide any evidence or testimony concerning the training of Board employees and only raised the training issue once during three days of hearings. During cross-examination, Dr. Burti was asked if there was any training on the disciplinary infraction table in the Middle School Code of Conduct. He responded that there is no district training in terms of code of conduct

review, “it’s just something we review with our supervisor.” Tr. Day 1, 189:6-16. The Board contends that Dr. Burti’s response confirms that the Board does in fact train its employees. Without more information, the Commissioner cannot confirm Dr. Burti’s statement, but neither can the Commissioner render a determination in favor of petitioner that the Board fails to train its employees in accordance with *N.J.A.C. 6A:16-7.1(a)(4)*. Therefore, the Commissioner must reject the AJL’s conclusion that the Board violated the due process rights of its students, including M.F., by failing to train its employees on the codes of conduct.

Accordingly, the Initial Decision is adopted in part and rejected in part. The Board is directed to expunge the suspensions dated October 5, 2021, October 15, 2021, November 2, 2021, November 10, 2021, November 17, 2021, November 29, 2021, January 10, 2022, March 21, 2022, May 6, 2022, June 16, 2022, and September 28, 2022 from M.F.’s records.

IT IS SO ORDERED.⁵


COMMISSIONER OF EDUCATION

Date of Decision: December 12, 2025
Date of Mailing: December 15, 2025

⁵ 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 10903-22

AGENCY DKT. NO. 317-11/22

K.F. ON BEHALF OF M.F.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE
TOWNSHIP OF CHERRY HILL,
CAMDEN COUNTY,**

Respondent.

Marissa J. Costello, Esq., for petitioner (Costello & Whitmore Law Offices,
attorneys)

Christina M. Michelson, Esq., for respondent (Methfessel & Werbel, Esqs.,
attorneys)

Record Closed: May 7, 2025

Decided: June 19, 2025

BEFORE **KIMBERLEY M. WILSON**, ALJ:

STATEMENT OF THE CASE

Petitioner, K.F., on behalf of M.F., appeals from out-of-school suspensions imposed on M.F. during the 2021–2022 school year by administrators at John A. Carusi

Middle School (Carusi), one of the schools within respondent Board of Education of the Township of Cherry Hill (Board or District), and one suspension imposed during the 2022–2023¹ school year by administrators at Cherry Hill West High School (Cherry Hill West). The relief that K.F. seeks includes overturning all of these out-of-school suspensions based on alleged due process rights violations, reviewing District policies and procedures regarding student discipline and ensuring that all reporting and implementation requirements are being met, and an audit of suspensions to review the disproportionate amount of suspensions of minority students and students with disabilities.² The Board generally denies that it violated M.F.’s due process rights and maintains that its policies are appropriate.

PROCEDURAL HISTORY

On or around November 18, 2022, K.F. filed a pro se petition of appeal with the New Jersey Department of Education (DOE). On or around December 6, 2022, the Board filed an Answer to Petition of Appeal With Affirmative Defenses. On or around December 7, 2022, the matter was transmitted to the Office of Administrative Law for a hearing as a contested case. N.J.S.A. 54:14B-1 to -15 and N.J.S.A. 14F-1 to -13.

After several prehearing conferences, discovery concluded. On or around November 10, 2023, the Board filed a motion for summary decision, which K.F. opposed. The Board filed a reply brief, and on or around January 12, 2024, the record was reopened to allow counsel to submit supplemental briefing, which they did. Oral argument on the motion was heard on March 21, 2024, and pursuant to a Letter Order dated March 22,

¹ To maintain confidentiality, the details of the various incidents during the 2021–2022 and 2022–2023 school years giving rise to discipline will not be discussed in this Initial Decision. The details are also not relevant to a determination of whether M.F.’s due process rights were violated. Incidents will be mentioned based on the approximate date they occurred.

² The adverse action from which petitioner appeals is a November 7, 2022, letter that Dr. Kwame R. Morton, Sr., district assistant superintendent, sent to K.F. denying her request to overturn M.F.’s out-of-school suspensions from the 2021–2022 school year. Petitioner’s request for “an audit of suspensions to review the disproportionate amount of suspensions of minority students and students with disabilities” is not directly related to the District’s adverse action, and petitioner’s counsel has provided no basis for which petitioner would be able to obtain that relief on behalf of District students. In addition, there was minimal specific testimony presented regarding other District students and any alleged disparate treatment of minority students and students with disabilities when they were disciplined. For these reasons, this request for relief will not be addressed in this Initial Decision.

2024, the record remained open to allow supplemental submissions by March 28, 2024, and any objections by April 4, 2024. The District provided a supplemental submission on April 3, 2024. Pursuant to an Order Denying Summary Decision dated May 20, 2024, the Board's motion for summary decision was denied.

After status conferences on June 4, 2024, August 21, 2024, and September 10, 2024, hearing dates were scheduled for January 8, 2025, and January 9, 2025. In preparation for the hearing, counsel could not agree upon the appropriate standard of review. Counsel submitted letters dated October 15, 2024, outlining their respective positions.

During the final prehearing status conference on December 16, 2024, counsel indicated that they wished to convert their dispute into cross-motions and requested that the October 15, 2024, submissions be considered as their respective motion papers. Counsel's request was granted. Pursuant to an Order on Motion dated January 3, 2025, the standard of review was determined.

Hearings were held on January 8, 2025, January 9, 2025, and February 26, 2025. The record remained open to allow counsel to submit post-hearing summation briefs, which were received by May 7, 2025, and the record closed that day.

FINDINGS OF FACT

The parties stipulated to the following relevant facts, and therefore, I **FIND** them as **FACT**:

1. M.F. was an eighth-grade student at Carusi during the 2021–2022 school year.
2. M.F. had an Individualized Education Program that was updated on October 20, 2021 (IEP). (J-2.)

3. On November 17, 2021, Dr. Neil Burti, principal at Carusi, sent a letter to K.F. advising that M.F. received a two-day out-of-school suspension for insubordination towards staff and insubordination towards administration. (J-3.)
4. On November 22, 2021, K.F., M.F., members of K.F.'s child study team,³ and Dr. Julie Benavides, Carusi's assistant principal, held a manifestation meeting. (R-7.)
5. On November 22, 2021, Abbe Morris (Morris), Carusi's social worker, sent K.F. a Disciplinary Action Manifestation Determination, explaining that a decision was made regarding M.F.'s disciplinary action. (R-6.)
6. On January 10, 2022, a manifestation determination meeting was held regarding K.F.'s alleged violations of the Middle School Code of Conduct.⁴ (R-9.) K.F. was present at this meeting with M.F.'s child study team. (Ibid.)
7. On January 10, 2022, Morris sent K.F. a Disciplinary Action Manifestation Determination. (R-8.)
8. On January 10, 2022, Dr. Benavides sent K.F. a letter confirming K.F.'s two-day out-of-school suspension for violations of the Middle School Code of Conduct. (J-5.)
9. On March 21, 2022, a manifestation determination meeting was held regarding K.F.'s alleged violations of the Middle School Code of Conduct with K.F., the child study team and Dr. Benavides. (R-12.)

³ The child study team typically included the case manager, special education teacher, regular education teacher and a district representative.

⁴ There are two Codes of Conduct at issue in this matter, which are the District's Middle School Code of Student Conduct for the 2021–2022 school year (Middle School Code of Conduct), (J-1), and the District's High School Code of Conduct for the 2022–2023 school year (High School Code of Conduct). (J-2.) To the extent the parties' stipulations do not distinguish between the two, differentiation will be made based on the applicable school year at issue.

10. K.F. provided a written statement objecting to the discipline determination. (Ibid.) She wrote: “Enforcement of conduct is inconsistent. Nothing [M.F.] does results in less than suspension. [W]hen other students create ‘unsafe’ situations they are not suspended. [M.F.] was anxious all day. Her meds were late. I was not told if or what the other students said to determine if her behavior was a manifestation of her disability.” (Ibid.)
11. On March 21, 2022, Morris sent K.F. a Disciplinary Action Manifestation Determination. (R-11.)
12. On March 21, 2022, Dr. Benavides sent K.F. a letter confirming that M.F. received a three-day out-of-school suspension for violating the Middle School Code of Conduct for threats and harassment towards a student. (J-6.)
13. On May 6, 2022, a manifestation determination meeting was held with K.F., the child study team and Dr. Benavides. (R-14.) K.F. provided a written statement on the form and stated: “I don’t agree that the behaviors are not a manifestation of her disability. She has been harassed and bullied by these students for over a week. There are text messages of the student threatening her. Her ongoing reaction to the harassment is clearly related to her behaviors.” (Ibid.)
14. On May 6, 2022, Morris sent K.F. a Disciplinary Action Manifestation Determination, explaining that a decision was made regarding disciplinary action against M.F. (R-13.)
15. On June 16, 2022, a manifestation determination meeting was held with K.F., M.F., the child study team and Dr. Benavides. (R-17.)
16. On June 16, 2022, Morris sent K.F. a Disciplinary Action Manifestation Determination, explaining that a decision was made regarding disciplinary action against M.F. (R-16.)

17. On June 16, 2022, Dr. Benavides sent K.F. a letter confirming that M.F. was assigned an out-of-school suspension for four days for violations of the Middle School Code of Conduct. (J-8.)
18. On June 16, 2022, K.F. and Dr. Joseph N. Meloche, district superintendent, met to discuss the suspension issued to M.F., and K.F. requested that he overturn the suspension. (R-18.)
19. On June 20, 2022, Dr. Meloche sent K.F. a letter denying K.F.'s appeal of M.F.'s four-day suspension. (Ibid.)
20. In the 2022–2023 school year, M.F. attended Cherry Hill High School West (Cherry Hill West) as a ninth grader. (R-19.)
21. On September 23, 2022, M.F. was involved in a physical altercation with another student during her lunch period. (Ibid.)
22. M.F. received a three-day out-of-school suspension for this incident. (Ibid.)
23. On September 28, 2022, K.F. sent Abel Ramos (Ramos), assistant principal at Cherry Hill West, an email requesting the suspension paperwork. (R-20.) K.F. also stated that M.F. was defending herself in the fight. (Ibid.)
24. On September 28, 2022, Ramos sent K.F. an email attaching the suspension letter for M.F. (R-21.)
25. Ramos also scheduled a “re-entry meeting” with K.F. and advised her that “[w]e will briefly discuss the incident, how it could have been avoided as we reflect upon it, and how we will move forward from this incident.” (Ibid.)
26. On September 28, 2022, Ramos sent K.F. a letter informing K.F. that M.F. received an out-of-school suspension for three days. (R-22.)

27. On October 26, 2022, Dr. Kwame R. Morton, Sr., assistant superintendent for the District, granted K.F.'s appeal of an October 11, 2022, suspension. (R-26.)
28. On November 3, 2022, K.F. sent Dr. Meloche an email appealing M.F.'s suspensions. In the email, Dr. Meloche stated the following: "Thank you for your inquiry. While the Code of Student Conduct and District Policy and Regulation 5600 (as well as Policy 5610) include references to student due process rights, they do not specify the District's appeal process for short-term suspensions. We will look into amending the Code of Conduct to clarify that. Our process is that short-term suspensions or other minor discipline may be appealed to the Assistant Superintendent of Schools having oversight of the particular school of attendance. If a parent is dissatisfied with the result at that level, the parent may appeal to the Superintendent. We endeavor to meet with the parents to review their concerns and provide a response within a reasonable time frame; our procedure does not include specific time limits. If a parent wishes to further contest minor discipline, the next step would be an appeal to the Commissioner of Education, which must be filed within 90 days." (R-27, emphasis added.)
29. On November 7, 2022, Dr. Morton sent K.F. an email denying her request to overturn M.F.'s suspensions in the 2021–2022 school year. (R-28.)

From the documents the parties provided for the hearing, I **FIND** the following **FACTS**:

Middle School Code of Conduct

1. The Middle School Code of Conduct states that students have the right to "[a]ppeal disciplinary determinations of District officials or the Board of Education to the New Jersey Commissioner of Education, and, where

applicable, to pursue the due process rights established in N.J.A.C. 6A:14 for pupils classified as eligible for special education.” (J-1 at 6.)

2. The Middle School Code of Conduct also states that students have the right to “[t]he due process procedures established by the District for review of conduct which may result in the imposition of short-term suspensions, long-term suspensions or expulsions. These procedures are set forth below in this Code of Conduct.” (*Ibid.*, emphasis added.)
3. The conduct and discipline section of the Middle School Code of Conduct states that “[d]isciplinary action shall be applied consistently and uniformly necessary due process in accordance with the regulations of the New Jersey Administrative Code. Staff shall comply with the regulations of the New Jersey Administrative Code when dealing with discipline and/or suspension of classified pupils.” (*Id.* at 3.)
4. The Middle School Code of Conduct provides the following due process procedures for suspensions:⁵ “The building principal is the only school official who may suspend a student. The building principal may delegate to an assistant, who holds the appropriate certificate and endorsement, authority to implement and administer procedures that lead to suspension. The building principal, however, must assume full responsibility for ensuring that due process is afforded to a student in each case.” (*Id.* at 23.)
5. The procedure for imposing a suspension in the Middle School 2021–2022 Code of Conduct is discussed as follows:

Before any suspension is imposed, the building principal must determine whether the student is classified or recently has been, or should be referred to the Child Study team for evaluation. If the incident involves such a student, the

⁵ A short-term suspension is an “out-of-school suspension for a period not to exceed ten (10) consecutive school days and may be imposed by the building principal. (J-1 at 23.) For students who are classified, among other categories related to classification, the District must follow procedures in Section F1 of the Middle School Code of Conduct. (*Ibid.*)

procedures set forth in Section F1 of this document shall be followed.

The building principal or designee must document his/her investigation of the incident giving rise to the discipline, including the names of any witnesses, reports and/or copies of any statements made by any student/staff, any student admission(s), any involvement of law enforcement officers, and all steps taken during the investigation.

If the student is a general education student, the building principal shall provide the student with either oral or written notice of the charges as soon as practicable and immediately hold an informal hearing with the student, i.e., the student shall be given an explanation of the evidence of the violation and be given the opportunity to explain the situation. The building principal shall then determine, on the basis of the incident itself, or in conjunction with the student's past disciplinary history, whether an in-school, short-term or long-term suspension is warranted.

[Ibid.]

6. If the building principal finds that a short-term suspension is appropriate after the informal hearing, "written notice shall be provided to the parent/guardian, or the student if s/he is over the age of eighteen (18), which shall state that the student has been suspended, the reason(s) for and the terms of the suspension, the length of the suspension and the student's/parents' right to appeal the suspension in accordance with law. . . . The building principal shall immediately inform the Superintendent of any pupil suspension. The Superintendent shall report the suspension to the Board at its next regularly scheduled meeting." (Id. at 24.)
7. Section F of the Middle School Code of Conduct addresses students who are classified.⁶ (Id. at 26.) Administrative Procedure S-25A provides the procedures that must be followed for disciplining students with disabilities. (Ibid.)

⁶ Students who are classified receive special education and related services pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1401, et seq.

8. Administrative Procedure S-25G, titled “Special Education Discipline for Students with Disabilities,” provides that “children with disabilities are subject to the same discipline procedures as the general student population, unless otherwise exempted or modified within the child’s IEP.” (Id. at 27.) Students with disabilities may be disciplined for up to ten days within a school year under the same rules that apply to all students. (Ibid.) This procedure also states that “[w]henever a school official suspends/removes a child with a disability under the discipline policy, he/she must notify the case manager and the parent in writing of the removal, provide a reason, and specify the number of days.” (Ibid.)
9. According to District Policy 5610, the Board acknowledges that “even the temporary exclusion of a student from the educational program of this district is a severe sanction and one that cannot be imposed without due process.” (R-29.)
10. Under District Policy 5610, “[c]onduct which shall constitute good cause for suspension or expulsion of a student guilty of such conduct shall include, but not be limited to, the conduct as defined in . . . the [District’s] Student Discipline/Code of Conduct Policy and Regulation in accordance with the N.J.A.C. 6A:16-7.1, et seq.” (Ibid.)
11. District Policy 5610 states that for short-term suspensions, “the student will be provided oral or written notice of the charges and an informal hearing conducted by the Principal or designee in accordance with the procedures outlined in N.J.A.C. 6A:16-7.2. To the extent the student’s presence poses a continuing danger to persons or property or an ongoing threat of disrupting the educational process, the student may be immediately removed from the student’s educational program and the informal hearing shall be held as soon as practical after the suspension.” (Ibid.)

The District's 2022–2023 High School Code of Conduct (High School Code of Conduct)

12. The High School Code of Conduct states that “[d]isciplinary action shall be applied consistently and uniformly with necessary due process in accordance with the regulations of the New Jersey Administrative Code. Staff shall comply with the regulations of the New Jersey Administrative Code when dealing with discipline and/or suspension of classified pupils.” (R-30 at 3.)
13. Student rights in the High School Code of Conduct include the right to “[a]ppeal disciplinary determinations of District officials or the [Board] to the New Jersey Commissioner of Education and, where applicable, to pursue the due process rights established in N.J.A.C. 6A:14 for pupils classified as eligible for special education.” (Id. at 6.)

M.F.’s out-of-school suspensions during the 2021–2022 school year

14. M.F. was suspended from school ten times during the 2021–2022 school year. The information regarding notice of M.F., the dates of suspension, the Middle School Code of Conduct violations as referenced by citation and whether a manifestation determination meeting was conducted for each incident is as follows:

Date of Incident⁷	Date of written notice to parent	Number of days M.F. was suspended	Middle School Code of Conduct violation(s)	Manifestation determination meeting conducted?
October 5, 2021	October 5, 2021 (R-44)	1	Defiance Insubordination Disrespectful to staff Electronic device violation	No (R-4)

⁷ This date is approximate, as the actual date of the incident was not always readily apparent from the exhibits.

			Unauthorized area without supervision (R-3 at 8) Profanity (R-4) Use of profanity directed at staff members (R-44)	
October 15, 2021	October 15, 2021 (R-45)	1	Fighting/physical aggression (R-3 at 7) Hitting (R-4.) Repeatedly hitting another student in the cafeteria (R-45)	No (R-4)
November 2, 2021	November 2, 2021 (R-46)	1	Fighting/physical aggression (R-3 at 6) Aggression/verbal abuse (R-4) Physical aggression directed towards student Verbal abuse/profanity directed towards staff (R-46)	No (R-4)
November 10, 2021	November 10, 2021 (R-33)	1	Threat (R-3 at 6) Profanity Threat (R-4) Threats directed towards student (R-33)	No (R-4)
November 17, 2021	November 17, 2021 (J-3)	2	Defiance Insubordination (R-3 at 6) Insubordination (R-4) Insubordination Disrespectful to staff Fighting/physical aggression (R-7)	Yes (R-7)

November 29, 2021	November 29, 2021 (J-4)	2	<p>Insubordination Disrespectful to staff Disrespectful to student Verbal abuse or use of profanity Fighting/physical aggression Inappropriate physical contact (R-3 at 5)</p> <p>Fighting Insubordination Profanity Disrespect towards staff member (J-4)</p>	No (R-4)
January 10, 2022	January 10, 2022 (J-5)	2	<p>Electronic device violation Unauthorized area without supervision Incitement (R-3 at 5)</p> <p>Out of area Technology violation – Class disruption (R-4)</p> <p>Out of area Technology violation Class disruption (R-9)</p> <p>Disruptive/inappropriate behavior Electronic device violation Being in an unauthorized area (J-5)</p>	Yes (R-9)
March 21, 2022	March 21, 2022 (J-6)	3	<p>Harassment (R-3 at 4)</p> <p>Threat/harassment (R-4)</p> <p>Racial harassment (R-12)</p> <p>Threats/harassment towards student (J-6)</p>	Yes (R-12)
May 6, 2022	May 6, 2022 (J-7)	5	Threat (R-3 at 3)	Yes (R-14)

			Threat/intimidation (R-4) Threats Intimidation Profanity (students/staff) Leaving school building Insubordination (R-14) Threats Intimidation (J-7)	
June 16, 2022	June 16, 2022 (J-8)	4	Defiance Disrespectful to staff Verbal abuse or use of profanity Disruptive/inappropriate behavior Fighting/physical aggression (R-3 at 3) Unacceptable language/profanity directed at staff Disrupting/attempting to disrupt school day Insubordination towards admin. staff (R-17) Insubordination Disruptive/inappropriate behavior (J-8)	Yes (R-17)

15. In Dr. Morton's October 26, 2022, letter to K.F., Dr. Morton was unable to verify that M.F. was given the opportunity to participate in an informal hearing before a disciplinary consequence was administered. (R-26.) As a result of his determination, M.F.'s suspension was expunged from her record, and she was to be provided a minimum of eight hours of compensatory services. (Ibid.)
16. In an email dated November 3, 2022, K.F. emailed Dr. Meloche and requested that someone from the District provide her the specific Board policy that provides for due process. (R-25.) Her questions were the

following: “[W]ho does the appeal go to, how long does the district have to review the appeal, what happens if the initial decision is upheld – who is the next level of appeal, etc.” (Ibid.)

17. In Dr. Morton’s November 7, 2022, email, he advised K.F. that he was not able to substantiate the allegation that M.F. was not afforded due process in the disciplinary events during the 2021–2022 school year. (R-28.) He said that even if he were able to substantiate that allegation, it would not justify overturning M.F.’s suspensions from that school year. (Ibid.)
18. None of the letters from Carusi or Cherry Hill West to K.F. regarding out-of-school suspensions imposed on M.F. provided the facts upon which M.F.’s suspension was based. (R-44; R-45; R-46; J-3; J-4; J-5; J-6; J-7; J-8; J-9.)

Testimony

The following individuals testified during the hearing:

1. **Dr. Meloche**, superintendent of the District
2. **Dr. Burti**, principal at Carusi during the 2021–2022 school year
3. **Dr. Julie Benavides**, assistant principal at Carusi during the 2021–2022 school year
4. **Ramos**, assistant principal at Cherry Hill West during the 2022–2023 school year
5. **K.F.**, M.F.’s guardian, who has a background in education and is a former Board member

The following is not a summary of all hearing testimony but an encapsulation of all relevant hearing testimony solely regarding K.F.’s claims that M.F.’s due process rights were violated and a review of District policies and procedures on student discipline to ensure reporting and implementation requirements are being met. The testimony related to these issues falls into the following categories: Middle School Code of Conduct/High

School Code of Conduct, the District's disciplinary process, the District's appeal process for disciplinary decisions and informal hearings for M.F.'s disciplinary violations.

Middle School Code of Conduct/High School Code of Conduct

The District's Middle School Code of Conduct and High School Code of Conduct, as applicable, are shared with District families and parents, and they govern the expectations for student behavior. They are published on the District's website and accessible electronically through Genesis, an electronic student management system. Parents and guardians must sign off electronically, which then provides access to the student's schedule. K.F. signed acknowledgment receipts for the 2020–2021, 2021–2022 and 2022–2023 school years, indicating that she received and reviewed the Middle School Code of Conduct and High School Code of Conduct for the applicable school year. (R-54.)

K.F. testified that when she signed these acknowledgments, there was no place to raise questions or concerns about them in Genesis, and that in order to access any information about your student, including courses, grades and IEP, parents had to complete the acknowledgment receipts for those forms.

The District's disciplinary process

1. Carusi

At Carusi, when teachers and staff were unable to handle a disciplinary issue with a student on their own, they would complete a white card that included a first-hand account of the incident, the student and/or faculty involved and any remedial steps the faculty member took to resolve the issue. The white cards would be delivered to the appropriate Carusi assistant principal, who would investigate what happened. That investigation included following up with the faculty member to find out what occurred, identifying any witnesses, meeting with the students and witnesses involved, taking

written and oral statements, speaking to parents and finding text messages or social media posts that are related to the incident.

Dr. Burti testified that when administrators are called to respond immediately to an incident, the administrators may be speaking to the students upon their arrival and directing students to their office to determine what occurred. Students are not required to make a written statement and are given the chance to give a verbal or written statement. After the incident, various administrators and staff, including the members of the student's child study team and school counselors, would discuss what occurred, make a decision on whether the student could remain in school, review the Middle School Code of Conduct and assign the appropriate discipline.

Dr. Benavides' understanding of students' rights for disciplinary matters was that they had due process rights, including the opportunity to share their version of events, which could be a verbal or written statement.

Once the discipline was imposed, there would be a follow-up, including parent notification. Depending on the nature of the incident, parents would be notified of the incident before discipline was imposed.

After an incident that could give rise to discipline, in some instances, a student's presence poses an ongoing threat of danger or disruption to the educational program, and in those circumstances, the informal hearing will be held afterwards, including at a re-entry hearing. A re-entry hearing is held when the student returns to school after the suspension. It is typically held with a principal or assistant principal, student and parent and is designed to provide support to the student to ensure the behavior does not recur.

Dr. Burti testified that there was no District training on how to determine the appropriate discipline for students based on the Middle School Code of Conduct or High School Code of Conduct.

2. Cherry Hill West

All documentation regarding any potential student violations of the High School Code of Conduct was contained on Genesis. Ramos would review this portion of Genesis for conduct that was inflammatory or required an immediate response.

At the high school level, the disciplinary process of suspensions included engaging with the student to discuss the matter, finding out whether there was aggravating or circumstantial information, and discussing the High School Code of Conduct. In some matters, Ramos would seek counsel from his immediate supervisor to determine if the course of action was appropriate. If the students were to be suspended, the parents would be contacted.

Appeal process for the District's disciplinary decisions

If a parent or guardian objected to discipline imposed on a student, the appeal procedure, assuming that an assistant principal imposed the discipline, was to first appeal to the principal, assistant superintendent, superintendent, and Board (internal appeal procedure) and then the commissioner of the DOE. Dr. Burti recognized that the notices of suspension that he sent out regarding M.F. did not include information about the parent or guardian's appeal rights.

Ramos testified that there is an appeal process available to parents and guardians who wish to appeal discipline, but the High School Code of Conduct does not specify the process that he understood, which, from his testimony, was identical to the internal appeal procedure Dr. Burti described in his testimony, and then an external appeal to the DOE. For the document that is generated to advise parents or guardians that their child is being disciplined, there is a link to the Board's policies, which, when clicked, would require parents to navigate through many policies to find the information they desire to learn.

Dr. Meloche testified that the statement in his November 4, 2022, email to K.F. regarding the District's appeal process and amending the Code of Conduct to clarify the process was likely drafted by the Board's solicitor.

K.F. testified that the Middle School Code of Conduct does not include any information about an appeal process. After the manifestation determination meetings, there was no information shared about how to appeal a disciplinary decision. None of the suspension letters that she received from Carusi or Cherry Hill West about M.F.'s suspensions contained information about her appeal rights.

During her tenure on the Board, no suspension appeals were brought before the Board, and Board members were not advised how many suspensions were being given.

During the 2021–2022 school year, Dr. Meloche met with K.F. regarding M.F.'s disciplinary issues. He said that he saw K.F. regularly because K.F. was a member of the Board, and there was a weekly meeting with Board leadership, along with committee and scheduled Board meetings. During these discussions, Dr. Meloche and K.F. had informal discussions about how M.F. was doing in school. According to Dr. Meloche, he was accessible to K.F. not necessarily during those meetings but adjacent to them, and K.F. knew how to contact him. On the other hand, K.F. testified that she spoke to District officials outside of the time that she was on duty as a Board member.

Informal hearings for M.F.'s disciplinary violations

As previously noted, M.F. received out-of-school suspensions ten times during the 2021–2022 school year. According to K.F., M.F. was never suspended before the 2021–2022 school year. Testimony on those specific suspensions, to the extent they were addressed, is as follows:

1. November 17, 2021

During this incident, K.F. said that there was no informal hearing on the charges against M.F. because school representatives originally told K.F. to come to the school to pick up M.F. for touching a staff member before an investigation began. It took K.F. about twenty-five minutes to get to the school, and when she arrived, Dr. Burti told K.F. that there was a new issue. Dr. Burti confirmed that the original charge was not confirmed,

but M.F. left the office. K.F. did not know whether Dr. Burti gave M.F. the chance to explain why she left the office. Dr. Meloche was not aware whether there was an informal hearing for this incident, and Dr. Burti did not recall.

M.F. was given two days of out-of-school suspension, served on Thursday, November 18, 2021, and Friday, November 19, 2021. (J-3.) The manifestation determination meeting occurred on Monday, November 22, 2021, and the decision made was that M.F.'s behavior was a manifestation of her disability. (R-7.) M.F. lost instructional time because she was suspended before the manifestation determination meeting.

2. November 29, 2021

K.F. testified that M.F. was not given the opportunity to explain what happened before she was disciplined because Dr. Benavides told K.F. that she did not need to interview M.F. because the incident was recorded on video. K.F. viewed the video and said that it was difficult to determine what occurred. Dr. Benavides, however, did not impose this discipline on M.F.; Michelle Smith (Smith), another assistant principal at Carusi, imposed discipline. (J-4.)

K.F.'s testimony as to whether a manifestation determination meeting took place was uncertain; at one point in her testimony, K.F. testified that there was a manifestation determination meeting, and she later testified there was no such meeting.

3. January 10, 2022

K.F. testified that when she received a call from school representatives to pick up M.F. after the incident, M.F. was not given the opportunity to explain what occurred while K.F. was present. K.F. said that typically after incidents, M.F. was upset and angry and did not want to communicate.

4. March 21, 2022

For the March 21, 2022, incident, Dr. Benavides did not conduct an investigation for the allegations, which were violations of the Anti-Bullying Bill of Rights Act (“Act”), N.J.S.A. 18A:37-13 to -37, and were investigated under a different process. Dr. Benavides did ask M.F. whether she made the statements giving rise to the investigation, and M.F. did not respond.

K.F., however, testified that she was not aware that Dr. Benavides spoke to M.F. about the allegations to get M.F.’s side of the events and did not believe that an informal hearing occurred. M.F. was not allowed to make a statement regarding the suspension related to the alleged violations of the Act.

5. May 6, 2022

During the investigation of these allegations, K.F. contacted Dr. Benavides to find out whether M.F. was threatening other students and whether she was safe. Dr. Benavides asked M.F. to advise where M.F.’s communications fell in the chain of text messages. The meeting ended abruptly with M.F. using profanity, making a statement along the lines of “I’m not doing this anymore with you,” and leaving her office.

6. June 16, 2022

After the incident, school representatives called K.F. and told her that she needed to pick up M.F. from school. The manifestation determination meeting was held the next day. K.F. attended the meeting and left before it concluded. Once K.F. learned that M.F. would be suspended and would miss her eighth-grade graduation, she called the District’s main office and requested a meeting with the superintendent.

Dr. Meloche and another assistant superintendent met with K.F. regarding M.F.’s suspension in the superintendent’s office in Cherry Hill. (R-18.) During the meeting, they discussed the discipline and K.F.’s desire to have the suspension removed so that M.F. could attend her graduation ceremony. K.F. also conveyed her frustration that M.F. had not been treated fairly and that she had been targeted.

After this meeting, Dr. Meloche spoke with Dr. Burti regarding the incident, and Dr. Meloche had no reason to believe that M.F. should not have been suspended. Dr. Meloche upheld the discipline “based on the events specific to that suspension and then the culmination of the events leading up to what occurred.” (T1, 50:12–16.) M.F. was not permitted to participate in her eighth-grade graduation ceremony.

Dr. Meloche did not meet again with K.F. after this meeting, as she resigned from the Board. They stopped seeing each other regularly.

Dr. Benavides testified that for all of M.F.’s disciplinary actions for which she was in charge, she investigated the incidents, which included speaking to the students involved and any student and adult witnesses. Dr. Benavides was involved in the October 5, 2021, January 10, 2022, March 21, 2022, May 6, 2022, and June 16, 2022, disciplinary decisions against M.F. (J-5; J-6; J-7; J-8; R-44.)

7. September 23, 2022

Immediately after the September 23, 2022, incident, Ramos went to an office where M.F. was located to assess what happened, and M.F. advised Ramos of what happened. Ramos was able to ask M.F. questions about the incident, and even though she was very agitated, Ramos received some answers to his questions. Ramos testified that when K.F. came to pick up M.F. from school, both were able to give their version of what happened. Ramos testified that M.F. was given the opportunity on the day of the incident to provide her version of the event.

According to K.F., school representatives called her to pick up M.F. immediately after the incident, and because K.F. was working remotely that day, she was able to pick up M.F. about ten minutes later. When K.F. arrived, M.F. was sitting in the principal’s office, and M.F. was very agitated. K.F. was told that they were not able to talk to M.F. because she was on the phone with a friend who was not at school that day, and they weren’t able to interview her.

K.F. was not provided a suspension letter immediately after M.F.'s suspension, and K.F. emailed the assistant principal to obtain the letter. Ramos advised her that his secretary had been out of the office, and he was behind. Ramos told K.F. that he consulted with M.F.'s child study team before M.F. was suspended. Ramos testified that his secretary created a letter regarding M.F.'s three-day suspension. (J-9.) Ramos described the letter as a form letter used at Cherry Hill West.

According to K.F., in October 2022, M.F. was suspended for an incident that happened among students while M.F. was walking home at the end of a school day, which was a half-day early dismissal. Ramos called K.F. to advise her that M.F. had been suspended, and K.F. went to Dr. Morton and asked him how M.F. could have been suspended when there was no opportunity to interview M.F. Dr. Morton ultimately overturned the suspension because he believed that M.F.'s due process rights had been violated for a failure to conduct an interview.

K.F. testified that around November 2021, she had a due process petition filed against the District regarding an IEP to place M.F. on home instruction. This due process petition was resolved with the District. K.F. did not believe that M.F. received compensatory education for the days for which M.F. was suspended from school. No one from the District, such as a teacher or tutor, contacted her to work with M.F. on the work that M.F. missed. M.F. would request that the school send her the assignments that M.F. was missing; sometimes M.F. received the assignments, and sometimes, she did not.

K.F. said that she was always allowed to provide information to the schools regarding incidents involving M.F. after the fact, but she never felt that the subsequent information had any effect on decision-making.

K.F. believes that M.F.'s behavior deserves consequences, understanding that some of the acts were driven by disabilities and others were not. Her issue was that the District did not follow due process, including interviewing students. K.F. requested redacted witness statements and other related information, but she was never given any. She was also never told what her appeal rights were.

Additional Findings

It is the obligation of the fact finder to weigh the credibility of the witnesses before making a decision. Credibility is the value that a fact finder gives to a witness's testimony. Credibility is best described as that quality of testimony or evidence that makes it worthy of belief. "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances." In re Estate of Perrone, 5 N.J. 514, 522 (1950). To assess credibility, the fact finder should consider the witness's interest in the outcome, motive, or bias. "A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony." Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

I generally accept all of the testimony provided as credible, except as specifically noted in conflicting testimony. Dr. Meloche, Dr. Burti, Dr. Benavides, Ramos and K.F. were all professional and forthright in their testimony, including those instances where they made admissions pertinent to the case.

Accordingly, I **FIND** the following additional **FACTS**:

1. K.F. signed acknowledgment receipts for the 2020–2021, 2021–2022 and 2022–2023 school years, indicating that she received and reviewed the Middle School Code of Conduct and High School Code of Conduct for the applicable school year.
2. When K.F. signed the acknowledgment receipts for the Middle School Code of Conduct and High School Code of Conduct, there was no place to raise questions or concerns about them in Genesis, and in order to access any information about M.F., including courses, grades and IEP, she had to complete the acknowledgment receipts.

3. The Middle School Code of Conduct does not include specific language regarding a parent or guardian's right to appeal disciplinary action imposed on a District student through the internal appeals procedure that Dr. Burti described in his testimony.
4. The Middle School Code of Conduct does not include specific statutory language regarding a parent or guardian's right to appeal disciplinary action taken against a student outside of the District, namely an appeal with the Commissioner of the BOE.
5. The High School Code of Conduct does not include specific language regarding a parent or guardian's right to appeal disciplinary action imposed on a District student through the internal appeals procedure that Dr. Burti described in his testimony.
6. The High School Code of Conduct does not include specific statutory language regarding a parent or guardian's right to appeal disciplinary action taken against a student outside of the District, namely an appeal with the Commissioner of the BOE.
7. None of the suspension letters that K.F. received from Carusi, specifically the letters dated October 5, 2021, October 15, 2021, November 2, 2021, November 17, 2021, November 29, 2021, January 10, 2022, March 21, 2022, May 6, 2022, or June 16, 2022, contained specific information about K.F.'s right to appeal discipline imposed on M.F., whether the internal appeal procedure or outside of the District to the Commissioner of DOE.
8. The September 28, 2022, suspension letter that K.F. received from Cherry Hill West did not contain any specific information about K.F.'s right to appeal discipline imposed on M.F., whether the internal appeals procedure or outside of the District to the Commissioner of DOE.

9. After the manifestation determination meetings, there was no information shared with M.F. about how to appeal a disciplinary decision.
10. During M.F.'s tenure on the Board, no suspension appeals were brought before the Board, and Board members were not advised how many suspensions were being given throughout the District.
11. For the November 17, 2021, incident, M.F. was not given the chance to explain why she left Dr. Burti's office before she was suspended.
12. M.F. served her two days of out-of-school suspension on Thursday, November 18, 2021, and Friday, November 19, 2021, before the Monday, November 22, 2021, manifestation determination meeting, where the child study team determined that M.F.'s behavior was a manifestation of her disability. M.F. lost instructional time because she was suspended before the manifestation determination meeting.
13. For the November 29, 2021, incident, the District did not conduct a manifestation determination meeting regarding this disciplinary action, and there was no evidence presented that M.F. was permitted to explain her version of the events giving rise to a suspension.
14. For the January 10, 2022, incident, M.F. was not given the opportunity to explain what occurred while K.F. was present.
15. For the March 21, 2022, incident, Dr. Benavides asked M.F. whether she made the statements giving rise to the investigation, and M.F. did not respond.
16. As part of the investigation of the allegations on or around May 6, 2022, Dr. Benavides asked M.F. to advise where M.F.'s communications fell in the chain of text messages. The meeting ended abruptly with M.F. using

profanity, making a statement along the lines of “I’m not doing this anymore with you,” and leaving her office.

17. Dr. Benavides investigated all of M.F.’s disciplinary actions for which she was in charge, which included speaking to the students involved and any student and adult witnesses. Dr. Benavides was involved in the October 5, 2021, January 10, 2022, March 21, 2022, May 6, 2022, and June 16, 2022, disciplinary decisions against M.F.
18. For the June 16, 2022, incident, after the manifestation determination meeting, which confirmed that M.F. would be suspended and miss her eighth-grade graduation, K.F. called the District’s main office and requested a meeting with the superintendent.
19. K.F.’s request to meet with the superintendent regarding the June 16, 2022, suspension did not follow the District’s unwritten internal appeal procedure.
20. For the September 23, 2022, incident, M.F. was given the opportunity on the day of the incident to provide her version of the event.
21. The District did not provide training on how to determine the appropriate discipline for students based on the Middle School Code of Conduct or High School Code of Conduct.

LEGAL ANALYSIS AND CONCLUSION

As previously noted, M.F. seeks the following relief from the District in this matter: (i) overturn all of M.F.’s suspensions from the 2021–2022 school year and one suspension from the 2022–2023 school year based on violations of M.F.’s due process rights; and (ii) a review of District policies and procedures related to student discipline to ensure that all reporting and implementation requirements are being met. Students’ due

process rights as they pertain to student conduct and potential discipline resulting from misconduct are discussed in N.J.A.C. 6A:16-7.1 as follows:

- (a) Each [District] shall develop, adopt, disseminate, and implement a code of student conduct that establishes standards, policies, and procedures for positive student development and student behavioral expectations on school grounds and, as appropriate, for conduct away from school grounds.

. . . .

- 2. The [District] shall establish a process for the annual review and update of the code of student conduct.
- 3. The code of student conduct shall be disseminated annually to all school staff, students and parents.
- 4. The [District] shall provide to all district board of education employees annual training on the code of student conduct, including training on the prevention, intervention, and remediation of student conduct that violates the [District's] code of student conduct.
- 5. The [District] shall provide for the code of student conduct's equitable application.
- 6. For students with disabilities subject to [IEPs] in accordance with 20 U.S.C. §§ 1400 et seq., the Individuals with Disabilities Education Act and accommodation plans under 29 U.S.C. §§ 794 and 705(20), the code of student conduct shall be implemented in accordance with the applicable plans.

- (b) The code of student conduct shall be established to achieve the following purposes:

. . . .

- 6. Establish parameters for school responses to violations of the code of student conduct that take into account, at a minimum, the severity of offenses, the developmental ages of student

offenders and students' histories of inappropriate behaviors in accordance with N.J.A.C. 6A:16-7.2 through 7.8, as appropriate.

(c) The code of student conduct shall include, at a minimum:

1. A description of students' responsibilities that includes expectations for academic achievement, behavior and attendance, pursuant to N.J.A.C. 6A:32-8 and 12.1;
2. A description of behaviors that result in suspension or expulsion, pursuant to N.J.S.A. 18A:37-2. . .
3. A description of students' rights to:
 - i. Advance notice of behaviors that result in suspensions and expulsions that have been identified pursuant to N.J.S.A. 18A:37-2;
 -
 - v. Due process appeal procedures and policies, pursuant to N.J.A.C. 6A:3-1.3 through 1.17; N.J.A.C. 6A:4; and, where applicable, N.J.A.C. 6A:14-2.7 and 2.8, and N.J.A.C. 6A:16-7.2 through 7.5;
 - vi. Parent notification consistent with the policies and procedures established pursuant to N.J.A.C. 6A:16-6.2(b)3, this section, and N.J.A.C. 6A:16-7.2 through 7.8; and
 - vii. Protections pursuant to 20 U.S.C. § 1232g, Family Educational Rights and Privacy Act; 34 CFR § 99, Family Educational Rights and Privacy; 20 U.S.C. § 1232h, Protection of Pupil Rights; 34 CFR Part 98, Student Rights in Research, Experimental Programs, and Testing; P.L.104-191, Health Insurance Portability and Accountability Act; 45 CFR 160, General Administrative Requirements; 20 U.S.C. § 7165, Transfer of school disciplinary records;

42 CFR Part 2, Confidentiality of Substance Use Disorder Patient Records; N.J.S.A. 18A:40A-7.1, Confidentiality of certain information provided by pupil, exceptions; N.J.A.C. 6A:16-3.2, Confidentiality of student alcohol and other drug information; N.J.S.A. 18A:36-19, Pupil records, creation, maintenance and retention, security and access, regulations, nonliability; N.J.S.A. 2A:4A-60, Disclosure of juvenile information, penalties for disclosure; N.J.A.C. 6A:32-7, Student Records; N.J.A.C. 6A:14-2.9, Student records; as well as other existing Federal and State laws and rules pertaining to student protections. . .

[N.J.A.C. 6A:16-7.1, emphasis added.]

M.F.'s suspensions during the 2021–2022 and 2022–2023 school years were all short-term suspensions, as they were all for less than ten consecutive school days. N.J.A.C. 6A:16-7.2(a). The due process rights afforded to students for short-term suspensions are as follows:

- (a) In each instance of a short-term suspension, a [District] shall assure the rights of a student suspended for one, but not more than 10 consecutive school days, by providing for the following:
 - 1. As soon as practical, oral or written notice of charges to the student.
 - i. When charges are denied, an explanation of the evidence forming the basis of the charges also shall be provided;
 - 2. Prior to the suspension, an informal hearing during which the student is given the opportunity to present the student's version of events regarding the student's actions leading to the short-term suspension and is provided notice of the [District's] actions taken pursuant to N.J.A.C. 6A:16-7.1(c)2 and 5:

- i. The informal hearing shall be conducted by a school administrator or the school administrator's designee;
 - ii. To the extent that a student's presence poses a continuing danger to persons or property or an ongoing threat of disrupting the educational process, the student may be immediately removed from the student's educational program and the informal hearing shall be held as soon as practical after the suspension;
 - iii. The informal hearing shall take place even when a school staff member has witnessed the conduct forming the basis of the charge; and
 - iv. The informal hearing and the notice given may take place at the same time;
3. Oral or written notification to the student's parents of the student's removal from the student's educational program prior to the end of the school day on which the school administrator decides to suspend the student. The notification shall include an explanation of:
 - i. The specific charges;
 - ii. The facts on which the charges are based;
 - iii. The provision(s) of the code of student conduct the student is accused of violating;
 - iv. The student's due process rights, pursuant to N.J.A.C. 6A:16-7.1(c)3 and this section; and
 - v. The terms and conditions of the suspension.

[N.J.A.C. 6A:16-7.2, emphasis added.]

A local board of education's action within its discretionary powers will only be reversed if it is "patently arbitrary, without rational basis or induced by improper motives."

Kopera v. Bd. of Ed. of West Orange, 60 N.J. Super. 288, 294 (App. Div. 1960). “Where 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 Sewerage Co. v. Dept. of Env’l Prot., 122 N.J. Super. 184, 199 (Ch. Div. 1973), aff.’d, 131 N.J. Super. 37 (App. Div. 1974).

From a review of the applicable law and the facts in this matter, the District violated M.F.’s due process rights in several ways. First, the District did not train its employees on the Middle School Code of Conduct or High School Code of Conduct, in violation of N.J.A.C. 6A:16-7.1(a)(4).

Second, the District did not provide parents and guardians, including K.F., notice of appeal procedures, either internal or external appeal procedures (the Commissioner of the DOE), as required by N.J.A.C. 6A:16-7.1(c)(3)(v). None of the District’s relevant documents, from the Middle School Code of Conduct, the High School Code of Conduct or District Policy 5610, even remotely mentions the internal appeal procedure. In his November 3, 2022, email to K.F., Dr. Meloche admits the same, noting that the Board needed to amend the Middle School Code of Conduct and the High School Code of Conduct to provide that information.

How, then, can a District student’s parent or guardian know how to proceed if they wish to challenge and/or appeal disciplinary action taken against their student? Do District parents and guardians even know that the internal appeals procedure exists? The simple fact is that they do not, and the fact that during her tenure on the Board, K.F. never heard any disciplinary appeals from parents and guardians regarding discipline imposed upon their children, a necessary part of the internal appeals procedure, underscores this point.

The District attempts to argue that because K.F. requested to meet with the superintendent regarding the June 16, 2021, suspension, she must have been aware of the internal appeal procedure. It is important to note that K.F. did not follow the chain of command for appeals as District representatives described it; she skipped a step. From her testimony, it appears that K.F., in her frustration over the situation, went to the

highest-ranking person in the District, rather than an assistant superintendent, to advocate for M.F. K.F. did not consult with Dr. Burti or an assistant superintendent before contacting the superintendent, who are the next individuals in the internal appeal procedure's chain of command. K.F.'s procedural failing proves that she was not aware of the District's internal appeals procedure.

The third and fourth due process violations are the District's failure to include in the written notification to parents and guardians that a student has received a short-term suspension the facts on which charges are based pursuant to N.J.A.C. 6A:16-7.2(a)(3)(ii) and again, to provide notice of due process rights, which includes the internal, informal appeal process, and the ability to appeal a disciplinary decision to the Commissioner of the DOE pursuant to N.J.A.C. 6A:3-1.3 to -1.17 and N.J.A.C. 6A:16-7.2(a)(3)(iv). None of this information, including references to the applicable regulations, is included in the form letters that the District provides to parents and guardians when students receive a short-term suspension.

K.F. argues generally that M.F. did not receive due process, namely an informal hearing as required by N.J.A.C. 6A:16-7.2(a)(2), before Carusi and Cherry Hill West administrators imposed short-term suspensions on M.F. The United States Supreme Court has held that in cases involving short-term suspension, a school disciplinarian may informally discuss the alleged misconduct with the student minutes after it has occurred and that the student is not entitled to a formal trial-type proceeding. Goss v. Lopez, 419 U.S. 565, 581-83 (1975). For an informal hearing, the student should be given the opportunity to persuade the disciplining authority that there is a case of mistaken identity or that there is some other compelling reason why they should not be suspended pending a full hearing. Hernandez v. Don Bosco Preparatory High, 322 N.J. Super. 1, 17 (App. Div. 1999) (citing R.R. v. Shore Reg'l High Sch. Bd. of Educ., 109 N.J. Super. 337, 347-48 (Ch. Div. 1970)). Based on these guiding principles, K.F. is correct in two instances.

The first instance is the November 17, 2021, incident, where Dr. Burti did not give M.F. the opportunity to explain why she left his office before receiving an out-of-school suspension. On its face, this is a violation of M.F.'s due process rights pursuant to

N.J.A.C. 6A:16-7.2(a)(2). M.F. was not given the opportunity to explain her behavior before discipline was imposed.

Equally troubling here is that a manifestation determination meeting, required for M.F. under the IDEA,⁸ was held after M.F. served her out-of-school suspension, and the determination was that her behavior was a manifestation of her disability. The practical implication is that M.F. served a two-day out-of-school suspension that she should not have received in the first place. M.F. lost instructional time as a result. The second instance is the November 29, 2021, incident, where there was no manifestation determination meeting, and there was no evidence presented that M.F. was permitted to explain her version of the events giving rise to a suspension. Smith did not testify during the hearing.

The next question is the appropriate remedy. K.F. advocates for the reversal of those suspensions; through testimony, the District asserts that its actions were not arbitrary, capricious or unreasonable. (Resp't's Br. 24–25.) As to the District's argument, I disagree. The language in the applicable regulations, N.J.A.C. 6A:16-7.1 and N.J.A.C. 6A:16-7.2, regarding the District's obligations to provide its students with due process is mandatory ("shall"), rather than permissive. See Quereshi v. Cintas Corp., 413 N.J. Super. 492, 498 (App. Div. 2010) (stating, "[t]he use of the word 'shall' ordinarily denotes action that is mandatory, unless the context suggests otherwise."); see also A.B. v. Div. of Med. Assistance and Health Servs., 407 N.J. Super. 330, 340 (App. Div. 2009) (stating, "[a] rule of an administrative agency is subject to the same canons of construction as a statute.") A failure to abide by state law or regulation is arbitrary, capricious and unreasonable. Brady v. Bd. of Review, 152 N.J. 197, 210–211 (1997) (stating that an agency's ruling should not be disturbed except for rare circumstances where "agency action is clearly inconsistent with its statutory mission or with other State policy," which includes an inquiry into whether the agency's action offends the State or Federal Constitution or violates express legislative policies.).

⁸ See 20 U.S.C. §§ 1415(i)(1)(E).

If a student's due process rights are violated, the student is entitled to a remedy, which can range from the immediate reinstatement of the student back in school to having the record expunged of any disciplinary action. See L.K. and A.K. o/b/o L.K. v. N. Burlington Cnty. Reg'l. Bd. of Educ., EDU 6071-12, Initial Decision (Jan. 27, 2014), adopted, Comm'r (Mar. 21, 2014), https://njlaw.rutgers.edu/collections/oal/html/initial/edu6071-12_1.html; C.F. v. Wildwood Bd. of Educ., 96 N.J.A.R.2d (EDU) 619, EDU 798-96 (Mar. 26, 1996). I agree that the reversal of the two out-of-school suspensions on November 17, 2021, and November 29, 2021, is appropriate, and M.F.'s record should be expunged of both of these disciplinary infractions. This result is consistent with N.J.A.C. 6A:32-7.7(a)(1), which allows parents or guardians to request the expungement of certain information in their student's record. Regardless of whether a school district allows the information to be expunged, parents or guardians "shall be permitted to place in the student record a statement commenting upon the information in the student record or setting forth any reasons for contesting a portion of the student record, including the decision made in the appeal. The parent's or adult student's statement shall be maintained as part of the student record, as long as the contested portion of the student record is maintained." N.J.A.C. 6A:32-7.7(d).

As a parent, I find the District's failure to follow the plain and mandatory language of State regulations designed to protect students' due process rights troubling, particularly when parents and guardians clearly do not know the process by which they can advocate for their children's rights. For the period of time in question here, the District had the last and final say regarding student discipline, a situation made possible because it failed to provide parents and guardians with the information they needed to challenge the District's actions. The irony is that even at the end of this Initial Decision, the parties, including the District, will be apprised of their respective appeal rights if they disagree. For a period of time, however, the District did not provide its students, parents and guardians with that same type of information, despite its mandatory obligation by regulation to do so.

For the foregoing reasons, I **CONCLUDE** that the District has violated students' due process rights for the following:

1. The District did not train its employees on the Middle School Code of Conduct or High School Code of Conduct, in violation of N.J.A.C. 6A:16-7.1(a)(4).
2. The District failed to provide parents and guardians, including K.F., notice of appeal procedures, whether the internal appeal procedure or an appeal to the Commissioner of the DOE, as required by N.J.A.C. 6A:16-7.1(c)(3)(v).
3. When disciplining students, including M.F., the District failed to include in the written notification to parents and guardians that a student has received a short-term suspension the facts on which charges are based pursuant to N.J.A.C. 6A:16-7.2(a)(3)(ii) and notice of their due process rights, which includes the District's internal appeal procedure and the ability to appeal a disciplinary decision to the Commissioner of the DOE pursuant to N.J.A.C. 6A:3-1.3 to -1.17, in violation of N.J.A.C. 6A:16-7.2(a)(3)(iv).

I **FURTHER CONCLUDE** that the District's actions in imposing out-of-school suspensions on M.F. on November 17, 2021, and November 29, 2021, violated M.F.'s due process rights by failing to conduct an informal hearing as required by N.J.A.C. 6A:16-7.2(a)(2), and as a result of those due process violations, those suspensions should be expunged from her permanent record.

ORDER

I **ORDER** that the District violated the due process rights of its students when it (i) failed to train its employees on the Middle School Code of Conduct or High School Code of Conduct, a violation of N.J.A.C. 6A:16-7.1(a)(4); (ii) failed to provide to provide parents and guardians, including K.F., notice of appeal procedures, whether the internal appeal procedure or an appeal to the Commissioner of the DOE, as required by N.J.A.C. 6A:16-7.1(c)(3)(v); and (iii) when disciplining students, including M.F., the District failed to include in the written notification to parents and guardians that a student has received a short-term suspension the facts on which charges are based pursuant to N.J.A.C.

6A:16-7.2(a)(3)(ii) and notice of due process rights, which includes the District's internal appeal process and the ability to appeal a disciplinary decision to the Commissioner of the DOE pursuant to N.J.A.C. 6A:3-1.3 to -1.17, in violation of pursuant to N.J.A.C. 6A:16-7.2(a)(3)(iv).

I **FURTHER ORDER** that the District's actions in imposing out-of-school suspensions on M.F. on November 17, 2021, and November 29, 2021, violated M.F.'s due process rights for a failing to conduct an informal hearing as required by N.J.A.C. 6A:16-7.2(a)(2), and as a result of those due process violations, those suspensions shall be expunged from M.F.'s permanent record.

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

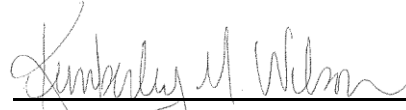
This recommended decision may be adopted, modified, or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify, or reject this decision within forty-five 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 19, 2025

DATE



KIMBERLEY M. WILSON, ALJ

Date Received at Agency:

June 19, 2025

Date Mailed to Parties:

KMW/ml

c: Clerk, OAL-T

APPENDIX

Witnesses

For petitioner:

K.F.

For respondent:

Dr. Joseph N. Meloche

Dr. Neil Burti

Dr. Julie Benavides

Abel Ramos

Exhibits

Joint:

- J-1 Board Middle School Code of Student Conduct 2021–2022
- J-2 M.F.'s IEP dated October 20, 2021
- J-3 Letter from Dr. Burti to K.F. dated November 17, 2021
- J-4 Letter from Michelle Smith to K.F. dated November 29, 2021
- J-5 Letter from Dr. Benavides to K.F. dated January 10, 2022
- J-6 Letter from Dr. Benavides to K.F. dated March 21, 2022
- J-7 Letter from Dr. Benavides to K.F. dated May 6, 2022
- J-8 Letter from Dr. Benavides to K.F. dated June 16, 2022
- J-9 Letter from Ramos to K.F. dated September 28, 2022
- J-10 Emails between K.F. and Dr. Meloche dated October 13, 2022, to November 6, 2022

For petitioner:

None entered into evidence.

For respondent:

- R-3 M.F.'s student conduct list dated September 27, 2021, to November 22, 2022
- R-4 List of M.F.'s manifestation determination meetings for the 2020–2021 school year
- R-5 Board's Middle School Code of Conduct 2022–2023
- R-6 Disciplinary Action Manifestation Determination Form dated November 11, 2021
- R-7 Manifestation Determination Form for November 22, 2021, meeting
- R-8 Disciplinary Action Manifestation Determination Form dated January 10, 2022
- R-9 Manifestation Determination Form for January 10, 2022, meeting
- R-10 Invitation for a Manifestation Determination letter dated March 18, 2022
- R-11 Disciplinary Action Manifestation Determination Form dated March 21, 2022
- R-12 Manifestation Determination Form for March 21, 2022, meeting
- R-13 Disciplinary Action Manifestation Determination Form dated May 6, 2022
- R-14 Manifestation Determination Form for May 6, 2022, meeting
- R-15 Invitation for a Manifestation Determination letter dated June 15, 2022
- R-16 Disciplinary Action Manifestation Determination Form dated June 16, 2022
- R-17 Manifestation Determination Form for June 16, 2022, meeting
- R-18 Letter from Dr. Meloche to K.F. dated June 20, 2022
- R-19 Cherry Hill High School West Incident Summary Report dated September 23, 2022
- R-20 Email from K.F. to Ramos dated September 28, 2022, 8:04 a.m.
- R-21 Email from Ramos to K.F. dated September 28, 2022, 9:24 a.m.
- R-24 Email from Dr. Meloche to K.F. dated October 14, 2022, 6:23 p.m.
- R-25 Email from K.F. to Dr. Meloche dated November 3, 2022
- R-26 Letter from Dr. Morton to K.F. dated October 26, 2022
- R-27 Email from K.F. to Dr. Meloche dated November 6, 2022
- R-28 Email from K.F. to Dr. Meloche dated November 7, 2022
- R-29 Board Policy 5610 – Suspension
- R-30 Board High School Code of Conduct 2022–2023

- R-32 Email from Dr. Burti to K.F. dated November 23, 2021
- R-33 Letter from Dr. Benavides to K.F. dated November 10, 2021
- R-42 Carusi cards
- R-43 Letter from Dr. Benavides to K.F. dated September 27, 2021
- R-44 Letter from Dr. Benavides to K.F. dated October 5, 2021
- R-45 Letter from Michelle Smith to K.F. dated October 15, 2021
- R-46 Letter from Dr. Burti to K.F. dated November 2, 2021
- R-51 Board Policy 5600 – Student Discipline/Code of Conduct
- R-52 District Parent Access – Genesis
- R-53 Important Documents and Information for the 2022–2023 School Year,
Genesis Parent University
- R-54 Acknowledgment receipts for Code of Student Conduct for 2020–2021,
2021–2022 and 2022–2023 school years
- R-55 Video of September 12, 2022, incident
- R-56 Video of September 12, 2022, incident
- R-57 Video of September 12, 2022, incident

The nonsequential numbering of exhibits reflects the fact that numerous pre-marked exhibits were neither identified nor offered into evidence.