174-26
OAL Dkt. No. EDU 05738-25
Agency Dkt. No. 90-4/25

New Jersey Commissioner of Education

Final Decision

A.G., on behalf of minor child, L.G.,

Petitioner,

v.

Board of Education of the Township of West Milford, Passaic County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), and the exceptions filed by the petitioner pursuant to *N.J.A.C.* 1:1-18.4 have been reviewed and considered. Respondent West Milford Board of Education (Board) did not file a reply to petitioner's exceptions.

In 2023, security guard Tommy Jordan reported that petitioner's child, L.G., was vaping in the school bathroom. L.G. was disciplined under the district's Substance Abuse Policy, and petitioner appealed; the case was settled. On February 26, 2025, Jordan escorted L.G. to Assistant Principal Nick Pollaro's office and reported that he had observed L.G. with a vaping device protruding from his pocket. L.G. was directed to empty his pockets, and no device was found. However, based on Jordan's observation, Pollaro sent L.G. home for the day and directed petitioner to arrange for a drug test, pursuant to the Substance Abuse Policy. Despite that direction, it was decided later that evening that L.G. could return to school the following day

without a medical examination, and L.G.'s disciplinary record does not indicate that the incident violated the Substance Abuse Policy.[1] On February 27, 2025, Jordan reported that L.G. called him a "fucking scumbag." L.G. received a one-day in-school detention for the vaping infraction, pursuant to the district's Student Smoking Policy and Student Code of Conduct, and a three-day suspension for the offensive statement to Jordan, pursuant to the Student Code of Conduct. He was also issued a four-game suspension from the baseball team, which was twenty percent of the team's games for the season, in accordance with the district's Athletic Code of Conduct for a second infraction.

Petitioner appealed. He did not dispute that district staff members complied with the Athletic Code of Conduct, Student Code of Conduct, Substance Abuse Policy, or Student Smoking Policy. Instead, petitioner argued that the policies themselves were discriminatory and illegal. In particular, his challenge focuses on the Substance Abuse Policy, which he alleges violates various provisions of the New Jersey Constitution, Title IX, and Section 504 of the Rehabilitation Act.

Following motion practice and a hearing, the Administrative Law Judge (ALJ) concluded that the doctrine of res judicata bars petitioner's challenge to the district's application of the Substance Abuse Policy to L.G. for the 2023 incident, or any other asserted deficiencies by the district concerning that disciplinary action, as petitioner had already appealed that incident. The ALJ found that the Board's Substance Abuse Policy and Student Smoking Policy include all requirement elements and are consistent with the regulatory mandates of *N.J.A.C.*6A:16-4.1 and

[1] An email from the superintendent to petitioner dated March 27, 2025, indicates that the Substance Abuse Policy was not enforced because L.G. did not appear to be under the influence and was not witnessed using a vape.

-4.3. The ALJ concluded that the policies themselves did not exceed the Board's legal authority, because the Board was in fact required by law to have such policies; therefore, the district's enforcement of those policies was not ultra vires.

In response to petitioner's argument that the policies interfere with his parental rights, especially regarding medical issues and consent to testing, the ALJ recognized the importance of parental consent but found that it must yield in certain circumstances, specifically noting that *N.J.S.A.* 18A:35-4.8 provides that a parent may not object to a medical or physical exam when medical issues or substance use present a concern for admission to the school. As such, the ALJ concluded that parental consent does not trump the Board's exercise of authority when district staff reasonably suspect that a student may be under the influence of illegal substances. Moreover, the 2025 incident was found to be a violation of the Student Smoking Policy, under which possession is sufficient for a violation, and not the Substance Abuse Policy. The ALJ indicated that while Pollaro was initially mistaken and should not have required L.G. to leave school for the day, there was no evidence in the record that L.G.'s loss of a few hours of school materially impacted him or his education, and ultimately the requirement for a drug test before L.G. could return to school was withdrawn. Accordingly, this loss did not create sufficient justification to remove the otherwise-supported disciplinary determination for vape possession.

Regarding L.G.'s suspension from baseball games, the ALJ concluded that the suspension was in accordance with the Athletic Code of Conduct, an agreement that L.G. executed in order to play sports, and which is consistent with *N.J.A.C.* 6A:16-7.1(d). The ALJ noted that L.G. was observed with a vaping device on February 26, 2025 – his second offense – and a preponderance

of the evidence exists to support the district's disciplinary actions. Therefore, the Board's actions were not arbitrary, capricious, or unreasonable.

The ALJ found that petitioner's Constitutional claims regarding the policies were primarily facial challenges, which the OAL and the Commissioner lack jurisdiction to consider. However, the ALJ did address petitioner's Constitutional arguments in the context of how the policies were applied to L.G. The ALJ found the search of L.G. did not violate the Fourth Amendment, because there were sufficient grounds to conduct it based on Jordan's observation of a vape in L.G.'s pocket, and it was reasonable in scope and duration. The ALJ found that the district's policies did not violate the Equal Protection Clause of the Fourteenth Amendment because there was no evidence of purposeful discrimination or that L.G. received treatment different from that received by other individuals similarly situated; all student athletes in the district would be subject to the same consequences as L.G., and the discipline was rationally related to the district's interest in maintaining a drug-free environment at school. Nor did the district's actions violate the Due Process Clause, as L.G. received notice of the charges against him and the opportunity to discuss them.

The ALJ also concluded that petitioner had not established a claim under New Jersey's Law Against Discrimination (LAD) because he did not allege or support that L.G. is within any protected class or clearly identify differential treatment. Finally, the ALJ rejected petitioner's Title IX claim, finding that petitioner did not allege any sexual harassment of L.G., and his Section 504 claim, finding that L.G. has no disability and was not disciplined because of a disability. For all of these reasons, the ALJ dismissed the petition of appeal.

In his exceptions, petitioner argues that L.G. was disciplined for alleged possession of a vaping device despite no device being recovered, no staff observation of L.G. using a vaping device, no nurse documentation of impairment, and inconclusive video that the ALJ improperly inflated in significance. According to petitioner, the district bears the burden of proof in school discipline cases, but the ALJ's conclusion relies on a single disputed observation by Jordan while ignoring the exculpatory evidence, demonstrating a lack of substantial credible evidence to support the disciplinary finding. Petitioner points to a prior Commissioner case in which student discipline was overturned, even though the student was directly observed with a vape, and argues that the evidence here is even weaker, warranting reversal of the disciplinary determination and expungement of L.G.'s records. Petitioner contends that the ALJ denied petitioner due process by allowing Superintendent Dr. Brian Kitchin to testify about the interpretation of district policies, district disciplinary practices, and enforcement rationale, even though he had no personal knowledge of the February 26, 2025 incident, but excluding the district's records custodian from testifying as petitioner's witness due to lack of personal knowledge. Petitioner indicates that the Board did not produce evidence that it had complied with its own policies by annually reviewing their implementation and effectiveness. Petitioner argues that penalties for athletes are differential and disproportionate because non-athletes committing identical conduct receive lesser penalties.

Upon review, the Commissioner concurs with the ALJ that the detention imposed on L.G. for possession of a vaping device on February 25, 2025 was not arbitrary, capricious, or unreasonable. The Commissioner rejects petitioner's argument that the evidence was inadequate to demonstrate that L.G. was in possession of a vaping device. Prior to filing their

cross-motions for summary decision, the parties filed a joint stipulation of facts. The events of February 25, 2025 are described in stipulations 12-14, which provide, in part, that Jordan reported that he observed a blue vape protruding from L.G.'s left pocket. The ALJ initially declined to accept stipulations 12-14, because in the papers filed in connection with the motions, petitioner disputed that L.G. possessed a vape and argued that the district and Jordan lied about the events of that day. The ALJ accordingly found that there were material facts in dispute about the events of that day and denied the parties' motions. At the hearing, the Board intended to call Jordan as a witness to testify regarding his observation, but petitioner agreed that Jordan did not need to testify and withdrew his objection to stipulations 12-14. The ALJ therefore accepted those stipulations and, on the basis of them, found that Jordan observed the vape pen in L.G.'s pocket. If petitioner wished to dispute Jordan's observation, then the Board could have called Jordan for testimony as it had planned, at which point petitioner would have had the opportunity to cross-examine him and the ALJ would have had the opportunity to assess his credibility. But having informed the ALJ that Jordan's testimony was not necessary, petitioner cannot now challenge Jordan's observation; the time to do that was at the hearing, and petitioner waived that opportunity. As such, the Commissioner accepts as fact that Jordan observed L.G. in possession of a vaping device.

Given that L.G. possessed a vaping device on school grounds, the detention imposed on L.G. was consistent with the district's Student Smoking Policy and the Student Code of Conduct. The Student Smoking Policy prohibits the possession of electronic smoking devices on school grounds, and a student who violates the provisions of the policy is subject to disciplinary measures in accordance with the district's Student Code of Conduct. The Code of Conduct, in

turn, includes a general list of multiple disciplinary measures, to be implemented as appropriate with regard to the student's violation of school rules. The detention imposed on L.G. falls in the middle of the range, being more severe than measures like admonishment or deprivation of privileges, but less severe than suspension or expulsion. The policy also includes a more specific list of the minimum penalties to be assessed for certain offenses, and the penalty for tobacco use/possession, which is the charge that L.G.'s disciplinary record reflects for February 26, 2025, is detention.

Petitioner's reliance on the decision in *B.A. and R.R. o/b/o E.A. v. Bd. of Educ. of the W. Essex Reg'l Sch. Dist.*, Commissioner Decision No. 190-23 (June 27, 2023), is misplaced. That matter involved discipline that was imposed against a student under the district's Substance Abuse Policy. A urine test had yielded a negative dilute result, which the district interpreted as a presumptive positive, but nothing in its Substance Abuse Policy provided for such an interpretation. The Commissioner specifically noted in *B.A.* that the Board had chosen not to suspend the student for possession of a vape pen. *Id.* at 6. As such, the Commissioner's decision was based solely on the district's actions with regard to the urine test results in light of the district's Substantive Abuse Policy. Here, the opposite circumstances are present: the Board chose not to enforce the Substance Abuse Policy, but instead disciplined L.G. based on his possession of a vaping device. As such, the holding in *B.A.* is not applicable to this matter.

The amended petition requests that all instances of substance abuse or smoking violations be removed from L.G.'s records. The only violation for substance abuse in L.G.'s records is the one pertaining to the 2023 vaping incident. As the ALJ correctly found, all issues related to the 2023 incident are barred by the doctrine of res judicata because they were the

subject of a prior appeal. Furthermore, in a third matter involving these parties, the Commissioner has already determined that there is no basis for removing the letter of suspension related to that incident from L.G.'s student records. *A.G. o/b/o L.G. v. Bd. of Educ. of the Twp. of W. Milford*, Commissioner Decision No. 92-26 (Mar. 16, 2026). Therefore, this request for relief is denied. Furthermore, L.G.'s disciplinary record does not specifically list a "smoking" violation, although it does list one for tobacco use/possession on February 26, 2025, which the Commissioner presumes is the violation petitioner references. The request that this violation be removed from L.G.'s records is denied because the finding that L.G. possessed a vape on that day is adopted and the associated detention is upheld for the reasons stated herein.

The Commissioner also agrees with the ALJ that the imposition of consequences under the Athletic Code of Conduct was not arbitrary, capricious, or unreasonable. The policy clearly provides that the possession of vaping devices is prohibited, and it outlines progressive discipline, including a penalty of 20% of athletic contests for a second infraction. Accordingly, the imposition of a four-game suspension from baseball games was consistent with the Athletic Code of Conduct.

Petitioner requests that the Athletic Code of Conduct be stricken or revised to eliminate differential punishments within the student body. Initially, the Commissioner notes that *N.J.A.C.* 6A:16-7.1 provides that a board of education may deny participation in sports as a disciplinary sanction. Contrary to petitioner's argument that athletes are subject to differential treatment, the provision in fact also provides that a board of education may deny participation in other kinds of activities, such as extracurricular activities, school functions, graduation exercises, or other privileges. The Board has codified the potential disciplinary consequences of misconduct for

student athletes in its Athletic Code of Conduct, but that action is merely a more specific version of codifying the potential disciplinary consequences of misconduct for all students in the Student Code of Conduct. Indeed, the Student Code of Conduct contains provisions such as "Deprivation of Privileges," which includes consequences related to participation in co-curricular or interscholastic activities and attendance at school-related social activities. The Commissioner therefore finds that both policies comport with the applicable regulation and do not impose differential treatment on student athletes.

As the ALJ noted, petitioner's primary concern appears to be that the district's Substance Abuse Policy can require medical testing or examination of a student even if the parent does not consent.[2] *N.J.S.A.* 18A:40A-12 provides that when a report is made that a student appears to be under the influence of alcohol or other drugs on school grounds, the principal "shall arrange for an immediate examination of the pupil . . . The pupil shall be examined as soon as possible for the purpose of diagnosing whether or not the pupil is under such influence." The use of the word "shall" in this provision demonstrates that the district is required to make arrangements for an exam. The Substance Abuse Policy aligns with this statutory requirement, as well as the related regulatory requirement of *N.J.A.C.* 6A:16-4.3 (the principal "shall arrange for an immediate medical examination of the student for the purposes of providing appropriate health care and for determining whether the student is under the influence of alcohol or other drugs"). As such, the Commissioner agrees with the ALJ that the Board's Substance Abuse policy is not ultra vires.

[2] The Commissioner notes that although L.G. was initially sent home from school pending a drug test, that direction was later rescinded, and the Substance Abuse Policy was not enforced against L.G. While the loss of a few hours of school is regrettable, given that it was quickly corrected and the Substance Abuse Policy was ultimately not enforced against L.G., no relief regarding that action is warranted.

Additionally, although petitioner requests that the Substance Abuse Policy be modified to offer parents an "opt-out" regarding consent, the Legislature has specifically provided that a parent may not object to a medical examination of a student who appears to be under the influence of a drug. *N.J.S.A.* 18A:35-4.8. Accordingly, this request for relief is denied.

Petitioners' remaining requests for relief are either improper (e.g., "The school needs to be more creative in [its] approach to punishment and discipline") or beyond the Commissioner's authority to order (e.g., "Compensation, recovery of legal expenses, and a financial penalty sufficient to teach the Board a lesson.") Accordingly, they are denied.

Regarding petitioner's claims under the Constitution and laws other than New Jersey's school laws, the Commissioner agrees with the ALJ, for the reasons thoroughly detailed in the Initial Decision, that the Board has not committed any violations as applied to L.G.

Finally, the Commissioner finds that the ALJ's admission and exclusion of testimony from witnesses was consistent with an ALJ's considerable discretion regarding the conduct of cases. *N.J.A.C.* 1:1-14.6. Petitioner does not make clear in his exceptions what testimony he wished to elicit from the district's records custodian that could have changed the outcome of the Initial Decision. However, when the custodian's testimony was the subject of a motion to quash by the Board, petitioner indicated that her testimony was sought regarding the "maintenance, authentication, and handling of student records, including the District's processes for addressing disputes as to accuracy." The ALJ found that her testimony was unnecessary because the parties stipulated to the District's policies and submitted them as joint exhibits, she was not employed by the district at the time of the events at issue, and Dr. Kitchin could also provide testimony related to records, such that the custodian's testimony would be duplicative. Petitioner does not

allege that L.G.'s student record is inaccurate, but rather that the disciplinary incident should be removed from it. That issue is a legal one that is part of the subject of this proceeding, and not a question of records maintenance. As such, petitioner has failed to demonstrate that the ALJ abused her discretion by excluding the testimony of the records custodian.

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

IT IS SO ORDERED.[3]

COMMISSIONER OF EDUCATION

Date of Decision: May 26, 2026
Date of Mailing: May 26, 2026

[3] 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 05738-25
AGENCY DKT. NO. 90-4/25

A.G. ON BEHALF OF L.G.,
Petitioner,
v.
BOARD OF EDUCATION OF THE TOWNSHIP OF WEST MILFORD, PASSAIC COUNTY,
Respondent.

A.G., petitioner appearing pro se

Kevin M. Cuddihy, Esq., for respondent (Scarinci Hollenbeck, attorneys)

Record Closed: January 23, 2026 Decided: March 2, 2026

BEFORE **NANCI G. STOKES**, ALJ:

STATEMENT OF THE CASE

West Milford High School student L.G. received detention under the required Student Smoking Policy following his observed possession of a vaping device on February 26, 2025, his second infraction involving a vaping device, which led to additional consequences under the Athletic Code of Conduct. Was the discipline within the

respondent's authority? Yes. Mandated student conduct policies permit discipline for prohibited acts, and a school district's disciplinary decision stands unless it is arbitrary, capricious, or unreasonable.

PROCEDURAL HISTORY

On April 2, 2025, A.G. filed a petition seeking emergent relief challenging discipline imposed by the West Milford School District (District or Board) regarding an incident that occurred on February 26, 2025, with his minor son, L.G. He also questions the District's policies and their application.

On April 2, 2025, the Department of Education (DOE), Office of Controversies and Disputes, transmitted this case to the Office of Administrative Law (OAL) for a hearing as a contested case and resolution of petitioner's motion for emergency relief under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23, according to the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6. The OAL scheduled oral argument on the emergent application for April 8, 2025. On April 8, 2025, the petitioner withdrew that application following a conference, and this tribunal directed the petitioner to amend his petition.

Petitioner filed a subsequent emergent relief application and petition against the Board regarding the same underlying events concerning his minor son under OAL Dkt. No. EDU 6854-25. Another administrative law judge denied the emergent application. On May 2, 2025, the respondent filed a motion to consolidate OAL Dkt. No. EDU 6854-25 with this case.

On May 8, 2025, the petitioner filed a motion for summary decision.

However, following a conference with the parties on May 9, 2025, the petitioner agreed to withdraw the second petition (OAL Dkt. No. EDU 6854-25), and I allowed the petitioner to file an amended petition to clarify all claims, issues, and relief sought from the same events. I also advised the petitioner that he could renew his summary decision motion, but that it was premature.

On May 14, 2025, petitioner withdrew his petition under OAL Dkt. No. EDU 6854-25, and he filed an amended petition. On May 22, 2025, the Board filed its answer to the amended petition.

I conducted a prehearing conference on June 3, 2025, and issued a Prehearing Order on June 4, 2025. Petitioner was also directed to identify any discovery deficiency.

The Prehearing Order also identified the following:

A. Nature of Proceedings:

Petitioner disputes respondent's discipline of his child for events on February 26, 2025, and February 27, 2025, and the related Athletic Code of Conduct policy suspension from participation in four baseball games. He seeks to clear his son's record of those actions and challenge District Policy No. 5530, Substance Abuse Policy, and the Athletic Code of Conduct Policy. Specifically, petitioner asserts those policies violate N.J.S.A. 18A:2-1, N.J.A.C. 6A:16-7.1, -7.6, the New Jersey and U.S. Constitution, are ultra vires, deprive a student of their right to a thorough and efficient education, are discriminatory, and restrict his rights as a parent to consent to activities involving his child.

B. Issue to be Resolved:

Whether the respondent's disciplinary actions were arbitrary, capricious, or unreasonable. If so, what relief is appropriate.

Whether petitioner's constitutional and other challenges to the District's Substance Abuse or the Athletic Code of Conduct policies are properly before the OAL. If so, what relief is appropriate.

The parties agreed to prepare a joint stipulation of facts and exhibits in anticipation of filing cross-motions for summary decision, which I received on July 16, 2025.

On August 6, 2025, the Board filed its motion, and on August 13, 2025, the petitioner filed his cross-motion for summary decision.

On September 4, 2025, the Board filed its reply and opposition to the cross-motion.

On September 12, 2025, the petitioner filed his reply to the opposition, but he was unable to transmit exhibits electronically. This tribunal advised the petitioner to present his exhibits by regular mail, which the OAL received on September 22, 2025. However, the exhibits did not include a certification or description of each exhibit, which I requested. On September 24, 2025, the petitioner supplied a list of exhibits, and I closed the record. With those exhibits, the petitioner supplied an additional argument, which I consider part of his reply and opposition.

During this tribunal's review of the motion papers, it was evident that the petitioner now disputed that his son L.G. possessed a vaping device on February 26, 2025, despite the parties' stipulation that a staff member observed L.G. with such a device at school. Undeniably, that observed possession led to the disputed disciplinary charges. Further, this tribunal learned that building security video existed, which may support the District's allegations regarding the event on February 26, 2025. I reopened the record to obtain a copy of this video exchanged during discovery, which I received on October 31, 2025, and I again closed the record.

On November 3, 2025, I denied the parties' cross-motions for summary decision, noting that material facts existed about the events on February 26, 2025. The Order advised that the hearing would only address the disputed events on February 26, 2025, as the parties accepted the remaining stipulations. Specifically, I removed stipulations twelve through fourteen, given the petitioner's opposition. Still, I accepted the joint exhibits.

The subsequent amended prehearing order advised that "the hearing is solely limited to the events on February 26, 2025, concerning L.G.'s alleged possession of a vaping device, and actions [which] transpired that day."

On January 13, 2026, the Board timely presented its witness list, the joint exhibits, and three exhibits for the Board.

On January 13, 2026, the petitioner supplied his witness list wherein he identified the Board's School Business Administrator and Board Secretary Melissa Bertagno as his only witness. The Board advised that Ms. Bertagno was not in this position on February 26, 2025, and had no personal knowledge of those events, and thus, Ms. Bertagno would not be testifying.

In turn, the petitioner issued a subpoena for her testimony. On January 14, 2026, the Board filed a motion to quash, which I granted over the petitioner's objections.

I also ordered that the District's witness, Mr. Jordan, could testify remotely due to a medical condition.

On January 14, 2026, counsel for the District also sought to include four additional exhibits that he just learned of, noting that he had not yet received the petitioner's exhibits. I allowed the District to include these exhibits, subject to any objection to their admission by the petitioner at the hearing.

Although this tribunal received the petitioner's exhibits on January 15, 2026, the petitioner did not present those exhibits to the Board before the hearing on January 23, 2026.

At the scheduled hearing, the parties and I discussed the petitioner's exhibits. To avoid rescheduling the hearing or barring the petitioner's exhibits, I made a copy of the exhibits for the Board and allowed the Board to review the petitioner's exhibits.

Still, many of the petitioner's exhibits included duplicative items of the joint exhibits, like the various District policies, and materials that would not be considered evidentiary, like statutes and orders issued by this tribunal. Other documents addressed issues and conversations before the February 26, 2025, incident.

Petitioner's exhibits did not include a "P" designation but were grouped by topic. After careful review with the parties, I admitted two additional joint exhibits presented by the petitioner, District Regulation 5530, accompanying the joint exhibit for the District's Substance Abuse Policy 5530 (J-1), and an April 9, 2025, email between the petitioner and Dr. Kitchin, which corresponded to joint exhibits and respondent's exhibits. (J-13 and J-15.) Indeed, the parties agreed to present all joint exhibits for consideration by this tribunal. In other words, there are no separate party exhibits, and I added the two agreed-upon exhibits to the joint-exhibit binder and noted their joint designation. Further, respondent's exhibits R-1 through R-4 were now joint exhibits (J-14, J-16, J-17, and J-18).

At the hearing, the petitioner also withdrew his objection to stipulations twelve through fourteen and again stipulated those facts after reviewing them. He agreed that Mr. Jordan need not testify to establish his observation of L.G. with a vaping device on February 26, 2025. However, he wanted to question School Superintendent Brian Kitchin, the District's other witness, about the District's policies and their application to the occurrence, which I allowed.

On January 23, 2026, I closed the record. In doing so, I accepted the parties' motion briefs, in support of and in opposition to the summary decision, as legal arguments relied upon by the parties for this decision.

FACTUAL DISCUSSION

The parties prepared a joint stipulation of facts and exhibits. Based upon a review of the stipulations, documentary evidence presented, and my evaluation of its sufficiency, I **FIND** the following undisputed **FACTS**:

1. L.G. was an eleventh-grade general education student for the 2024–2025 school year enrolled at West Milford High School (High School).
2. Petitioner is a citizen and the natural parent of L.G.
3. The Board is a body politic and corporate, organized and existing by virtue of the laws of the State of New Jersey, pursuant to N.J.S.A. 18A:11-1, with its principal

offices located at 46 Highlander Drive, West Milford, New Jersey 07480, which is invested with the authority for maintaining and operating West Milford Township School District.

4. The District's total operating budget for the 2024–2025 school year was approximately $76,168,098.

5. The Board maintains two policies governing situations where students are suspected of consuming alcohol, drugs, or steroids, or being under the influence of the same, on school grounds. The first is the Substance Abuse Policy Number 5530 (Substance Abuse Policy) (J-1). District Regulation 5530 corresponds to Board Policy Number 5530. (J-13.)

6. The Substance Abuse Policy was adopted by the Board in 2012. (J-1.)

7. The medical examination required under the Substance Abuse Policy does not test nicotine.

8. The second relevant Board policy is the Board's Student Smoking Policy Number 5533 (Student Smoking Policy). (J-2.)

9. During the 2023–2024 school year, the District ordered L.G. to undergo a medical examination after it was reported by Tommy Jordan (Mr. Jordan), a District security guard, that L.G. was vaping in the bathroom. The petitioner refused to consent to the medical examination, and the District placed L.G. on home instruction until L.G. completed the medical examination.

10. The petitioner then filed a Request for Emergent Relief challenging the District's actions. The petitioner and the Board reached a settlement agreement regarding this Request for Emergent Relief. (J-3.)

11. Following the Settlement Agreement, L.G. then returned to in-person instruction in the District for the remainder of the 2023–2024 school year.

12. On February 26, 2025, Mr. Jordan reported that he observed a blue vape protruding from L.G.'s left pocket and escorted L.G. to Assistant Principal Nick Pollaro's office. (J-18.)

13. When L.G. arrived at the assistant principal's office, Mr. Pollaro directed L.G. to empty his pockets. There was no device found in his pocket. Mr. Pollaro and Mr. Jordan were in the room.

14. Based on Mr. Jordan's report of observing a vape on L.G.'s person, Mr. Pollaro sent L.G. home for the remainder of the school day and directed the petitioner to arrange for a drug test for L.G. pursuant to the Substance Abuse Policy. (J-4.)

15. The following school day, Mr. Jordan reported that L.G. directed profanity at him, stating that L.G. called him a "fucking scumbag." (J-6, J-7, and J-8.)

16. On or about March 26, 2025, the High School baseball coach, Taylor Pevny, and the Athletic Director, Joe Trentacosta, informed L.G. that he would experience a consequence related to his participation on the High School baseball team, namely a four-game suspension. The suspension was enforced during the regular season, and the petitioner was not notified of the suspension until after the baseball team participated in a tournament in Florida. (J-10.)

17. Students who participate in District athletics must also sign an agreement to adhere to the District's Athletic Code of Conduct. (J-11 and J-12.)

18. The Athletic Code of Conduct imposes athletic consequences for student code of conduct violations, including violations of the Substance Abuse Policy and Student Smoking Policy. (J-11.) Included in these consequences are suspensions from team games. Id.

19. L.G. and his parents received a copy of the Athletic Code of Conduct prior to L.G. joining the High School baseball team. L.G. and his mother, J.S., signed the Athletic Code of Conduct, thereby agreeing to its terms. (J-12.)

20. The petitioner did not contact any District staff member to object to the terms and conditions of the Athletic Code of Conduct prior to J.S. and L.G. agreeing to their terms.

21. Since this was L.G.'s second infraction related to vaping, he was disciplined according to the second offense level and suspended from twenty percent of baseball games (four games). L.G. served the four-game suspension by April 7, 2025.

22. The District imposes fees for participating in school athletics.

23. Homeschooled children are allowed to participate in school athletics. (J-15.)

24. N.J.S.A. 18A:38-25 provides that "[e]very parent, guardian or other person having custody and control of a child between the ages of six and sixteen years shall cause such child regularly to attend the public schools of the district . . . ."

25. The school nurse is the most experienced medical professional employed by the District on a full-time basis.

26. The petitioner does not dispute that the District staff members complied with and adhered to the Athletic Code of Conduct, Substance Abuse Policy, Student Smoking

Policy, and Student Code of Conduct. Rather, petitioner challenges whether such policies are legal and discriminatory.

Based on the testimony of Dr. Brian Kitchin and my assessment of its credibility, and further consideration of the sufficiency of the documents supplied, I make the following **FINDINGS** of **FACT:**

Dr. Kitchin has served as the District's superintendent since 2024. He has years of prior experience in education and administration, including three years as superintendent in another school district, and possesses principal and administrator certificates. He qualified as an expert in school leadership and administration.

As superintendent, Dr. Kitchin oversees all matters related to the District, including working with the Board of Education, establishing policies, working with school administrators, and ensuring effective operations of the District's schools.

Dr. Kitchin acknowledges that a school district cannot implement policies that conflict with regulations or statutory guidelines, but a school district can expand its application, requirements, or guidelines for school operations, including disciplinary policies. The Board, Board counsel, and the superintendent work with an outside vendor to remain current in their policies and codes of conduct. The vendor regularly provides the District with updates to regulations or statutes that would impact school operations. Indeed, the District regularly revises its policies, including the Student Smoking Policy and the Substance Abuse Policy.

A student disciplinary record is an internal document, like J-6 and J-7. However, a district also must report certain events to the State through the Student Data Safety System (SSDS). For example, the District made an SSDS entry relating to L.G.'s suspension following his offensive language towards Mr. Jordan on February 27, 2025. (J-9.) Further, the District notified L.G.'s parents of his three-day placement at the Highlands Refocus Center at the high school. (J-8.) The SSDS form notes that disciplinary removals require an SSDS entry, which includes in-school suspensions, out-of-school suspensions, expulsion, and removal to another educational setting. (J-9.)

Indeed, SSDS incidents involve violence, vandalism, harassment, intimidation, bullying, or substance abuse. Id. The school did not make an SSDS entry for the incident of February 26, 2025, which led to detention, not a removal or suspension.

Dr. Kitchin was not present at the school or involved in the administration's handling of Mr. Jordan's observation when it occurred on February 26, 2025. Thus, Dr. Kitchin did not know specific conversations between Mr. Pollaro and A.G. that day. Although the black and white security video does not clearly reflect that L.G. had a vape in his left hand, he possessed an item that was the same size as a vape, which he placed in his pocket. (J-17.)

However, Dr. Kitchin participated in the decision to return L.G. to school the following day without a medical examination and in not enforcing the District Substance Abuse Policy for that event. This decision was made, in part, to avoid keeping L.G. out of school. He was uninvolved with the athletic consequence decision, other than to ensure that the school staff followed the District's policies and codes of conduct.

Undeniably, the assistant principal dismissed L.G. for the remainder of the school day. At that time, Mr. Pollaro also gave the petitioner a Medical Examination Notification form, which would have been necessary for a violation under the Substance Abuse Policy. (J-4.) However, the District did not require L.G. to undergo a medical examination before returning to school on February 27, 2025; it withdrew the request on the evening of February 26, 2025.

District personnel undergo training on the District's policies and codes of conduct and their application, including the Substance Abuse Policy. Parental consent does not drive staff decisions about discipline. Instead, the District's policies, codes of conduct, and regulations provide guidelines for such action.

Ultimately, the District assigned L.G. a one-day in-school detention under the Student Code of Conduct policy (J-5), concluding that L.G.'s observed possession of a vaping device violated the school's Student Smoking Policy. (J-7.) In other words, the

District's discipline did not stem from a violation of the Substance Abuse Policy, and his disciplinary record notes no violation of that policy on February 26, 2025.

Indeed, the District's Student Code of Conduct provides several levels of discipline or consequences for violations of the Student Smoking Policy, along with a penalty chart for various offenses. (J-5.) Tobacco use or possession carries a consequence range of "detention to HRC." Id. at 5. Thus, I **FIND** that the District's penalty for the incident on February 26, 2025, a detention, followed the consequences outlined in the Student Code of Conduct. Similarly, the three-day suspension for offensive language to a staff member followed the Student Code of Conduct's allowable consequences. Moreover, I **FIND** the four-game suspension followed the Athletic Code of Conduct for a second infraction involving vaping on school grounds.

The parties resolved L.G.'s other disciplinary infraction involving vaping from December 14, 2023, under the Substance Abuse Policy through a settlement executed in April 2024. The District allowed L.G. to return without a medical examination. A.G. agreed to consent to a medical examination and drug test of L.G. should L.G. possess a vape within one year of the agreement. That settlement resolved all claims, and the petitioner waived any claims that arose or may have arisen from that incident. (J-3.)

After the athletic suspension, A.G. and Dr. Kitchin exchanged several emails from at least March 26, 2025, through April 9, 2025. A.G. questioned the authority of the athletic suspension and reiterated that the lack of parental consent for a medical examination under the "drug policy" made it invalid. Dr. Kitchin referred A.G. to the Athletic Code of Conduct, which L.G. and his mother signed when registering L.G. to play baseball. (J-14.)

A.G. contacted the police department following the February 26, 2025 incident and after the imposition of the baseball game suspension, complaining that it is too easy for a minor to obtain a vape and that using nicotine should not prevent a child from attending school. (J-16.) The police department also prepared a police report regarding A.G.'s allegation of harassment of L.G. by Mr. Jordan. Ibid. However, the officer directed A.G. to address his concerns regarding smoking or vaping policies with the superintendent.

Id. Still, A.G. supplies no evidence that the police department charged Mr. Jordan with any wrongdoing.

A.G. also inquired whether L.G.'s disenrollment from school would impact on his ability to play baseball; it would not. (J-15.) Yet, A.G. did not disenroll L.G. from high school.

LEGAL DISCUSSION AND CONCLUSIONS

Petitioner's focus in this case remains that the Substance Abuse Policy violates the Equal Protection and Due Process clause of the New Jersey Constitution, the right to a thorough education (N.J. Const. art. VIII, § 4, ¶ 1; N.J.S.A. 18A:36-26), Title IX of the Education Amendments of 197, 20 U.S.C. § 1681 et seq., and Section 504 of the Rehabilitation Act (29 U.S.C. § 794). Yet, he also challenges the New Jersey State Interscholastic Athletic Association's Athletic Code under the same framework. In essence, he disputes the District's authority to circumvent parental consent regarding a medical examination of a child accused of violating the District's Substance Abuse Policy.

In other words, the petitioner largely attempts to relitigate the events from L.G.'s December 14, 2023, Substance Abuse Policy violation. In response, the Board asserts that the doctrine of res judicata bars the petitioner from reasserting prior claims or claims he could have raised but did not. Indeed, the doctrine applies when the parties in the later action are the same as the prior case, the claim in the later action stemmed from the same occurrence as the earlier case, and when a final judgment on the merits of the earlier action exists. Elkadrawy v. Vanguard Group, Inc., 584 F.3d 169, 173 (3d Cir. 2009). Notably, a res judicata analysis is not dependent on "the specific legal theory invoked, but rather 'the essential similarity of the underlying events giving rise to the various legal claims.'" Ibid. (internal citations omitted). The doctrine bars not only those claims that the petitioner made but those that the petitioner could have made. Ibid. Thus, I **CONCLUDE** that the doctrine of res judicata bars petitioner's challenge to the Substance Abuse Policy's application to his son on December 14, 2023, or any asserted deficiencies by the District concerning that disciplinary action.

For example, the petitioner asserts that the District improperly failed to involve law enforcement in the earlier dispute during the 2023–2024 school year. However, reports to law enforcement are permissive under the District's Substance Abuse Policy and N.J.A.C. 6A:16-4.3. Indeed, the District's Substance Abuse Policy states that "[d]isclosure to law enforcement authorities of the identity of a student in instances of alcohol and other drugs" must comply with N.J.A.C. 6A:16-4.3(a)(3), which provides that a "chief school administrator or designee *may* disclose [such information] to law enforcement authorities." While the District's involvement of law enforcement authorities is permissive, not mandatory, relative to drugs or alcohol, the language and requirements concerning medical examinations under N.J.A.C. 6A:16-4.3 are mandatory. Regardless, the District was not required to contact law enforcement under the Substance Abuse Policy, and I **CONCLUDE** that its failure to do so is not actionable, notwithstanding that the doctrine of res judicata bars this claim.

Although the petitioner suggests that the incident on February 26, 2025, was retribution for his prior challenge to the incident of December 14, 2023, he supplies no evidence to support such an allegation. Instead, Mr. Jordan observed his son's possession of a vaping device a second time on school grounds on February 26, 2025. Indeed, the District did not find that the February 26, 2025, vaping incident violated the District's Substance Abuse Policy.

Notwithstanding, petitioner's arguments blend issues with the prior discipline, the February 26, 2025, discipline, and the disciplinary actions taken under the Athletic Code of Conduct.

Thorough and Efficient Education

The "Thorough and Efficient Clause" of the Constitution of the State of New Jersey states that "[t]he Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years." N.J. Const. art. VIII, § 4, ¶ 1. The New Jersey Supreme Court, in Abbott v. Burke, 153 N.J. 480 (1998), broadly interpreted the obligations of the State to provide a thorough and efficient system of education. These

obligations included the provision of adequate physical facilities, providing sufficient resources for a curriculum that would provide students with a chance to excel and succeed, and ensuring that students in underfunded districts had the funding necessary to provide students with an appropriate education. Ibid.

As part of that obligation, schools must develop a student code of conduct, establishing clear standards, policies, and procedures that promote positive student development and behavioral expectations, which the District did. N.J.A.C. 6A:16-7.1 to -7.10.

Codes of Conduct

The right to education is not without certain restrictions. Pupils must submit to the authority of their teachers; they must pursue their prescribed courses of study and comply with the rules established to govern the schools. N.J.S.A. 18A:37-1. Indeed, local boards of education must follow the regulatory guidelines promulgated by the Department of Education and the State Board of Education to faithfully execute the Education Clause of the New Jersey Constitution, N.J. Const. of 1957 art. VIII, § 4, ¶ 1, and the State policy of compulsory public education. Bd. of Educ. of City of Plainfield v. Cooperman, 105 N.J. 587, 596 (1987).

Under N.J.S.A. 18A:37-2, a school district may discipline a student for good cause. Good cause includes, in relevant part, continued and willful disobedience, open defiance of authority, and possession or consumption without legal authority of alcoholic beverages or controlled dangerous substances on school premises, or being under the influence of such substances while on school premises. N.J.S.A. 18A:37-2(a), (b), and (j). To be sure, school districts have wide discretion in determining student discipline. N.J.A.C. 6A:16-7.1 to -7.10; N.J.S.A. 18A:11-1(d).

Here, the District Code of Student Conduct includes various consequences for violations, including detention, in-school suspensions, out-of-school suspensions, and expulsion. (J-5.)

Other Required Board Policies

Notably, N.J.S.A. 18A:40A-10 also requires Boards to implement "a comprehensive substance use intervention, prevention and treatment referral program" in their elementary and secondary schools to "identify pupils who use substances, assess the extent of these pupils' involvement with these substances and, where appropriate, refer pupils and their families to . . . professional treatment." Ibid. "Substances" include "any chemical or chemical compound which releases vapors," and the policies apply to "students who consume or who are suspected of being under the influence of or who *possess*" substances on school grounds. N.J.S.A. 18A:40A-9; N.J.A.C. 6A:16-4.1(a) (emphasis added). To satisfy this legislative mandate, boards must "adopt and implement . . . policies and procedures for the evaluation, referral for treatment and discipline of pupils involved in incidents of possession or use of substances . . . on school property." N.J.S.A. 18A:40A-11; N.J.A.C. 6A:16-4.1(a). N.J.S.A. 18A:40A-11 requires the Board to enact and maintain policies addressing substance use and abuse, including any chemical or chemical compound that releases vapor or fumes, that comply with N.J.A.C. 6A:16-4.1 and N.J.A.C. 6A:16-4.3. Significantly, in New Jersey, it is illegal for any person under the age of twenty-one years old to use alcohol, tobacco, or marijuana. N.J.S.A. 2C:33-15; N.J.S.A.; N.J.S.A. 2C:33-13.126:3D-66. A medical examination is necessary when it appears that a student "may be under the influence of alcohol or other drugs on school grounds." N.J.S.A. 18A:40A-12(a); N.J.A.C. 6A:16-4.3(a)(1), (2)(ii).

Here, the Board has two policies that govern situations when students are suspected of consuming alcohol, drugs, or other substances, or being under the influence, on school grounds: the Substance Abuse Policy and the Student Smoking Policy. The Substance Abuse Policy prohibits the use, possession, or distribution of alcohol or other drugs (including vapes) on school grounds. See J-1. Violations of the Substance Abuse Policy require that the District discipline students according to the District's Code of Student Conduct. Ibid.

Under the Student Smoking Policy, the District prohibits smoking or possession of any matter or substance which can be smoked in any form, including an electronic device, in school buildings, on school grounds, at events sponsored by the Board away from

school, and on any transportation supplied by the Board. See J-2. Additionally, the Student Smoking Policy authorizes District staff to confiscate vapes. Ibid. If, after confiscating the vape, the principal or his designee has a reason to believe the vape contains marijuana or another drug listed in N.J.S.A. 2C:35-2, the principal will arrange for an immediate medical examination under the Substance Abuse Policy. Id.

Both the Substance Abuse Policy and the Student Smoking Policy provide that any student who violates their provisions "shall be subject to appropriate disciplinary measures" in accordance with the District's Code of Conduct. (J-1 and J-2.) In comparing the Board's Substance Abuse Policy and Student Smoking Policy with the legislative requirements under N.J.A.C. 6A:16-4.1 and N.J.A.C. 6A:16-4.3, I **CONCLUDE** that the Board's policies include all required elements and are consistent with the regulatory mandates. Indeed, the policy provisions are nearly identical to the regulations.

However, the petitioner maintains that Board policies interfere with his parental consent, especially regarding medical issues. While the Commissioner recognizes the importance of parental consent in many situations, like under N.J.S.A. 18A:2-1, the Commissioner also recognizes that such consent must yield in certain circumstances. Significantly, N.J.S.A 18A:35-4.8 provides that a parent may not object to a medical or physical exam when medical issues or substance use presents a concern for admission to the school:

> No pupil whose parent or guardian objects to such pupil receiving medical treatment or medical examination or physical examination shall be compelled to receive such treatment or examination; provided, however, that no objection shall be made to a physical or medical examination of any child with a disability for the purpose of determining whether such child shall be admitted to any class or school for children with disabilities or of any pupil to determine whether the pupil is ill or infected with a communicable disease or of any person who appears to be under the influence of a drug.
>
> [Ibid. (emphasis supplied.)]

The Substance Abuse Policy requires District staff members to report students who appear to be under the influence of alcohol or other drugs on school grounds. (J-1.) When a report of suspected substance abuse is made, the student is required to undergo an "immediate medical examination" following suspicion of the student being under the influence of alcohol or other drugs, and school attendance will not resume until a parent submits a report of that medical examination, which "verifies the student's alcohol or other drug use no longer interferes with his or her physical and mental ability to perform in school." Ibid. Significantly, the Board's Substance Abuse Policy mirrors N.J.A.C. 6A:16-4.3(d), which states that when a parent refuses to provide consent for a drug test, such actions shall be treated as a violation of the Compulsory Education Act, child neglect laws, and district policy. If the student refuses or fails to comply with the provisions of N.J.S.A. 18A:40A-12 concerning required medical examinations for suspected substance abuse in school, the school district will consider the refusal a policy violation. N.J.A.C. 6A:16-4.3(e). Although the petitioner highlights that a physician would not examine a minor absent parental consent, the District policies necessitate that consent in certain situations. In other words, the District would not expect a required medical examination concerning suspected substance use without parental consent and would impose consequences should the parent refuse.

Here, I **CONCLUDE** that parental consent (or refusal to consent) does not trump the Board's exercise of authority under the required provisions of its policies regarding medical assessments when the District reasonably suspects a student may have an infectious disease or is under the influence of illegal substances.

Still, the District addressed the incident on February 26, 2025, as a violation of the Student Smoking Policy, not the Substance Abuse Policy. Indeed, the District had no evidence that the vaping device observed by Mr. Jordan contained marijuana or other illegal drugs. The petitioner also suggests that no violation can be found absent finding the vaping device. Yet, personal observation along with the District's video supports the conclusion that the device was in L.G.'s possession, and I **CONCLUDE** that possession is sufficient to violate the District's Student Smoking Policy.

While the assistant principal may have initially requested a drug test under the Substance Abuse Policy, the District required no drug test of L.G. to return to school the following day. In other words, the assistant principal was initially mistaken and should not have required L.G. to leave school on February 26, 2025. However, the petitioner presents no evidence that L.G.'s loss of a few hours of school materially impacted L.G. or his education. Further, the only disciplinary event from his vape possession on February 26, 2025, on L.G.'s student disciplinary record is that L.G. served an in-school detention on February 27, 2025. See J-7. Indeed, the penalty for "Tobacco Use/Possession" is a detention. Further, the use of inappropriate language towards a staff member can carry in-school multi-day suspensions, which the District imposed on the offensive language incident on February 27, 2025. See J-5.

While the petitioner asserts that the required policies improperly impact the educational services provided to children, the District must address suspected substance abuse and smoking. Indeed, I **CONCLUDE** that discipline properly imposed for violations of required District policies does not deprive a student of educational services without good cause. Further, I **CONCLUDE** that the unfortunate loss of a few hours of school on February 26, 2025, cannot be viewed as justification to remove the District's supported vape possession disciplinary determination.

Athletic Code of Conduct

Participation in extracurricular activities is a privilege that a school district may revoke. Burnside v. N.J.S.I.A.A., No. A-625-84T7 (App. Div. Nov. 15, 1984) (slip op. at 5–6), certif. denied, 101 N.J. 236 (1985). Extracurricular activities, such as athletic or sports participation, are not a required component of the free, appropriate public education guaranteed to all students. City of Trenton Bd. of Educ. v. N.J.S.I.A.A., 91 N.J.A.R.2d (EDU) 158. Further, participation in an extracurricular activity is not a fundamental right under the federal or state constitutions. Camden Co. Bd. of Educ. v. N.J.S.I.A.A., No. A02802-91T2 (App. Div. Feb. 18, 1992). Specifically, N.J.A.C. 6A:16-7.1(d) permits a district to deny participation in sports and impose disciplinary sanctions upon such activities "to maintain the order and integrity of the school environment."

Under the District's Athletic Code of Conduct and State regulations, the District suspended L.G. for four baseball games during the 2025 season after a security officer observed L.G. possessing a vape for the second time on school grounds. Undeniably, L.G. and his mother signed the agreement requiring L.G. to abide by the District's Athletic Code of Conduct to participate in baseball. See J-11. L.G.'s violation of the Student Smoking Policy would "result in disciplinary action including suspension or dismissal for a designated time as determined by the head coach and/or school administration." Id. at 3. Indeed, the Athletic Code of Conduct strictly prohibits the use or possession of tobacco products, vaping devices, or other substances. Id. at 7.

A student using such products is subject to extracurricular consequences (which are separate from the consequences imposed by the Student Code of Conduct): first offense is a suspension of ten percent of athletic contests; second offense is a suspension of twenty percent of athletic contests; and third offense is a suspension of fifty percent of athletic competitions. Id. at 7. Further, the Athletic Code of Conduct states that these "corrective actions are cumulative and carry over from season to season, year by year" without limitation to the sport's season, to ensure compliance throughout the school year. Id. For example, a student who possessed or used a vaping device during their first year, whether during the sports season or not, would be subject to a first-offense suspension from ten percent of athletic contests. If the District later found that the student possessed or used a vaping device during their junior year, that would constitute the student's second offense, and the student would receive a suspension from twenty percent of athletic contests.

The District disciplined L.G. twice in connection with vape use: once during the 2023–2024 school year and once during the 2024–2025 school year. Since L.G. had two vaping incidents, L.G. received a suspension from twenty percent of baseball games or four games under the Athletic Code of Conduct, which he served by April 7, 2025. (J-8.) Thus, I **CONCLUDE** that the District's imposition of additional extracurricular consequences for L.G.'s actions on February 26, 2025, representing his second offense, was in accordance with the Athletic Code of Conduct. Yet this does not constitute impermissible double-dipping; it is under an agreement that L.G. executed to play athletics and is consistent with N.J.A.C. 6A:16-7.1(d).

Ultra Vires

The petitioner argues that the Board's Substance Abuse Policy, Student Smoking Policy, and Athletic Code of Conduct exceed the Board's rulemaking authority and that the District's enforcement of those policies is an ultra vires act. Petitioner maintains that the District cannot require a medical examination of a child in response to a report of suspected substance abuse because this interferes with a parent's rights. Specifically, he argues it is impermissible to "eject a student from school and seek to place the burden of proving 'innocence' upon the parents with no regard for the student's education, the parents' responsibilities, or the detrimental effects" they cause. Further supporting his position that the enforcement of the Substance Abuse Policy is ultra vires, petitioner asserts that the District staff lack the authority to "enforce, determine guilt, or otherwise impose a consequence for alleged violations (or violations) of the New Jersey Code of Criminal Justice and applicable municipal codes or ordinances."

However, an act is only ultra vires if the action exceeds one's power or legal authority. In this case, the Department of Education requires the Board to have such policies, which include required medical assessments under N.J.S.A 18A:35-4.8 and N.J.A.C. 6A:16-4.3. Thus, I **CONCLUDE** that the District was not acting ultra vires because the Substance Abuse Policy, Student Smoking Policy, and Athletic Code of Conduct comply with applicable legal authority. The District is not enforcing or determining whether a student violated criminal or municipal codes, contrary to the petitioner's arguments. Therefore, I also **CONCLUDE** that the District's discipline imposed in accordance with the District's Student Smoking Policy or the Athletic Code of Conduct was not outside its legal authority or ultra vires.

Arbitrary, Capricious, and Unreasonable

When a local board of education acts within its discretionary authority, its decision is entitled to a presumption of correctness that will not be disturbed unless there is an affirmative showing that the decision was "patently arbitrary, without rational basis or induced by improper motives." Kopera v. W. Orange Bd. of Educ., 60 N.J. Super. 288, 294 (App. Div. 1960). To overcome that presumption, the petitioner must prove that the

board "acted in either bad faith or in disregard to the circumstances." T.B.M. v. Moorestown Bd. of Educ., EDU 2780-07 (Feb. 6, 2008), aff'd, Comm'r (Apr. 7, 2008). Furthermore, "[w]here there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration," and the Commissioner will not substitute his judgment for that of the board. Bayshore Sewerage Co. v. Dep't. of Env't Prot., 122 N.J. Super. 184, 199 (Ch. Div. 1973), aff'd, 131 N.J. Super. 37 (App. Div. 1974); C.M. ex rel. J.M. v. Bergenfield Bd. of Educ., EDU 11504-24, Initial Decision (Feb. 24, 2025), adopted, Comm'r (Apr. 21, 2025), https://www.nj.gov/education/legal/commissioner/2025/143-25.pdf. In other words, petitioner's burden is a substantial one.

Still, the Board's factual determinations require such deference only when supported by appropriate credible evidence, e.g., having a rational basis. Quinlan v. Bd. of Educ. of N. Bergen Twp., 73 N.J. Super. 40 (App. Div. 1962); Schinck v. Bd. of Educ. of Westwood Consol. Sch. Dist., 60 N.J. Super. 448 (App. Div. 1960). Additionally, the reviewing tribunal may reject the findings of fact if the evidentiary record does not support them. In re Suspension of License of Silberman, 169 N.J. Super. 243, 255−56 (App. Div. 1979), aff'd, 84 N.J. 303 (1980).

Notably, the petitioner conceded that the District staff adhered to the Substance Abuse Policy, Student Smoking Policy, and Athletic Code of Conduct. Instead, he challenges whether such policies are legal or discriminatory. Yet, I found that L.G. was observed possessing a vape on February 26, 2025, his second offense. Thus, I also **CONCLUDE** that a preponderance of the evidence exists to support the District's disciplinary actions as having a rational basis. In other words, the District's actions are not arbitrary, capricious, or unreasonable even though the petitioner may be dissatisfied with the District's disciplinary actions.

Protection of Pupil Rights Amendment

The 1978 Protection of Pupil Rights Amendment (PPRA) requires schools to obtain parental consent before minor children can participate in a DOE-funded survey that seeks certain information. 20 U.S.C. § 1232h. The PPRA prohibits surveys, analyses, or

evaluations related to categories such as political affiliation, mental or psychological problems, or religious behaviors. Ibid. Further, the PPRA requires parental notification for any nonemergency, invasive physical examination that a school requires as a condition of attendance, administered and scheduled by the school, which is unnecessary to protect the immediate health or safety of the student. 20 U.S.C. § 1232h(c)(2)(c). However, the PPRA is inapplicable "to any physical examination or screening that is permitted or required by an applicable state law, including physical examinations or screenings that are permitted without parental notification." 20 U.S.C. § 1232h(c)(4). Further, the PPRA defines "invasive physical examination" as "any act during such examination that includes incision, insertion, or injection into the body." 20 U.S.C. § 1232h(c)(6).

Clearly, a urine drug test does not meet the definition of an invasive physical examination under the PPRA. Regardless, New Jersey's statutes and regulations specifically authorize a drug test for students suspected of being under the influence of drugs or alcohol while on school grounds or at school functions. The PPRA carves out an exception for such screenings when required or permitted by statutory authority. The District's policies follow such authority. Thus, I **CONCLUDE** that the PPRA is inapplicable to the situation raised by the petitioner, and the District's policies do not violate the PPRA.

Constitutional Challenges

Under N.J.A.C. 1:1-3.2, the OAL's statutory authority to hear contested cases is derivative from the agency that is empowered to hear and determine the case. Thus, if the DOE has jurisdiction and the Commissioner transmits the case to the OAL, the OAL has jurisdiction over the case. See N.J.A.C. 1:1-3.1 (contested case shall commence in the State agency with appropriate subject matter jurisdiction). Further, administrative law judges have independence in executing "certain important responsibilities . . . to conduct hearings, make factual findings, and recommend decisions in contested cases for the various State agencies." In re Appeal of Certain Sections of Unif. Admin. Proc. Rules, 90 N.J. 85, 94 (1982). Final decision authority rests with the agency and is subject to judicial review by the Appellate Division. N.J.S.A. 52:14B-10(c); R. 2:2-3 and 2:2-4.

Under N.J.S.A. 18A:6-9, the Commissioner's jurisdiction is defined and is limited to "controversies and disputes arising under the school laws." As the Supreme Court stated in Dunellen Bd. of Educ. v. Dunellen Educ. Ass'n, 64 N.J. 17, 23 (1973), "the Legislature enacted provisions entrusting school supervision and management to local school boards . . . subject to the supervisory control [of] . . . the State Commissioner of Education." However, "[t]he sweep of the Department's interest and the Commissioner's jurisdiction does not extend to all matters involving boards of education." Archway Programs v. Pemberton Twp. Bd. of Educ., 352 N.J. Super. 420, 424–25 (App. Div. 2002). Claims against local school boards that "do not arise under the school laws but rather from statutory or common law [are] typically and appropriately adjudicated in the courts." Id. at 425. Indeed, questions of law "not amenable to practical administrative resolution, [may] remain to be determined by the trial court." Id. at 432.

Still, in administrative proceedings, a petitioner may challenge the constitutionality of rules as applied, but they cannot "mount facial attacks." 37 *New Jersey Practice, Administrative Law and Practice*, § 3.8, at 107 (Steven L. Lefelt, Anthony Miragliotta & Patricia Prunty) (2d ed. 2000). Indeed, pure legal questions are exclusively reserved for the courts. Accordingly, "an agency has no power to determine constitutionality of a statute on its face." Id. at 108. The Commissioner of Education and ALJs do not have the authority to strike down statutes, rules, or policies. Ibid. Thus, there is no jurisdiction for an ALJ to consider a facial constitutional challenge. However, "[i]n as-applied challenges, the question involves whether an agency is applying its rule in such a way as to violate an individual's constitutional rights. Usually, challenges to rules for being unconstitutionally applied raise the need for both fact finding and agency expertise." Ibid. Still, "applied" has a meaning different from "a mere claim that a regulation has worked a unique, unwarranted hardship on certain individuals; if that were the criteria, virtually all constitutional claims by petitioners would be [viewed] as applied." Giordano v. New Jersey Pinelands Comm'n, 96 N.J.A.R.2d (EPC) 25, 27 (holding that challenging the validity of the rule itself rather than the way in which it is applied is a facial constitutional challenge and cannot be heard in the OAL).

In other words, to the extent that the petitioner claims that West Milford's Substance Abuse Policy, Student Smoking Policy, or the Athletic Code of Conduct are

facially unconstitutional or unenforceable, the Commissioner and ALJ do not have jurisdiction to address such claims. Similarly, even if I agree that the District should revise its policies as the petitioner requests, I have no ability to order this action if the District acts within its authority. However, if the petitioner's constitutional challenges do not constitute a facial challenge and claim that the District's policies have been unconstitutionally applied, the Commissioner and ALJ have jurisdiction to consider these claims.

However, most of the petitioner's challenges are facial attacks on the District's policies, not as to their application to L.G. Assuming arguendo that he asserts "applied challenges," his claims also fail.

Fourth Amendment

While students do not waive their constitutional rights upon entering a school building, students are not afforded the same Fourth Amendment protections as a typical citizen because District staff act "in loco parentis" while students are at school. The U.S. Supreme Court addressed a constitutional claim under the Fourth Amendment in New Jersey v. T.L.O., 464 U.S. 991 (1983). Specifically, the Supreme Court determined that the Fourth Amendment protects students from unreasonable searches in public schools, but that determining the search's constitutionality involves a modified two-part test. First, was the search justified at its inception? Second, was the search conducted in a reasonable scope, duration, and intensity? Ibid. A search is justified at its inception if the District staff have "reasonable grounds to believe that a student possesses evidence of illegal activity or activity that would interfere with school discipline and order, the school official has the right to conduct a reasonable search for such evidence." Id. (citing State in Int. of T.L.O., 94 N.J. 331, at 346 (1983)). A search is reasonable in scope and intensity when it is not excessively intrusive. Id.

While conducting his standard patrol, Mr. Jordan observed a vape protruding from L.G.'s pocket in plain sight and thus had sufficient grounds to believe that L.G. was violating school policies in possessing a vaping device or was engaged in substance abuse. When L.G. was taken to the assistant principal's office, he was only asked to

empty his pockets in front of Mr. Pollaro and Mr. Jordan. No further search of L.G.'s person occurred. In other words, I **CONCLUDE** that the search had a reasonable inception, scope, and duration, which meets the test set forth in T.L.O.

Harassment and Discrimination

The petitioner asserts that the District uses the Substance Abuse Policy to harass and discriminate against students and families. The Law Against Discrimination (LAD) prohibits discrimination and harassment in places of public accommodation, including schools, based on an individual's membership in a protected class. The LAD identifies many protected classes, including race, religion, national origin, sex, sexual orientation, age, gender identity, and disability, among others. Further, N.J.S.A. 18A:36-20 provides that "[n]o pupil in a public school . . . shall be discriminated against . . . in obtaining any advantages, privileges or courses of study of school by reason of race, color, creed, sex, or national origin." N.J.A.C. 6A:7-1.1.

Yet L.G., a student athlete, is not considered within a protected class or status on that basis alone. Further, a student using tobacco products, alcohol, or drugs is not within a protected class. To state a claim under the LAD in the educational context, an aggrieved student must allege "discriminatory conduct that would not have occurred 'but for' the student's protected characteristic, that a reasonable student of the same age, maturity level, and protected characteristic would consider sufficiently severe or pervasive enough to create an intimidating, hostile, or offensive school environment, and that the school district failed to reasonably address such conduct." L.W. ex rel. L.G. v. Toms River Reg'l Schs. Bd. of Educ., 189 N.J. 381 (2007). Still, the petitioner does not allege or support that L.G. is within any protected class, let alone clearly identify differential treatment. Thus, I **CONCLUDE** that the petitioner did not establish a claim under the LAD by a preponderance of the evidence.

Insofar as the petitioner maintains that the District uses the Substance Abuse Policy to improperly harass or discriminate against students and parents, he has submitted no evidence to support this allegation. Indeed, I concluded that the District's policies conform with regulatory and statutory authority and that the District's detention

and athletic suspension actions against L.G. had a rational basis. Moreover, the petitioner conceded that the District followed its policies. Thus, the petitioner's claims again seek to challenge the policies themselves rather than their application.

Equal Protection and Due Process

Similarly, the petitioner asserts that the Substance Abuse Policy and the Athletic Code of Conduct violate the Equal Protection Clause of the Fourteenth Amendment, which precludes a State from denying "to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. Here, the petitioner maintains that punishing athletes more severely for the same conduct is arbitrary. He further argues that "refusal is not guilt" and conditioning education on compliance with drug testing violates due process.

Yet, an equal protection claim must show the existence of purposeful discrimination against the plaintiff and that the plaintiff received treatment different from that received by other individuals similarly situated. Chambers ex rel. Chambers v. Sch. Dist. of Phila. Bd. of Educ., 587 F.3d 176, 196 (3d Cir. 2009). Here, any athlete attending school within the District would be subject to the same enhanced consequences for Student Code of Conduct violations.

In Palmer v. Merluzzi, 868 F.2d 90 (3d Cir. 1989), a high school football player received a ten-day suspension after the District found empty bottles and marijuana on school premises, along with a sixty-day suspension from the football team because he violated the school's athletic code of conduct. Palmer raised both Equal Protection and Due Process claims concerning his football suspension; the United States Court of Appeals for the Third Circuit disagreed. Undeniably, "participation in extra-curricular activities is not a fundamental right under the Constitution, and since Palmer's suspension was not based on a suspect classification," the court "examine[d] Palmer's argument under the 'rational relationship test.'" Id. at 96. Here, the school and athletic suspensions were rationally related to the District's interest in maintaining a drug-free environment at school:

> [T]he disciplinary actions taken by the school were rationally related to a valid state interest. The State has very strong interest in preserving a drug-free environment in its schools and in discouraging drug use by its students. We are unwilling to say that the sanctions imposed on Palmer were not reasonably designed to serve those legitimate interests.
>
> [Ibid.]

The Palmer court also addressed his due process claims. Id. at 93–96. Palmer was aware that his actions could have additional consequences under the Athletic Code of Conduct, like L.G. Id. at 94. However, Palmer did not receive a second notification regarding his football suspension. Here, L.G. met with his baseball coach and the athletic director to discuss those additional consequences. He also met with Mr. Jordan and Mr. Pollaro when the vape possession incident occurred, and his father received notice of the detention.

In Goss v. Lopez, 419 U.S. 565 (1975), the Court decided that the student must be given "oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story." Id. at 581. The Court held that "the student [must] first be told what he is accused of doing and what the basis of the accusation is." Id. at 582. Due process is afforded if the student "at least ha[s] the opportunity to characterize his conduct and put it in what he deems the proper context." Id. at 584.

Thus, the Palmer court concluded that the school afforded Palmer with adequate due process after considering the Goss requirement and that additional due process was unnecessary for an athletic suspension from the same action resulting in an educational suspension. Palmer, 868 F.2d at 94–96. Moreover, the required notification of the charges and their basis need not "include a statement of the *penalties* that could be imposed in the course of the proceeding." Id. at 94 (emphasis in original). Here, L.G. received notice and opportunity to discuss the charges from his February 26, 2025, vaping possession incident, and the evidence against him.

Yet, the petitioner's claim regarding due process focuses on the Substance Abuse Policy's consideration of a refusal for drug testing as a violation of the policy. In other words, his due process claims stem from the prior disciplinary action under the Substance Abuse Policy, which are barred by the res judicata doctrine, and seek to challenge the regulatory and statutory authorities giving the District the ability to treat a drug-testing refusal as a policy violation, which is a facial attack on the policy. Thus, I **CONCLUDE** that the petitioner has not demonstrated by a preponderance of evidence that an Equal Protection or Due Process violation occurred here, and that a facial due process challenge to the drug-testing policy is not within the OAL's jurisdiction.

Title IX

Petitioner also asserts that the District violated Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.), which provides that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." To recover under Title IX, a plaintiff must establish severe, pervasive sexual harassment that impacts the victim's educational experience to a point in which the plaintiff is "effectively denied equal access to an institution's resources and opportunities." DeJohn v. Temple Univ., 537 F.3d 301, 316 n.14 (3d Cir. 2008) (citations omitted). The petitioner does not refer to any sexual harassment of L.G., let alone supports that the District engaged in any sexual harassment through its actions or policies. Thus, I also **CONCLUDE** that the petitioner did not establish a claim under Title IX by a preponderance of the evidence.

Section 504

Section 504 of the Rehabilitation Act of 1973 (Section 504) prohibits the exclusion of disabled individuals from participating in or obtaining benefits under programs receiving federal funding:

> No otherwise qualified individual with a disability in the United States, as defined in . . . [29 U.S.C. § 705(20)] shall, solely by

> reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . . .
>
> [29 U.S.C. § 794(a).]

The petitioner also asserts that the District's policies violate Section 504. However, this argument is unclear as his son has no disability, and the District did not exclude his son from participating in baseball games because of a disability. Instead, the District disciplined L.G. under its Student Code of Conduct and Athletic Code of Conduct for violating the Student Smoking Policy. Thus, I further **CONCLUDE** that the petitioner did not establish a claim under Section 504 by a preponderance of the evidence.

In sum, I **CONCLUDE** that the petitioner has not established that the Board's actions were arbitrary, capricious, or unreasonable, that the Board acted without authority, or that his applied constitutional or other challenges have merit before the OAL, which warrants dismissal of his amended petition.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the Amended Petition of Appeal be **DISMISSED**.

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

This recommended decision may be adopted, modified, or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION,** who by law is authorized to make a final decision on 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.

March 2, 2026

DATE

NANCI G. STOKES, ALJ

Date Received at Agency: March 2, 2026

Date Mailed to Parties: March 2, 2026

APPENDIX

Witnesses

For petitioner:

None

For respondent:

Dr. Brian Kitchin

Exhibits

Joint:

J-1 District Substance Abuse Policy 5530

J-2 District Student Smoking Policy 5533

J-3 Initial Decision-Settlement, EDU 04134-24, dated May 16, 2024, and settlement agreement

J-4 Medical Examination Notification, dated February 26, 2025

J-5 District Student Code of Conduct

J-6 Student Discipline Incident Form, dated February 27, 2025

J-7 L.G.'s Student Discipline Incidents Report from October 10, 2024, through February 27, 2025

J-8 Correspondence to L.G.'s parents regarding the suspension concerning the February 27, 2025, incident

J-9 Student Safety Data System for other incident leading to removal, dated February 27, 2025

J-10 Email correspondence between L.G. and Dr. Kitchin, dated March 27, 2025

J-11 District Athletic Code of Conduct

J-12 L.G. and J.S.'s acknowledgment of the Athletic Code of Conduct, dated January 28, 2025

J-13 District Substance Abuse Regulation 5530

J-14 Email correspondence between L.G. and Dr. Kitchin, dated April 4, 2025

J-15 Email correspondence between L.G. and Dr. Kitchin, dated April 9, 2025

J-16 Email correspondence between L.G. and the West Milford Township Police Department, dated April 2, 2025

J-17 Hallway security video, dated February 26, 2025

J-18 Email report by Tommy Jordan, dated February 26, 2025