

New Jersey Commissioner of Education
Final Decision

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

Petitioner,

v.

Board of Education of the Borough of
Hawthorne, Passaic County,

The Board.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL) issued after remand, the exceptions filed by petitioner pursuant to *N.J.A.C. 1:1-18.4*, and the Hawthorne Board of Education's (Board) reply thereto, have been reviewed and considered.¹

In this matter, petitioner appeals the Board's decision to suspend her minor child, L.S., for three days following a bias-related incident. When arguing with another student in class about playing basketball, L.S. told the other student: "I would whoop you in basketball just like how I whooped you in the 1800's." During the ensuing investigation conducted at school, L.S. admitted to making this statement, which was also overheard by his classmates. The Board determined that L.S.'s conduct did not constitute harassment, intimidation, or bullying (HIB) because the

¹ The Commissioner remanded the matter to the OAL on March 30, 2026, for clarification regarding the date the record was closed and whether the Administrative Law Judge (ALJ) considered petitioner's January 9, 2026, written submission. On remand, the ALJ clarified that she fully considered the submission before closing the record.

conduct did not substantially disrupt or interfere with the school operations or rights of other students. However, the Board imposed a three-day out-of-school suspension upon L.S. for violating the code of student conduct (Code).

Petitioner's appeal seeks expungement of the suspension on the grounds that it was based on selective enforcement, flawed investigative procedures, and a mischaracterization of L.S.'s actions. After the matter was transmitted to the OAL, the Board filed a motion for summary decision, which petitioner opposed. The ALJ granted the Board's motion for summary decision and ordered that the petition be dismissed. At the outset, the ALJ found that petitioner never alleged in the appeal that the Board's actions were arbitrary, capricious, and unreasonable. The ALJ nonetheless reviewed the Board's actions and concluded that it did not act arbitrarily, capriciously, or unreasonably. While the ALJ recognized that petitioner disagreed with the discipline imposed for various reasons, the ALJ found that such disagreement does not establish that the Board acted unreasonably or with an improper motive.

In her exceptions, petitioner requests a remand for further proceedings and argues that the ALJ's decision neither fully addresses the arbitrary, capricious, or unreasonable standard nor whether the disciplinary determination was consistent with the investigative findings. Petitioner claims that it was alleged in her appeal papers that the Board's conduct was arbitrary, capricious, or unreasonable, and that the record reflects mutual misconduct by both L.S. and the victim. However, only L.S. was suspended, and the ALJ's decision does not meaningfully analyze the Board's selective enforcement of the Code. In addition, petitioner asserts that genuine issues of material fact regarding the students' conduct, the significance of corroborating witness

statements, and whether similarly situated students were treated consistently under the Code precluded summary decision.

In reply, the Board argues that the Initial Decision should be adopted because the ALJ correctly determined that petitioner failed to allege in the appeal papers that the Board's actions were arbitrary, capricious, or unreasonable, and correctly determined based upon the record that the Board did not act arbitrarily, without rational basis, or with improper motives. The Board asserts that no material facts are disputed, and that no additional facts are necessary to decide this case. Moreover, the Board contends that petitioner's claims about the Board's treatment of other students under the Code are not the subject of this appeal.

Upon review, the Commissioner adopts the Initial Decision as the final decision in this matter for the reasons explained herein. The Legislature granted local boards of education sweeping authority to enact rules regarding operation of their public schools. *N.J.S.A. 18A:11-1(c), (d); Bd. of Educ. of City of Plainfield v. Cooperman*, 105 N.J. 587, 596 (1987). Boards may suspend a student from school if the student's conduct constitutes "good cause" for suspension. *N.J.S.A. 18A:37-2*. While the statute lists several examples of conduct that satisfy the good cause standard, boards may suspend a student for other reasons so long as the good cause standard is met. State education regulations require boards to implement a code of student conduct aimed at "foster[ing] the health, safety, and social and emotional well-being of students," which must establish parameters for discipline and include a description of conduct that will result in suspension. *N.J.A.C. 6A:16-7.1*. In this case, the Board's Code defines a bias incident as any communication directed at a person on the basis of New Jersey's nine protected classes,

including race. The Code requires a 1 to 4 day out-of-school suspension for a first offense, along with a HIB investigation.

Board action conducted within the ambit of its broad discretionary authority “may not be upset unless 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). Board determinations are “entitled to a presumption of correctness.” *Thomas v. Bd. of Educ. of Twp. of Morris*, 89 N.J. Super. 327, 332 (App. Div. 1965), *aff’d*, 46 N.J. 581 (1966). The heavy burden of demonstrating that board action was arbitrary, capricious, or unreasonable rests upon the petitioner. “[T]o prevail, petitioner[] must demonstrate that the Board acted in bad faith, or in utter disregard of the circumstances before it.” *G.H. and E.H., on behalf of K.H. v. Bd. of Educ. of Borough of Franklin Lakes, Bergen Cnty.*, EDU 13204-13, Initial Decision at 20 (Feb. 24, 2014), *adopted*, Comm’r, Final Decision No. 157-14 (Apr. 10, 2014).

Petitioner’s exceptions, which do not include citation to any legal authority, are unavailing. A hearing was not necessary to establish the material facts in this matter when L.S. admitted to making the comment. While petitioner is entitled to disagree with the Board’s decision, the Commissioner concurs with the ALJ that said disagreement does not establish that the suspension was arbitrary, capricious, or unreasonable. Furthermore, the Commissioner agrees with the ALJ that no genuine issues of material fact exist. The crux of petitioner’s objection is that her son was suspended for his comments while the victim was not suspended for his comments. According to petitioner, this shows that the Board is selectively enforcing the Code. However, petitioner’s position is not supported by the record. Petitioner failed to establish that

the Board selectively enforced the Code or otherwise acted in bad faith or in utter disregard of the circumstances.

While it is undisputed that the victim called L.S. a “skinny Lizzo” and was not disciplined for that comment following a HIB investigation, that fact does not warrant the conclusion that the Board’s suspension of L.S. was arbitrary, capricious, or unreasonable.² The incidents are entirely different. The victim’s comment to L.S. did not constitute a bias-related incident under the Code. However, L.S.’s comment to the victim based on his race did constitute a bias-related incident under the Code. The Board had good cause to suspend L.S., and the discipline imposed was consistent with the investigative findings contained in the record. By conducting a HIB investigation and suspending L.S. for a first offense bias-related incident, the Board fully adhered to its Code.

Accordingly, the Initial Decision is adopted as the final decision in this matter, the Board’s motion for summary decision is granted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.



COMMISSIONER OF EDUCATION

Date of Decision: July 29, 2026
Date of Mailing: July 29, 2026

² According to the victim, a “skinny Lizzo is when you eat a lot but still look skinny.” The Commissioner does not condone the use of body-shaming language of any kind.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 05349-26

AGENCY DKT. NO. 226-7/25

(On Remand EDU 13921-25)

D.S., ON BEHALF OF MINOR

CHILD L.S.,

Petitioner,

v.

BOARD OF EDUCATION OF THE

BOROUGH OF HAWTHORNE,

PASSAIC COUNTY,

Respondent.

D.S., petitioner, pro se

Brian Gauthier, Esq., for respondent (Fogarty, Hara, LaPira & Cherry, attorneys)

Record Closed: April 8, 2026

Decided: May 13, 2026

BEFORE: **KIMBERLY K. HOLMES, ALJ**

STATEMENT OF THE CASE

The petitioner appealed respondent's decision to suspend the minor child under the Code of Conduct policy based on an inappropriate statement made to another student

during an argument in school concerning basketball. Must the decision stand? **Answer.** Yes. When a Board acts within its discretion, its decision must stand unless “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); N.J.A.C. 1:1-125(b).

PROCEDURAL HISTORY

On January 8, 2025, petitioner and another student were arguing in class about who could beat whom in basketball. At that time, petitioner told the student, “I would whoop you in basketball just like how I whooped you in the 1800’s.” After a thorough investigation, respondent decided that while the HIB allegation was unfounded, the petitioner violated the school’s Code of Conduct policy which resulted in a three-day suspension of the petitioner’s minor child.

On July 9, 2025, petitioner filed a petition of appeal with the Department of Education, Board of Controversies and Disputes, challenging the respondent’s determination.

On July 30, 2025, the Board of Controversies and Disputes transmitted the case to the Office of Administrative Law (OAL), which was received on August 4, 2025, as a contested case 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-13, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

On September 11, 2025, and October 16, 2025, I held prehearing conferences and scheduled a hearing for January 20, 2026, and January 21, 2026.

On December 19, 2025, the Board filed a motion for summary decision. On December 25, 2025, petitioner filed an opposition. On January 5, 2026, the Board filed its response, I received it on January 7, 2026. On January 5, 2026, the petitioner submitted a request to send a Reply in response to the Board’s Reply Brief of January 5,

2026. I granted the petitioner's request. On January 9, 2026, I received petitioner's Reply in response to the Board's Reply Brief of January 5, 2026, and closed the record.¹

On January 21, 2026, I issued my Initial Decision.

On March 30, 2026, this matter was remanded "for clarification regarding the date the record was closed and whether "[I] considered the petitioner's January 9, 2026, written submission before completing [my] Initial Decision."²

FINDINGS OF FACT

In considering the papers submitted in support of and in opposition to the motion for summary decision, and in viewing the evidence in the light most favorable to petitioner, I **FIND** the following as **FACT** for purposes of this motion only:

On January 8, 2025, petitioner and another student were arguing in class about who could beat whom in basketball. At that time, petitioner told the student, "I would whoop you in basketball just like how I whooped you in the 1800's."

After a thorough investigation, respondent decided that the HIB allegation was unfounded although three (3) other students stated that petitioner's minor child made similar statements concerning "whooping" another student "like I did in the 1800's."

The respondent determined that the conduct of petitioner's minor child did not substantially disrupt or interfere with the school operations or rights of other students.

On January 17, 2025, the respondent determined that while the HIB allegation was unfounded, the petitioner's minor child violated the school's Code of Conduct policy which resulted in a three-day out-of-school suspension of the minor child.

¹ After reviewing my original Initial Decision under OAL Dkt. No. EDU 13921-25, I realized the typographical error regarding the record closed date which should have been January 9, 2026.

² Pursuant to my email dated January 5, 2026, I advised petitioner that his response is due on or before Friday, January 9, 2026, which was submitted timely and accepted.

On January 17, 2025, and February 18, 2025, the petitioner's communication with respondent was a grievance appeal of the discipline the minor child received.

On February 18, 2025, the respondent determined that the statements made by the minor child were bias related under the Discipline Code of the school and that the three-day out-of-school suspension would stand.

On April 2, 2025, the petitioner requested that the January 8, 2025, incident be expunged because there was no harm to the other student and no corroboration that the statement made by the minor child was bias-related. The petitioner alleged for the first time that her minor child was targeted because the minor child is Muslim.

On April 25, 2025, the respondent rejected the new allegation of the petitioner concerning her minor child being targeted because of being a Muslim. The respondent also told the petitioner that there was corroborating evidence to support its decision that the statement made by the minor child was racially biased and in violation of the school's Code of Conduct.

On June 2, 2025, petitioner made another request for the respondent to reconsider the decision to suspend their minor child and to remove the disciplinary points received. The petitioner's husband admitted that the minor child's statement was "inappropriate" but that the investigation was not conducted properly as their minor child was treated unfairly.

On June 2, 2025, the respondent found no basis to reverse or modify the decision to suspend their minor child or to remove the disciplinary points received.

On June 27, 2025, the respondent notified the petitioner in writing that, after having reviewed the appeal request, the decision would stand.

On January 5, 2026, the Board filed its response which was received it on January 7, 2026.

On January 5, 2026, the petitioner submitted a request to send a Reply in response to the Board's Reply Brief of January 5, 2026. I granted the petitioner's request (email attached).

On January 9, 2026, I received petitioner's Reply in response to the Board's Reply Brief of January 5, 2026, and closed the record.

The petitioner's submission of January 9, 2026, was fully considered before completing my Initial Decision of January 21, 2026.

CONCLUSIONS OF LAW

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 by a preponderance of the evidence 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 (February 6, 2008), aff'd, Comm'r (April 25, 2013) (citing Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965), aff'd, 46 N.J. 581 (1966)). In other words, the burden is a heavy one.

In this case, the petitioner did not allege that the respondent's actions were arbitrary, capricious or unreasonable in this appeal. Nevertheless, after a thorough investigation, respondent decided that the HIB allegation was unfounded although three (3) other students stated that petitioner's minor child made similar statements concerning "whooping" another student "like I did in the 1800's." The respondent determined that the conduct of petitioner's minor child did not substantially disrupt or interfere with the school operations or rights of other students. On January 17, 2025, the respondent determined that while the HIB allegation was unfounded, the petitioner's minor child violated the school's Code of Conduct policy which resulted in a three-day out-of-school suspension

of the minor child. Therefore, I **CONCLUDE** that the Board did not act arbitrarily, without rational basis, or induced by improper motives, and that its HIB determination and Code of Conduct determination must stand.

A party may move for summary decision upon any or all substantive issues in a contested case. N.J.A.C. 1:1-12.5(a). The motion for summary decision shall be served with briefs and may be served with supporting affidavits. Ibid. "The decision sought may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b).

In this case, petitioner disagrees with the respondent's decision that the minor child's statement to another student violated the school's Code of Conduct policy. That does not mean that the respondent's actions were absent on a rational basis or that there was an improper motive. In short, the petitioner has not demonstrated that the respondent acted in an arbitrary, capricious or unreasonable manner. Therefore, I **CONCLUDE** that no genuine issue of material fact exists and that the respondent is entitled to summary decision as a matter of law.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that respondent's motion for summary decision is **GRANTED** and that this case is **DISMISSED**.

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

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

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**. 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.

May 13, 2026

DATE



KIMBERLY K. HOLMES, ALJ

Date Received at Agency:

Date Mailed to Parties:

as