

L.S., on behalf of minor child, J.S., :
 PETITIONER, : COMMISSIONER OF EDUCATION
 V. : DECISION
 BOARD OF EDUCATION OF THE :
 TOWNSHIP OF PISCATAWAY, :
 MIDDLESEX COUNTY, :
 RESPONDENT. :

SYNOPSIS

In April 2016, petitioner filed an appeal seeking to reduce his daughter’s four-day out-of-school suspension, imposed by the respondent Board on J.S. for violating the school district’s written policy against cheating. School officials alleged that J.S. was among a group of students in an Honors Trigonometry class who took and worked on a test without the teacher present and without her authorization. While admitting that J.S. cheated, petitioner contended that the penalty was excessive and unwarranted. The Board maintained that the penalty was appropriate and that the Commissioner cannot set aside the determination of a local board unless a finding is made that the action was arbitrary, capricious or unreasonable.

The ALJ found, *inter alia*, that: pursuant to *N.J.S.A.* 18A:37-2, local boards of education have the authority to impose discipline upon students, including “suspension or expulsion from school”; it is well established that the Commissioner will not substitute her judgment for that of the local board unless it can be shown that the board’s decision was arbitrary, capricious or unreasonable; petitioner bears the burden of proof to show that the board acted in bad faith, or in disregard to the circumstances of the case; J.S. admitted verbally and in writing that she cheated on the test; there is no evidence of any coercion of J.S.’s admission; every witness presented was credible and their testimony corroborated that of other witnesses; and petitioner failed to present any evidence to dispute the above findings. The ALJ concluded that the petitioner failed to show that the Board’s finding that J.S. cheated was arbitrary, capricious or unreasonable; further, the four-day out of school suspension was a reasonable penalty for petitioner’s actions. Accordingly, the ALJ affirmed the Board’s penalty imposition, and denied the relief requested by the petitioner.

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

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

March 2, 2017

OAL DKT. NO. EDU 6869-16
AGENCY DKT. NO. 124-4/16

L.S., on behalf of minor child, J.S., :
PETITIONER, : COMMISSIONER OF EDUCATION
V. : DECISION
BOARD OF EDUCATION OF THE :
TOWNSHIP OF PISCATAWAY, :
MIDDLESEX COUNTY,¹ :
RESPONDENT. :

The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. Petitioner filed exceptions on February 17, 2017.²

Upon such review, the Commissioner adopts the Administrative Law Judge's recommended decision for the reasons expressed therein. Accordingly, the petition is dismissed with prejudice.

IT IS SO ORDERED.³

ACTING COMMISSIONER OF EDUCATION

Date of Decision: _____

Date of Mailing: _____

¹ Teresa Rafferty, Jason Lester, and Antione Gayles, were named respondents and were parties to this matter pursuant to petitioner's initial filing. However, on August 11, 2016, the Administrative Law Judge issued an order dismissing the case against the aforementioned respondents; that order is likewise hereby adopted.

² Petitioner's exceptions were not timely filed in accordance with *N.J.A.C.* 1:1-18.4. Accordingly, the exceptions were not considered by the Commissioner.

³ This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A.* 18A:6-9.1)



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 6869-16

AGENCY DKT. NO. 124-4/16

L.S. ON BEHALF OF MINOR CHILD, J.S.,

Petitioner,

v.

**TOWNSHIP OF PISCATAWAY BOARD
OF EDUCATION, MIDDLESEX COUNTY, AND
TERESA RAFFERTY, JASON LESTER, AND
ANTOINE GAYLES, TEACHERS,**

Respondents.

L.S., petitioner pro se

David B. Rubin, Esq., for respondents (Law Office of David B. Rubin, attorney)

Record Closed: November 30, 2016

Decided: January 17, 2017

BEFORE **DANIELLE PASQUALE**, ALJ:

STATEMENT OF THE CASE

This is an appeal by petitioner, L.S., on behalf of his sixteen-year-old daughter J.S., seeking to reduce as excessive a four-day out-of-school suspension imposed by respondent Board of Education of the Township of Piscataway ("Board") on J.S. for a

violation of its written policy against “cheating.” School officials allege that, while in Honors Trigonometry class, J.S. took and worked on a test without the teacher present and without her authorization, changed answers, and worked with other members of the class to change answers on a test previously proctored by the teacher. To be clear, the math teacher proctored the initial part of the test and then allowed additional time at a later date to complete the test.

While admitting that she cheated, the petitioner contends that the penalty is unwarranted. The Board maintains that the penalty was appropriate and that the Commissioner of Education cannot set aside its determination unless a finding is made that the action was arbitrary, capricious, or unreasonable.

PROCEDURAL HISTORY

By notice dated January 22, 2016, the Piscataway High School dean of students for the eleventh grade, Herbert Jermaine Robinson, as per vice principal Dr. Antoine Gayles, notified J.S.’s father that J.S. would receive a four-day out-of-school suspension for cheating. (R-7.) L.S. sought a review of the decision, and on or about April 4, 2016, the Board denied L.S.’s appeal, upheld the suspension assessed to J.S., and refused expungement of same.

L.S. filed an appeal to the Commissioner on April 25, 2016. Subsequently, the matter was transmitted to the Office of Administrative Law (“OAL”), where on May 5, 2016, it was filed for a hearing as a contested case. On or about July 18, 2016, L.S. filed a “Motion to Dismiss Without Prejudice Case Against Less Than All Parties.” Counsel for the Board, David B. Rubin, requested similar relief on his clients’ behalf. As such, he drafted a form of Order at my request which this tribunal signed on August 11, 2016, dismissing the case against individual respondents Teresa Rafferty, Jason Lester, and Antoine Gayles, leaving the issue of whether the discipline imposed upon J.S. was appropriate. On September 30, 2016, this tribunal signed a Protective Order protecting any personally identifiable information pertaining to students enrolled in the Piscataway Township School District. The OAL held a hearing on October 18, 2016. Upon receipt of post-hearing briefs, the record closed on November 30, 2016.

FACTUAL DISCUSSION AND FINDINGS

The following facts are uncontroverted, and I **FIND**:

L.S. appealed the matter of J.S.'s discipline through the eleventh-grade dean of students, the assistant principal, the principal, and, finally, the superintendent. Superintendent Teresa Rafferty affirmed principal Jason Lester's decision to deny L.S.'s requested expungement of J.S.'s discipline from her academic record.

L.S. appealed again to the full Board, and a hearing was held on April 14, 2016, before the Piscataway Township Board of Education in closed session. L.S. appeared with attorney Ira Ginsburg, Esq., and Mr. Rubin appeared on behalf of the Board. L.S. put on a lengthy presentation before the Board. His attorney was present, but did not take part in the presentation.

Mr. Rubin informed Mr. Ginsburg by letter dated April 18, 2016, that a hearing was conducted on April 14, 2016, on the appeal of the superintendent's decision to uphold J.S.'s suspension and the Board's refusal to expunge same. Mr. Rubin noted that the Board deliberated on the matter in closed session later that evening and directed him to inform L.S. through counsel that the superintendent's ruling was upheld by the Board "substantially for the reasons expressed in her written decision." (See R-11, citing R-10.)

Testimony at the OAL Hearing

At the OAL hearing, L.S. produced no witnesses to attack the accounts or credibility of any of the witnesses that testified at the OAL hearing, and he did not argue that J.S. did not cheat. Rather, he argued that the charge should have been different and the penalty lessened or expunged. He agreed that the school district should put on its case first, and he would cross-examine its witnesses to help expedite the hearing and streamline the case. L.S. agreed that he would have more latitude with the witnesses to ask questions in a leading manner. He never produced J.S. to refute the

accuracy or voluntary nature of the confession. He never insinuated that J.S.'s confession to cheating was persuaded or refuted same. I **FIND**, as the Board did, that J.S. admitted to cheating and that J.S.'s story is consistent with that of the other students who were implicated and ultimately confessed to cheating in an identical manner to J.S.

In support of that finding, the following witnesses testified.

Carolyn Lee

Carolyn Lee, a math teacher at Piscataway High School, testified that she taught J.S. and others in a rigorous Honors Trigonometry and Analytic Geometry class in period 5. The class was comprised mostly of junior and sophomore honors students, known as the "top kids in the school." Ms. Lee explained that they are competitive with themselves and others. On December 18, 2015, while she was administering a test involving solving trigonometry equations, there was a lock-down drill. The class stopped taking the test, and Ms. Lee explained to the students that in a subsequent class she would give them additional time (approximately ten to fifteen minutes) to go over their answers and complete any portions of the test they did not get to on the day the test was interrupted by the drill. Ms. Lee noted that this period 5 math class was held in a classroom shared by several teachers, as it was wheelchair accessible, and one of her students used a wheelchair. She testified that she had a drawer in a file cabinet in this classroom to store the items she needed to effectively teach the class, and that she housed the unfinished tests in that cabinet after the lock-down drill began.

Ms. Lee continued that after that weekend, and due to a rotating schedule, the next possible school day to complete the test was December 22, 2015. However, on that date Ms. Lee was out of school sick. As a result, a lesson plan was given to the substitute teacher. (Exhibit R-1.) Ms. Lee confirmed that nowhere in that lesson plan for period 5 (or any other period) does it mention that the test that was begun on December 18 should be administered. Rather, the note indicates that the students should work on a "Law of Sines packet." Ms. Lee noted that she had no idea who the substitute teacher would be and never corresponded with anyone, other than leaving a

lesson plan in the normal course. Ms. Lee continued that she was out of work sick on December 23, 2015, as well, which went right into winter break. She testified credibly that during winter break, she had no idea that any alleged cheating incident had occurred in her class.

After the winter break, Ms. Lee met with her period 5 math class on the first possible date, which was Monday, January 4, 2016. Ms. Lee discussed that she wanted to give the students the extra time to complete the test that was begun on December 18. Some of the kids resisted, stating that they were not ready because they forgot about completing the test over the long break. She instructed the students that she would give the remaining time for the test during the “next class,” and there were no more discussions regarding the test that day. Specifically, no one mentioned that anyone already finished the exam while she was out sick.

The following day, January 5, 2016, a student from another class came to Ms. Lee to explain that something happened on December 22, 2015, in her class, although that student was not a witness to what occurred. Ms. Lee relayed this information to Mr. Ross, the Math Department chair, on January 6, 2016, and he launched an investigation. He addressed Ms. Lee’s period 5 math class on January 6, 2016. Mr. Ross spoke to the students about character and honesty. He said that honesty would mean something in subsequent letters of recommendation. He asked any student with knowledge of the alleged cheating incident to come forward with information to either him or Ms. Lee, and explained that consequences would likely follow.

Ms. Lee testified that thereafter she received an email from student L.T., who apologized about the cheating incident. (R-2.) L.T. revealed that she had been looking for a worksheet and she went into Ms. Lee’s designated drawer, at which point she noticed the tests. She admitted to taking the exams without permission, and, fearing a lack of time to complete the tests, handed out the test to the majority of the class, who agreed to work on it separately, and then she and others worked on the test for fifteen minutes.

On January 7, 2016, another student, A.L., emailed Ms. Lee admitting to being involved in the cheating, as well. A.L. acknowledged that she worked on the test inappropriately, and she named several other students involved on her “side of the room.” A.L. did not implicate the petitioner, J.S. She noted that she had been afraid to come forward due to pressure from other students that were involved.

On cross-examination, L.S. attempted to elicit an admission from Ms. Lee regarding peer review and peer grading, and whether the incident in question could have been seen as allowed activity. Ms. Lee testified credibly that students would sometimes be asked to exchange tests and grade them to learn from and identify their mistakes. However, that was done under her supervision, with color pencils or highlighters. In addition, Ms. Lee noted that such an exercise had been used only approximately two times prior to the date when the alleged cheating occurred, and certainly was not used on December 22, 2015.

Further, L.S.’s cross-examination of Ms. Lee only strengthened the notion that in no way would Ms. Lee have allowed student access to the tests or anything else in the drawer. She noted that possibly she would allow access if a student forgot a textbook and needed to borrow one, but expressly disallowed anything else. Further, Ms. Lee noted that when Mr. Ross addressed the class he did not promise any favored treatment if the students admitted cheating or implicated anyone else in cheating. Lastly, cross-examination of Ms. Lee established that Mr. Ross memorialized his investigation with what students admitted to him. (See R-5.)

Daniel Ross

Daniel Ross is the chair of the Math Department at Piscataway High School, as he was on the date in question. In January 2016 he became aware of an allegation of cheating in Ms. Lee’s period 5 math class that occurred in late December 2015. He was notified by Ms. Lee that a student reached out to her about the alleged incident, at which point he addressed her class in order to launch an investigation into the incident.

He memorialized the chronology of his investigation and testified consistently and credibly at the OAL hearing. (See R-13.) He noted that on Friday, December 18, students in Ms. Lee's Trigonometry and Analytic Geometry period 5 class took an assessment where time ran short, and were told that they would be given extra time to finish the exam in the next class. On Monday, December 21, 2015, period 5 did not meet due to the rotating schedule. On Tuesday, December 22, 2015, Ms. Lee was absent from school, and it was rumored that she would be out the following day. Ms. Lee left plans out for the substitute for the class to work on a packet of problems on December 22, 2015, the date of the incident in question. On Wednesday, January 6, 2016, Ms. Lee informed Mr. Ross of the cheating issue after she was tipped off by a student in a different class. Mr. Ross then spoke with period 5 math student L.T. during the last period of the day, at which time L.T. acknowledged working on the exam on December 22, 2015.

As a result of this admission, on January 7, 2016, Mr. Ross spoke with Ms. Lee's period 5 class about character and taking responsibility for their actions. He told them that anyone with information should come forward. He noted that these are the most exemplary academic students, and that he expects the same exemplary character. Students came to see him that afternoon, and he received a parent call that day. He testified that additional students contacted both Ms. Lee and him via email admitting having inappropriately worked on the test. He stated specifically that the admissions noted that they went into Ms. Lee's designated cabinet, removed their exams, and worked on their exams during her absence, and then replaced the exams in the drawer as if it had never happened. On January 8, 2016, J.S. and two other students came to see Mr. Ross in the morning to admit to taking and working on the exam without permission. Mr. Ross and Ms. Lee were contacted by numerous others throughout that day, as well.

In short, Mr. Ross gave detailed testimony without prejudice. He testified credibly that he was interested in a fair investigation, and that most students came to him voluntarily and without any pressure. He impressed upon the students that their actions in period 5 on December 22, 2015, would not be fair to those in the class who did not cheat. His report supports his in-person testimony, as he testified that those

notes were taken contemporaneously as students came forward. He noted that these students were the highest performing kids in their sophomore and junior classes, respectively, and that they were all bound to get into great colleges. They were all involved in academic clubs and activities, and he celebrated them for that, as did the faculty as a whole. In short, his testimony revealed disappointment. It appeared that the crux of that disappointment was that not only did they act in contravention of Ms. Lee's instructions, but some students got the exams and others did not, giving the cheaters an unfair advantage.

As for J.S. specifically, Mr. Ross testified clearly and credibly that she never said that she felt she had permission to work on the exam or to access the cabinet in question. In fact, he stated that J.S. was not trying to make an excuse, except to say that she knew the class would, at some point, get extra time to complete the exam. She never made an argument to Mr. Ross that what she did was right, and in fact admitted that it was wrong. He noted that he never had contact with J.S. after that, and that he sent the documentation of his investigation to the vice principal, Dr. Gayles.

On cross-examination, Mr. Ross further bolstered his credibility by noting that he did not go to speak to any of the students who were exonerated or not implicated. He clearly was not on a fishing expedition to implicate additional students. He also noted that he was not responsible for the discipline, but only the investigation. As such, he moved the matter to the administration to deal with discipline. He stated also that he was not aware of any other student that implicated J.S., if it was not revealed in R-5. This shows that he stuck to facts that he knew firsthand and did not rely on rumor or innuendo as a result of any preparation for this hearing.

Dr. Antoine L. Gayles

Dr. Gayles testified that he is the assistant principal of Piscataway High School. He is responsible for doling out the discipline for cheating and other offenses. He testified that after Mr. Ross concluded his investigation of the December 22, 2015, incident, he issued short-term, or four-day, suspensions to all seven students involved, including J.S., for cheating on the test. Dr. Gayles testified that the offense carried an

exposure of up to ten days. He indicated that Dean Robinson was the individual tasked with advising the students' parents of the suspensions. (See R-6; R-16.) Written discipline referral notices were sent out to each family. (See R-7.)

Cross-examination of Dr. Gayles confirmed that it was his understanding that the students would be given extra time on the test, but that they were not afforded access to the test without the teacher's consent. Dr. Gayles testified that the decision to suspend the students in question was not made after the confessions alone. As an administrator, and as a parent himself, Dr. Gayles wanted the students to be afforded due process, so he wanted to consult with the dean to make sure that the confessions were legitimate and that the chain of command was followed. To that end, after the cheating was reported, the investigation and subsequent report by Mr. Ross were reviewed in tandem with the information obtained by Ms. Lee.

Herbert Jermaine Robinson

In the 2015–2016 school year, Herbert Jermaine Robinson was the dean of students for the eleventh grade at Piscataway High School, and was responsible for handling matters involving infractions or incidents and for issuing discipline. He testified that in January 2016 Dr. Gayles brought to his attention allegations of cheating in Ms. Lee's period 5 math class.

An investigation was done by Mr. Ross, and Dr. Gayles issued a four-day out-of-school suspension for each of the students involved. If the punishment were less than a suspension, Robinson could make the penalty decisions on his own. In this case, the decision to impose a suspension and length of same appropriately came from the vice principal, Dr. Gayles. The dean's job was to notify the parents of the discipline. Mr. Robinson had L.S.'s primary contact information (R-16), but he was only able to leave a voice mail. He then decided to try L.S.'s cell phone. He noted that on January 22, 2016, the same day, the numbers show an incoming call from L.S.'s home phone. Mr. Robinson testified credibly that he usually reaches out to parents via cell number, as they are usually most available there. It should be noted that Mr. Robinson presented

well in court and obviously had no axe to grind with L.S., J.S. or any of the other individuals involved.

Jason Lester

Mr. Lester is, and was at the time of the incident, the principal of Piscataway High School. He testified credibly that the cheating came to his attention through Vice Principal Gayles as an appeal to the principal from L.S. on J.S.'s behalf. His March 4, 2016, meeting with L.S. was memorialized in a letter. (R-9.) Most notably, Principal Lester noted that L.S. never denied that J.S. cheated or asserted that she was given permission to take the exam without Ms. Lee's authorization. He stated convincingly that his letter accurately reflects the issue.

When questioned by L.S. on cross-examination, about why the substitute teacher was not questioned regarding the incident in question, Mr. Lester stated simply that all the students involved admitted to it, so there would be no reason to involve the substitute. He also testified convincingly that he had no knowledge of a child of a prior teacher being in Ms. Lee's period 5 math class, as insinuated by L.S. on cross-examination. Principal Lester testified convincingly that he does not know if J.S. changed any answers, or if J.S. shared answers with other students, or if J.S. went over the allotted time for the test. All of these answers speak to Principal Lester's credibility, in that he conducted a fair appeal and was detailed in addressing L.S.'s concerns. Lastly, he noted that his level of involvement in an investigation and doling out of discipline amounts to "no involvement," unless there is an appeal from the parent, as there was in the instant matter.

Teresa Rafferty

Superintendent of Piscataway Public Schools Teresa Rafferty testified that as part of her duties she attends the Board of Education meetings, which are held approximately twice a month. At the January 28, 2016, meeting, members of the public came forward, including L.S., who gave a lengthy presentation regarding his daughter J.S. Prior to that Board of Education meeting, Ms. Rafferty had no knowledge of either

L.S. or J.S. At the meeting, she told L.S. to go up the chain of command regarding an appeal at the school level.

The second Board of Education meeting that involved L.S. and J.S. was on April 4, 2016. After closed session, L.S. was denied his appeal to expunge J.S.'s suspension. L.S. had an attorney, Ira Ginsburg, and L.S. recorded the session. Superintendent Rafferty's findings, memorialized on April 6, 2016, included that J.S. worked on the test and made at least one change to her exam before returning it. Ms. Rafferty credibly testified that the substitute teacher was not questioned because J.S. came forward with her own account of what occurred, which was consistent with statements given by the other students involved. Superintendent Rafferty noted that L.S. never said that his daughter was not guilty of any offense, but asserted that the action should be taken "in context." It was clear that J.S. knew that what she had done was wrong, and she never claimed that she relied on any permission from the substitute. Most notably, Ms. Rafferty stated, and wrote in her Appeal Determination, that "the investigation also disclosed evidence of the students' conscious awareness of wrongdoing as the behavior was occurring in the classroom." (R-10.) Ms. Rafferty bolstered her determination by noting that on May 24, 2016, she received an email from J.S. (R-12) acknowledging that J.S. made a "stupid decision" and a "stupid mistake," albeit disagreeing with the characterization of "cheating."

On cross-examination, Superintendent Rafferty testified that seven students were suspended, and all got the same penalty. Superintendent Rafferty said that she did not know whether J.S. colluded with other students or used any study aids when she took the test and worked on it. J.S. did indicate that it was her opinion that no sophomores were involved. Superintendent Rafferty was prepared and professional, and also did not have any personal issue with L.S. or J.S., and thus was highly credible.

Findings of Fact

I **FIND** the following to be **FACTS**:

1. J.S. was in Carolyn Lee's Trigonometry and Analytic Geometry class, comprised of junior and sophomore honors students, during the 2015–2016 school year.
2. J.S. was a junior in the 2015–2016 school year.
3. On December 18, 2015, Ms. Lee administered a test involving trigonometry equations which was not completed due to a lock-down drill.
4. Ms. Lee informed the students that they would be able to complete the final ten to fifteen minutes of the test on another date that would be selected by the teacher.
5. The class in question is on a rotating schedule, and thus does not meet every day.
6. The next available day for the exam was December 22, 2015.
7. Ms. Lee was out sick on December 22, 2015, and left a lesson plan for a substitute teacher. (R-1.)
8. Ms. Lee was also out sick on December 23, 2015.
9. Ms. Lee's lesson plan made no mention of completing the test in question, but rather instructed the period 5 students to work on a "Law of Sines packet."
10. Ms. Lee had a wheelchair-bound student in the class in question, so the class was taught in a different classroom than her homeroom, and she kept the tests in a locked file cabinet in that classroom with her name on it.

11. Ms. Lee did not authorize the students to access the file cabinet unless expressly instructed.
12. Ms. Lee never instructed the substitute to administer the final portion of the exam, nor did she have any contact with the substitute teacher or know who the substitute would be that day.
13. Ms. Lee had no knowledge of any cheating incident over the winter break.
14. Upon returning from break on Monday January 4, 2016, Ms. Lee went to give the students the exam back. Some students explained that they forgot about the test over break and were not prepared. Ms. Lee told the students that she would give it to them on the next available class day.
15. On January 5, 2016, Ms. Lee was notified by another student that cheating allegedly occurred in her class on December 22, 2015, while she was out sick.
16. On January 6, 2015, Ms. Lee notified the Math Department chair, Mr. Ross, who launched an investigation.
17. On January 6, 2016, after school, Ms. Lee received an email from a student, L.T., who admitted to taking the tests without permission.
18. On January 7, 2016, other students involved in the taking of the exams from the file cabinet and working on the exams came forward implicating themselves and others.
19. On January 8, 2016, J.S. came forward with several friends to admit to taking and working on the tests without permission on December 22, 2015.

20. All students involved were given the same penalty of a four-day out-of-school suspension, and notified of same on January 22, 2016.

CONCLUSIONS OF LAW

Local boards of education are charged with protecting the health and welfare of the students entrusted to their care, and with ensuring that a thorough and efficient education is provided every day to every student in an environment that is safe, orderly and free from disruption. N.J.S.A. 18A:37-2 establishes the authority of local boards to impose discipline, and provides that “[a]ny pupil who is guilty of continued and willful disobedience, or of open defiance of the authority of any teacher or person having authority over him, . . . shall be liable to punishment and to suspension or expulsion from school.”

Disciplined students retain extensive due-process rights. Goss v. Lopez, 419 U.S. 565, 95 S. Ct. 729, 42 L. Ed. 2d 725 (1975); N.J.S.A. 18A:37-2.4; N.J.A.C. 6A:16-7.3. Where a long-term suspension or an expulsion is recommended by the administration, the student is entitled to a board-level hearing, and the ultimate determination whether to impose the recommended discipline rests in the discretion of the board. An appeal of the board’s decision may be made to the Commissioner of Education. N.J.S.A. 18A:37-2.4(c).

It is well established that the Commissioner will not overturn the decision of a local board in the absence of a finding that the action below was arbitrary, capricious, or unreasonable. T.B.M. v. Moorestown Bd. of Educ., EDU 2780-07, Initial Decision (February 6, 2008), adopted, Comm’r (April 7, 2008), <<http://njlaw.rutgers.edu/collections/oal/>> (citing Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965), aff’d, 46 N.J. 581(1966)). The Commissioner will not substitute his judgment for that of the board of education, whose exercise of its discretion may not be disturbed unless shown to be “patently arbitrary, without rational basis or induced by improper motives.” Kopera v. W. Orange Bd. of Educ., 60 N.J. Super. 288, 294 (App. Div. 1960). Our courts have held that “[w]here there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due

consideration, even though it may be believed that an erroneous conclusion has been reached.” Bayshore Sewage Co. v. Dep’t of Env’tl. Prot., 122 N.J. Super. 184, 199–200 (Ch. Div. 1973), aff’d, 131 N.J. Super. 37 (App. Div. 1974). Accordingly, the petitioner carries a weighty burden. The petitioner must demonstrate that the board acted in bad faith, or in utter disregard of the circumstances before it. T.B.M. v. Moorestown, supra, EDU 2780-07, Initial Decision (February 6, 2008), <<http://njlaw.rutgers.edu/collections/oal/>>.

Here, J.S. admitted verbally and in writing to the actions that the school and the Board subsequently found were substantiated. There is no evidence of any coercion of J.S.’s admission, and every witness presented was credible and their testimony corroborated the other. In fact, L.S., in his meeting with the superintendent, acknowledged that J.S. engaged in discipline-worthy behavior; however, he argued that her conduct did not rise to the level of “cheating,” but rather should have been considered “tampering.” However, L.S. did not present any evidence to dispute any of the findings above. I **CONCLUDE** that the petitioner has not shown that the Board’s finding that J.S. cheated was arbitrary, capricious, or unreasonable.

The next issue is the appropriateness of the penalty. The charge of cheating could carry an out-of-school suspension of up to ten days. The Board, rather than imposing the maximum penalty, imposed what Vice Principal Gayles called a “short-term” four-day suspension.

A balancing must be undertaken, with the knowledge that the Board is required to maintain discipline in its schools. Further, the Board’s discretionary powers must be given deference, as long as the Board did not act in an arbitrary, unreasonable, or capricious manner. I **CONCLUDE** that the petitioner has not shown that the Board’s imposition of a four-day out-of-school suspension was arbitrary, capricious, or unreasonable. On the contrary, the Board reasonably imposed a much lesser discipline than the maximum suspension.

Based on the foregoing facts and the applicable law, I **CONCLUDE** that the Board's imposition of a four-day out-of-school-suspension for J.S. for a violation of its policy against cheating should be **AFFIRMED**.

ORDER

It is **ORDERED** that the relief requested by petitioner is **DENIED**.

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

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

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

January 17, 2016
DATE

DANIELLE PASQUALE, ALJ

Date Received at Agency:

Date Mailed to Parties:

APPENDIX

WITNESSES

For petitioner:

L.S.

For respondents:

Carolyn Lee
Antoine Gayles
Daniel Ross
Herbert Jermaine Robinson
Jason Lester
Teresa Rafferty

EXHIBITS

For petitioner:

None

For respondents:

R-1 Instructions for Substitute, dated 12/22/15
R-2 E-mail from L.T. to C. Lee, dated 1/6/16
R-3 E-mails to/from A.L. and C. Lee, dated 1/7/16
R-4 E-mails to/from C.W. and L. Lee, dated 1/7/16
R-5 Carolyn Lee, Cheating Issue, December 22, prepared by D. Ross
R-6 Call Search Log
R-7 Student Discipline Referral Form
R-8 E-mails to/from A. Gayles and L.S., dated 1/27/16–1/28/16
R-9 Letter from J. Lester to L.S., dated 3/4/16

- R-10 J.S. Student Records Appeal Determination, by T. Rafferty, dated 3/4/16
- R-11 Letter from D. Rubin, Esq., to I. Ginsburg, Esq., dated 4/18/16
- R-12 Emails to/from J.S. and T. Rafferty, dated 5/24/16
- R-13 Chronology prepared by D. Ross, dated 6/27/16
- R-14 No exhibit
- R-15 No exhibit
- R-16 Family Contact Information