

New Jersey Commissioner of Education
Final Decision

C.M., on behalf of minor child, J.M.,

Petitioner,

v.

Board of Education of the Borough of Bergenfield,
Bergen County,

Respondent.

The record of this matter, the hearing transcript, and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered. The parties did not file exceptions.

Upon review, the Commissioner concurs with the Administrative Law Judge (ALJ) that the Board's decision to expel J.M. pursuant to *N.J.S.A. 18A:37-2* was not arbitrary, capricious, or unreasonable. The Commissioner also concurs with the ALJ that the pre-expulsion meeting convened between J.M. and the evaluating psychiatrist, who had previously assessed the student several times and was familiar with the student's disciplinary history, satisfied the intent of *N.J.S.A. 18A:37-2c* and District Policy 5620.

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.¹


COMMISSIONER OF EDUCATION

Date of Decision: April 21, 2025
Date of Mailing: April 22, 2025

¹ 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 11504-24

AGENCY DKT. NO. 266-8/24

C.M. ON BEHALF OF MINOR CHILD J.M.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE BOROUGH
OF BERGENFIELD, BERGEN COUNTY,**

Respondent.

C.M., petitioner, pro se

Rodney T. Hara, Esq., for respondent (Fogarty & Hara, attorneys)

Record Closed: January 10, 2025

Decided: February 24, 2025

BEFORE **R. TALI EPSTEIN**, ALJ:

STATEMENT OF THE CASE

Petitioner, C.M., on behalf of his son, J.M., appeals the determination by respondent Bergenfield Board of Education (the "Board") to expel J.M. from the Bergenfield School District (the "District") for assaulting a fellow student on school grounds, participating in a group of students that followed another student who then engaged in a stabbing, and impeding the ensuing criminal investigation by providing a

false name to the Bergenfield Police Department. Did the Board act arbitrarily, unreasonably, or capriciously in determining to expel J.M. from the District? No. Under N.J.S.A. 18A:37-2 and N.J.A.C. 6A:16-7.4, the District may expel a student if the student engages in the physical assault of another student and/or conduct that constitutes a continuing danger to the physical well-being of other pupils.

PROCEDURAL HISTORY

Following written notice to J.M.'s parents, on May 13, 2024, the Board conducted a disciplinary hearing, the purpose of which was to determine whether J.M. should be subject to further discipline after having been suspended for physically assaulting a student on April 9, 2024, and for engaging in further misconduct on April 22, 2024, by participating in a group of students that followed another student with the intention of provoking a fight, and impeding the ensuing criminal investigation by lying to the police. On May 20, 2024, five school days after the conclusion of the disciplinary hearing, the Board passed a resolution expelling J.M. from the District. By letter dated May 21, 2024, the Board issued a written statement of its decision and notified J.M.'s parents of the right to appeal. On August 16, 2024, C.M. filed a pro se petition of appeal on behalf of J.M. with the Department of Education's Office of Controversies and Disputes challenging the decision by the Board to expel J.M. and requesting emergent relief.

On August 19, 2024, the matter was transmitted to the Office of Administrative Law (OAL), where it was filed on August 20, 2024, for hearing as a contested case under N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -23.

At a prehearing conference on August 27, 2024, respondent confirmed that the District would continue to provide J.M. with an interim alternate education program during the pendency of the appeal. Accordingly, petitioner withdrew his application for emergent relief, and a two-day hearing on the underlying appeal was scheduled. The hearing took place on November 14 and November 26, 2024. The hearing proceeded as scheduled. C.M., J.M., and Anne Monahan, C.M.'s fiancée, testified on behalf of petitioner. Respondent presented the testimony of Dr. Christopher Tully, Superintendent of Schools ("Superintendent Tully"), Matthew McGrath, Acting Director of the Alternative School

(“McGrath”), Robert Ragasa, Assistant Principal of the Alternative School (“Ragasa”) and Dr. Morton Fridman (“Dr. Fridman”), the Board-certified child, adolescent, and adult psychiatrist who examined J.M. on behalf of the District. At the conclusion of the testimonial portion of the proceedings, the parties agreed to submit post-hearing submissions on or by January 10, 2025. Upon receipt and the parties’ exchange of same on January 10, 2025, I closed the record.

FINDINGS OF FACT

Based upon the testimony the parties provided, and my assessment of its credibility, together with the documents the parties submitted, and my assessment of their sufficiency, I **FIND** the following **FACTS**:

J.M. is sixteen years old. In April 2024, J.M. was a tenth-grade student enrolled in the District. For the 2023–2024 year, J.M. was placed at the Bergenfield Alternative School (the “Alternative School”), as a result of prior disciplinary actions taken against him.

Specifically, J.M. was suspended on December 10, 2021, for making “terroristic threats against the Roy Brown Middle School community” while he was a student at the middle school (the “2021 suspension”). (R-1.) In a group chat, J.M. referred to a “Bergenfield shooting” and his intention to “kill as many people as possible,” shoot students at the school, blow up the doors upon attempted escape, and possibly kill himself. J.M. named specific students as intended targets of the shooting.

Following a hearing on December 20, 2021, the Board resolved to continue J.M.’s 2021 suspension on a monthly basis through the 2021–2022 school year.¹ During this long-term suspension, J.M. was provided with home instruction. For the following school year (2022–2023), J.M. was permitted to return to a classroom environment, and was placed at the Alternative School.

¹ As part of the disciplinary proceedings, J.M.’s parents also signed an acknowledgment that “if [J.M.] engages in further conduct warranting expulsion,” his conduct would “constitute a knowing and voluntary waiver of his right to a free and public education” if the Board decided to expel him. (R-2.)

Only two months after returning to a classroom setting, on October 24, 2022, J.M. was again subject to disciplinary action for making terroristic threats. This time, the alleged threats concerned violence against J.M.'s female math teacher. In an email that J.M. titled, "I HATE MY MATH TEACHER, MANNNNNN" and sent to another teacher, J.M. attached a link to a 2013 article reporting on the killing of a female math teacher by a fourteen-year-old male high school student who slashed her throat in a school bathroom. (R-3, Ex. L.) As a result, J.M. was charged with various violations of Board policies, including District Policy 5520 ("Expulsion") and N.J.S.A. 18A:37-2 ("Causes for Suspension or Expulsion of Pupils"). (R-3.)

Notice of a disciplinary proceeding before the Board was provided to J.M.'s parents, and petitioner retained a lawyer to represent J.M.'s interests. A settlement among the parties was reached prior to the scheduled Board expulsion hearing.² As relevant here, the settlement agreement provided that J.M.'s suspension would continue to "at least the end of the 2022–2023 school year," and the Board agreed not to initiate expulsion proceedings, provided that J.M. complied with the terms of the settlement agreement. Among those terms was the requirement that J.M. submit to psychiatric examination by the psychiatrist designated by the Board at scheduled intervals. (R-4, ¶¶ 2, 5.)

Dr. Fridman, the Board-designated psychiatrist engaged by the District, first examined J.M. on or about February 9, 2023. Dr. Fridman concluded that J.M. suffered from "emotional difficulties, impulsivity and lack of social skills" that were likely to continue in the absence of effective treatment. (R-12.)

Dr. Fridman next examined J.M. on or about June 20, 2023. Dr. Fridman reported that J.M. was being seen by a private therapist and engaged in group therapy while his home suspension continued. Dr. Fridman noted that J.M. seemed motivated to return to school, but Dr. Fridman reserved further recommendation pending receipt of information from J.M.'s individual and group therapist. (R-13.)

² J.M. and C.M. also signed another acknowledgment that "if [J.M.] engages in further conduct warranting expulsion," his conduct would "constitute a knowing and voluntary waiver of his right to a free public education" if the Board decided to expel him. (R-4.)

On or about July 19, 2023, Dr. Fridman issued a follow-up report, which, among other things, included his professional recommendation that J.M. had not sufficiently progressed and that a mainstream school environment (*i.e.*, Bergenfield High School) was not appropriate for J.M. Dr. Fridman suggested that the Alternative School—J.M.’s placement prior to his most recent long-term suspension—should be considered. Accordingly, the Board passed a resolution continuing J.M.’s suspension on a monthly basis and J.M. began the 2023–2024 school year at the Alternative School, where he received alternate instruction during his continued suspension. (R-6.) In or about Fall 2023, J.M. was evaluated by a Child Study Team and was determined not to be eligible for services.

On January 10, 2024, Dr. Fridman examined J.M. again and was asked by the school to opine whether it would be “okay” for J.M. to participate in after-school athletics at Bergenfield High School. Dr. Fridman testified that he was told by the school that “they’d love to be able to give [J.M.] a chance to participate in athletics . . . [a]nd they wanted to know if I thought it was okay.” (Hr’g Tr. 2,³ 129:13-17.) Dr. Fridman recommended that J.M. continue receiving psychotherapy and noted that while “the Alternative School appears to be an appropriate placement for [J.M.] at this time,” in his professional opinion, “it would be reasonable to give [J.M.] the opportunity to participate in athletics at Bergenfield High School.” (R- 14.) Dr. Fridman, however, made clear that his recommendation was made contingent upon J.M.’s continued progress.

After reviewing Dr. Fridman’s recommendation, Superintendent Tully recommended that the Board agree to allow J.M. to participate in Winter Track at Bergenfield High School while his suspension continued. The Board agreed, and J.M. was scheduled to attend his first track meeting after school on April 9, 2024.

But J.M. never took advantage of that rehabilitation opportunity offered by the District. Instead, on the same day that he was supposed to participate in after-school athletics at Bergenfield High School, J.M. physically assaulted another student at the

³ References to Hr’g Tr. 1 and Hr’g Tr. 2 are to the transcripts of the proceedings from the first day of the hearing on November 14, 2024 and the second day of the hearing on November 26, 2024, respectively.

Alternative School. The violent incident, which occurred in the school hallway, was captured by video footage. (J-1.) The video clearly depicts J.M. waiting for his intended victim to emerge from the bathroom and immediately pummeling the stunned student as he exits through the bathroom door into the hallway. J.M. admits to punching the student several times in his head. There is also no dispute that the assault was premeditated; the victim was caught by surprise and did not fight back but ran away to avoid further assault.

As an immediate consequence of his assault on another student, J.M. was suspended from attending class at the Alternative School. For “fighting/assault,” the “Basic Progressive Disciplinary Guidelines” contained in the District’s Code of Conduct provided for a five-to-ten-day home suspension and “possible Bd. of Ed. review for expulsion hearing.” (R-9, Ex. E.) Following a ten-day suspension, five days of which J.M. served at the Suspension Alternative Program in Hackensack (in lieu of a home suspension), J.M. returned to the Alternative School on April 22, 2024.

On April 22, 2024, Superintendent Tully was also at the Alternative School to meet with then-Principal Fasano. The purpose of Superintendent Tully’s discussion with Fasano was to evaluate whether the April 9th assault warranted further discipline against J.M. beyond the ten-day suspension and whether a Board hearing to consider additional disciplinary action, including expulsion, was appropriate at that time. While Superintendent Tully was engaged in that evaluation, he received notice of a contemporaneous incident in which a District student was stabbed outside the Roy W. Brown Middle School, on Clinton Avenue in Bergenfield, shortly after dismissal. Among other students, J.M. was detained for questioning by the Bergenfield Police Department in connection with the incident, and he was again suspended from attending the Alternative School.

The District promptly conducted its own investigation, which considered information provided by the police, witness interviews and statements, and the review of video footage of the incident from various vantage points. J.M. was included among the witnesses who were interviewed and provided statements. As a result of the District’s

investigation, the following facts were determined regarding J.M.'s involvement in the April 22, 2024 incident:

Shortly after dismissal, on his first day back at the Alternative School following his suspension for the April 9th assault, J.M. was part of a large group of students that was harassing a small group of students and trying to provoke a fight. (R-11.) J.M. and other students in the large group were wearing hoods and masks to conceal their identity. The larger group, including J.M., followed the smaller group as they headed down the street. A verbal altercation between participants in the larger and smaller groups escalated, and it ended when a student in the smaller group used a knife to stab the leg of a student in the larger group, in what was determined by the District as "an attempt to defend himself." (R-11.) Immediately after the stabbing, as captured by the video footage, J.M. is seen running from the scene in the opposite direction. (J-2.) At no time, prior to the stabbing, did J.M. call for help. Nor did he walk away. Rather, the video footage shows that J.M., while on the periphery of the larger group, followed along with the group as they continued down the street while harassing the smaller group of students, until the stabbing ensued. (Ibid.) When he was stopped by the Bergenfield Police Department and questioned, J.M. provided the authorities with a false name. In lying to the police, J.M. impeded the police investigation.

On or about April 23, 2024, Superintendent Tully issued an incident report recounting the foregoing facts. (R-9, Ex. L.) In J.M.'s statement regarding the incident, he claimed that he was in the area because he "went to go buy food" and was "walking back home" when the police told him "not to leave" because they had to question him. (Ibid., Ex. N.) At the hearing before this tribunal, however, J.M. acknowledged that he "got [his] food" and, after that, he "ran into the whole crowd [*i.e.*, the larger group]," and "that's when I stayed." (Hr'g Tr. 1, 114:3–9.) But J.M. did more than "stay" to watch "what was going to happen." (Ibid., 115:11–14.) As reflected in the video footage, J.M. also followed along with the larger group as they headed down the street after the smaller group. (J-2.) On cross-examination, J.M. also admitted that he lied to the police. He expressed no remorse about concealing the truth about his identity from the police. In J.M.'s words, "everyone lies," and "I lie when I want to." (Hr'g Tr. 1, 117:5–14.) By his own admission, J.M. was not trustworthy. Indeed, prior to the April 22, 2024 incident, Dr.

Fridman noted in his January 10, 2024 psychiatric evaluation of J.M. that J.M. has a penchant for “stretching the truth to gain favor, despite them [sic] being clearly fabricated.” (R-14.) In contrast to J.M., I found respondent’s witnesses to be candid and the basis for their determinations regarding J.M.’s involvement in the April 22, 2024 incident sufficiently supported by the evidence gathered during the District’s investigation.

After the incident, J.M. was referred by the District for a psychiatric examination with Dr. Fridman, which took place on May 3, 2024.

District Policy 5620 regarding expulsion requires that the principal convene a meeting between a student who is subject to a proposed expulsion and a “school psychologist, a school counselor, a school social worker, a student assistance coordinator, or a member of the school’s intervention and referral services team.” (R-9, Ex. D.) The stated “purpose of the meeting” is to “identify any behavior or health difficulties experienced by the student and, where appropriate, to provide supportive interventions or referrals to school or community resources that may assist the student in addressing the identified difficulties.” (Ibid.) Because Dr. Fridman was more familiar with J.M.’s health and behavioral difficulties than any staff members designated in District Policy 5620, it was determined that the purpose of the District Policy was best met by convening a meeting between J.M. and Dr. Fridman. (Hr’g Tr. 2, 101:12–18.)

As contemplated by District Policy 5620, following his examination of J.M., which considered J.M.’s prior psychiatric evaluations, Dr. Fridman issued a report that identified J.M.’s current and continuing behavioral difficulties and recommended the continuation of J.M.’s weekly psychotherapy and involvement with the Youth Resource Center. (R-10.) Dr. Fridman further concluded, in his professional opinion, that: “Given [J.M.]’s continuing violent behaviors and antisocial difficulties, it is clear that [J.M.] cannot function effectively in school with other students at this time.” (Ibid.)

Following his review and acceptance of Dr. Fridman’s May 3, 2024 psychiatric evaluation report, and after further consultation with then-Principal Fasano regarding J.M.’s most recent misconduct on April 9 and April 22, 2024, Superintendent Tully made the decision to present a recommendation to the Board that J.M. be expelled from school.

Superintendent Tully testified that his decision “was not made lightly.” (Hr’g Tr. 2, 69:6–7.) J.M. had a history of serious, unreformed misconduct that began with terroristic threats and had escalated to the physical assault of another student on school grounds.⁴ Considered with the other misconduct that occurred on the very same day that J.M. returned from the assault suspension, Superintendent Tully had “no confidence” that if J.M. were allowed to return to any District school that Superintendent Tully could continue “to ensure the safety and well-being of the students and the staff members.” (*Ibid.*, 109:23–110:1.) In short, Superintendent Tully concluded that J.M.’s continued misconduct was a “substantial disruption to our abilities [] to provide appropriate discipline for the safe operation of our school,” he recommended expulsion as a disciplinary action of last resort. (*Ibid.*, 61:15–17.)

By letter dated May 8, 2024 (the “May 8 Letter”), addressed to J.M.’s parents, Superintendent Tully advised that the Board had scheduled a disciplinary hearing to take place on May 13, 2024, the purpose of which was to determine whether J.M. should be subject to further discipline in connection with the April 9 and April 22, 2024 incidents. The May 8 Letter detailed the facts leading to J.M.’s suspension as: (1) the April 9, 2024 assault; (2) J.M.’s participation on April 22, 2024, in a larger group of students that followed another student with the intention of provoking a fight, and, relatedly, (3) J.M.’s falsification of his identity, which impeded a criminal investigation. Regarding (1) and (2), the May 8 Letter advised that the charged conduct “constitutes a continuing danger to the safety and physical well-being of other pupils and substantially disrupted and interfered with the requirements of appropriate discipline in the operation of the school.” (R-9.)

The May 8 Letter also notified J.M.’s parents that Superintendent Tully would be recommending that the Board expel J.M. from the District public schools. (*Ibid.*) It further listed the statutory, school handbook, and District Policy provisions that J.M. allegedly violated and the evidentiary support, including witnesses, to be presented at the hearing in support of the disciplinary charges.

⁴ Since the time this appeal was filed, Superintendent Tully testified that J.M. was involved in several other disciplinary matters, including an incident on school grounds in violation of the terms of his suspension and a substantiated HIB. (Hr’g Tr. 2, 69:14–71:18.) While not the subject of this appeal, these incidents further support Superintendent Tully’s determination that J.M.’s misconduct will continue if allowed to return to a District school.

The Board hearing took place on May 13, 2024, as scheduled. After hearing from witnesses, including a presentation made by C.M. on J.M.'s behalf, reviewing the video footage of the incidents and documentary evidence,⁵ the Board determined that the record fully supported the conclusion that J.M. engaged in the charged conduct and in violation of the student code of conduct, as set forth in the Bergenfield High School Student/Parent Handbook and District Policies and Regulations 5500 (Expectations for Pupil Conduct), 5600 (Student Discipline/Code of Conduct), 5610 (Suspension) and 5620 (Expulsion). The Board further concluded that J.M.'s conduct, including the physical assault of another pupil, constituted "a continuing danger to the physical well being [sic] of other pupils." (R-11.) As a result, and after consideration of the evidence presented at the hearing, the Board further "determined that [J.M.] should be expelled from the [District]." (Ibid.)

On August 16, 2024, C.M. timely filed a pro se petition on behalf of his son appealing the Board's decision. Pending a final decision on the appeal, the District is providing J.M. with an alternative education program at the Suspension Alternative Program in Hackensack, New Jersey.

DISCUSSION AND CONCLUSIONS OF LAW

Petitioner challenges the Board's decision to expel J.M. pursuant to N.J.S.A. 18A:37-2 for violations of the above-referenced District Policies and Regulations and student code of conduct, as set forth in the Bergenfield High School Student/Parent Handbook.

It is well recognized that school districts have the authority to suspend and expel students. N.J.S.A. 18A:37-2. Further, school board actions are entitled to a presumption of correctness. They will not be upset by an administrative law judge ("ALJ") nor by the Commissioner of Education (the "Commissioner") unless petitioner, who carries the

⁵ The documentary evidence presented by the District included J.M.'s school behavior and discipline record (which cited prior disciplinary infractions in addition to those detailed above) (R-9, Exs. O and Q), Dr. Fridman's psychiatric evaluation reports, Superintendent Tully's incident report, and witness statements from the April 9 and April 22 incidents, including J.M.'s statements.

burden of proof, shows by a preponderance of the evidence that the actions taken were arbitrary, capricious, or unreasonable. See, e.g., J.D. and E.D. o/b/o B.D. v. Bd. of Educ. of Toms River Reg'l Sch. Dist., EDU 6009-97, Initial Decision (Dec. 29, 1997), adopted, Comm'r (July 8, 1998), <https://njlaw.rutgers.edu/collections/oal/html/initial/edu6009-97.html> (recognizing that student discipline is a discretionary power of the school board, and board decision regarding the appropriate penalty for a disciplinary infraction should not be disturbed, absent evidence that the board's action was arbitrary, capricious, or unreasonable).

Even if the ALJ or the Commissioner may have come to a different conclusion, it is decidedly not their function to substitute their judgment for that of the board members on matters which are by statute delegated to local boards. See, e.g., J.D. and E.D. obo B.D. v. Bd. of Educ. of Toms River Reg'l Sch. Dist., Ocean Cnty., 1997 N.J. AGEN LEXIS 521 (Dec. 29, 1997) (collecting cases that cite this applicable and "circumscribed" scope of review when assessing the propriety of a student expulsion).

Stated otherwise, when a local board of education acts within its discretionary authority, its decision will not be disturbed unless it is demonstrated 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). Thus, to successfully challenge a determination made by a board of education, a party must demonstrate that the Board acted in "either bad faith or disregard to the circumstances." T.B.M. v. Moorestown Bd. of Educ., EDU 2780-07, Initial Decision (Feb. 6, 2008), https://njlaw.rutgers.edu/collections/oal/html/initial/edu02780-07_1.html.

Applying this standard does not leave discretion to this tribunal to decide whether it would have reached the same outcome concerning the severity of the discipline imposed. Rather, the Board must first be found, by a preponderance of the credible evidence, to have acted arbitrarily, capriciously, or unreasonably for reversal or modification to occur. This high threshold is undeniably difficult to meet. See, e.g., K.L. v. Bd. of Educ. of Matawan/Aberdeen High Sch. Dist., 91 N.J.A.R.2d (EDU) 74 (where student with prior disciplinary record resorted to physical aggression, expulsion was

“neither unreasonable, arbitrary nor capricious,” notwithstanding that student’s conduct was provoked by his teacher).

Here, there is ample, credible evidence that J.M. engaged in the conduct that constituted the basis of the Board’s determination that he be expelled from the District.

First, there is no dispute that J.M. physically assaulted another student in a premeditated attack that occurred in a school hallway at the Alternative School on April 9, 2024. The violent incident was captured on video and witnessed by students and staff, and J.M. admits that he was the attacker. While petitioner notes that the victim previously sent J.M. provocative texts, petitioner also concedes that it “doesn’t justify the actions that my son did. He shouldn’t have done it.” (Hr’g Tr. 1, 30:6–11.) Petitioner acknowledges that J.M. had other avenues to pursue a remedy outside of physical force but J.M. chose to pursue violence. (Ibid.)

There is also no question that under District Policy 5600 “[p]hysical assault upon another student” constitutes “good cause” for expulsion or that the Student Code of Conduct provides that a consequence for a student who engages in fighting/assault—even for a first offense—is Board review for possible expulsion. (R-9, Exs. B & E.)

Regarding J.M.’s involvement in the April 22, 2024 incident, there was sufficient evidence presented to the Board for it to reach a reasonable conclusion that J.M. was not a passive or innocent bystander to the incident that led to another student being stabbed. To be clear, J.M. was not charged as a participant to the stabbing. Nor was he expelled for “observing a fight while wearing a hoodie,” as petitioner claims. (Petitioner’s Post-Hearing Br. at p. 4.) Rather, after viewing video footage of the event, statements from witnesses, including J.M., and hearing from Superintendent Tully regarding his conclusions following the District’s investigation and communications with the Bergenfield Police, the Board concluded that the credible evidence supported a preponderated finding that J.M. “participated in a group of students, while wearing a hood and mask, that followed another student with the intention of provoking a fight.” (R-11.) That the Board did not accept J.M.’s account or C.M.’s presentation that J.M. was only in the area to buy food and was not involved in the incident in any way, does not make the Board’s finding,

and its resultant decision to expel J.M., arbitrary, unreasonable, or capricious. It was not unreasonable for the Board to discredit J.M.'s claim after viewing the video footage of J.M. following along with the larger group, albeit on the periphery, while they walked down the street shouting at and harassing the smaller group of students and then watching J.M. run away from the scene in the opposite direction immediately after the stabbing occurred. It was also not unreasonable for the Board to question J.M.'s credibility after he lied to the police about his identity. Indeed, at the hearing before this tribunal, J.M. admitted, without any compunction: "I lie when I want to." (Hr'g Tr. 1, 117:14.)

Having reasonably determined, based on the credible evidence, that J.M. engaged in the charged misconduct, which violated the Student Code of Conduct and various Board Policies and Regulations, the Board's determination that expulsion was the appropriate disciplinary consequence was also reasonable. In reaching this decision, the Board properly considered J.M.'s prior disciplinary record, in addition to the April 9 and April 22, 2024 incidents. See, e.g., D.J. v. Morris Bd. of Educ., EDU 16026-14, Initial Decision (June 23, 2015), https://njlaw.rutgers.edu/collections/oal/html/initial/edu16026-14_1.html (Board's consideration of student's prior disciplinary record was appropriate in determining severity of penalty); K.O.H. v. Bd. of Educ. of Edison Twp., Middlesex Cnty., 1995 N.J. AGEN LEXIS 1313, *10 (same).

That J.M.'s misconduct had continued, notwithstanding prior opportunities extended to him by the District to reform his behavior, was patently relevant to the Board's determination.⁶ Contrary to petitioner's argument, it was also entirely reasonable for the Board to weigh the severity of J.M.'s prior terroristic threats and the fact that lesser penalties apparently had served no rehabilitative or deterrent effect. Indeed, when reviewing an expulsion decision, the Commissioner considers whether "less draconian courses of action were considered and found to be inappropriate." M.G. and M.G. o/b/o A.G. v. Bd. of Educ. of Washington Twp., 2001 N.J. AGEN LEXIS 1220 (Aug. 6, 2001)

⁶ See also prior acknowledgments by petitioner and J.M. that any further misconduct by J.M. could lead to J.M.'s expulsion. (R-2, R-4.)

(finding that Board need not consider alternative education options for a non-classified student over the age of sixteen before ordering expulsion).

Under the circumstances, petitioner's claim that placement in an out-of-district and/or private school, not expulsion, was the appropriate result is unavailing. (Petitioner's Post-Hearing Br. at p. 4.) Contrary to petitioner's belief, the District does not have an obligation to pay for a school to accept J.M. (a non-classified student) when his disciplinary record contains multiple long-term suspensions, and his behavior was determined to compromise the safety and well-being of other students and substantially disrupt and interfere with appropriate discipline in the operation of a school.

Petitioner also provides no legal basis for reversal of the Board's determination based on his allegation that the District did not follow District Policy 5620 because Dr. Fridman conducted the pre-expulsion meeting with J.M. in lieu of a less informed school staff member. (Petitioner's Post-Hearing Br. at p. 2.) It is indisputable that the May 3, 2024 evaluation report prepared by Dr. Fridman following his meeting with J.M. satisfied the stated purpose of District Policy 5620. See supra, Findings of Fact, at 8.

Upon review of the record, I **CONCLUDE** that (1) the Board's decision was amply supported by competent evidence to support its factual findings and imposition of discipline; and (2) J.M. was afforded the requisite due process in connection with the Board's determination to expel him.⁷ Petitioner's claim that due process was denied because he was not allowed to present the Board with the texts that "incited" J.M.'s violent attack of another student on April 9, 2024, is rejected. (Petitioner's Post-Hearing Br. at p. 2.) Petitioner admitted at the hearing before this tribunal that the texts provided no justification for J.M.'s assault of another student. Further, the Board was presented with J.M.'s statement that his premeditated attack was "in retaliation for threatening text messages" and concluded that "[t]here was no justification" for the assault. (R-11.) Also

⁷ There is no dispute that J.M. had engaged a second time in conduct warranting possible suspension or expulsion, after having first served a duly imposed long-term suspension for an earlier infraction. It is also undisputed that J.M. and his parents were provided prior notice that J.M. may be expelled after his long-term suspension and there was no other legal impediment to the Board instituting procedures to expel J.M. Cf. M.R. v. Bd. of Trs. of the Hoboken Charter Sch., Hudson Cnty., 2010 N.J. AGEN LEXIS 213 (Mar. 22, 2010).

unavailing is petitioner's complaint that he was not allowed to present "the letter from the Detective that stated that [J.M.] was not involved in the stabbing." (Petitioner's Post-Hearing Br. at p. 2.) As stated above, J.M. was not charged as an assailant in the stabbing that occurred April 22, 2024. Indeed, there is no dispute that J.M. did not commit the stabbing or that he was directly involved in the fight that led to the stabbing. Rather, the Board found, by a preponderance of the credible evidence that J.M. was present and complicit with the large group of students "that followed another student with the intention of provoking a fight." (R-11.)

Put simply, petitioner was unable to meet his burden of demonstrating that the Board action in this matter should be reversed because it was unreasonable, arbitrary, or capricious. Consequently, it is not the province of this tribunal to determine whether it agrees with the Board or would have decided the matter differently. Accordingly, I **CONCLUDE** that the Board determination to expel J.M. was not arbitrary, capricious, or unreasonable.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the action of the Board is **AFFIRMED** and petitioner's appeal is **DISMISSED**.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Acting 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 **ACTING 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.

February 24, 2025

DATE



R. TALI EPSTEIN, ALJ

Date Received at Agency:

February 24, 2025

Date Mailed to Parties:

February 24, 2025

cc

APPENDIX

WITNESSES

For Petitioner:

J.M.

C.M.

Anne Monahan

For Respondent:

Dr. Christopher Tully

Dr. Morton Fridman

Matthew McGrath

Robert Ragasa

EXHIBITS

Joint Exhibits:

J-1 Video of April 9, 2024 Incident

J-2 Videos of April 22, 2024 Incident

For Petitioner:

P-1 Exhibits attached to Pro-Se Petition (with handwritten notes redacted)

For Respondent:

R-1 Letter to Parents, dated 12/23/2021 and Disciplinary Decision by the Board and Resolution, dated 12/21/2021

R-2 Acknowledgements Signed by Parents, dated 12/16/21 and 12/20/21

R-3 Letter to Parents, Notification of Disciplinary Hearing and Exhibits, dated 12/7/22

R-4 Agreement between Parent, J.M. and Respondent, dated 12/19/2022

R-5 Dr. Morton Fridman Psychiatric Evaluation of J.M., dated 7/19/23

- R-6 Resolution Continuing Suspension of J.M., dated 8/28/23
- R-7 Incident Report, dated 4/9/24
- R-8 Incident Report, dated 4/22/24
- R-9 Letter to Parents, Notification of Disciplinary Hearing and Exhibits, dated 5/8/24
- R-10 Dr. Morton Fridman Psychiatric Evaluation of J.M., dated 5/3/24
- R-11 Letter to Parents, Disciplinary Decision by the Board to Expel J.M., dated 5/21/24
- R-12 Dr. Morton Fridman Psychiatric Evaluation of J.M., dated 2/9/23
- R-13 Dr. Morton Fridman Psychiatric Evaluation of J.M., dated 6/20/23
- R-14 Dr. Morton Fridman Psychiatric Evaluation of J.M., dated 1/10/24