

**New Jersey Commissioner of Education**  
**Final Decision**

A.J.-P., on behalf of minor child, B.B.,

Petitioner,

v.

Board of Education of the City of Linden,  
Union County,

Respondent.

The record of this matter 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 findings of fact and conclusions of law made by the Administrative Law Judge. Respondent's decision to suspend B.B. for five days in accordance with *N.J.S.A. 18A:37-2* for proven "continued and willful disobedience" and "open defiance of the authority of any teacher or person having authority over him" was not arbitrary, capricious, or unreasonable.

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.<sup>1</sup>

  
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 29, 2025  
Date of Mailing: January 29, 2025

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<sup>1</sup> 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 06900-24

AGENCY DKT. NO. 111-4/24

**A.-J.P. ON BEHALF OF MINOR CHILD, B.B.,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE CITY OF**

**LINDEN, UNION COUNTY,**

Respondent.

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**A.-J.P.**, petitioner, pro se

**Rita F. Barone**, Esq., for respondent (Flanagan, Barone & O'Brien, LLC,  
attorneys)

Record Closed: October 29, 2024

Decided: December 3, 2024

BEFORE **DANIEL J. BROWN**, ALJ:

**STATEMENT OF THE CASE**

The petitioner challenges the respondent's decision to impose a five-day out-of-school suspension on her minor child, B.B., on December 14, 2023, based upon the child's insubordinate acts to a teacher in the lunchroom of the school and then to the principal when he was speaking to B.B. about the incident. Should the suspension be vacated or

modified? No. The imposed suspension should stand because the decision to impose it by the respondent (the Board) was not arbitrary, capricious, or unreasonable.

### **PROCEDURAL HISTORY**

On April 23, 2024, the petitioner filed a Petition with the Commissioner of the Department of Education (Commissioner) contesting discipline entered by the Board against her minor son, B.B. while he was a student at Linden High School (Linden). The petitioner maintains that the Board imposed discipline against B.B. for infractions that he did not commit and, alternatively, that B.B. was punished excessively for the infractions using guidelines set forth in the Student Handbook, which is attached as R-1.

The Board filed an Answer on May 9, 2024, with the New Jersey State Department of Education. On May 15, 2024, the Office of Controversies and Disputes within the New Jersey State Department of Education transmitted the case to the Office of Administrative Law (OAL) under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

On June 26, 2024, and again on August 7, 2024, I held a prehearing conference under N.J.A.C. 1:1-13.1 to discuss available dates for the hearing, the nature of the proceeding, and the issues to be resolved. I permitted additional time for discovery, and I scheduled a hearing date for September 23, 2024. The hearing was conducted and concluded on that date. I gave the parties until October 15, 2024, to file written summations if they chose to do so. I received a written summation from the petitioner on October 10, 2024. On October 11, 2024, the Board requested until October 29, 2024; to file a written summation and I approved that request. On October 29, 2024, I received a written summation from the Board, and I closed the record.

### **FINDINGS OF FACT**

Based on the testimony the parties provided and my assessment of the credibility of the testimony, together with the documents that the parties submitted and my assessment of their sufficiency, I **FIND** the following as **FACT**:

B.B. was a student in attendance at Linden during the 2023-24 school year. On December 14, 2023, B.B. forgot his backpack in the school lunchroom. B.B. returned to the lunchroom to retrieve his backpack. Charles Koonce, who has been the principal at Linden for the past 2 years, testified that the lunchroom was staffed by teachers at certain exits to maintain order in the flow of students from the lunchroom to the hallways of the school. B.B. and a friend of his attempted to leave the lunchroom through a door that was only for entering the lunchroom. A teacher saw this, stepped in front of the door and told B.B. that he could not exit through that door. B.B. did not follow the direction given by the teacher, exited through the improper door and continued to his next class. B.B. testified that he did not know that he could not exit through that door as he and other students regularly exited through that door. That testimony was not credible, and I give it no weight. It may be true that B.B. and other students regularly used that door to exit the cafeteria. Principal Koonce stated that if there was a staffing shortage on a particular day, a door in the lunchroom might be left unattended. However, on the day of the incident, the door that B.B. exited from was monitored by a teacher and her presence and direction to B.B. should have been heeded by B.B.

When he attempted to walk past the teacher, B.B. made physical contact with the teacher. Principal Koonce characterized this contact as B.B. pushing the teacher. Both B.B. and the petitioner testified that any physical contact between B.B. and the teacher was not intentional on B.B.'s part because B.B. did not see the teacher. According to the petitioner, the teacher initiated physical contact with B.B. because the teacher slid her body in front of B.B. as B.B. was leaving the lunchroom. The petitioner testified that B.B. did not see the teacher because B.B. does not pay attention to his surroundings and his hair is always in front of his eyes, obstructing his vision. B.B. testified that the teacher may have thought he pushed her because he is bigger than her.

Principal Koonce testified that the teacher reported the incident to the vice-principal, who then informed Principal Koonce about the incident. Principal Koonce also testified that the teacher was so distraught that she was sent home for the rest of the day. The petitioner asserted that Principal Koonce's testimony that the teacher was distraught because of the incident was incorrect or knowingly false based upon the teacher's statement to the petitioner at a later meeting that she only reported the incident because B.B. did not apologize to her. I find that the petitioner's assertion that Principal Koonce's testimony on this issue was incorrect or untrue to lack any merit at all. The teacher was trying to accomplish her assigned task, which was to maintain order regarding the flow of students from the lunchroom to the hallways of the school. The nature of the incident with B.B., which included physical contact with B.B. would leave any teacher distraught. The fact that the teacher said that she would not have reported the incident if B.B. had apologized does not affect the teacher's ability to be upset from the incident. What is relevant to me is that B.B. did not apologize to the teacher and that B.B. failed to demonstrate some level of remorse or accountability following the incident with the teacher. When the petitioner asked B.B. why he didn't apologize to the teacher, B.B. told the petitioner that he stopped momentarily in the hallway but that he did not apologize to the teacher because he was worried about being late for his next class, which was across the street from the school in the Academy building. The fact that B.B. was so worried about being late for his next class causes me to believe that he was more likely to rush out of the wrong door of the lunchroom and push a teacher in his rush to get to that class. The fact that B.B. stopped momentarily in the hallway after the incident with the teacher causes me to believe that he saw the teacher despite his assertion to the contrary and the petitioner's assertion that B.B. did not see the teacher because he did not pay attention to his surroundings. Additionally, I can infer from B.B.'s statement to the petitioner that he was aware that he should have apologized regarding what occurred with the teacher as he exited the lunchroom and that he knowingly chose not to.

When the teacher reported the incident, she did not know B.B.'s name but she provided a physical description of B.B. to the Vice-Principal. Principal Koonce viewed a video of the incident to determine what happened and to identify the student that was involved in the incident. The video that Principal Koonce viewed was played at the hearing and was submitted into evidence as R-6. The video shows that the teacher was

in front of the door prior to B.B. reaching the door. At that point, B.B. and the teacher were so close to each other that it is impossible to believe that B.B. did not see the teacher or that B.B. did not hear any directive that the teacher gave to him. The testimony from petitioner that B.B. did not see the teacher because his hair was in his eyes or because he didn't pay attention to his surroundings lacks credibility and I give it no weight whatsoever. The video also shows that the physical contact between B.B. and the teacher was not accidental and was not the fault of the teacher as the petitioner suggests. I **FIND** that B.B. initiated physical contact with the teacher. I **FIND** that the teacher stepped in front of the door to prevent B.B. from using the door to exit the lunchroom. I **FIND** that this occurred prior to B.B. arriving at the door. I **FIND** that the teacher verbally instructed B.B. not to use the door that she was monitoring to exit the lunchroom. I also **FIND** that B.B. pushed the teacher on the shoulder to get past her so that he could exit the lunchroom through the improper door.

Principal Koonce testified that he called B.B. to the office to discuss the incident with him. Koonce described B.B. as emotional, angry, and defiant when he was in the principal's office. Koonce recounted that B.B. stated that the principal was wasting his time. Koonce stated that B.B. used a racial epithet to describe the principal. B.B. then stormed out of Principal Koonce's office before the principal finished speaking with him. Koonce wrote up the five day out-of-school suspension and called the petitioner on the telephone to let her know about the incident. Koonce communicated to the petitioner that B.B. defied a direct order from a teacher and pushed through a teacher while exiting the lunchroom through the wrong door. The petitioner stated that Koonce also told her that B.B. was suspended because he was disrespectful, insubordinate, and made physical contact with a teacher.

The petitioner said that B.B. didn't know why he was being summoned to the principal's office until B.B. was shown the video of the incident between B.B. and the teacher. This statement by the petitioner lacks credibility given that B.B. was involved in a serious incident with a teacher prior to being summoned to the principal's office. The incident with the teacher was clearly the reason that B.B. was called to the principal's office and any suggestion that B.B. was not aware that this was the reason he was called to the principal's office willfully ignores the facts of this case. The petitioner stated that

B.B. became frustrated as the principal repeatedly asked him what happened earlier in the day and B.B. told the principal that he was wasting his time. During his testimony, B.B. admitted to telling the principal that he was wasting B.B.'s time and that B.B. left the principal's office before he was instructed to do so. Principal Koonce testified that B.B. used a racial epithet to refer to the principal prior to B.B. leaving the principal's office. Both B.B. and the petitioner testified that B.B. did not use a racial epithet when he addressed Koonce.

I had the opportunity to observe all the witnesses testifying during the hearing. Principal Koonce testified credibly throughout his testimony and specifically concerning B.B.'s use of a racial epithet toward him. Principal Koonce's testimony was direct and straightforward. He answered questions in a concise manner and without any purpose of evasion, even when the testimony involved B.B. using a racial epithet when he spoke to Koonce. Conversely, I do not believe that the petitioner testified in a credible manner. The petitioner's testimony regarding B.B.'s encounter with the teacher in the lunchroom was contradicted by the video evidence. While the petitioner did admit that B.B. told the principal that the principal was wasting B.B.'s time, she tried to rationalize B.B.'s behavior by stating that the principal was at fault because the principal asked B.B. about what happened in the lunchroom over and over. This shows the petitioner's bias for B.B., who is her son. This bias was further illustrated when the petitioner was asked if B.B. ever lied to her and she said that her son had never lied to her. Therefore, I give little to no weight to the petitioner's testimony regarding B.B.'s actions toward the teacher in the lunchroom and toward Principal Koonce.

During the hearing, B.B. testified that he did not see or push the teacher in the lunchroom. This testimony was contradicted by the video evidence which I credit. B.B.'s denial of the use of a racial epithet was contradicted by Principal Koonce's testimony, which I give great weight to. B.B. admitted telling the principal that the principal was wasting his time. I place great weight upon B.B.'s admission, which was corroborated by other evidence in the case. Additionally, B.B.'s response when he was asked what he thought the outcome of the case should be was particularly significant to me. B.B. testified that the out-of-school suspension of five days imposed by Principal Koonce should only be lowered instead of changed to a lower form of punishment or to no punishment at all.

I consider that portion of B.B.'s testimony to be an acknowledgement by B.B. of his wrongful conduct toward the teacher in the lunchroom and toward Principal Koonce. For all the reasons stated above, I **FIND** that B.B. told the principal that he was wasting B.B.'s time, that B.B. used a racial epithet when he addressed Principal Koonce, and that B.B. left the principal's office before he was excused by Principal Koonce.

In contesting the five day out-of-school suspension imposed by Principal Koonce, the petitioner testified that, pursuant to the student handbook attached as R-1, B.B. should have received an after-school program or a Saturday program for exiting through the wrong door of the lunchroom. According to the petitioner, B.B. should not have been punished for initiating physical contact with the teacher because she believed the physical contact was initiated by the teacher. The petitioner did not specifically address what she believed the appropriate penalty would be for B.B.'s actions in the principal's office. Instead, she argued that, pursuant to the student handbook, five-day suspensions are given for very serious offenses like fighting, assault, pulling the fire alarm or having drugs or weapons on school property. The petitioner argued that B.B.'s conduct did not rise to that level of seriousness to warrant a five-day out of school suspension. Given my previous findings of fact, I strongly disagree with the petitioner's assertion that B.B.'s conduct was not a serious breach of the rules for the school, and I reject that argument.

Principal Koonce noted that the student handbook defines insubordination and defiance of authority as an offense where the punishment depends on the severity of the student's actions. Principal Koonce testified that B.B.'s initial act of insubordination toward the teacher in the lunchroom was exacerbated by B.B. pushing the teacher; being insubordinate to Principal Koonce in the principal's office, using a racial epithet toward Principal Koonce, and taking no responsibility for any of his actions. Principal Koonce also testified that he relied upon that portion of the handbook that provides the principal may modify or alter the recommended outcomes for infractions of school rules in imposing a five-day out of school suspension based upon B.B.'s behavior. Therefore, I **FIND** that Principal Koonce had the discretion and the authority to impose discipline above the guidelines listed in the student handbook.



## **DISCUSSION AND CONCLUSIONS OF LAW**

The Commissioner of Education will not overturn the decision of a local school board in the absence of finding that the board's decision was arbitrary, capricious, or unreasonable. T.B.M. v. Moorestown Bd. of Educ., EDU 2780-07, Initial Decision (February 6, 2008) (citing Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965), aff'd, 46 N.J. 581(1966)), adopted, Comm'r (April 7, 2008), <<http://njlaw.rutgers.edu/collections/oal/>>. Further, 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). New Jersey 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). Thus, to prevail, the petitioner must demonstrate that the Board acted in bad faith, or in utter disregard of the circumstances before it. T.B.M., EDU 2780-07, Initial Decision (February 6, 2008), <<http://njlaw.rutgers.edu/collections/oal/>>.

Here the Board submits that B.B. violated N.J.S.A. 18A:37-2 through his disruptive behavior on December 14, 2023. N.J.S.A. 18A:37-2 provides, in pertinent part, that:

Any 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, or of the habitual use of profanity or of obscene language, or who shall cut, deface or otherwise injure any school property, shall be liable to punishment and to suspension or expulsion from school.

I agree with the Board that B.B.'s behavior amounted to a violation of this statute. Additionally, a student who violates this statute clearly faces the possibility of an out-of-school suspension. Therefore, N.J.S.A. 18A:37-2 provides the Board with the statutory discretion and authority for its' actions.

In conclusion, the petitioner has failed to show that the Board acted in an arbitrary, capricious or unreasonable manner in finding that B.B. violated N.J.S.A. 18A:37-2 through his actions. Additionally, the petitioner has failed to demonstrate that the Board acted in an arbitrary, capricious or unreasonable manner in imposing a five-day out of school suspension upon B.B. for his actions on December 14, 2023.

Instead, the Board has demonstrated through competent and credible evidence that B.B. is guilty of continued and willful disobedience; and open defiance of the authority of any teacher or person, having authority over him in violation of N.J.S.A. 18A:37-2(a) and (b). Additionally, the Board has demonstrated that Principal Koonce reasonably exercised his discretion as Linden's Principal in imposing a five-day out of school suspension on B.B. because of B.B.'s behavior on December 14, 2023.

Accordingly, I **CONCLUDE** that the petitioner has not shown that the Board acted in an arbitrary, capricious or unreasonable manner in finding that B.B. violated N.J.S.A. 18A:37-2 through his egregious and disruptive behavior on December 14, 2023. I also **CONCLUDE** that the petitioner has failed to demonstrate that the Board acted in an arbitrary, capricious or unreasonable manner for imposing a five-day out-of-school suspension for B.B.'s actions on December 14, 2023.

### **ORDER**

Given my findings of fact and conclusions of law, I **ORDER** that the Board's decision to impose a five-day out-of-school suspension upon B.B. because B.B. violated N.J.S.A. 18A:37-2 through his conduct on December 14, 2023, be **AFFIRMED**. I further **ORDER** that petitioner's Petition of Appeal be **DISMISSED**.

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

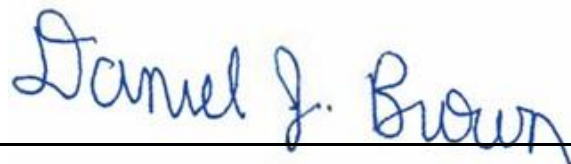
This recommended decision may be adopted, modified, or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision on this matter. If the Commissioner of the Department of

Education does not adopt, modify, or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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

December 3, 2024

DATE

A handwritten signature in blue ink that reads "Daniel J. Brown". The signature is written in a cursive style and is positioned above a horizontal line.

**DANIEL J. BROWN, ALJ**

Date Received at Agency:

December 3, 2024

Date Mailed to Parties:

December 3, 2024

dr

**APPENDIX**

Witnesses

For Petitioner:

A.-J.P.

For Respondent:

Charles Koonce

Exhibits

For Petitioner:

None

For Respondent:

- R-1 Linden High School Handbook 2023- 2024
- R-2 Incident Summary Report
- R-3 Redacted Executive Session Minutes dated February 27, 2024
- R-4 Letter to parent dated February 22, 2024
- R-5 Email to parent dated March 9, 2024
- R-6 Video of incident