

114-26R
OAL Dkt. No. EDU 13921-25
Agency Dkt. No. 226-7/25

New Jersey Commissioner of Education
Final Decision

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

Petitioner,

v.

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

Respondent.

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

In his exceptions, petitioner argues, among other things, that the Initial Decision incorrectly states that the record closed on January 7, 2026. Petitioner maintains that the Administrative Law Judge (ALJ) permitted him to submit an additional written response on January 9, 2026, that should have been considered and acknowledged within the Initial Decision.

In response, the Board does not disagree with petitioner's contentions regarding the record closure date and the ALJ's failure to expressly acknowledge the January 9, 2026, written response within the Initial Decision. However, the Board argues that petitioner has not explained

¹ The Commissioner will not consider petitioner's sur-reply because such submissions are not permitted by *N.J.A.C. 1:1-18.4*.

what, if any, arguments made in the January 9, 2026, submission were not already considered by the ALJ because they were expressed in petitioner's prior filings.

Upon review of the record, the Commissioner finds that the Initial Decision states that the record closed on January 7, 2026. However, the record reflects that the ALJ did permit petitioner to submit an additional written response no later than January 9, 2026, and that petitioner complied with that deadline. Consequently, the Commissioner is constrained to remand the matter for clarification regarding the date the record was closed and whether the ALJ considered petitioner's January 9, 2026, written submission before completing the Initial Decision.

IT IS SO ORDERED.


COMMISSIONER OF EDUCATION

Date of Decision: March 30, 2026
Date of Mailing: March 30, 2026



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 13921-25

AGENCY DKT. NO. 226-7/25

D.S. ON BEHALF OF MINOR

CHILD L.S.,

Petitioner,

v.

BOARD OF EDUCATION OF THE

BOROUGH OF HAWTHORNE,

PASSAIC COUNTY,

Respondent.

D.S., petitioner, pro se

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

Record Closed: January 7, 2026

Decided: January 21, 2026

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

STATEMENT OF THE CASE

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

during an argument in school concerning basketball. Must the decision stand? **Answer.** Yes. When a Board acts within its discretion, its decision must stand unless “patently arbitrary, without rational basis, or induced by improper motives.” Kopera v. W. Orange Bd. of Educ., 60 N.J. Super. 288, 294 (App. Div. 1960); N.J.A.C. 1:1-125(b).

PROCEDURAL HISTORY

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

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

On July 30, 2025, the Board of Controversies and Disputes transmitted the case to the Office of Administrative Law (OAL), which was received on August 4, 2025, as a contested case under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to-15, and the Act establishing the OAL, N.J.S.A. 52:14F-1 to-13, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

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

On December 19, 2025, the Board filed a motion for summary decision. On December 25, 2025, petitioner filed an opposition. On January 5, 2026, the Board filed its response, I received it on January 7, 2026, and closed the record.

FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

When a local board of education acts within its discretionary authority, its decision is entitled to a presumption of correctness that will not be disturbed unless there is an affirmative showing that the decision was "patently arbitrary, without rational basis or induced by improper motives." Kopera v. W. Orange Bd. of Educ., 60 N.J. Super. 288, 294 (App. Div. 1960). To overcome that presumption, the petitioner must prove by a preponderance of the evidence that the board "acted in either bad faith or in disregard to the circumstances." T.B.M. v. Moorestown Bd. of Educ., EDU 2780-07 (February 6, 2008), aff'd, Comm'r (April 25, 2013) (citing Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965), aff'd, 46 N.J. 581 (1966)). In other words, the burden is a heavy one.

In this case, the petitioner did not allege that the respondent's actions were arbitrary, capricious or unreasonable in this appeal. Nevertheless, after a thorough

investigation, respondent decided that the HIB allegation was unfounded although three (3) other students stated that petitioner's minor child made similar statements concerning "whooping" another student "like I did in the 1800's." The respondent determined that the conduct of petitioner's minor child did not substantially disrupt or interfere with the school operations or rights of other students. On January 17, 2025, the respondent determined that while the HIB allegation was unfounded, the petitioner's minor child violated the school's Code of Conduct policy which resulted in a three-day out-of-school suspension of the minor child. Therefore, I **CONCLUDE** that the Board did not act arbitrarily, without rational basis, or induced by improper motives, and that its HIB determination and Code of Conduct determination must stand.

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

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

ORDER


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

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

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

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**. Exceptions may be filed by email to ControversiesDisputesFilings@doe.nj.gov or by mail to **Office of Controversies and disputes, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**. A copy of any exceptions must be sent to the judge and to the other parties.

January 21, 2026
DATE


KIMBERLY K. HOLMES, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

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