IOWA DEPARTMENT OF EDUCATION
(Cite as 24 D.o.E. App. Dec. 177)

In re Colton L.		
Troy and Karen L., Appellants,	:	
	:	DECISION
vs.		
	:	[Admin. Doc. 4645]
Cedar Rapids Comm. School District, Appellee.	:	

The above-captioned matter was heard telephonically on December 14, 2006, before designated administrative law judge Carol J. Greta, J.D. The Appellants, Troy and Karen L., were present on behalf of their minor son, Colton, who also participated in the hearing. Attorney Mark Rettig represented the Appellants; attorney Mark Roberts the Appellee. Also present on behalf of the Appellee District were Superintendent David Markward, Kennedy High School Associate Principal Jim Muench, Director of Student Equity Aaron Green, Executive Director of Special Services Suzanne Blomme, Executive Administrator of Secondary Education Sandy Stephen, Board President Keith Westercamp, and District Board secretary Laurel Day.

An evidentiary hearing was held pursuant to agency rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for the appeal is found in Iowa Code chapter 290 (2005). The administrative law judge finds that she and the State Board of Education have jurisdiction over the parties and subject matter of the appeal before them.

Mr. and Mrs. L. seek reversal of the October 9, 2006 decision of the local Board of Directors of the Cedar Rapids School District expelling Colton for a violation of school rules and state law that prohibit the possession and/or distribution of controlled substances at school. Specifically, Colton was expelled for the remainder of the 2006-07 school year. The local Board's decision allows Colton to attend the District's Alternative Education Center during the period of his expulsion, and states that he may apply to that Board for early reinstatement, conditioned on successful attendance at the Alternative Education Center.

I.
FINDINGS OF FACT

The parties submitted a written stipulation of pertinent facts. Mr. and Mrs. L. do not dispute that Colton sold marijuana to another student at school during the school day on September 18, 2006. Colton, who was then a 9th grader at Kennedy High School, had not brought the marijuana to school. His role in the transaction was to transfer the marijuana from Student A to Student B, and to collect $10.00 for the transfer from Student B, keeping $5.00 for himself and giving $5.00 to Student A.

The District's local policies regarding student discipline include numbers 604.3 and 604.4, which state in pertinent part as follows:

> *Regulation 604.3:*
> Suspensions may be invoked for, but not limited to such actions as:
> ...
> (F) use, sale, and/or possession of narcotics, intoxicating beverages, tobacco, look-alike drugs, or other harmful substances;
>
> *Regulation 604.4:*
> A student may be expelled whenever the student's behavior materially or substantially interferes with the educational process, disrupting the ability of other students to profit from the education provided to them. A student also may be expelled for ... possession and/or sale of narcotics or look-alike drugs ...

After initially denying his involvement in the transaction, Colton eventually admitted his actions to Kennedy Associate Principal Muench. Because Colton receives special education services pursuant to an IEP (individualized education program), a mandatory "manifestation determination" hearing was held. The relevant members of Colton's IEP team determined that Colton's role in the sale of the marijuana was not a manifestation of his disability.[1] [That determination is not at issue here.] Thereafter, Colton was suspended from school pending a disciplinary hearing before the local Board to be held October 9, 2006.

Mr. and Mrs. L. were initially told by some Kennedy High School officials that the recommendation to the local Board regarding Colton's discipline would be suspension. All written notices to Colton and his parents regarding the October 9 local Board hearing stated that administrators, both of Kennedy High School and the District's central office, would be recommending to the local Board that Colton be expelled from school.

At the October 9 hearing, the administration did indeed recommend to the Board that Colton be expelled. Mr and Mrs. L. presented their argument to the Board in favor of suspension. The written documents presented to the Board that night include the following (all identified with the exhibit numbers assigned to them for this hearing):

Exhibit #1:	September 27 Report of Misconduct
Exhibit #2:	September 21 Suspension Report
Exhibit #3:	September 25 Hearing Report (Expulsion Fact-finding Meeting)
Exhibit #4:	September 27 Principal's Recommendation for Expulsion
Exhibit #5:	October 3 Superintendent's Letter to Board President

[1] A manifestation hearing is required by federal law [20 U.S.C. *§ 1415(k)(1)(E);* 34 C.F.R. § 300.530] before a child with a disability is removed from his or her present educational setting for more than ten consecutive school days. If, as was the case here, the result is a determination that the child's conduct was not a manifestation of his or her disability, the child is then subject to long-term (over ten days) suspension or expulsion. However, the school must still provide such special education programs and services as are required in the child's IEP. *Iowa Code § 282 4.*

Exhibit #6: October 3 Superintendent's Letter to Mr. and Mrs. L. and Colton

Exhibit #7: October 3 Board Secretary's Letter to Parents

Exhibit #8: October 9 Correspondence from a Licensed Psychologist (privately retained by Mr. and Mrs. L to interview Colton)

Exhibit #9: Local Board Regulations 604.3 and 604.4

On behalf of District administration, Associate Principal Muench told the Board that Colton admitted selling marijuana to another student at Kennedy High School. Mr. Muench also reported that Colton was in good academic standing and had a good attendance record at Kennedy. Although he initially stated to the Board that the administrative recommendation regarding Colton was for suspension for the balance of the trimester, he corrected himself and acknowledged that the recommendation was for expulsion for the remainder of the 2006-07 school year, as reflected in Exhibit ## 4, 5, and 6.

Requesting suspension over expulsion, Mr. Rettig made the following arguments on behalf of Colton and his parents:

- Colton's punishment should be individualized and should reflect the extent of his involvement in the marijuana transaction.
- Colton receives special education services to address a reading/learning disability; thus, he will still receive these services whether suspended or expelled.
- The family was initially told that the recommendation would be suspension until the end of the current trimester.
- Colton was not and is not a user of illegal drugs; he did not use illegal drugs on school property or elsewhere.
- Colton's misbehavior was a one-time event for which he received $5.00.
- Colton admitted his misbehavior and acknowledged that he used poor judgment.
- His family supports Colton and secured counseling services for Colton prior to knowing that the District administration's recommendation would be expulsion.

After hearing from both sides, the local Board voted 5 – 1 (with one member absent) to expel Colton for the remainder of the 2006-07 school year. Because Colton has an IEP, he may attend the District's Alternative Education Center during the period of his expulsion. The Board further directed that Colton may apply to that Board for reinstatement to Kennedy High School prior to the expiration of the period of expulsion. The written Board decision provided to Colton and his parents found that Colton "sold marijuana to another Kennedy student on school grounds."

II.
CONCLUSIONS OF LAW

Standard of review

Absent a claim of a procedural due process violation, our standard of review in student discipline appeals is that we shall not overturn a local board decision unless the local decision is "unreasonable and contrary to the best interest of education." *In re Amber Criqui*, 24 D.o.E. App. Dec. 33 (2006). This review is more "than that necessary to determine whether the school district abused its discretion." *Sioux City Community School Dist. v. Iowa Department of Education*, 659 N.W.2d 563, 569 (Iowa 2003).

General Authority of Local School Boards

The Legislature has conferred upon local boards of education the authority to set rules of conduct for students and to discipline them for violations of the same. *See* Iowa Code § 279.8, which states in pertinent part, "The board shall make rules for its own government and that of the ... pupils ...." Local boards have explicit statutory authority to punish students, up to and including expulsion, pursuant to Iowa Code section 282.4, which states in pertinent part as follows:

> 1. The board may, by a majority vote, expel any student from school for a violation of the regulations or rules established by the board, or when the presence of the student is detrimental to the best interests of the school. ....

Furthermore, § 279.9 requires local school boards to enact rules that "prohibit ... the use or possession of ... or any controlled substance as defined in § 124.101, subsection 5, by any student of the schools and the board may suspend or expel a student for a violation of a rule under this section." Marijuana is a schedule I controlled substance per § 124.204(4)*"m."*

Did the Local Board Correctly Apply its own Policies?

Mr. and Mrs. L. argued for the first time before the State Board of Education that the local Board did not follow its own policies correctly. They point out that the policy # 604 3 (suspensions) proscribes such activities as selling or possessing "narcotics, ... look-alike drugs, or other harmful substances." The family then contrasts this with policy #604.4 (expulsions) whose language includes "narcotics or look-alike drugs," omitting any reference to "other harmful substances." Thus, the argument is that possession and sale of marijuana is punishable only by suspension, not expulsion. Furthermore, under the family's reading of policy 604.4, Colton could be expelled only if the local Board reached a determination that his misbehavior "materially or substantially interfere[d] with the educational process."

The District first counters that this argument cannot be considered by the State Board because it was not raised before the local Board. The District's argument is that the local Board was "never apprised of this basis for appeal and never had the opportunity to consider it." (District's post-hearing brief, page 2.) The District's argument assumes that the local Board was ignorant of the language in its own policies, an assumption we do not share. If Mr. and Mrs. L. were putting forth an argument here

of which the local Board could not have conceived, we would be sympathetic to the District's assertion. However, inasmuch as the dispute is over verbiage in the local Board's own policies, we conclude that there is no element of surprise present that would preclude Colton's family from bringing forth its argument at this time.

Moreover, this is not an evidentiary dispute. Both policies 604.3 and 604.4 were before the local Board during Colton's hearing. Thereafter, Mr. and Mrs. L. put the District on notice that they were appealing the punishment of Colton, specifying their belief that suspension was more appropriate than expulsion of their son. Their point that the local Board did not comply with its own policies when deciding on Colton's discipline is but another means of pressing that primary argument.

This Board now considers the argument. We are not persuaded by it.

We have had occasion in several previous appeals to reiterate what the United States Supreme Court stated in *Bethel School Dist. No. 403 v. Fraser*, 478 U.S. 675, 106 S.Ct. 3159 (1986). That is, "maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures. . . .[T]he school disciplinary rules need not be as detailed as a criminal code which imposes criminal sanctions." 106 S.Ct. at 3166. *Cf., In re Jon Francis,* 21 D.o.E. App. Dec. 251 (2003), *In re Justin Anderson, et al.*, 14 D.o.E. App. Dec. 294, 299 (1997). All that is required is that a person of reasonable intelligence be able to comprehend from reading a school policy what conduct is prohibited. *Id.*

As the District points out in its post-hearing brief, Merriam-Webster's On-Line Dictionary defines "narcotic" to include – by name – marijuana. The definition in Merriam-Webster also more generically defines narcotic as "something that soothes, relieves, or lulls." Another dictionary, one of the Oxford editions, defines narcotic as any addictive, illegal drug affecting mood or behavior.

The Iowa Legislature, in criminalizing the possession, use, and distribution of controlled substances in chapter 124 of the Iowa Code, chose to categorize marijuana as a Schedule I controlled substance and narcotic drugs as Schedule III controlled substances. Schedule I controlled substances are considered more addictive and more dangerous than are Schedule II, III, IV, and V controlled substances. The criminal penalty in Iowa for possession or distribution of certain controlled substances on or within one thousand feet of schools is the same regardless of whether the controlled substance is a Schedule I, II, or III controlled substance. (Iowa Code §§ 124.401A and 124.401B.)

We conclude that reasonable persons, including secondary students, would have no doubt from reading the disputed policies that possessing, using, and/or distributing marijuana at school could subject a person to expulsion, not just suspension. Any minute parsing of words in the disputed policies is unnecessary and counter-productive to the local Board's "important and at times difficult task of operating our public schools." *Board of Directors of the Independent School Dist. of Waterloo v. Green*, 147 N.W.2d 854, 857-858 (Iowa 1967).

Was Colton's Expulsion an Excessive Punishment?

The formal administrative recommendation to the local Board regarding Colton's discipline was that he be expelled for the remainder of the school year. Mr. and Mrs. L.

admit that their attorney presented the local Board with suspension as an alternative to expulsion. Indeed, Mr. Rettig stated here that there was a "long discussion" before the local Board regarding the appropriateness of suspension over expulsion.

Both the District and Colton's family cite to a previous appeal decision of this Board, *In re Peter Carlson*, 22 D.o.E. App. Dec. 1 (2003), and there are several parallels between that case and the one before us now. Peter possessed and distributed marijuana to a classmate at school. He was expelled by his local board of education. As we concluded in Peter's case, we again conclude that the administrative recommendation and the board decision of expulsion was not "out of line." The Iowa Legislature clearly contemplated expulsion as a possible consequence for such action. There is nothing shocking about the disciplinary measure imposed here.

Another similarity exists regarding the very active participation of the parents of Peter and now Colton before their local boards of education. There can be no doubt that both local boards were presented with much food for thought in the form of mitigating circumstances (see the bullet points on the third page of this decision) and options short of expulsion, including correspondence from a mental health counselor that, when viewed in the light most favorable to Colton, indicates that expulsion is not necessary to direct Colton's attention to the "gravity of his choice." (Exhibit #8.)

As in Peter's case, we do not know the weight this local Board gave to the arguments, options, and mitigating circumstances. Rather, we repeat that a "school board, as the final arbiter of a district's policies and views, may but is not required to consider mitigating circumstances in deciding whether or not to exact the full measure of punishment due a student for violating the rules." *In re Eric Plough*, 9 D.o.E. App. Dec. 234 (1992), citing *In re Carl Raper*, 7 D.o.E. App. Dec. 352 (1990), as quoted in *Carlson*, 22 D.o.E. App. Dec. at 8.

> Schools must provide a safe environment in which learning can take place with as few distractions as practical. It is entirely reasonable for a district to expel a student who introduces a controlled substance into the learning environment. It is reasonable for the Waterloo Board of Education to have expelled Peter Carlson for possession and distribution of marijuana at West High School.

Carlson, *Id.* at 9.

We likewise conclude here that it was not unreasonable for the Cedar Rapids School Board to have expelled Colton L. The local Board's decision does not have to be the *best* decision. *Board of Directors of the Independent School Dist. of Waterloo v. Green*, 147 N.W.2d 854 (Iowa 1967). The Iowa Supreme Court recognized in *Green* that appellate bodies have a duty to uphold school rules unless the rules are clearly arbitrary and unreasonable. In light of this, we recognize that this Board "does not sit as a 'super school board' substituting its judgment for that of the elected board officials." *In re Jerry Eaton*, 7 D.o.E. App. Dec. 137, 141 (1987). We conclude that any reasonable person would be put on notice that possession or distribution of marijuana at school could result in expulsion and that the discipline imposed by the local Board is reasonable and not contrary to the best interest of education.

Finally, Mr. and Mrs. L. cite *Southeast Warren Community School District v. Department of Public Instruction*, 285 N.W.2d 173 (Iowa 1979), for the proposition that "[e]xpulsion should be resorted to only when no reasonable alternative placement is available." *Id.* at 180. The student in *Southeast Warren* was a "special education student," and the dicta in that case must be viewed in that context. *Southeast Warren* was decided by the Iowa Supreme Court before manifestation determinations became a requirement in disciplinary proceedings against students with disabilities. Such determinations ensure that no student is disciplined for misbehavior that is merely a manifestation of his or her disability. Once the determination is made that the misbehavior was not such a manifestation, the student may be disciplined to the same extent as the student's non-disabled peers. The Supreme Court's dicta is quite sensible when read with the knowledge that the statutory safeguard of a manifestation determination did not exist for the student in *Southeast Warren*. It is not instructive beyond that context.

III.
DECISION

For the foregoing reasons, it is recommended that the decision of the Board of Directors of the Cedar Rapids Community School District made on October 9, 2006, be AFFIRMED. There are no costs of this appeal to be assigned.

1-2-07
Date

Carol J. Greta, J.D.
Administrative Law Judge

It is so ordered.

2-7-07
Date

Gene E. Vincent, President
State Board of Education