IOWA DEPARTMENT OF EDUCATION
(Cite as 26 D.o.E. App. Dec. 71)

In re Ian G.

Karla K., Appellant,	:	
	:	PROPOSED DECISION
vs.	:	[Admin. Doc. 4719]
Cedar Falls Community School District, Appellee.	:	

The above-captioned matter was heard telephonically on October 21, 2010, before designated administrative law judge Carol J. Greta, J.D. The Appellant ["Ms. K."] and her minor son, Ian, were present and represented by attorney Timothy Luce. The Appellee District was present through Superintendent David Stoakes and was represented by attorney John Larsen.

Hearing on a stipulated record 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 (2009). 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.

Ms. K. seeks reversal of the decision of the local board of directors of the Cedar Falls School District to suspend Ian from Holmes Junior High School for the first semester of the 2010-11 school year. This decision was made initially on August 9, 2010, and was re-affirmed by the local board on August 23, 2010.

FINDINGS OF FACT

At the time of Ian's alleged misconduct, he was nearing completion of the 7th grade at Holmes Junior High School, the sole junior high attendance center of the Cedar Falls Community School District. Ian was found to have violated the District's policy prohibiting "[p]ossession, use or distribution of a controlled substance or controlled substance look alike." Marijuana is a Schedule I controlled substance under Iowa Code section 124.204.

The facts are in dispute. The local board found that Ian participated in a marijuana transaction with another student ["Pete"] in a school restroom the morning of June 8, 2010, a day when classes were still in session. Ian admits that he used this particular restroom at the time in question, but he denied seeing Pete in the restroom and denied being in possession of marijuana. When Ian was searched two hours after the time of the alleged transaction, no illegal drugs were found in his possession.

The local board met on August 9, 2010 in closed session to take evidence and discuss the underlying incident and the administration's recommendation that Ian be suspended from school for the first semester (August 25, 2010 – January 13, 2011) of the 2010-2011 school year. The District agreed to allow Ms. K. and Ian to present

additional evidence and argument at the local board's August 23rd meeting. The local board devoted over five (5) hours to receiving and reviewing evidence in this matter.

Part of the evidence reviewed by the local board consisted of three student statements that Ms. K. claims contradict each other. Pete, who was also found to have been in possession of marijuana and punished by the local board, admitted that he had a prearrangement with Ian to meet in the restroom to transfer marijuana for money. It is not clear from the rest of Pete's statement who was the buyer and who was the seller, but Pete was unambiguous in implicating Ian as the other party to the transfer. Another student, "Steve," claimed that Pete had the marijuana, Ian had the money. Steve added that he saw Pete walk out of the bathroom, followed about 15 seconds later by Ian. A fourth student saw nothing, but stated that Steve told him very shortly after the incident that he, Steve, had witnessed Pete give Ian a bag of some drug.

The local board found that Pete admitted being in possession of marijuana in the Math Wing restroom of the school at approximately 8:10 a.m. on June 8, and that Pete and Ian participated in a drug transaction at that time. The local board acknowledged that Ian steadfastly denied any involvement and that no controlled substance was found in Ian's possession when he was searched two hours after the restroom incident. However, the local board found Ian's denial not to be credible, and affirmatively found that a "preponderance of the evidence supports the position of the administration that [Ian] was in possession of drugs at Holmes Junior High School on the morning of June 8, 2010, and that he was involved in a drug transaction with [Pete] in the Math Wing men's restroom at that time." [Findings and Decision of Cedar Falls Community School District Board of Directors, August 9, 2010.]

The specific terms and conditions of Ian's long term suspension are not at issue, and shall not be repeated here.

CONCLUSIONS OF LAW

The sole challenge raised on appeal by Ms. K. is whether the local board's decision is supported by a preponderance of the evidence.

As this Board stated in *In re Shinn*, 14 D.o.E. App. Dec. 185 (1996), "a 'preponderance of the evidence' exists when there is enough evidence to 'tip the scales of justice one way or the other' or enough evidence is presented to outweigh the evidence on the other side." *Shinn* at 196. Another explanation of this is that preponderance of the evidence means superiority in weight, influence, or force, but evidence may preponderate and yet leave the mind in doubt as to the very truth. *Walthart v. Board of Directors of Edgewood-Colesburg Community School Dist*., 694 N.W.2d 740, 744 (Iowa 2005). The evidence does not settle the fact question, but merely preponderates in favor of that side whereon the doubts have less weight. *Id.*

The fact that there is conflicting evidence in the record does not preclude, as a matter of law, a finding made by a preponderance of the evidence. *See Green v. Harrison*, 185 N.W.2d 722, 723 (Iowa 1971) (so holding regarding a finding of clear and convincing evidence, a lower standard than preponderance of the evidence). It was not necessary that the local board find whether Ian was the buyer or the seller or a go-between in a drug transaction. Marijuana is a Schedule I controlled substance according to Iowa Code section 124.204. Possession of the drug is illegal. This is not a criminal

action; the local board was not required to determine Ian's precise role in the transaction. It was sufficient that the board found Ian to be a party in the transaction because any participation in the transaction required Ian to be in possession of the drug at some point.

It is the factfinder's duty to weigh credibility. *See Iowa Supreme Court Attorney Disciplinary Board v. Weaver, 750* N.W.2d 71 (Iowa 2008). "It is entirely reasonable to give credibility to the students who admitted their own guilt and implicated the Perrys… ." *In re Perry*, 22 D.o.E. App. Dec. 175, 181 (2003). There is no evidence that Pete had a motive to lie either about his own guilt or about Ian's involvement.

This is not a criminal proceeding; accordingly, the local board also had the right to draw an inference from Ian's lack of presentation of corroborating evidence of his denials. Ian's explanation that he failed to present corroboration because he would not be believed does not ring true, particularly given that a full semester of his education at the District was at stake.

One of the points made by Ms. K. is that the District's administrators and some students are "predisposed" to conclude that Ian is involved in illegal drug use or possession. To the extent that this is true, it appears that any such predisposition was not created in a vacuum. Ian has cultivated and portrayed to his peers an image of himself as a participant in the drug culture.

Nor can this Board conclude that Principal Welter personally was predisposed to believe that Ian was culpable in this incident. Prior to the events of June 8, Principal Welter had received reports or concerns about Ian from various sources. The principal did not initiate or create any of the situations involving Ian. He merely investigated them as is his duty to do so. These are summarized as follows:

- On April 1, another student told one of the school's counselors that Ian took a pill out of his wallet at lunch and said it was a drug. It is likely that this was a candy "dot" and not a pharmaceutical. However, this incident shows that Ian appears to want to present himself as "doing drugs."

- On April 2, more than one student reported to the principal's office suspicious behavior at Ian's locker, and an anonymous parent called to state that Ian had told other students that he was doing crack cocaine. There is no evidence that any wrongdoing took place at Ian's locker, and we accept his mother's assertion that Ian was repaying a loan, which accounts for open wallets at his locker. Also, there is no evidence that Ian was a user of crack cocaine. However, again this incident shows that, for whatever reason, Ian wanted to be known as a participant in the local drug culture.

- On April 19, a sixth grader in another attendance center of the District told the principal of that building that there are drugs at Ian's home and that Ian was saying that he has access to weapons. Ms.K. states that Ian has two Airsoft BB guns, but denies the presence of drugs at the residence.

- Finally, on June 4, Ian was sitting in class and decided to transfer six bills (folding money) from one pocket to the other in a conspicuous enough manner to attract the attention of the teacher. The teacher reported Ian having a "bunch of money" and suggested to Ian that he have the school's bookkeeper keep it until day's end.

This case is not factually dissimilar to the appeal, *In re Hodges*, 22 D.o.E. App. Dec. 279, 283 (2004). In that case, this Board upheld the local board's expulsion of a student for possession of a Schedule II controlled substance (oxycodone) at school when the only direct evidence was the statement of a fellow student.

> The only direct evidence that the pills Zach bought and ingested one of were a Schedule II controlled substance was the statement of Student A. Student A told school and law enforcement authorities that the pills he sold to Zach came from a group of pills he had purchased from Student B, the remainder of which he relinquished to the District and one of which was tested by the DCI and identified as oxycodone.
>
> No testing could be conducted of the two pills purchased by Zach. He claims to have swallowed one and lost the other. No testing of Zach's blood or urine was requested of or volunteered by Zach. Zach did not show any outward signs to his principal of being under the influence of a drug. ...
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> But, direct evidence is not required. Even in a criminal case, where the standard of proof is "beyond a reasonable doubt" (as opposed to the "preponderance of the evidence" standard in local board hearings), direct and circumstantial evidence are equally probative. *E.g., State v. Schmidt*, 588 N.W.2d 416, 418 (Iowa 1998). "An inference of knowledge and intent can be drawn from the circumstances." *In re Amy Cline*, 2 D.P.I. App. Dec. 16, 19 (1979).

In re Hodges, 22 D.o.E. App. Dec. at 283.

The local board met at great length to review all of the evidence presented to it, and agreed to permit Ms. K. and Ian to present additional evidence prior to its final deliberations. By no means did the local board merely rubber-stamp the administration's punishment recommendation. We have no basis upon which to overturn its decision.

DECISION

For the foregoing reasons, it is recommended that the decision of the Board of Directors of the Cedar Falls Community School District made on August 9, 2010 and reaffirmed by that board on August 23, 2010, suspending Ian from the District for the first semester of the 2010-2011 school year be AFFIRMED. There are no costs of this appeal to be assigned.

11/17/10
Date

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

It is so ordered.

Date

Rosie Hussey, President
State Board of Education