IOWA DEPARTMENT
OF EDUCATION
(Cite as 24 D.o.E. App. Dec. 68)

In re Preston McNees

Joseph and Kim McNees, Appellants,	:	
	:	DECISION
vs.		
	:	[Admin. Doc. 4634]
Clarinda Community School District, Appellee.	:	

The above-captioned matter was heard in person on May 4, 2006, before designated administrative law judge Carol J. Greta, J.D. Appellant Joseph McNees was present on behalf of his minor son, Preston, who also participated in the hearing. The Appellants were represented by attorney Jon H. Johnson. The Appellee District was represented by attorney Danielle Hainfield. Also participating on behalf of the District were Superintendent Paul Honnold, Secondary Principal Michael Ruffing, and Assistant Principal Harley Schieffer. Present throughout the hearing but not participating herein was District Board secretary Cindy VanFosson.

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. McNees seek reversal of the April 6, 2006 decision of the local Board of Directors of the Clarinda School District to suspend Preston for the balance of the 2005-06 school year. Regarding the 2006-07 school year, the local Board decided that Preston may apply for admission to the District's alternative high school for the first trimester and may unconditionally re-enter Clarinda High School commencing with the second trimester.

I.
FINDINGS OF FACT

The pertinent facts of this case are undisputed. The fighting issues are whether Preston violated the District's weapons policy and, if so, whether the punishment imposed by the local Board is disproportionate to Preston's admitted misconduct.

At the time of his suspension, Preston was in the 11th grade at Clarinda High School. He had excellent attendance, was an honor roll student, carrying at least a 3.3 GPA, and was a member of the local Future Farmers of America (FFA) chapter. Preston had no prior disciplinary incidents with the District. Before his suspension, he was on track to graduate early (after the first trimester of the 2006-07 school year) if he chose to do so.

In the fall of the 2005-06 school year District officials noted that the high school student parking lot was littered with plastic BBs. Concerned that students were having BB pistol fights with each other on school property, the officials issued a general warning reminding the student body that the possession and/or usage of BB pistols at school is a violation of the District's weapons policy. Preston acknowledged this warning. No one alleges that Preston was involved in any of the BB pistol fights on school property that gave rise to the warning.

When Preston attained his 17th birthday in November, 2005, one of his friends gave him two plastic spring-loaded BB pistols and four magazines of 6 mm plastic BBs. The pistols and magazines are sold by the Daisy Outdoor Products company as "Powerline AirStrike Model 241®." Preston and his friends had BB pistol "wars" off school property a few times that fall, after which Preston stowed the pistols and magazines in the toolbox in his pickup truck. Preston routinely drove his pickup truck to high school and parked on school property. Mr. McNees testified that he was aware that Preston had the pistols and magazines in his pickup's toolbox, and that he had cautioned Preston that "that looks like something that could get a person into trouble" if discovered at school.

On March 29, 2006, Preston was in welding class at Clarinda High School. He received permission that day from the teacher to back his pickup to the shop class door, thus giving him easy access to the supplies in his toolbox. Looking through his pickup's toolbox while completing a project in the class, Preston spied the pistols and BB ammunition. On the spur of the moment he pulled out one of the pistols, loaded in a magazine, and shot two of his friends – K.B. and J.H. – below the shoulders. K.B. grabbed the other pistol from Preston's toolbox, loaded it, and shot Preston and a fourth friend, J.W. At some point, J.W. also intentionally discharged one of Preston's BB pistols. Unknown to Preston at the time, a stray BB hit a student passing by on the way to another class on the back of the hand.

Preston and his friends put away the pistols, finished welding class, and continued to the next class. As rumors of the incident reached high school administrators, the ensuing investigation soon centered on Preston. Although he initially lied about any involvement in the incident, before school was concluded for the day Preston came forward and offered the truth. He was immediately suspended by the administration for five school days, pending further local Board action.

The notice of the expulsion hearing to his parents states that the local Board would consider disciplinary action under its weapons policy. That local policy, number 502.6, states in pertinent part as follows:

> The board believes weapons, other dangerous objects and look-a-likes in school district facilities cause material and substantial disruption to the school environment or present a threat to the health and safety of students, employees and visitors on the school district premises or property within the jurisdiction of the school district.
>
> School district facilities are not an appropriate place for weapons, dangerous objects and look-a-likes. Weapons and other dangerous objects and look-a-likes will be taken from students and others who bring them onto the school district property or onto property within the jurisdiction of the school district or from students who are within the control of the school district.
>
> …

The Appellants brought both pistols and the magazines of BBs to this hearing. The pistols are constructed of clear plastic with brightly colored (one orange and one green) handles. The tips of both pistols are colored safety orange. The following instructions are printed by the manufacturer, Daisy, on the side of the barrel of the pistol: 1. PUT "ON SAFE" 2. LOAD 3. COCK 4. AIM 5. TAKE "OFF SAFE" 6. FIRE.[1] Above these instructions, the following additional words are printed on the side of the barrel:

> WARNING: MISUSE MAY CAUSE SERIOUS INJURY PARTICULARLY TO THE EYE. <u>FOR USE BY AGES 16 AND OLDER WITH ADULT SUPERVISION</u>. BEFORE USING READ OWNERS MANUAL AVAILABLE FREE FROM DAISY. [Emphasis thus on pistol.]

The District administration recommended to the local Board that Preston be expelled immediately and through the first trimester of the 2006-07 school year without possibility of enrollment in the alternative high school. During the expulsion hearing, the local Board met in closed session to hear from witnesses and deliberate on the administration's recommendation. Its members voted 4-1 to suspend, not expel, Preston for the remainder of the school year, to permit him to apply for admission to the alternative high school for the first trimester of the

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[1] A request by the Appellants to demonstrate the limited power of the pistols by having Preston shoot a BB at the torso of his attorney at fairly close range was denied. The denial was based solely on the fact that such a demonstration had been denied by the local Board; this Board cannot have the advantage of any evidence not considered by the local Board. The local Board did see the BB pistols.

2006-07 school year, and to allow Preston to re-enter Clarinda High School unconditionally after the first trimester.

The other two students who shot the BB pistols at school on March 29 were also punished by the local Board. K.B. was suspended for the rest of this school year, but allowed to apply for admission to the alternative high school April 10, 2006. J.W. was suspended for 15 school days and permitted to return to Clarinda High School on April 26.

II.
CONCLUSIONS OF LAW

Standard of Review

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 section 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. … .

For the reasons articulated in *In re Amber Criqui*, 24 D.o.E. App. Dec. 33 (2006), 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." We turn now to the substantive issues raised by the Appellants.

Did Preston's Possession and Use of the BB Pistols on March 29 Violate the District's Weapons Policy?

It is important to establish first that this is not a case that involves Iowa's Gun-Free School Zones Act, Iowa Code section 280.21B. That statute, with some exceptions, requires the expulsion "for a period of not less than one year" of a student "who is determined to have brought a weapon to a school or knowingly possessed a weapon at a school." "Weapon" as used in section 280.21B is defined as a *firearm*, which in turn is defined to mean a device that will "expel a projectile by the action of an explosive… ."

At no time has the District alleged that Preston's BB pistols are firearms. The BBs are not expelled by action of an explosive, but by a spring-loaded mechanism. Thus, the District at all times acted under its more general weapons policy, 502.6, which bans "weapons, other dangerous objects and look-a-likes" from school district facilities. The policy does not define weapons or include examples.

The Appellants argue that the Daisy AirStrike model 241® BB pistols do not violate the Clarinda District's weapons policy. Preston characterized the pistols as "toys." His parents argue that the pistols cannot be classified as "weapons" because BB pistols are not listed as weapons in Iowa Code section 724.1. That section defines and lists "offensive weapons." It is not meant to be an exhaustive listing of all weaponry. Even if Iowa's criminal code included a list of all objects considered to be weapons, such a listing is meaningless in the school context.

This Board has previously ruled that local school boards need not write conduct codes and rules "with the precision of a criminal code." *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), quoting favorably *Fowler v. Bd. of Educ.*, 819 F.2d 657, 664 (6th Cir. 1987). All that is required is that a person of reasonable intelligence be able to comprehend from reading a school policy what conduct is prohibited. *Bethel School Dist. No. 403 v. Fraser*, 478 U.S. 675, 106 S.Ct. 3159 (1986). Preston acknowledged that bringing the BB pistols to school was a policy violation. He admitted that he lied to school administrators investigating the incident because he knew that he was in the wrong and would be punished.

In the alternative to urging this Board to reject BB pistols as weapons in this case, the Appellants argue that the pistols are not "dangerous objects" as that term is used in the Clarinda policy. The Appellants cite the definition of "dangerous weapon" in Iowa Code section 702.7 as "any instrument or device designed primarily for use in inflicting death or injury upon a human being or animal, and which is capable of inflicting death upon a human being when used in the manner for which it was designed. …" Additionally, the Appellants rely on the definition of "dangerous" in *Black's Law Dictionary* of "likely to cause serious bodily harm."

This reliance is misplaced.

The Iowa appellate courts have stated that when an object is not listed specifically in a proscriptive statute, code, or policy, it is a question for the finder of fact whether the object is a dangerous weapon. *State v. Johnson*, No. 6-226/05-0558 (Iowa App. filed May 10, 2006)(absence of listing of BB guns in Iowa Code section 702.7, Dangerous Weapons, gave rise to jury question whether a BB gun is a dangerous weapon). *See also State v. Dallen,* 452

N.W.2d 398 (Iowa 1990), concluding that the prosecution presented sufficient evidence to permit the jury to find a BB gun was a dangerous weapon.

The dangers of a BB gun are not "extremely remote" as alleged by the Appellants. In *American Family Mut. Ins. Co. v. Wubbena*, 496 N.W.2d 783 (Iowa App. 1992), the Court of Appeals ruled that a 15-year-old who intentionally shot twice at a playmate with whom he had become angry, intended to cause some kind of bodily injury. "[I]t can be inferred as a matter of law that when a person shoots a bb gun at another, there is the intent to cause bodily injury. Some harm is inherent in and inevitably results from such an act. The character of the act of pointing a bb gun at another is such that physical harm can be foreseen as accompanying it." *Id.* at 785. [Emphasis added.]

Accordingly, the finder of fact, the Clarinda Community School District Board of Education, could conclude that the BB pistols were weapons in violation of its policy.

We also cannot conclude, as invited to do so by the Appellants, that the March 29 incident in school created minimal disruption. Principal Ruffing testified that there was disruption to the school environment in the following particulars: his time and that of Assistant Principal Schieffer was focused on investigating the incident, students had to be pulled from various classes to be interviewed, and the students directly involved in the incident actively chose to disrupt their education in favor of what Preston optimistically termed "horseplay."

As to the Appellants' bald assertion that Preston would present no threat to the safety of his fellow students or to school staff in the future, the local Board was not compelled to accept this statement. Indeed, the local Board did not accept this statement. Preston knowingly brought the pistols to school on a daily basis after all students were warned not to do so. At a time when class was in session, Preston made a decision to shoot one of the pistols. He did not aim at a paper target, but at two classmates. Even at the hearing before this Board's hearing officer, Preston characterized his actions as horseplay. The local Board wrote in its decision, "[Preston's] behavior is antagonistic to the rights of other students to attain their education. Such conduct is a serious threat to the safe and orderly operation of the school." There are no reasons before us to conclude that this is an unreasonable determination.

Is Preston's Punishment Disproportionate to his Misconduct?

In their post-hearing brief, the Appellants argue that the "discipline imposed by the Clarinda Board is extreme and not rationally warranted for the actual infraction that Preston committed." They pointed out at this hearing that this is the first time that Preston has faced discipline at school and that no one was seriously injured as a result of the shooting of the BB pistols on March 29.

We have previously taken the position 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 Peter Carlson*, 22 D.o.E. App. Dec. 1 (2003); *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).

This local Board carefully examined the level of participation of four or five students who were involved in the March 29 incident in welding class. The three students who not only discharged a BB pistol at school, but who shot at their peers, each received a distinct punishment, Preston's being the most severe. Preston – who acknowledged that the act of possessing the pistols on school property was forbidden – knowingly brought the pistols to school each day and initiated the incident of March 29. The Board's written Decision also demonstrates that its members took into account the fact that Preston initially lied in the early stages of the school administrators' investigation.

"Schools must provide a safe environment in which learning can take place with as few distractions as practical." *In re Peter Carlson*, 22 D.o.E. App. Dec. 1 (2003). Weighing this duty against the facts before it regarding Preston's misbehavior, the local Board reached what it believed to be the most appropriate punishment for Preston.

The 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). We conclude that the discipline imposed by the local Board is reasonable and not contrary to the best interest of education.[2]

III.
DECISION

For the foregoing reasons, it is recommended that the decision of the Board of Directors of the Clarinda Community School District made on April 6, 2006, suspending Preston McNees from the District for the remainder of the 2005-06 school year and the first third of the 2006-07 school year (permitting application for admission to the alternative high school for the first trimester thereof), be AFFIRMED. There are no costs of this appeal to be assigned.

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[2] Even in a jurisdiction where the standard of review was abuse of discretion, a lower standard than what we must apply, a federal trial court upheld the expulsion of a student whose sole violation was that he had stored his plastic BB gun in a vehicle parked adjacent to school property. The court reasoned that the local school board could rationally conclude that the BB gun in the car adjacent to the school was accessible to the student and thus posed enough of a danger to students and staff that expulsion was appropriate. *Tassoni v. Paris*, 2004 WL 1899761 (N.D. Ill.).

___5/22/06_____ /s/________________________________
Date Carol J. Greta, J.D.
Administrative Law Judge

It is so ordered.

___7/27/06_____ /s/________________________________
Date Gene E. Vincent, President
State Board of Education