**IOWA DEPARTMENT**
**OF EDUCATION**
**(Cite as 24 D.o.E. App. Dec. 33)**

*In re Amber Criqui*

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| Jeannette Criqui, Appellant, | : | |
| | : | DECISION |
| vs. | : | [Admin. Doc. 4628] |
| Chariton Community School District, Appellee. | : | |

The above-captioned matter was heard telephonically on February 1, 2006, before designated administrative law judge Carol J. Greta, J.D. The Appellant, Jeannette Criqui ["Ms. Criqui"], was present on behalf of her minor daughter, Amber. Amber and Amber's father, Richard Felts, also participated in the hearing. The Appellee District was represented by attorney Paul Goldsmith. Also participating on behalf of the District were Superintendent Robert Newsum[1], Secondary Principal Russ Reiter, Assistant Secondary Principal Kevin Seney, and teacher Andrew Fuhs. Present throughout the hearing but not participating herein were District Board secretary Kelley Reece and the District's School Resource Officer, Marcus Kious.

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.

Ms. Criqui seeks reversal of the January 10, 2006 decision of the local board of directors of the Chariton School District to expel Amber for one calendar year (the balance of the 2005-06 school year and so much of the 2006-07 school year to equal one calendar year).

## I.
## FINDINGS OF FACT

At the time of her expulsion, Amber was in the 11th grade at Chariton High School. The notice of the expulsion hearing to her parents (dated January 4, 2006) states that the administration was recommending to the local Board that Amber be expelled for an assault against another student on school grounds on December 16, 2005, and for a multitude of past violations of school rules, including "[p]hysical violence/fighting, disrespect to staff, and threatening behaviors toward students."

[1] Supt. Newsum, in Des Moines for another matter, was physically present in the same room as the administrative law judge.

Amber's disciplinary record discloses seven incidents of verbal harassment of other students, five incidents of disrespect toward school staff, three incidents of physical violence against other students at school, and one possession of tobacco at school. Nine of Amber's conduct violations occurred in the ten week period ending with the final incident of December 16.

Assistant Principal Seney, noting that Amber was suspended from school during the 2004-05 school year a total of 17 days, used two resources at the beginning of the current school year to help Amber get a fresh start. These resources are Capturing Kids' Hearts and Positive Behavioral Supports. The goal of both programs is for schools to make positive connections with students. Specific to Amber was the goal of changing her reputation at school from one of a bully to one of a person who makes positive contributions to the school. Mr. Seney described how these efforts paid off early in the school year; that Amber's "disposition became much more friendly and positive than it ever had in the past." Amber had no disciplinary referrals the first seven to eight weeks of school this school year.

However, starting in mid-October, Amber's disciplinary record picked up. Twice in October, she clashed with teachers with whose directives she disagreed. In November she pushed another student in a school hallway. And in December Amber was given a three day out-of-school suspension for threatening other students and another three days removal from school for acting disrespectfully to staff when she informed Mr. Seney, using obscene language, that he was not going to suspend her.

The out-of-school suspension period included December 16, a Friday. There is disagreement between the parties whether Amber had permission to be on school grounds that day for the limited purpose of retrieving her books and assignments. Assuming for the sake of argument that Amber believed she had permission to be at school to obtain homework, what next occurred on school grounds was the "last straw" for District administrators.

Mr. Seney saw Amber in the media center and told her to get what she needed and leave. Amber informed Mr. Seney that he could not talk to her and to leave her alone. She left the building, but did not leave the school grounds. She waited by an exit. When another student left the building, a shouting match ensued between Amber, her mother, her sister, and the other student. Teacher Andrew Fuhs witnessed Amber hit the other student in the face, separated the two students, and instructed Amber to leave. Moments later, Amber circled around Mr. Fuhs and resumed hitting the other girl. The other student did not hit Amber, but did strike Amber's mother in the face with a bookbag or purse.[2] Amber does not dispute that she assaulted the other student; she states that she

[2] Amber does not claim that she assaulted the other student in defense of her mother; the incident between Ms. Criqui and the other student occurred after Amber's assault on the other student. It was referred to local law enforcement. There is nothing more in this record about any contact not involving Amber directly.

had overheard the other student talking about her and that the other student responded "make me" when Amber told her to stop.

Amber minimizes and offers excuses for her misconduct, but regarding only one incident does she outright dispute her culpability. Regarding the November 30 incident when she is accused of pushing another student in the hallway, Amber states that she tripped and fell into the student. The District believes this is not a credible account, but rather that Amber, who was standing by her own locker at the time, deliberately threw an elbow into the other student as that student walked by Amber. Often, Amber's account of the incidents consists of blaming others along the line of "the teacher couldn't speak to me that way" or "the other student had it coming."

In her notice of appeal, Ms. Criqui states that Amber was reacting to racial slurs in many of the incidents. No examples were offered in the notice or in testimony at this hearing. In Amber's seven-page, typewritten account offered in her defense, she addresses her "side" of 26 separate incidents. She writes that twice a racial epithet was directed at her, presumably by another student. The first occasion was in November of 2004. At that time a student was not addressing Amber directly but was talking to a school official about Amber, and used a pejorative term to describe Amber.[3] On December 2, 2005, Amber told Mr. Seney that she did not feel safe at the high school because she had overheard two girls call her an ugly, racially-charged name, and then tell Amber "too bad Halloween is over [because] we could have [hung you] to scare away the black trick-or-treaters." But Amber did not elaborate upon her written statement in her testimony, and in her written account she does not claim that this verbal abuse is a defense to any of the incidents of harassment or assault for which she was punished.

Ms. Criqui also did not elaborate on her assertion that Amber was reacting to racially-motivated provocation. Rather, she argued that (1) no one at the District informed Amber of complaint forms available to students to use to report peer harassment and (2) no one at the District tried to help Amber with her "attitude."

Principal Reiter refuted Ms. Criqui's first argument when he testified that Amber was given the complaint forms in the spring of 2005 but never returned any. Amber did not dispute that she had the complaint forms at her disposal.[4]

As to helping Amber, Mr. Seney provided an abundance of evidence that he tried in many and creative ways to reach out to Amber. In a back-handed recognition of his efforts, Amber complained at this hearing that, as a "B/C" student, she was in need of no

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[3] By her own account, Amber responded with a derogatory term toward the other student.

[4] The absence of a written complaint from Amber did not stop the District from suspending another student whom it determined had harassed Amber.

help. She protested here that Mr. Seney had no "right to try to get me in with a better group of kids."

During the expulsion hearing, the local Board met in closed session for approximately two-and-a-half hours to hear from witnesses and deliberate on the administration's recommendation. Its members voted unanimously to expel Amber for one calendar year. Specifically, the order subject to this appeal states as follows:

> A. For the remainder of this school year (2005-2006), she [Amber] shall be expelled from school, however, she shall receive her books and homework from the school which she shall complete at home, and her tests will be arranged by the high school administration to be taken at a time and location where she is excluded from other students.
> B. For the 2006-2007 school year, during the remainder of her expulsion, she will be allowed to attend the Chariton Alterative School as her sole option for educational benefits from the Chariton Community School District.

## 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 expel students 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. … .

The Legislature also has provided a process in Iowa Code section 290.1 for aggrieved students or their parents to appeal local board decisions to the State Board of Education. Section 290.3 specifically directs this Board to render decisions that are "just and equitable" in hearing appeals from local board decisions.

Thus, the local boards have clear authority to expel students, we have clear authority to hear appeals therefrom, and section 290.3 directs that our review must be 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).

In addition to the directive in section 290.3, the administrative rules adopted by this Board for appeals before us also state that our "decision shall be based on the laws of the United States, the state of Iowa and the regulations and policies of the department of education and shall be in the best interest of education." 281—IAC 6.17(2). This led to a standard of review first articulated in *In re Jesse Bachman*, 13 D.o.E. App. Dec. 363 (1996), that we not overturn a local board decision unless the local decision is "unreasonable and contrary to the best interest of education." *Id*. at 369.

*Did the Local Board Act Unreasonably and Contrary to the Best Interest of Education?*

The Chariton Community School District has a policy defining and punishing both disrespect to staff members as well as physical violence toward other students. The policy states in pertinent part as follows:

> **Disrespect to Staff Members**: Any act which demeans the position of a staff member of the school. The use of profanity or a threat toward a staff member or the refusal to carry out instructions of a staff member while in the building or on the school grounds … is considered to be disrespectful.
> …
> Fourth Offense – …[M]ay be recommended for expulsion by the Board.
>
> **Fighting and Physical Violence** – Any time a student is determined to be a danger to himself/herself or others during regular school day or at any school activity because of demonstrated acts of violence.
> …
> B. Toward other Students
> …
> Third Offense – Out-of-school suspension pending an expulsion hearing with the Board.

Ms. Criqui does not challenge the District's authority to have and enforce the above policies. She does not claim that the above local policies are unreasonable. Nor does she argue that Amber was deprived in any way of procedural due process. As stated in the Findings of Fact, Ms. Criqui's sole argument boils down to a claim that Amber was justified in her acts of violence against her peers.

Certainly, it is indisputable that "[s]chools 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). The extensive depth and breadth of authority schools have over student conduct has been recognized by the U.S. Supreme Court, which stated that the "proper educational environment requires close supervision of schoolchildren … ." *New Jersey v. T.L.O.*, 469 U.S. 325, 105 S.Ct. 733, 741 (1985).

The responsibility that schools have to provide a safe environment in which learning can take place coexists with the right that a student has to defend herself *within the limits of the law*. Thus, we now examine Amber's claim of justification.

There is nothing in statutory or case law that permits a student to assault another because of alleged name-calling. To the contrary, it has long been established that mere words, no matter how abusive or insulting they may be, cannot justify an assault. *Chapman v. Lamp*, 189 Iowa 771, 179 N.W. 50 (1920). Amber wrote that on two occasions over a 13-month period of time a racial epithet had been used to describe her. On one such occasion, the student was talking to a school official but knew that Amber was listening when she chose an ugly term to refer to Amber. More recently, she told Mr. Reiter that she did not feel safe at the high school because two girls made a remark about hanging Amber, who is a person of color.

Even if the remark was intended to frighten Amber (and the record simply is not clear about this because there was no testimony about either incident), she followed the correct procedure in reporting the incident to the school. There is no excuse for the remarks to which Amber was subjected, but nothing about those remarks gives her a legal justification for assaulting students.[5]

It is entirely reasonable for the Chariton Board of Education to have expelled Amber Criqui for one year.

*Admission to another School or School District*

Amber asks this Board to address how she may enroll in another school district if her family moves from the Chariton District. This is covered in Iowa Code section 282.4(3), which states, "…[I]f a student has been expelled or suspended from school and has not met the conditions of the expulsion or suspension, the student shall not be permitted to enroll in a school district until the board of directors of the school district approves, by a majority vote, the enrollment of the student."

This language has not been litigated. It is not clear which school board must approve the enrollment of an expelled student.

[5] The record also does not disclose whether any of the despicable remarks had been made by students who were assaulted by Amber.

Our guidance is that if Amber desires to enroll elsewhere before the period of expulsion expires, the board of the school district to which Amber seeks enrollment must approve. We also believe that a board in that position is well-advised to also seek permission from the board that expelled her. Local school boards in Iowa should recognize and honor the authority of another board to discipline its students. As a matter of courtesy and good faith, no school board should take action that effectively negates an expulsion decision reached by another board.

## III.
## DECISION

For the foregoing reasons, it is recommended that the decision of the Board of Directors of the Chariton Community School District made on January 10, 2006, expelling Amber Criqui from the District for one year be AFFIRMED. There are no costs of this appeal to be assigned.

(3/20/06)
Date

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

It is so ordered.

(5/11/06)
Date

_____
Gene E. Vincent, President
State Board of Education