

**IOWA DEPARTMENT
OF EDUCATION
(Cite as 24 D.o.E. App. Dec. 168)**

In re Ashley Garvin

Louise Wood,	:	
Appellant,	:	
	:	DECISION
vs.	:	
	:	[Admin. Doc. 4644]
Harlan Community School District,	:	
Appellee.	:	

The above-captioned matter was heard telephonically on November 30, 2006, before designated administrative law judge Carol J. Greta, J.D. Appellant Louise Wood failed to be present on behalf of her minor daughter, Ashley, but was represented by attorney William T. Early. Participating on behalf of the Appellee District were Superintendent Bill Decker and Middle School Principal Duane Magee.

A 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. Wood seeks a modification of the October 9, 2006 decision of the local Board of Directors of the Harlan School District disciplining Ashley for a violation of school rules and state law that prohibit the possession and/or use of controlled substances at school. The specifics of the disciplinary order are discussed herein.

**I.
FINDINGS OF FACT**

At the time of her expulsion, Ashley was a regular education student in the 7th grade at Harlan Middle School. On Thursday, September 28, 2006 – a school day – Ashley brought marijuana to school, shared some of that controlled substance with classmates, and used some of the marijuana herself during the school day on property adjacent to the school's property.

The local Board's decision, which followed an evidentiary hearing at which both Ashley and her mother were present, includes the following provisions:

- Ashley is expelled for the remainder of first semester of the 2006-07 school year.
- Counseling for Ashley is recommended, but not mandated.
- Ashley may re-enroll for the second semester, and will be considered on "probationary status" for second semester, during which time the following conditions apply:

- She is ineligible to participate in extracurricular activities pursuant to the District's good conduct policy.
- She must abide by all school rules and state laws.
- Ashley will be promoted to the 8th grade if the following are both true:
 - She maintains a 2.0 grade point average (GPA) for the second semester and
 - She "has completed a satisfactory educational program during her expulsion."

Ms. Wood's primary contention is that the District has a duty, under Iowa Code § 280.19A, to provide alternative educational options for Ashley during the period of her expulsion. She secondarily argues that the conditions set forth immediately above, to the extent that they may constitute conditions of re-enrollment in the District for second semester, are unlawful. The parties stipulated that the District has not provided directly any alternative educational program for Ashley during the period of her expulsion.

II. CONCLUSIONS OF LAW

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 § 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 ... any controlled substance as defined in § 124.101(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."

Ms. Wood does not raise any claims of procedural irregularities. In examining the substantive issues she raises, we shall not overturn the local Board's decision unless we determine that decision to be "unreasonable and contrary to the best interest of education." *In re Amber Criquei*, 24 D.o.E. App. Dec. 33 (2006).

Impact of § 280.19A

Ms. Wood recognizes that the Harlan Board has authority to expel Ashley. She contends that the District has a duty, under Iowa Code § 280.19A, to provide alternative educational options for Ashley during the period of her expulsion. Section 280.19A states as follows:

[E]ach school district shall adopt a plan to provide alternative options education programs to students who are either at risk of dropping out or have dropped out. An alternative options

education program may be provided in a district, through a sharing agreement with a school in a contiguous district, or through an areawide program available at the community college serving the merged area in which the school district is located. Each area education agency shall provide assistance in establishing a plan to provide alternative education options to students attending a public school in a district served by the agency.

As stated earlier, § 282.4, provides authority for local school boards to expel any student from school for a violation of school rules. Section 282.3 gives statutory authority to such boards to exclude a student from instruction. Both statutes specifically make exceptions for students who have been identified as students with disabilities. The statement at the end of § 282.3(1) is, "However, the [local] board shall provide special education programs and services under chapters 256B, 257, and 273 for all children requiring special education." Ashley has not been identified as a child with a disability for special education purposes.

Even if we assume for the sake of argument that Ashley is a student who is at risk of dropping out, nothing in § 280.19A makes an exception requiring the District to serve Ashley during the period of her expulsion. Section 282.3 demonstrates that the Legislature knows how to make such an exception. We must presume that our lawmakers have affirmatively decided not to make the exception. See *Bob Zimmerman Ford, Inc. v. Midwest Automotive I, L.L.C.*, 679 N.W.2d 606 (Iowa 2004), holding that the legislature may regulate by omission as well as by inclusion, particularly when certain conditions of entitlement are listed in a statute, and others are not.

Conditions for Promotion

By the plain language of the local Board's decision, Ashley's completion of "a satisfactory educational program during her expulsion" is not a condition of her re-enrollment, but is a condition of her promotion to 8th grade. As long as Ashley is still a resident of the Harlan District when her period of expulsion expires, she will be re-enrolled in the Harlan Middle School.

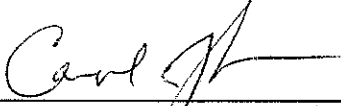
The conditions placed by the local Board on Ashley's promotion to 8th grade (2.0 G.P.A. and completion of a satisfactory educational program during her expulsion) beg the question of the extent of a local school board's authority to determine promotion/retention issues. Consistent with sample policy number 505.2 of the Iowa Association of School Boards, such decisions lie initially within the judgment of the professional education staff. A promotion/retention decision may be appealed to a local school board for final judgment on the issue, but the initial determination to promote or to retain rests with teachers and building principals.

After the hearing before this Board, Superintendent Decker submitted into the record a letter clarifying that Ashley will be promoted to 8th grade or retained in 7th grade based on her "academic standing and abilities at the end of the 2006-2007 school year," and that her grade point average will not be used "any differently than it is used for all students. Furthermore, programming during her expulsion will not be considered in the promotion/retention decision." Accordingly, we see no need to order any further adjustment to the decision of the local Board.

**III.
DECISION**

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

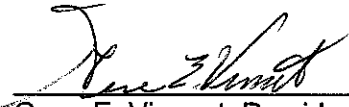
12/12/06
Date



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

It is so ordered.

2-7-07
Date



Gene E. Vincent, President
State Board of Education