

**IOWA DEPARTMENT
OF EDUCATION
(Cite as 22 D.o.E. App. Dec. 259)**

In re Lonnie William Billings

Pamela Billings, Appellant,	:	
	:	DECISION
vs.	:	
	:	[Admin. Doc. 4559]
Burlington Community School District, Appellee.	:	

The above-captioned matter was heard in person on March 22, 2004, before designated administrative law judge Carol J. Greta. Appellant, Pamela Billings, was present on behalf of her son, Lonnie William Billings, who was also personally present. Mrs. Billings was not represented by legal counsel at this hearing. Appellee, the Burlington Community School District, was represented by legal counsel, Sue Seitz, and paralegal, Alan Maupin, of the Belin Lamson McCormick Zumbach Flynn Law Firm, Des Moines, Iowa. Also appearing on behalf of the Appellee were Superintendent Michael Book and High School Principal Michael Schmitz.

An evidentiary hearing was held pursuant to agency rules found at 281—Iowa Administrative Code 6. Authority and jurisdiction for the appeal are found in Iowa Code § 290.1. 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.

Mrs. Billings seeks reversal of a decision of the local board of directors of the Burlington district made on January 12, 2004, upholding a disciplinary decision contrary to Lonnie.¹ She filed a timely appeal to this Board.

**I.
FINDINGS OF FACT**

The question posed in this appeal is whether a 30-minute detention was wrongfully issued to Lonnie. The local Board of the Burlington Community School District decided that the detention was not improper and refused to retract or change it.

¹ The local Board members stated that they were upholding the administration’s recommendation, and that they did not need a motion to do so. A motion would have been needed, in their view, only if the Board desired to modify or reverse the recommendation for Lonnie’s detention.

Lonnie Billings is a 9th grader at Burlington High School and a member of the high school choir. On November 5, 2003, the choir teacher instructed students, including Lonnie and another student (“Tony”), to put their choir robes in their lockers and then return to class, which had not yet ended. What does end here is any agreement of the parties as to the salient facts.

According to Lonnie’s testimony before both the local Board² and at this hearing, he and Tony, choir robes in hand, stopped at a water fountain in the science wing of the high school where Lonnie got a drink of water. The handle on the side of the fountain stuck in the “on” position and as Lonnie did not know how to turn it off, he and Tony walked away to their lockers leaving the water running. After securing their robes in their lockers, the two walked by the same water fountain, which was no longer running, where Tony helped himself to a drink while Lonnie walked on toward the choir room. Tony then caught up to Lonnie, at which point a teacher whose name neither student knew called the two to her and gave both students a 30-minute detention for being in the hall and turning on the water fountain.

The teacher who issued the detention is Elizabeth Sanning, a teacher of biology and zoology. Ms. Sanning did not appear personally before the local board. Rather, Mr. Schmitz related to the local Board what Ms. Sanning reported to him. Ms. Sanning noticed Lonnie and Tony by the water fountain, which was running. She asked them to return to class, then proceeded to the restroom. When Ms. Sanning exited the restroom after a few minutes, the young men were still in the hall and the water fountain was still running. At that point, Ms. Sanning informed Lonnie and Tony that they were both to serve a 30-minute detention in her classroom because they had not returned to choir in a timely manner after being advised by her to do so. Times for serving those detentions were set after some limited give-and-take between Lonnie and Ms. Sanning regarding when he would serve his detention.

Ordinarily a teacher-issued detention does not come to the attention of building or district administrators. However, in this case Lonnie did not report to Ms. Sanning’s classroom to serve his detention. Therefore, in accordance with district policy, Ms. Sanning made a report to high school administrators of the initial incident and of Lonnie’s failure to comply with the disciplinary consequence. Ms. Sanning’s report, given to the local Board members and admitted into evidence here, gives a bit more detail about her encounter with the two students, as follows:

² After being advised by the District’s administrators of her right to a closed hearing pursuant to Iowa Code § 21.5(1)(e), Ms. Billings requested an open hearing before the local Board. A cassette tape of that hearing was admitted into evidence here.

...Just as I reached the women's restroom near the science wing, I saw two boys at the east end of the hall. The water fountain near the restroom was running. I went over and turned it off. The two boys watched me and for lack of a better term, giggled and then proceeded south. I went into the restroom. When I left, the same water fountain was running, and the two boys were heading down the stairs next to the restroom. I instructed them to return. I asked them if they had turned it on both times and they said yes. I asked why and neither had a reason. I also asked why they were in the hall and they told me they were supposed to be getting their choir robes. Neither boy had the robes at that point. I took them down to my room and had them both write their names on a sheet of paper. ... I gave them both a detention to be served by Friday, November 7th.

Lonnie's violation of November 5 was characterized by the District in this report as "unacceptable hall conduct." When pressed by local Board members as to the precise violation that merited a 30-minute detention for Lonnie, Mr. Schmitz stated that it was "some sort of split" between the water fountain issue and not going straight back to class.

Lonnie disputed that he should be punished for either reason. He told the local Board that the water fountain must have been malfunctioning, but that, in any event, Tony turned on the fountain the second time without any knowledge on his part that Tony would do so. Regarding any other hallway conduct, Lonnie denied that he spent an excessive time out of class or that he was disruptive while in the hallway.

The deliberations of the local Board members demonstrate that the members were convinced by the "totality of the circumstances" that the 30-minute teacher detention was not unreasonable. Accordingly, the Board took no action to modify or reject the administration's recommendation that Lonnie serve his 30-minute detention. The detention has been served.³ A teacher detention does not go on a student's permanent record. However, under the District's progressive disciplinary policy, further misconduct could result in suspension or expulsion. It is possible, therefore, that Lonnie's education record eventually could be negatively affected by the detention for the November 5 incident. In other words, there will be a tangible benefit to Lonnie if we agree with him that the local Board's decision should be reversed.

³ The record shows that, because Lonnie failed to timely serve the 30-minute detention, he was to serve a four-hour detention. He failed to comply with the four-hour detention, and eventually served a one-day out-of-school suspension. The more severe consequence is not at issue here; only the original detention is before this Board.

II. CONCLUSIONS OF LAW

The Iowa Legislature has directed that the State Board, in regard to appeals to this body, make decisions that are “just and equitable.” Iowa Code § 290.3. The standard of review, articulated in *In re Jesse Bachman*, 13 D.o.E. App. Dec. 363 (1996), requires that a local board decision not be overturned by the State Board unless the local decision is “unreasonable and contrary to the best interest of education.” *Id.* at 369.

The consequence here was a 30-minute detention that did not involve Lonnie’s removal from any class or activity. Lonnie’s only procedural due process complaint is that Ms. Sanning did not appear before the local Board, and that this deprived him of a right to cross-examine her. He also argues that the finding of misconduct and subsequent punishment were contrary to the evidence against him.

That *some* process applies to students facing expulsion, and even short-term suspensions, from school has long been established. In *Goss v. Lopez*, 419 U.S. 565, 95 S.Ct. 729 (1975), the United States Supreme Court held that even a short term suspension, which the Court defined as ten days or less, could not be imposed “in complete disregard of the Due Process Clause [of the Fourteenth Amendment].” *Id.*, 95 S.Ct. at 737. How much process is due for a 30-minute detention?

Although we find no reported cases in Iowa bearing on the issue, there are a few reported cases from other jurisdictions where as little as a three-day suspension has been the punishment. Those cases are in agreement that cross-examination is not required to preserve the student’s interest at stake. Due process is satisfied in cases involving three-day suspensions where the student is informed of the violation and evidence against him, and is given an opportunity to answer to the violation. *See, e.g., Smith ex rel. Lanham v. Greene County School District*, 100 F.Supp.2d 1354 (M.D. Ga. 2000); *West v. Derby Unified School District No. 260*, 206 F.3d 1358 (10th Cir. 2000). Inasmuch as these steps were afforded to Lonnie and inasmuch as he faced only a 30-minute detention – far shy of a three-day period of suspension – we conclude that any process due to him was fulfilled by the District.

Regarding the evidence against him, Lonnie argues that there was a discrepancy in the reason for his punishment, and that he could not ascertain whether he was being disciplined for his conduct at the water fountain or some other hallway conduct. Any focus on one type of conduct to the exclusion of another, however, is misplaced. As the local Board articulated at its meeting, it was the totality of the circumstances that concerned them and that they believed justified the detention. Furthermore, Lonnie was quite able to address both types of conduct. He argued that the water fountain was not working properly, that he was not in the hallway an excessive amount of time, and that he was not disruptive while in the hallway. There was no prejudice to Lonnie caused by any

discrepancy in the characterization of his misconduct. Granted, the local Board gave more credence to the administration than to Lonnie, but that is within the Board's discretion and authority.

A local Board member stated at the January 12 hearing that perhaps Lonnie and Tony did not realize the seriousness of the situation when Ms. Sanning brought to the boys' attention that their conduct did not meet her expectations. This statement echoes words of the U.S. Supreme Court in *Board of Education of Ind. School District No. 92 of Pottawatomie Co. v. Earls*, 536 U.S. 822, 112 S.Ct. 2559, 2565 (2002), when it stated,

Securing order in the school environment sometimes requires that students be subjected to greater controls than those appropriate for adults.

Put another way, the “proper educational environment requires close supervision of schoolchildren, as well as the enforcement of rules against conduct that would be perfectly permissible if undertaken by an adult.” *New Jersey v. T.L.O.*, 469 U.S. 325, 105 S.Ct. 733, 741 (1985). [Emphasis added.]

Schools must provide a safe environment in which learning can take place. It is entirely reasonable for the Burlington Board of Education to have upheld the consequence against Lonnie Billings of a 30-minute detention.

Finally, both parties marked and offered as exhibits herein quite a few documents subject to objection by the non-offering party. Rulings on the admissibility of all but one exhibit were deferred with the understanding and consent of the parties. Appellant's Exhibit 8 – the cassette tape of the January 12 meeting of the local Board – was admitted without objection at the hearing before this Board. The objections to all other exhibits are hereby sustained with the exception of the following exhibits:

- Appellant's Exhibits 1, 2, and 3 (notices to the Billings of the November 5 incident and of the subsequent November 10 conference between Lonnie and Dean of Students, Mack Turner)
- Appellee's Exhibit 4, second page thereof ONLY (a page from the Burlington High School Student Handbook)
- Appellee's Exhibit 6 (Lonnie's hand-written statement of the events of November 5, 2004)
- Appellee's Exhibit 10 (minutes of the January 12 meeting of the Burlington Board of Education)

III.
DECISION

For the foregoing reasons, it is recommended that the decision of the Board of Directors of the Burlington Community School District made on January 12, 2004, upholding the 30-minute detention against Lonnie Billings, be AFFIRMED. There are no costs of this appeal to be assigned.

Date

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

It is so ordered.

Date

Gene E. Vincent, President
State Board of Education