

IOWA DEPARTMENT OF EDUCATION
(Cite as 28 D.o.E. App. Dec. 175)

<i>In re Expulsion of M.F.</i>)	
)	
J.F. and G.F.,)	
)	DECISION
Appellants,)	
)	
v.)	
)	
Clear Creek Amana Community)	Admin. Doc. No. 5077
Community School District,)	
)	
Appellee.)	

STATEMENT OF THE CASE

The Appellants seek reversal of a November 30, 2017 decision by Clear Creek Amana Community School District ("District") Board ("Board") expelling M.F. for the remainder of the 2017-2018 school year and prohibiting M.F. from attending any school activities. The affidavit of appeal filed on December 18, 2017, attached supporting documents, and the District's supporting documents are included in the record. Authority and jurisdiction for the appeal are found in Iowa Code §§ 282.18(5) and 290.1. The administrative law judge finds that she and the State Board of Education ("State Board") have jurisdiction over the parties and subject matter of the appeal before them.

An in person evidentiary hearing was held in this matter on February 1, 2018, before designated administrative law judge, Nicole M. Proesch, J.D., pursuant to agency rules found at 281 Iowa Administrative Code chapter 6. The Appellants were present with M.F. and were unrepresented. Superintendent Tim Kuehl ("Superintendent Kuehl") appeared on behalf of the District and was represented by attorney Kristy Latta. Also present was High School Principal Mark Moody ("Principal Moody").

J.F. and M.F. testified in support of the appeal. Appellants presented exhibit A with no objections. Superintendent Kuehl and Principal Moody testified for the District and the school district's exhibits 1-5 were admitted into evidence without objection.

The Appellee filed a timely Motion to for Summary Judgment on January 19, 2018, that was denied on January 31, 2018.

FINDINGS OF FACT

M.F. was a fourteen year old freshman at Clear Creek Amana High School during the 2017-2018 school year. M.F. and his family are residents of the District and M.F. has been attending schools in the District since he was in kindergarten. During the 2016-2017 school year M.F. attended middle school in the District. During that school year M.F. had nine disciplinary issues relating to class disruption, theft, truancy, and fighting.

Another incident occurred in the fall of 2017. The District is a 1:1 laptop school that assigns a Chrome Books to each of its students for use of a learning management system. On November 14, 2016, the District experienced multiple internet outages. The outages impacted hundreds of students from 6th to 12th grades and disrupted learning. The District was able to trace the internet outages back to M.F. M.F. had used a cell phone application to attack the District's computer network, causing it to crash. The District questioned M.F. about the incident and M.F. admitted to intentionally trying to crash the network. M.F. was suspended for one hundred and twenty days and provided homebound instruction for the remainder of the 2016-2017 school year in lieu of an expulsion. During this time, M.F. completed 200 hours of community service and earned money to pay the District for costs associated with the crash.

At the beginning of the 2017-2018 school year, M.F. was readmitted to the regular school program at the high school under the terms of a readmission agreement. In the agreement, it stated that if M.F. had any new rule violations it would result in a recommendation to expel M.F. if appropriate. The readmission agreement also noted the District's authority to expel M.F.

In the fall of 2017, M.F. was removed from Spanish class and Principal Moody reminded M.F. that he could be subject to expulsion if he violated school rules. M.F. testified he felt this was a threat and Principal Moody testified that he was reminding M.F. that if he did not follow the rules and continued to get in trouble, he could be expelled. M.F. testified this happened on several occasions. We find Principal Moody's account credible.

On November 17, 2017, two students reported to Principal Moody that M.F. talked about using drugs before school. Additionally, one of M.F.'s teachers reported that M.F. was acting odd in class. M.F. was escorted to Principal Moody's office. Principal Moody told M.F. about the reports he had received and observed that M.F. was not coherent. M.F. admitted that he used illegal drugs before coming to school and that he was under the influence.

Administration found that M.F.'s behavior violated school rules relating to student conduct and the use of illegal substance and that he should be suspended for two days. However, because of the readmission agreement, M.F. was placed on out of school suspension pending a hearing before the Board on a recommendation that M.F. be expelled for the remainder of the 2017-2018 school year.

A hearing was held on November 30, 2017, before the Board. J.F. and G.F. were notified and invited to the hearing in a letter sent on November 27, 2018. J.F. provided a written statement to the Board and did not participate in the hearing.

J.F.'s written statement outlined for the Board how difficult it was for M.F. to return to school after his initial suspension. In October, M.F. reported feeling depressed after a peer attempted to commit suicide. M.F. was also struggling in his classes. At that point, the Appellants set up a psychiatric appointment for M.F. for December 4, 2018. M.F. was also struggling with the separation of his parents.

In the days leading up to the incident on November 17, M.F. could not sleep. On November 15, 2017, he was up until 1:00 or 2:00 a.m. He stayed home from school the next day to catch up on rest. On November 17, 2017, at 1:00 p.m., J.F. received a call from the school that M.F. was under the influence at school and being suspended for two days. M.F. reported that his classmates told Mr. Moody that M.F. had taken Xanax and he was going to go home and take more to commit suicide. M.F. had not mentioned suicide to his parents. The next day M.F. was taken to the University of Iowa where M.F. revealed that he had taken 23 pills that his mother used for her thyroid in an attempt to commit suicide. He was hospitalized for five days and continues to get medical attention for his depression.

Administration was not aware of M.F.'s depression and felt that M.F. was disrespectful and not remorseful for his actions. The Board voted 7-0 to expel M.F. and prohibit him from being on school grounds or at school related activities for the remainder of the year. M.F. may be readmitted after serving the period of expulsion, getting a mental health and substance abuse evaluation and following through on recommendations. The Appellants filed a timely appeal. They argued that the decision to expel M.F. is too harsh based on the incident that occurred that day. They believe M.F. should have only had a two day suspension notwithstanding the readmission agreement given his depression.

CONCLUSIONS OF LAW

The State Board, in reviewing appeals under Iowa Code section 290.1, has been given broad authority to make decisions that are "just and equitable." Iowa Code § 290.3 . The review of a local school board's decision is for abuse of discretion. *See Sioux City Comm. Sch. Dist. v. Iowa Dep't of Educ.*, 659 N.W.2d 563, 569 (Iowa 2003). In applying abuse of discretion we look at whether a reasonable person could have found sufficient evidence to come to the same conclusion. *Id.* "[W]e will find a decision was unreasonable if it was not based on substantial evidence or was based upon an erroneous application of the law." [Citations Omitted] *Id.* at 569. The State Board will not disturb a local board's decision in school discipline issues unless they are "unreasonable and contrary to the best interest of education." *In re Jesse Bachmann*, 13 D.o.E. App. Dec. 363, 369 (1996). The decision of a local board to suspend or expel a student is clearly an issue of discretion. The question here is whether or not the decision of the Board to expel M.F. was reasonable under the facts and circumstances. If the decision was reasonable, we must find in favor of the local board as a matter of law. If it was unreasonable, and not based on substantial evidence, we must find in favor of the Appellants.

The Iowa Legislature has conferred broad authority to local school boards to adopt and enforce its own rules and disciplinary policies. *See* Iowa Code §§ 279.8 & 282.4. Under section 279.8, "the board shall make rules for its own government and that of the . . . pupils, and for the care of the school house, grounds, and property of the school corporation, and shall aid in enforcement of the rules." Local school boards have the explicit statutory authority to expel or

suspend students for violating school rules pursuant to Iowa Code section 282.4. Additionally, under Iowa Code section 279.9, a board "shall prohibit . . . the use or possession of . . . any controlled substance . . . by any student of the schools and the board may suspend or expel a student for a violation of this rule under this section." Iowa Code § 279.9. Thus, school districts have broad discretion to punish students who break the rules as long as the district follows appropriate due process requirements. *In re Suspension of A.W.*, 27 D.o.E. App. Dec. 587 (2015).

Due process requires "notice and opportunity for hearing appropriate to the nature of the case." *Goss v. Lopez*, 95 S. Ct. 729, 738 (1975). However, due process does not "shield [a student] from suspensions properly imposed". *Id.* at 739. An expulsion or a long-term suspension will generally be upheld as long as the student received written notice of the alleged offense; notice of the time, date, and place of the hearing; sufficient time to prepare an adequate defense, to present witnesses, and to cross examine witnesses; notice of individual rights; and if the hearing conducted by the board was free of bias. See *In re Cameron Wilson*, 25 D.o.E. App. Dec. 223, 224 (2010). The State Board will not overturn a local board's decision unless it is unreasonable. *In re Jesse Bachman*, 13 D.o.E. App. Dec. at 363.

The Appellants do not argue that M.F. did not violate the school policy or rule. Nor do they argue that M.F. was denied due process. The sole basis of this appeal is the reasonableness of M.F.'s punishment for being under the influence of a drug that was not legally prescribed to him to take.

Reasonableness

As long as the punishment of the Board is reasonable, the decision will be upheld. Based on the record before us, the State Board cannot say that the decision of the Board was unreasonable, given the circumstances in this case and the long history of disciplinary issues with M.F. After the incident in the 2016-2017 school year, M.F. was readmitted to school after reading and signing a readmission agreement with the school. M.F. and his parents were both aware that any further disciplinary issues could result in M.F. being expelled. On several occasions when M.F. was not behaving as he should in class, Principal Moody reminded him of the possible consequences of his behavior. Yes, M.F. went to school under the influence and admitted it.

While we understand that there may be underlying mental health concerns that are effecting M.F.'s ability to make good decisions, we cannot say that it gives M.F. a free pass to violate school rules or subject other students to his poor choices. In its decision, the Board found that M.F. needed to have a mental health and a substance abuse evaluation and to follow through with any recommended treatment before returning to school. Thus, it is clear from the record that the Board thoughtfully considered the evidence presented and the recommendations of administration to expel M.F. We cannot say that the Board acted unreasonably.

While this may not be the preferred educational outcome for M.F., we also understand that M.F.'s conduct is not the preferred conduct that the Board expects of its students. Furthermore, M.F.'s conduct was progressive in nature because of his prior suspension and readmission agreement and he failed to correct his behavior. After the 2017-2018 school year M.F. will have an opportunity to return to school after providing proof of evaluation and progress to the Board. We believe that, with the appropriate treatment, M.F., a freshman student who single

handedly shut down the schools' computer network, has a lot of potential to succeed when he returns.

Thus, we find the decision of the Board was reasonable.

DECISION

For the foregoing reasons, the decision of the Board made on November 30, 2017, expelling M.F. for the remainder of the 2017-2018 school year and prohibiting M.F. from attending any school activities is hereby AFFIRMED. There are no costs.

3/29/18
Date

Nicole M. Proesch
Nicole M. Proesch, J.D.
Administrative Law Judge

3/29/18
Date

[Signature]
Charles C. Edwards Jr., Board President
State Board of Education