

IOWA STATE BOARD
OF EDUCATION
(Cite as 18 D.o.E. App. Dec. 238)

<i>In re Matthew W. Hall</i>	:	
William & Linda Hall,	:	
Appellants,	:	
v.	:	PROPOSED
	:	DECISION
Keokuk Community School	:	
District,	:	
Appellee.	:	

[Admin Doc.#4196]

The above-captioned matter was heard on February 7, 2000, before a hearing panel comprised of Jim Tyson and Teresa McCune, consultants, Bureau of Administration and School Improvement Services; and Susan E. Anderson, J.D., designated administrative law judge, presiding. The Appellants, William and Linda Hall, were present and were represented by Attorney Jeffrey Ireland of the Kirkley Law Firm, Cedar Rapids, Iowa. Matthew W. Hall was also present. The Appellee, Keokuk Community School District [hereinafter, "the District"], was present in the persons of Ms. Jane Babcock, superintendent; and Dr. Tom Wemette, principal. The District was represented by Attorney Tom Foley of Nyemaster, Goode, Voigts, West, Hansell & O'Brien Law Firm, of Des Moines, Iowa.

An evidentiary hearing was held pursuant to departmental rules found at 281 Iowa Administrative Code Chapter 6. Authority and jurisdiction for this appeal are found at Iowa Code section 290.1(1999). 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.

The Appellants are seeking reversal of a decision of the Board of Directors [hereinafter, "the Board"] of the District made on December 7, 1999, which expelled their son, Matthew Hall, for the remainder of the 1999-2000 school year.

I
Findings of Fact

During the appeal hearing, Dr. Thomas Wemette, principal of Keokuk High School, and Jane Babcock, superintendent of schools, testified in support of the decision to expel Matthew from school. Mrs. Hall and two of Matthew's friends, one of whom is a student also testified. Those exhibits were the same exhibits that were offered and received during the Board's expulsion hearing, which was held in closed session. A certified transcript of the expulsion hearing was also received into evidence as Exhibit AA.

Keokuk Community School District is located in Keokuk, Iowa. The District instructs approximately 1,200 students and employs approximately 170 teachers. The District maintains a high school, a middle school, and five elementary schools. A seven-member Board of Directors oversees the District.

The Board has passed specific policies concerning student suspension and expulsion (Exh. E). The District's expulsion policy specifically informs students that they "can be expelled for violations of Board policy, school rules or the law. It shall be within the Board's discretion of the board to discipline a student by using an expulsion for a single offense or for a series of offenses, depending on the nature of the offense and the circumstances surrounding the offense." (Exh. E, Policy No. 502.4). The specific conduct that can lead to suspension or expulsion is contained in the Student Handbook that is distributed to all high school students at the beginning of each school year. The student handbook provides in pertinent part, as follows:

SUSPENSION/EXPULSION

Pupils shall be subject to suspension and/or expulsion from school for disobedience or misconduct on school premises, school trips, or while riding the school bus. ...

1. Threatening or actual infliction of bodily harm or physical violence upon the person of any student or employee in the District.
...
9. Use of vulgar or obscene language, either oral or in writing.
...
10. Conduct which materially and substantially threatens or actually disrupts the educational process or interferes with the rights of others, including intimidating statements or actions.
...
16. Pupils may further be liable for suspension and expulsion for acts committed outside of school which constitute and demonstrate a clear, present, and compelling danger to the physical safety of pupils or school personnel while on campus or in transit to or from campus.
...

(Exh. D, pp. 21-23.)

Approximately 740 students in grades 9 through 12 attend the District's high school. Dr. Wemette is the high school principal. He reports directly to Jane Babcock, superintendent of schools.

Prior to being expelled from school, Matthew Hall was a sophomore at Keokuk High School. He had attended as a freshman the previous year. Matthew maintained less than an average grade point average. He had maintained a good disciplinary record and had never been suspended or expelled from school before November 1999. Matthew had never been in trouble with the law and had never been recommended for any type of counseling.

November 23, 1999, was Matthew's sixteenth birthday. Approximately 18 days before he turned 16, Matthew began "counting down" to his birthday by declaring at school that something was going to happen in a specified number of days. Matthew made these statements to his friends and to others. However, he disclosed only to his closest friends the specific event to which he was counting down – his birthday. Matthew permitted those who were not his friends to speculate about what this "countdown" concerned. When asked about what the countdown was about, Matthew remained silent or replied, "Wait and see" (Exh. J).

Matthew and the students who call themselves his friends perceived that they were not accepted by what they refer to as the "in crowd" or the "popular kids." This sense of isolation sometimes caused them to feel a certain amount of resentment or anger toward students who excluded them (Ex. AA, pp. 101, 102-03).

During the past two years, Matthew maintained a personal web site at home that was sometimes discussed at school. Matthew told some students about the web site but did not actively encourage them at school to visit the site (Exh. AA, pp.80-81, 146). Furthermore, there was no evidence that showed that any student, including Matthew, had ever visited the site at school. The contents of the web site contained biographical information, including a photograph of Matthew as a five-year old, with red eyes that appeared to "morph out" toward the viewer. It also contained italicized references to violence, hate, sex, and death, including the following:

My name is Matt, Iron Death to everyone on the net. Pedro to everyone else;

I live at home, I have no friends, no life, and a cat named Sleepy;

I figured I'd include the satanic version too, to show contrast from before and after I sold my soul for three easy payments of \$19.95 plus \$5.00 shipping and handling;

Satan is my motor;

Some of my favorite songs are Seek & Destroy, Metal Militia,
Wasting My Hate

The home page to Matthew's web site had a headline entitled, "Hate." The site also contained specific pages entitled "Sex," "Violence," "Language," "Parodies," "Jokes," "Cartoons," and "About Me." The site also asked people to send electronic messages to Matthew at his e-mail address: "iron-death@mindless.com." The web site also contained a small satanic symbol.

Dr. Wemette testified that the District did not discipline Matthew directly for maintaining the web site. In his opinion, the site was relevant to Matthew's expulsion because the site may have added to the speculation and alarm concerning whether Matthew was counting down to some violent event.

The talk of Matthew's countdown spread throughout the high school. Because Matthew told only a few friends that the countdown actually concerned his sixteenth birthday, some students speculated that perhaps Matthew planned to bring a bomb or gun to school and was counting down to that event. Rumors began to circulate about bloodshed in the halls and about a list of student names. Some students were frightened by what they heard. Others dismissed the rumors as idle gossip or jokes.

Matthew knew of the rumors and speculation, but did nothing to clear up the misperceptions that may have existed. Matthew did not disclose to what he was counting down when he was specifically asked. Matthew also told two students that he was "going to blow up the school," and informed another student that she was on a list he was maintaining and then refused to clarify the type of list to which he was referring (Exh. J).

Matthew's countdown and the rumors concerning that countdown first came to Dr. Wemette's attention on November 18, 1999. On that day, a female student came to Dr. Wemette's office and told him that Matthew was conducting a countdown, and that she heard there would be bloodshed in the halls within five days (Exh. AA, pp. 9-10). The student was concerned about what she heard. The student also identified other students who had heard similar things and were concerned.

Based on the information the student provided him, Dr. Wemette decided to investigate whether Matthew was indeed conducting a countdown and whether there was any truth to the speculation that Matthew was counting down to some violent event. That same day, November 18, Dr. Wemette interviewed seven other students who confirmed that Matthew was conducting a countdown and that the countdown was being discussed in classes, during lunch, and in the halls (Exh. J). One student told Dr. Wemette that he had actually heard Matthew talking about or referring to the countdown. Another student stated that students were talking about bloodshed during lunch in Matthew's presence and

Matthew responded, "You'll see." From information he received from his assistant principal and from teachers, Dr. Wemette learned of Matthew's web site. He then "hit" the web site and printed some of its content (Exh. AA, pp. 14-15).

The information Dr. Wemette received from students and what he saw on Matthew's web page concerned him greatly (Exh. AA, pp. 16-19, 45). Dr. Wemette believed that Matthew's conduct in continuing the countdown while rumors were spreading rapidly constituted cause for discipline. Dr. Wemette, therefore, called Matthew's home and asked Matthew's father to come to the school later that same day. Matthew's mother was at work and was not notified of the meeting.

When Dr. Wemette met with Mr. Hall, he showed Mr. Hall the content of Matthew's web site. Dr. Wemette also told Mr. Hall about Matthew's countdown and the rumors that were circulating throughout the school (Exh. AA, p. 20; Exh. H). Dr. Wemette then asked Matthew to come into the room, along with the school counselor and assistant principal. In Matthew's presence, Dr. Wemette discussed the facts his investigation uncovered, and also visited Matthew's web site. Dr. Wemette asked Matthew if he had any response, and Matthew apologized for causing the situation.

At the conclusion of that meeting, Dr. Wemette advised Matthew and his father that Matthew was suspended from school for at least four days. Dr. Wemette also told them that he intended to contact the Keokuk Police Department concerning Matthew's conduct (Exh. AA, p. 21). In a letter sent to Mr. and Mrs. Hall later that day, Dr. Wemette confirmed that their son was suspended effective immediately for a period of four days. He also characterized Matthew's conduct as "unsatisfactory school citizenship" as follows:

Interruption of the education process (spreading rumors) implying that something would happen at school on the day which turns out to be the student's birthday. The student led other students to believe this incident would happen. I have reviewed this matter with the Keokuk Police Department.

(Exh. A.)

The next day, November 19, Dr. Wemette continued his investigation and interviewed five additional students, who provided Dr. Wemette with information similar to what he had received during his student interviews the previous day (Exh. J). Dr. Wemette's subsequent interviews confirmed his belief that Matthew had violated school rules and should be disciplined. He waited, however, to see what information the Keokuk Police Department uncovered before deciding whether to expel Matthew from school.

The Keokuk Police Department conducted an investigation concerning Matthew's conduct at school. Based on that investigation, the Police Department obtained an order involuntarily committing Matthew to the University of Iowa Hospitals and Clinics for a complete psychological evaluation from November 22 through November 29, 1999. Matthew spent the next seven days being evaluated in the psychiatric ward of the University of Iowa Hospitals and Clinics. Matthew was released when the psychiatrists who evaluated him stated that Matthew did not present an immediate risk of harm to himself or others. The psychiatric report stated that Matthew has "schizoid personality traits" which might respond to psychotherapy" but that there was "no evidence of serious mental impairment." The report also indicated that ongoing therapy could help Matthew "increase insight into himself and how he is perceived by others" (Exh. F-1). No criminal charge were filed against Matthew.

On November 24, 1999, Dr. Wemette had sent a letter to Matthew's parents, which extended his suspension from Keokuk High School until December 7, 1999. Dr. Wemette further indicated that a psychiatric evaluation would be necessary before Matthew could return to school (Exh. B). At the time of the appeal hearing, Matthew had received no professional counseling or therapy and Mrs. Hall testified that she didn't feel that Matthew needed it.

After Matthew was suspended from school, Dr. Wemette received numerous calls from parents who were very concerned about the rumors that were circulating at the school (Exh. AA, pp. 32-33; Exh. K). Dr. Wemette told those parents that the school remained safe and otherwise attempted to reassure them. Dr. Wemette also read a written statement over the school intercom with the hope that the statement would reassure both students and parents (Exh. L).

Nevertheless, by November 22, the rumors and speculation had been reported both by the newspaper and the local television stations. On November 23, Matthew's birthday, approximately 212 students out of the 750 high school student body did not attend school. Normal absences for that day (the last day of school before Thanksgiving vacation) were 40 to 50 students. Matthew was not present that day because he was still in Iowa City being evaluated. One student witness testified that some of the students used the countdown rumors as an excuse to have a "skip day." Dr. Wemette testified that numerous classes were disrupted and that many students feared for their safety. He testified that there were numerous calls from concerned parents. Two members of the Keokuk Police Department were present at the high school that day at the District's request.

On or about November 29, 1999, Dr. Wemette received information from the Keokuk Police Department that two students had specifically told them that Matthew mentioned "bloodshed" when referring to his countdown, and that Matthew also

mentioned bringing a bomb to school (Exh. AA, pp. 23-23). Dr. Wemette followed up on those reports and interviewed the students from whom the police obtained this information. Those students confirmed to Dr. Wemette that Matthew had mentioned bloodshed and a bomb either directly to them or in their presence (Exh. AA, p. 24; Exh. J). One sophomore boy told the Police Department that on November 18, at a lunch table at school, Matthew stated that “he was going to blow up the school with a bomb and we are all going to burn in hell” (Exh. J).

Based on that information and on the information obtained on November 18 and 19, Dr. Wemette decided that expulsion was the appropriate discipline for Matthew’s conduct and prepared a recommendation to the Board to that effect (Exh. F). The recommendation Dr. Wemette prepared summarized the specific facts his investigation uncovered and also listed the specific school rules that Matthew had violated. Those rules are contained within the Student Handbook. Dr. Wemette’s recommendation referred to those rules and provided, in pertinent part, as follows:

This student violated the following school rules contained in the *Student Handbook, 1999-2000*, p. 21-23: Suspension/Expulsion, rules 1, 11, and 16 and Expulsion page 23.

Page 21, Pupils shall be subject to suspension and/or expulsion from school for disobedience or misconduct on school premises ...

Disobedience and misconduct shall be defined to include the following:

Page 22.1. Threatening or actual infliction of bodily harm or physical violence upon the person of any student or employee in the District

VIOLATION: Matthew Hall did deliberately create rumors during the weeks of November 8 and 15 that inferred and implied that something catastrophic would happen on Tuesday, November 23, 1999 at Keokuk High School. This was done by repeating to numerous students over a period of days that he was conducting some form of countdown. That he promoted said rumors by the manner in which he carried on conversations with students. His conversations with students included implied and direct statements.

Page 22.11 Conduct which materially and substantially threatens to or actually disrupts the educational process or interferes with the rights of others, including intimidating statements or actions.

Page 23.16. Pupils may further be liable for suspension and expulsion for acts committed outside of school which constitute and demonstrate a clear, present, and compelling danger to the physical safety of pupils or school personnel while on campus or in transit to or from campus.

VIOLATION: Matthew Hall's statements were intimidating to students and caused students and parents to be concerned for their safety. The degree of concerned [sic] may be illustrated by the absence from school on Tuesday, November 23, 1999 of over two hundred students.

Page 22, Expulsion. Students may be subject to expulsion by the Board of Education for repeated or serious violation of school rules and regulations. The Board of Education may expel a student for a first violation of a rule. Expulsion is the removal from school of a student. [Note: Iowa law allows a Board of Education to expel a student for up to one year.]

VIOLATION: The violations cited constitute a serious violation of school rules.

(Exh. F. [bracketed material in the original].)

Superintendent Babcock agreed with Dr. Wemette's recommendation and, in turn recommended that the District's Board of Directors expel Matthew from school. Mr. and Mrs. Hall were notified of Dr. Wemette's recommendation in a letter dated December 1, 1999 (Exh. C). In that letter, which was hand-delivered to the Halls' home on Wednesday, December 1, Dr. Wemette advised Mr. and Mrs. Hall that an expulsion hearing would be held at 7:00 p.m. on Monday, December 6, 1999. Enclosed with the letter was a copy of Dr. Wemette's recommendation, copies of the applicable school rules and Board policies, and a letter of acknowledgement which advised the Halls of Matthew's right to be represented by anyone of his choosing at the hearing, and his "right to know the charge and the basis for the charges" (Exh. G). Prior to the hearing, Matthew's attorney was notified of the witnesses who would testify during the hearing, and was also provided a copy of the exhibits Superintendent Babcock intended to introduce in support of her recommendation (Exh. AA, p. 28).

The hearing was held before the Board of Directors on December 6, 1999. The Halls were represented by Attorney Jeff Ireland during the expulsion hearing before the Board. The District was represented by Thomas W. Foley. The hearing, which was held in closed session, began at 7:00 p.m. that evening and continued until approximately 12:40 a.m. Matthew Hall was present at the hearing but had decided not to testify, which was in accordance with the wishes of his parents. At the conclusion of the hearing and during open session, the Board expelled Matthew for the remainder of the 1999-2000 school year. The specific motion that was passed provided as follows:

The action of the student created an attitude of fear and concern among the students of the Keokuk High School. These action [sic] created a material and substantial disruption of the educational process of Keokuk High School and thereby constitutes a violation of a rule established by the Board of Education of the Keokuk Community School District. The student shall be expelled from the Keokuk Community School District for the balance of the 1999-2000 school year. After August 1, 2000, the student may appear personally before the Board of Education to request readmission. Such readmission shall be conditioned upon the student undergoing an evaluation, treatment and counseling, if recommended, and as coordinated with the school district administration.

The Board later issued specific Findings, Conclusion and Order consistent with the motion it passed on December 7, 1999.

On January 6, 2000, Appellants, William W. Hall and Linda D. Hall, filed an affidavit appealing the decision by the Board of Directors of Appellee, Keokuk Community School District, to expel their son, Matthew T. Hall, from school for the remainder of the 1999-2000 school year. As a basis for that appeal, the Halls alleged that the Board's decision was not based on substantial evidence contained in this record. The Halls also argued that the District's administration violated Matthew's due process rights by failing to disclose the names of students who accused Matthew of making threats or spreading rumors.

Superintendent Babcock testified that the District would send Matthew's parents a letter outlining some alternatives for Matthew's education during the time he is expelled from school. In addition to that testimony, Exhibits A through L were offered and received into evidence.

II Conclusions of Law

In appeals brought under Iowa Code section 290.1(1999), the State Board must render a decision which is “just and equitable,” and “in the best interest of education.” Iowa Code section 290.3(1999); 281 IAC 6.17(2); *In re Rashawn Mallett*, 14 D.o.E. App. Dec. 327 (1997). The test is reasonableness. *Mallett, supra*, at 334. A local board’s decision will not be overturned unless it is “unreasonable and contrary to the best interest of education.” *Id.* The decision must be based on the laws of the United States, the State of Iowa, and the Iowa Department of Education rules. 281 IAC 6.17(2).

Iowa statutory law is relatively terse regarding student expulsion. It is clear, however, that the School Board and only the Board, has the right to expel. Iowa Code section 282.4 sets out the local school board’s authority regarding expulsions, 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 board may confer upon any teacher, principal, or superintendent the power temporarily to suspend a student, notice of the suspension being at once given in writing to the president of the board.

...

3. Notwithstanding section 282.6 [regarding tuition-free public school for all Iowa residents between the ages of 5 and 21], if 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.

Id. [bracketed information supplied.].

School districts have the authority to promulgate rules for the governance of pupils. Iowa Code section 279.8(1997); *In re Joseph Anderegg*, 14 D.o.E. App. Dec. 107, 113(1997). In general, school discipline policies address student conduct that occurs on school grounds during the school day. This is because the school district’s regulation of school conduct must bear some reasonable relationship to the educational environment.

The Iowa Code does not spell out what constitutes an expulsion, nor does it address the rights of a student facing expulsion. Rather, those issues have been litigated over a period of time before the state and federal courts of this country. The State Board of Education has also had numerous opportunities to reflect on judicial decisions and articulate its expectations for the rights of students facing suspension and expulsion from school. We will now address the Halls' arguments for why they believe we should reverse Matthew's expulsion.

A. Whether the Board Met Due Process Requirements.

Iowa students are, by statute, entitled to a free public education. Because of this entitlement, the Fourteenth Amendment to the United States Constitution prohibits school districts from denying students access to a public education without due process. *Goss v. Lopez*, 491 U.S. 565(1975). Due process is, however, a flexible concept, and what process is due before a student is expelled from school varies depending upon the specific facts and circumstances of each case. *See Matthews v. Eldrige*, 424 U.S. 319 (1976); *In re John Lawler*, 18 D.o.E. App. Dec. 61(2000); *In re Rashawn Mallett*, 14 D.o.E. App. Dec. 337(1997). Even though different facts often dictate different procedures, the fundamental requirement of due process is "the opportunity to be heard at a meaningful time and in a meaningful manner." *Id.*

In 1993, the State Board thoroughly reviewed the case law and summarized the elements of due process for students facing expulsion. *See In re Joseph Childs*, 10 D.o.E. App. Dec. 1 at 12-14 (1993). The following due process principles for expulsion hearings in Iowa were reaffirmed in the expulsion case of *In re Isaiah Rice*, 13 D.o.E. App. Dec. 13 (1996) and in the recent expulsion case of *In re John Lawler*, 18 D.o.E. 61 (2000):

A. Notice

1. The student handbook, board policy, the Code of Iowa, or "commonly held notions of unacceptable, immoral, or inappropriate behavior," may serve as sources of notice to the students of what conduct is impermissible and for which discipline may be imposed.
2. Prior to an expulsion hearing, the student shall be afforded *written* notice containing the following:
 - a. the date, time and place of hearing;
 - b. sufficiently in advance of the hearing (suggestion: a minimum of three working days) to enable the student to obtain the assistance of counsel and to prepare a defense;

- c. a summary of the charges against the student written with "sufficient specificity" to enable the student to prepare a defense;¹ and
- d. an enunciation of the rights to representation (by parent, friend, or counsel), to present documents and witnesses in the student's own behalf, to cross-examine adverse witnesses, to be given copies of documents which will be introduced by the administration, and to a closed hearing unless an open hearing is specifically requested.

B. Hearing Procedures

- 1. The student will have all of the rights announced in the notice, and may give an opening and closing statement in addition to calling witnesses and cross-examining adverse witnesses. (This is "a full and fair opportunity to be heard.")
- 2. The decision making body (school board) must be impartial. (No prior involvement in the situation; no stake in the outcome; no personal bias or prejudice.)
- 3. The student has a right to a decision solely on the basis of the evidence presented.
- 4. There must be an adequate factual basis for the decision. This assumes that the evidence admitted is reasonably reliable. A "preponderance of the evidence" standard is sufficient to find the student violated the rule or policy at issue.²

C. Decision Making Process/Creating a Record

- 1. No one who advocated a position at the hearing should be present during deliberations unless the other party or parties are also permitted to attend the deliberation phase.

¹ Inherent in this right is the fact that no new charges will be brought up at the expulsion hearing that were not in the notice.

² A "preponderance" is enough to outweigh the evidence on the other side, enough to "tip the scales of justice one way or the other"; 51% of the total evidence suggests guilt or innocence.

2. Following the decision in deliberations, the Iowa Open Meetings Law (chapter 21) requires that decisions be made in open session. (§21.5(3).)
3. The student is entitled to written findings and conclusions as to the charges and the penalty.

Although the above were not rules promulgated by the Department, and therefore are not absolute requirements to be followed in every case, they do provide guidance as to how the State Board will interpret due process requirements in expulsion cases. *In re Isaiah Rice*, 13 D.o.E. App. Dec. 13 (1996). With this guidance in mind, in addition to the other authorities discussed above, we conclude that the Findings of Fact show that the Board satisfied all of the above due process requirements regarding Matthew's expulsion.

The letter and other information Dr. Wemette hand-delivered to the Halls on December 1, 1999 complied with these requirements. That letter, and its contents, advised the Halls and Matthew, that the expulsion hearing would occur on December 6, 1999, beginning at 7:00 p.m. (Exh. C). Enclosed with the letter was a written recommendation from Dr. Wemette that not only identified the specific rules Matthew violated, but also provided a summary of the precise conduct that supported each alleged rule violation (Exh. F). A separate document Dr. Wemette enclosed further advised the Halls and Matthew of Matthew's right to call witnesses to testify on his behalf, to cross-examine any witnesses Superintendent Babcock might call in support of her expulsion recommendation, and of Matthew's right to be represented by legal counsel. Those materials met the due process requirements the State Board has imposed. The Halls and Matthew were aware of the right to counsel since they were represented, at all times, by Mr. Ireland.

In their appeal, the Halls assert Matthew did not receive any due process prior to his expulsion. The only procedural shortcoming the Halls mentioned in their affidavit was that neither they, nor their son, were expressly told who accused Matthew "of making threats or spreading rumors." The Halls argue that Matthew's due process rights were violated because the investigation summary Dr. Wemette prepared only summarized the information he received from each student he interviewed, and did not disclose the names of the specific students to whom he spoke (Exh. J).

We conclude that the Halls waived any right to cross-examine these student witnesses. First, the Halls never asked Dr. Wemette to disclose the names of the students he interviewed at any time before or after the expulsion hearing. The Halls never inquired even though they were given a copy of Exhibit J before the expulsion hearing and even though their attorney cross-examined Dr. Wemette at great length during the expulsion hearing concerning all aspects of his investigation, including the information contained in Exhibit J (Exh. AA, pp. 37-58). The Halls' failure to ask for the students' identities defeats their due process claim that they were not allowed to cross-examine the

students from Exhibit J. By not raising that specific issue during the expulsion hearing, the Halls waived the right to assert it on appeal. *In re Joseph Childs*, 10 D.o.E. App. Dec. 1 (1993).

The Halls' due process argument fails for the additional reason that the investigation report Dr. Wemette prepared was offered into evidence during the closed session hearing, yet neither the Halls nor their attorney objected to the exhibit in any way. When the exhibit was offered, Mr. Ireland asked Dr. Wemette limited questions concerning the exhibit's format and also asked Dr. Wemette when he prepared the exhibit (Exh. AA, pp. 11-12). The Halls' due process arguments must be denied for the additional reason that Matthew elected to remain in his chair and declined to offer any testimony to rebut the information Dr. Wemette uncovered. Having not disputed any of the information gathered, Matthew cannot reasonably assert that his interests were in any way prejudiced because he was not specifically told the names of the students who gave information adverse to his interests.

B. Whether the Board's decision to expel Matthew was reasonable and in the best interests of education.

Mr. and Mrs. Hall contend that the District's decision to expel Matthew was based upon circumstantial and hearsay evidence and was, therefore, unreasonable. After hearing all of the evidence, the Board decided to expel Matthew for the remainder of the 1999-2000 school year and to impose certain conditions to his readmission. The Board's decision to expel Matthew was based on its findings that an inordinate number of students refused to attend school on November 23, 1999, and that those absences were caused by fear of what was going to happen on that day. The Board noted that Matthew's actions "disrupted numerous classes, and many students feared for their safety. Parent calls and comments were significant, and police activity was requested." Based on those findings, the Board reached the following conclusion:

The Board unanimously finds and orders that the actions of the student created an attitude of fear and concern among students which caused a material and substantial disruption of the educational process of the Keokuk High School. Such disruption is a rule violation and is contrary to the educational process.

(Bd. Findings, Conclusion and Order.) The Board's conclusions were based upon the information it received from the District's administration. In the affidavit of appeal the Halls criticized the Board's decision as being based solely "upon unsupported circumstantial evidence and unsupported hearsay statements by [Dr. Wemette] and [Ms. Babcock]." (Aff. of Appeal, p. 1.) In asserting that argument, the Halls failed to recognize that hearsay evidence is routinely offered and received during most administrative proceedings, including student expulsion hearings. Hearsay is clearly

admissible in the forum provided the evidence “has ‘rational probative force’ and there is no direct contradictory evidence.” *In re Don Shinn*, 14 D.o.E. App. Dec. 185(1997)(citing *Brands v. Sheldon Comm. School Dist.*, 671 F.Supp. 627 (N.D. Iowa 1987).

The argument the Halls made in their affidavit of appeal was also asserted in the *Shinn* decision. In reviewing the decision to expel the student in *Shinn*, the State Board rejected the parents’ argument that the decision was not supported by a preponderance of the evidence arguing the decision was supported by a report the principal prepared only, and not by the principal’s own personal knowledge. In rejecting that argument, the State Board wrote as follows:

Even though the school principal may not have had direct, first-hand knowledge of Don A. Shinn’s involvement in the destruction at the high school, he was the person ultimately responsible for enforcing the district’s policies and rules at the high school. He was responsible for student management, as well as facility management. He was also the responsible authority to present the administration’s findings.

The principal was available for cross-examination at the hearing before the board. If his testimony and if his findings and conclusions were not reliable or credible, cross-examination would certainly have revealed those deficiencies. There was no cross-examination, however, and no evidence was submitted to indicate that the principal’s findings and conclusions were unreliable. Indeed, there is no evidence whatsoever which contradicts the principal’s findings and conclusions. Even at the state board appeal, which is held de novo, no evidence was ever submitted to contradict the principal’s findings.

Id.

In applying the *Shinn* analysis to Matthew Hall’s expulsion, the written report and investigation summary Dr. Wemette prepared in this case is as reliable and as worthy of belief as was the report the State Board approved in *Shinn*. The information Dr. Wemette compiled was based upon interviews he had with numerous students. Furthermore, Matthew’s attorney was given ample opportunity to cross-examine Dr. Wemette and through that process fully explore Dr. Wemette’s findings and conclusions. That cross-examination did not yield any inconsistencies or uncover any evidence that gave the District’s Board reasonable cause to question the information Dr. Wemette collected during the course of his investigation.

As was the case in *Shinn*, Dr. Wemette's investigation, findings and conclusions were largely unrefuted. Even though many of Matthew's friends testified on his behalf during the hearing, those friends primarily offered assessments of Matthew's tranquil and peaceful nature. The friends also testified that Matthew never associated his countdown with bombs, bloodshed, hit lists, or similar representation. The Halls did not, however, offer any evidence that directly refuted the statements that the other students provided in Exhibit J to Dr. Wemette (and the police); and, as is discussed in more detail below, much of the testimony the Halls offered corroborated what those students told Dr. Wemette.

The information Dr. Wemette gathered was sufficient to support an expulsion. The preponderance of the evidence presented to the Board demonstrated that even if Matthew started the countdown with the most innocent of intentions, he continued the countdown and when those students discussed the possibility of bloodshed, Matthew's only comment was, "You'll find out." He also told one of those students that her name was on a list he was maintaining. Finally, Matthew told one student that he intended to bring a bomb to school and that the entire school would burn in hell.

The testimony offered on Matthew's behalf during the expulsion hearing not only failed to demonstrate that Dr. Wemette's investigation, findings, and conclusions were unreliable, the testimony actually corroborated much of the information Dr. Wemette gathered. Matthew's friends, like the students Dr. Wemette interviewed, all acknowledged that rumors concerning Matthew's countdown were spreading throughout the school. They also confirmed that the rumors concerned bomb threats, hit lists, and bloodshed. More importantly, at least two of Matthew's friends, including his own cousin, testified that Matthew did nothing to dispel those rumors when they were mentioned in his presence. In fact, he acted to the contrary and kept the rumors in an aura of mystery that worsened the speculation and alarm. The District Board of Directors expelled Matthew for his statements and conduct, and concluded that he had significantly disrupted the entire high school, and was contrary to the best interest of the District and its students. The circumstantial and hearsay evidence the District's administration provided was both reliable and unrefuted.

In their affidavit of appeal, the Halls also maintained that the expulsion was not warranted because there was no evidence that Matthew made any direct threat against the District or its students. That argument is not supported by the evidence because, as noted above, at least one student told Dr. Wemette that at lunch on November 18, Matthew threatened to blow up the entire school and that they would all burn in hell. The student whom Dr. Wemette interviewed gave a similar account to the Keokuk Police Department. Matthew's statement to the student constituted a direct threat.

The State Board concludes that Matthew's conduct warranted expulsion because he created and fostered a climate that resulted in approximately 212 students being absent from school on November 23, 1999. Matthew must be held accountable for the disruption he helped to create. The preponderance of the evidence in the record before the District Board established that Matthew violated two school rules. We conclude that Matthew violated rules 22.1 and 22.11 regarding threats of bodily harm or physical violence upon the person of any student or employee of the District; and regarding intimidating statements which threatens or disrupts the educational process.

The Board of Directors' findings of facts stated that Matthew's web site led students to be concerned about their safety, and that the web site had "dark and brooding comments about hate and violence." The Halls argue that Matthew's web site is an exercise of his constitutional right to freedom of expression under the First Amendment.

We do not need to address these arguments, however, because we conclude that even without the web site evidence, Matthew's countdown and lunchroom bomb threat caused a substantial disruption to the educational process. The Board had the authority to expel Matthew pursuant to Iowa Code section 282.4. For these reasons, we conclude that the Board acted reasonably and in the best interest of education when it expelled Matthew for the rest of the school year pursuant to its relevant Board policy and two student handbook provisions. The Board's action was not out of proportion to Matthew's conduct when it expelled him for the rest of the school year for causing a material and substantial disruption to the school environment and for threatening the general safety of the school environment.

The school authorities, for their part, in order to carry out their important function, have both the inherent and the statutory power to maintain order and discipline in the schools and to exclude from the student body those who are detrimental to such body and whose conduct is inimical to the exercise of the institution's scholastic function.

...

The schools deal with increasing numbers of students from all walks of life. The problems presented to the various schools differ widely. Consequently their powers in these areas are plenary, subject only to the qualifications we have noted. They must not only provide a suitable environment for study and for relaxation, but must also uphold and protect the authority reposed in the teachers in the institution. Without these powers they have no power to guarantee the attainment of the education entrusted to them. Thus it is that the school authorities may and do formulate rules and regulations thought necessary or desirable for classroom

learning and conduct. In so doing, they have a wide latitude of discretion. And so it is, also, that the courts do not rule upon the wisdom of the rules, or their expedience, but merely, as a substantive matter, when in issue, whether they are a reasonable use of authorities' power and discretion to maintain order and decorum by all appropriate means, including suspension and expulsion.

In re Cohen Monson, 18 D.o.E. App. Dec. 142(2000) (citing *Davis v. Hillsdale Comm. Sch. Dist.*, 573 N.W.2d 77, 79(Mich.App. 1997)).

We conclude that Matthew's expulsion was reasonable and in the best interest of the school officials' duty to protect other students and staff from violence. The Board was aware that over 200 students were absent from school on November 23, at least in part due to the facts that Matthew threatened in the lunch room to blow up the school and spoke of a "countdown" without clarifying that it was to his birthday. The absences and the fearful atmosphere at school that day for the students in attendance clearly show a material and substantial disruption to the school environment and a threat to the health and safety of students and staff. The Keokuk High School handbook penalty for that kind of threat and disruption is expulsion. The Board acted reasonably and in the best interest of education when it expelled Matthew for the remainder of the 1999-2000 school year.

Any motions or objections not previously ruled upon are hereby overruled.

III. Decision

For the foregoing reasons, the decision of the Keokuk Community School District Board of Directors made on December 7, 1999, to expel Matthew W. Hall for the remainder of the 1999-2000 school year, is hereby recommended for affirmance. There are no costs to be assigned under Iowa Code chapter 290.

DATE

SUSAN E. ANDERSON, J.D.
ADMINISTRATIVE LAW JUDGE

IT IS SO ORDERED.

DATE

CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION