

**Iowa State Department
of Education**

(Cite as 18 D.o.E. App. Dec. 142)

<i>In re Cohen Monson</i>	:	
Craig & Teresa Monson, Appellants,	:	
v.	:	PROPOSED DECISION
Forest City Community School District, Appellee.	:	
	:	[Adm. Doc. #4187]

The above-captioned matter was heard on December 16, 1999, before a hearing panel comprised of Jane Heinsen, consultant, Bureau of Practitioner Preparation Licensure; Joseph Farnsworth, consultant, Bureau of Community Colleges; and Susan E. Anderson, J.D., designated administrative law judge, presiding. Appellants, Craig and Teresa Monson, were present along with their son, Cohen. Appellants were represented by Judith O'Donohoe of Elwood, O'Donohoe, O'Connor and Stochl, of Charles City, Iowa. Appellee, Forest City Community School District [hereinafter, "the District"], was present in the persons of Dwight Pierson, superintendent; Bob Miller, secondary school principal; Kenneth Baker, high school assistant principal and activities director; and Dennis McDonald, high school student services coordinator. The District was represented by Robert Cooper of Forest City, Iowa.

Authority and jurisdiction for the appeal are found in Iowa Code section 290.1(1999). An evidentiary hearing was held pursuant to Departmental Rules found at 281 Iowa Administrative Code 6. 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.

Appellants seek reversal of a decision of the Board of Directors [hereinafter, "the Board"] of the District made on October 18, 1999, to expel their son from school through the 1999-2000 school year.

**I.
Findings of Fact**

Cohen Monson began his tenth-grade year at Forest City High School on August 24, 1999. The high school consists of grades 9-12. The certified enrollment of the high school building for the school year 1999-2000 was 603. The middle school is connected to the high

school and shares some areas with the high school, such as the cafeteria and the lobby area. Forest City is a community of approximately 4,000 residents with a police department consisting of six full-time officers.

During the current school year and during the 1998-99 school year, when Cohen was a freshman, the high school had experienced problems caused by friction between two student groups within the high school population. The “Preps” consist of approximately 25 high school students, most of whom participate in athletics. The “Korns” consist of approximately 25 high school students who like to listen to music by the rock group “Korn,” whose music contains lyrics which many people in the Forest City community and many students reportedly consider to be offensive. Students who are associated with the “Korns” are also sometimes called the “Dirties” or the “Loadies.” According to Principal Bob Miller, the “Korns” students often wear clothing that is black or dark-colored and some of them wear chains on their wallets which are connected to their trousers. The usual attire of the “Preps” was described as “lighter”.¹

During the fall of 1998 when Cohen was a freshman, the friction between the “Preps” and the “Korns” was present on a daily basis in the form of what the administration called “a lack of tolerance between two groups.” On December 17, 1998, a direct conflict between the two groups occurred in the school’s lunchroom. Earlier that day, a student had come to school wearing a bandana on his head in order to cover a bandage following brain surgery. Cohen saw the bandana on the student’s head and, not knowing about the surgery, Cohen assumed that the student was parodying the “Korns” manner of dress. Cohen took the bandana off the student’s head. The student then explained to Cohen why he was wearing the bandana and Cohen apologized.

Later that day, Cohen was in the cafeteria, eating lunch with his friend, Josh Loge, who was then a sophomore. Cohen was approached by five or six senior “Preps,” who were friends of the brother of the student wearing the bandana. These seniors were yelling at Cohen about the bandana incident and were physically aggressive enough that the table the boys were sitting at was jostled, spilling milk all over Josh’s shirt. One of the seniors, Shane Swanson, ripped Cohen’s wallet chain off and threw it back at Cohen. Josh Loge testified that Shane Swanson told Cohen, “You’re dead.” Cohen swore at Shane. Principal Miller, who was on duty in the lunchroom, did not hear any specific words, but noticed the loud confrontation and broke it up. Principal Miller then called all of the students who were involved in the incident into his office during the course of the afternoon. On December 18, some of the “Preps” group came to school wearing black T-shirts in parody of the “Korns.” As a result of his meetings with the students the prior day, Mr. Miller identified approximately 35 students who were involved in the ongoing friction between the two groups and the administration sent letters to their parents’ homes on December 18, 1998.

¹ The State Board does not condone the use of labels for students or student groups. For the sake of clarity and because it is relevant to this appeal, however, we will use the labels the witnesses used at the appeal hearing. We are presenting some of the history of the two student groups because it is relevant to the circumstances that led to Cohen’s expulsion. Some of the history is taken from Exhibits 9 and 10 at the appeal hearing, which consisted of two cassette tapes of the closed session of the Board’s expulsion hearing.

The letter stated, in pertinent part, as follows:

On Thursday, December 17, 1998, your child was found to be part of severe harassment issue at the high school. The events of this harassment issue have been accumulating for quite some time. On Thursday it came to a head.

The issue stems between two distinct groups, both who dress in particular ways, listen to different types of music, and “hang-out” with different kids. This may not sound strange, but one group has persistently been aggravating the other group by name calling and making threats.

... Any student who continues to persist in name calling or any other form of harassment, no matter how subtle or slight will suffer severe consequences. These consequences will include long-term suspension or even possible expulsion from Forest City High School.

Assistant Principal Baker testified that he drafted the letter and that the “one group” who had aggravated the other referred to the “Preps.” None of the students was formally disciplined for the incident but they all received the letter and have a conduct report in their discipline files that they were involved in a harassment issue on that date.

During the spring semester of 1999 up until May, apparently nothing of significance occurred between the two groups. Cohen was involved in one incident earlier in the spring that was not related to the ongoing conflict. Cohen had worn “dreadlocks” in his hair and another student told him to wash his hair. Cohen swore at that student and although there was some minor pushing involved, the incident did not turn into a physical fight. The student who had commented on Cohen’s hair was suspended for one day. In another incident on or about May 24, 1999, Cohen received a one-day suspension for using profanity. This incident may have been related to the ongoing conflict.

However, in May of 1999, there was an incident in the parking lot involving direct conflict between the “Korns” and the “Preps.” Cohen and some other “Korns” students were skateboarding in the school parking lot after school. Shane Swanson and another student, members of the “Preps,” were angry when one of the skateboards accidentally hit one of their vehicles. Shane Swanson challenged Cohen and the other students and Shane tackled Cohen to the ground and struck him on the head. Cohen did not fight back but received abrasions to the back of his head that did not required medical attention. Shane Swanson was suspended for three days as a result of this incident pursuant to a student handbook policy. The investigation by the administration led to the conclusion that Cohen was not at fault for this incident and Cohen was not disciplined.

The beginning of the 1999-2000 school year led the school administration to believe that this year was going to be a better year with less tension between the “Korns” and “Preps.” Some of the “Preps” who had been seniors the previous year had graduated and things seemed to be

getting off to a better start. However, during the week of homecoming, the conflict between the two student groups resurfaced. Homecoming week activities began on Monday, September 27, 1999, and ended on Friday, October 1, 1999. During Monday, Tuesday, Wednesday and Thursday, the students engaged in traditional homecoming activities such as making homecoming floats, spirit posters and painting school windows. This was done in preparation for the homecoming coronation on Thursday evening, and the football game on Friday evening that would be followed by a dance.

Beginning on Tuesday, September 28, 1999, the students and administration started noticing the initials “KTP” written on spirit posters in at least two of the hallways in the high school. The original spirit posters had been made by the cheerleaders with positive words promoting the Forest City team. Principal Miller testified that he saw “KTP” in the halls but did not know what it meant until sometime on Wednesday, September 29, when one of the high school teachers told him that students had indicated it meant, “Kill the Preps.” Testimony showed that some of the school floats being built by the different classes for the parade also had some initials written on them. These possibly included “KTP,” “KTD” (“Kill the Dirties”), and “KTK” (“Kill the Korns”). Some students saw “KTP” written on backpacks or notebooks but they thought at first that it meant “Keep the Pride” or “Keep the Peace.”

None of the administrators had seen any of the students actually writing the initials on the spirit posters or floats, although there had been reports that the initials were there. There was also “KTP” scratched into the washable paint on some of the exterior windows of the building. As the students and the administration became aware of what the initials might mean, they removed them or covered them up, or in some cases removed the posters on which they were written. Mr. Miller testified that he had walked through all the hallways and had seen 10 to 15 “KTPs” written in various areas of the school.

There was no real alarm over the presence of these initials in the school until Wednesday evening. According to Lieutenant Greg Beaver of the Forest City Police Department, he was notified by Assistant Police Chief Dan Davis or by Chief Doug Book that on the evening of Wednesday, September 29, a parent of a middle-school student had called the Police Department. The parent reported that her daughter had heard that a student was possibly going to bring a gun to school the next day, which would have been September 30, 1999. Chief Doug Book received the original call from the middle-school parent on his cell phone around 5:45 p.m. Chief Book was on his way to deliver a prisoner to another facility outside of Forest City and directed Lt. Beaver to start an immediate investigation of this rumor. At about 8:00 a.m. on Thursday, September 30, 1999, Lt. Beaver went to the high school and spoke to the administrators, including Principal Miller and Superintendent Dwight Pierson. Mr. Miller informed Lt. Beaver of the “KTP” incidents and Lt. Beaver began his investigation to determine whether or not the gun rumor could be related to the “KTP” incidents.

Lt. Beaver interviewed several students who had seen people writing “KTP.” Those interviews led to the names of three students whom he felt needed to be questioned about the “KTP” incidents. He interviewed all three of the students that day at school, all of whom were

identified with the “Korns.” One of the three students was Cohen Monson. School officials called both Mr. and Mrs. Monson and they were present during Cohen’s interview. Cohen admitted that he had written “KTP” one time on a school window, which was decorated for homecoming, by scratching those initials into the paint with his fingernail. This happened on Tuesday or Wednesday. Another of the students interviewed was Josh Loge, who admitted that he had written “KTP” on a spirit poster. The third student, Jeremy Sveen, said he had not personally written “KTP,” but he had been the “lookout” for others as they had written “KTP.”

Cohen, Josh and Jeremy all testified at the appeal hearing. Cohen testified that he had written “KTP” once on the school window and that he knew that it meant, “Kill the Preps.” He testified that he made no verbal threats and did not intend to threaten anyone by writing “KTP.” He testified that he didn’t really mean anything by it and didn’t think much about it.

Josh Loge testified that he had written “KTP” on a spirit poster, but Cohen had not told him to do so, and that he did not see Cohen write “KTP.” Jeremy Sveen testified at the appeal hearing that he did write the initials once or twice on a spirit poster but that he thought it meant, “Keep the Pride.” (This testimony was different from his earlier statement to Lt. Beaver that he had not written “KTP.”) Jeremy did not see Cohen write the initials and Cohen had never urged him to write “KTP.” None of the three students knew anything about the gun rumor.

Lt. Beaver concluded in his investigation and through the interviews that day that the gun rumors which had originated from the middle-school students were not connected to the “KTP” incidents. He also concluded that Cohen did not have anything to do with the gun rumor and that the gun rumor apparently started in the middle school by sixth-grade girls without any reference to Cohen.

The girls had seen “KTP” written outside the cafeteria on Wednesday and had asked Principal Miller if “KTP” meant, “Kill the Preps.” The girls told Mr. Hinkley, the middle-school principal, that Mr. Miller did not deny that it meant “Kill the Preps.” Principal Hinkley testified that he had seen “KTP” written in the middle school on Thursday. Several middle-school students had reported seeing “KTP” written in the girls’ restroom and on student lockers.

Lt. Beaver never saw “KTP” written anywhere himself because the administration was cleaning it up as soon as it was discovered. Through his investigation, Lt. Beaver found that it had been written in a number of locations. Lt. Beaver testified that Cohen told him that he had scratched “KTP” once in the paint on the window near the lunchroom. Lt. Beaver also testified that he believed Cohen when he said that he had written it only once and that he found Cohen credible. Lt. Beaver stated that there very well could have been more students who had written “KTP” or other initials in the school during homecoming week, but his investigation had failed to identify them.

In the meantime, however, the gun rumor was still being spread throughout the middle and high schools and students were now also talking about having been interviewed about the “KTP” incidents. The students began to associate the “KTP” incidents with the gun rumor. School officials began to get inquiries from worried parents and students about whether or not the school was safe. Lt. Beaver agreed with Cohen’s attorney at the Board’s expulsion hearing that the students took “KTP” and blew it out of proportion to a gun threat.

Lt. Beaver’s conclusion at the expulsion hearing in closed session was as follows: “Throughout the investigation, that’s what it indicated, that there was not credibility on the threat of the gun part, but I think what happened was the students take the ‘KTP’ – ‘Kill the Preps’ – and in light of what’s been going on around the country, they think, you know, gun, killing, school, so it, it snowballed.”

By the end of the school day on Thursday, September 30, 1999, students were coming up to Principal Miller and asking him whether they should come to school the next day. One student was Krystal Anderson, whom Principal Miller had testified was a “reliable student.” She testified at the appeal hearing that she had asked Principal Miller whether she should come to school the next day, and he said that he would not want to come if he were a student. Krystal Anderson asked Principal Miller if the rumors were about Cohen Monson and his friends bringing a gun to school the next day. She testified that Principal Miller replied, “Yes.”

No classes or homecoming events were cancelled. As a result of the combined effect of the gun rumor and the “KTP” incidents, by Thursday evening, Police Chief Doug Book had decided to assign extra police officers to be on duty wherever there was a congregation of students. Therefore, police officers were at the coronation ceremony at the school on Thursday evening. Chief Book received calls from parents starting at about 5:45 a.m. on Friday concerning the safety of the school. He felt the situation was under control but decided to have officers present at the school anyway. On Friday, October 1, 1999, five out of the six full-time police officers were present at the school. There were officers at the main doors of the middle and high schools; officers were on patrol in the immediate area; and one officer remained at the Police Department to handle calls. Students were happy that the police were there because of the uncertainty due to the rumors. The atmosphere at both the high school and the middle school that day was one “of grave concern,” but the day passed without incident.

Approximately 140 high school students did not attend school on Friday because of their fear or their parents’ fear over the uncertainty of the situation. School officials told them that they thought things were under control, but that they would respect the parents’ decision if they did not want their children to attend school on Friday.

Six police officers were present at the homecoming football game Friday evening. (Two officers normally are present at a home football game.) At the homecoming dance following the game, two officers were inside and several more were outside the building on patrol. (Usually one police officer attends the homecoming dance.) No incidents occurred either at the game or at the dance.

Lt. Beaver asked the Monsons to bring Cohen in for questioning on Friday morning regarding possible charges of terrorism because of the “KTP” incident. Cohen gave a statement that morning and authorities did not pursue the possible charges. The Chief of Police stated at the expulsion hearing that the source of the middle-school rumors regarding the gun had nothing to do with Cohen Monson. Chief Book considered the investigation into the gun rumor and the “KTP” incidents to be closed according to Police Department records. He stated that the Police Department does a sporadic walk-through and patrol of the school area which has always been done and that has only increased slightly since the week of homecoming.

By Thursday evening, September 30, Principal Miller had reached the conclusion that he was going to suspend Cohen for ten days for making threats to the general safety of the school. He had also decided to recommend to the Board that it expel Cohen Monson for the remainder of the school year as a result of the “KTP” incidents. Principal Miller and Assistant Principal Baker decided to suspend Josh for 7 days as a result of his participation in the “KTP” incidents. They decided not to discipline Jeremy because at that point, he had never admitted to writing “KTP.” Superintendent Pierson and Principal Miller believed that Cohen had taken a leadership role in continuing the friction between the groups and in encouraging others to write “KTP.” They testified that Cohen had told them that “someone had to keep it going.” They also testified, along with Assistant Principal Baker, that Cohen resented anyone with authority over him. The administrators testified that their different disciplinary actions against Cohen and Josh for writing “KTP” were due to the fact that Josh had only tardies and unexcused absences in his file while Cohen had several other disciplinary referrals and conduct reports in his file.

Cohen’s conduct reports are as follows: During the five weeks from the beginning of the school year on August 24, 1999, until the “KTP” incidents at the end of September, Cohen had had six conduct reports. On August 30 and 31, 1999, Cohen had been referred to the Assistant Principal’s office for swearing and vulgar language on three separate incidents. His mother had been notified by Assistant Principal Baker about the swearing and vulgar language. On September 9, 1999, Cohen had been referred to the office for two separate incidents of harassing a female student by making sheep noises. Apparently, the girl lived on a sheep farm near Cohen’s home and this was his “way of greeting her” on the bus and at school. However, it was not acceptable to the girl or to her parents. On September 22, 1999, Cohen was referred to the office for disruptive conduct in the classroom. He had been making disruptive noises according to the teacher. When the teacher asked him to leave her math class, Cohen questioned her authority to ask him to do so and refused to leave. Cohen received an eighth-hour detention and Cohen’s parents were notified of his disruptive behavior and the eighth-hour detention. None of these six conduct reports was related to the conflict between the “Korns” and the “Preps.” Principal Miller testified that he viewed these conduct reports as escalating behavior problems.

Cohen denied having a problem with profanity or vulgarity, in spite of the conduct reports in his file. He referred to his conduct reports as just “sheets of paper that came home.” He did admit to sometimes having a disrespectful attitude toward the administration.

The Board notified the Monsons by letter on October 4, 1999, that there would be an expulsion hearing on October 14 with regard to Cohen's actions. The letter specified the actions, the handbook policies, and the Board policies involved. It also contained a list of witnesses who would testify and who would be subject to cross-examination. The letter notified the Monsons that they had a right to an attorney and a right to present evidence and testify at the hearing. It also informed them that the results and findings of the Board would be made in writing and open to their inspection.

Cohen appeared at the Board's closed session with his parents and they were represented by Attorney Judith O'Donohue. The Board consisted of seven members, four of whom had children who were currently students in the District. After statements were given by Cohen, Mr. Monson, various students, administrators, and police officers on October 14, 1999, the Board adjourned the meeting and reconvened on October 18, 1999, to act on the recommendation to expel Cohen for the remainder of the school year. Forest City High School operates on a trimester schedule, so the effect of the recommendation was to expel Cohen for 5/6 of the school year.

The Board voted to expel Cohen for the remainder of the school year for violating Board Policy 503.1 and the student handbook policy regarding threats to the general safety of the school community. Board Policy 503.1 reads as follows, in pertinent part:

The board believes inappropriate student conduct causes material and substantial disruption to the school environment, interferes with the rights of others, or presents a threat to the health and safety of students, employees, and visitors on school premises.

Students shall conduct themselves in a manner fitting to their age level and maturity and with respect and consideration for the rights of others while on school district property or on property within the jurisdiction of the school district; while on school owned and/or operated school or chartered buses; while attending or engaged in school activities; and while away from school grounds if misconduct will directly affect the good order, efficient management and welfare of the school district.

Students who fail to abide by this policy and the administrative regulations supporting it may be disciplined for conduct which disrupts or interferes with the educational program; conduct which disrupts the orderly and efficient operation of the school district or school activity; conduct which disrupts the rights of other students to obtain their education or participation; or conduct which interrupts the maintenance of a disciplined atmosphere. Disciplinary measures, include, but are not limited to, removal from the classroom, detention, suspension, probation, and expulsion.

...

The Forest City High School Student Handbook contains the following pertinent language under the heading of “Student Discipline Policy”:

Consistent discipline is necessary to maintain a safe and orderly environment and to encourage ethical behavior from students. The sections below outline the discipline policy of the Forest City High School.

...

Level Three Offenses:

- Possession or use of deadly weapons
- Threats to the general safety of the school community
- Arson
- Illegal entry
- Tampering with school reports or records
- Extortion
- Major theft
- Sale or distribution of narcotics, dangerous drugs, controlled Substances, or alcoholic beverages

Level Three Consequences:

1. Law enforcement officials will be immediately notified and
2. The student will be expelled for the remainder of the school year.

The October 18, 1999, Board minutes state that the Board expelled Cohen based on the following:

The Board finds that there is sufficient evidence to believe that the student’s continuing conduct has caused material and substantial disruption to the school environment and has interfered with the rights of other students and faculty to attend school without fear for their physical safety or well being. The Board further believes that the expulsion of the student is necessary to maintain a safe and orderly environment within the Forest City Community School District and encourage ethical behavior by students. Evidence considered in making these determinations is as follows:

1. Conduct reports maintained by the High School Principal.
2. Testimony received from the Superintendent and High School Administrators.

3. Testimony of Forest City Police Officers as well as Administration as to student and parental concerns regarding the students' safety that resulted in as many as 140 students absent from school on Friday, October 1, 1999.
4. The student's admission that the student wrote or scratched "KTP" standing for "Kill the Preps" on Homecoming signs at the Forest City High School.

On October 19, 1999, Superintendent Pierson sent the Monsons a letter notifying them that the Board had taken action to expel Cohen the evening before. The letter also set out alternatives for Cohen's education while out of school and conditions for Cohen's readmission to school following the end of the expulsion period. The Board had made a summary of the evidence upon which it based its expulsion, consisting of three pages. Mr. and Mrs. Monson appealed their son's expulsion to the State Board of Education.

During the time in between the end of homecoming week when Cohen was suspended and the date of the appeal hearing, Cohen had been working at home on the family farm. Mrs. Monson testified that Cohen is not, and never has been, a discipline problem at home. His grades are mostly A's and B's; he sometimes receives a C or D.

At the appeal hearing, Superintendent Pierson testified that the District had made arrangements with North Iowa Area Community College (NIACC) for Cohen to attend classes there at no cost to the Monsons. Mrs. Monson testified that she was not aware that it was free of cost and that she had been "quoted a price per week" by NIACC for Cohen's attendance. Superintendent Pierson emphasized that he would clarify with NIACC that Cohen was the student for whom the District had made the agreement with NIACC for cost-free education. Mrs. Monson testified that she would follow up on this alternative for educating Cohen during the time he is out of school.

Appellants' affidavit of appeal states that they are appealing for the following reasons:

1. The procedures associated with the expulsion did not afford the student adequate Due Process and the School Board was not an impartial fact finding tribunal.
2. The action is out of proportion to the conduct of the student.
3. The action is based on the untrue erroneous assumption that the conduct of Cohen Monson, in some way, resulted in 140 students staying home from school on October 1, 1999.
4. The action of the High School Administration is discriminatory as to Craig Monson. The administration did not seriously investigate other students who had written these letters on homecoming decorations and punish one other student admitting this conduct very lightly. Further, students in the past involved in disruptive incidents have not been punished to this extent or degree.

II. CONCLUSIONS OF LAW

In hearing 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 Code section 282.4 sets out the local school board’s authority regarding expulsions 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.
2. A student who commits an assault, as defined under section 708.1, against a school employee in a school building, on school grounds, or at a school-sponsored function shall be suspended for a time to be determined by the principal. Notice of the suspension shall be immediately sent to the president of the board. By special meeting or at the next regularly-scheduled board meeting, the board shall review the suspension and decide whether to hold a disciplinary hearing to determine whether or not to order further sanctions against the student, which may include expelling the student. In making its decision, the board shall consider the best interests of the school district, which shall include what is best to protect and ensure the safety of the school employees and students from the student committing the assault.
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 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).

The State Board of Education has been directed by the Legislature to render appeal decisions that are "just and equitable" [Iowa Code Section 290.3 (1999)]; "in the best interest of the affected child" [Iowa Code Section 282.18 (18)) (1999)], and "in the best interest of education" [281 Iowa Administrative Code 6.11(2)]. The test is reasonableness. The State Board's standard of review, based on this mandate, is as follows:

[A] local school board's decision will not be overturned unless it is "unreasonable and contrary to the best interest of education."

In re Jesse Bachman, 13 D.o.E. App. Dec. 363, (1996).

In applying the standard of review to this appeal, the question becomes whether the Board's decision to expel Cohen for the remainder of the 1999-2000 school year and to impose certain conditions for his readmission to school was a reasonable exercise of its authority.

The Board finds that there is sufficient evidence to believe that the student's continuing conduct has caused material and substantial disruption to the school environment and has interfered with the rights of other students and faculty to attend school without fear for their physical safety or well being. The Board further believes that the expulsion of the student is necessary to maintain a safe and orderly environment within the Forest City Community School District and encourage ethical behavior by students. Evidence considered in making these determinations is as follows:

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. "The Board may, by a majority vote, expel any student, for a violation of the regulations or rules established by the Board, or when the presence of the student is detrimental to the best interest of the school . . ." Iowa Code section 282.4 (1999). The 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 Monsons' four arguments for why they believe we should reverse Cohen's expulsion.

1. The procedures associated with the expulsion did not afford the student adequate Due Process and the School Board was not an impartial fact finding tribunal.

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;² 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.

² 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.

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.³

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.
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 clearly show that the Board satisfied all of the above due process requirements regarding Cohen's expulsion.

³ 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.

We do not agree with Appellants' argument that Cohen did not have an impartial decision maker due to the fact that some of the members of the Board had children currently attending the Forest City Schools. In order to disqualify a board member from sitting on a hearing panel, it is necessary to prove actual bias on behalf of the board member against the individual involved. *In re Don Shinn*, 14 D.o.E. App. Dec. 185(1997). There was no specific evidence that any of the seven members of the Board had a bias or prejudice against Cohen due to the fact that their children were in the school buildings where "KTP" was written. People who serve on local school boards often do so because they have children in the school district. This is often one of the reasons that they decide to be on the board in the first place. Often, then, school board members are going to have a personal interest in what happens to the district and to its children, including their own.

We realize that there may be times that a specific board member should abstain from voting on a decision due to bias or prejudice against the student involved. However, absent some specific showing of personal bias or prejudice, we are not prepared to reverse a decision of a board merely because some of the board members were interested in the outcome of a decision because their own children would be affected by it. In this appeal, Appellants have failed to show any evidence of actual personal bias or prejudice on the part of any of the members of the Board. Therefore, we reject Appellants' argument that Cohen did not have an impartial decision maker.

2. & 3. The action is out of proportion to the conduct of the student and the action is based on the untrue erroneous assumption that the conduct of Cohen Monson, in some way, resulted in 140 students staying home from school on October 1, 1999.

The gravamen of this complaint is that the punishment was excessive; that the punishment did not fit the crime. The Board action to expel Cohen occurred at a time when many students and teachers felt that Cohen was a threat to their safety due to his writing "KTP" when he knew it meant "Kill the Preps."

The United States Supreme Court has held that the First Amendment guarantees only limited protection for student speech in the school context. *See Tinker v. Des Moines Independent Sch. Dist.*, 393 U.S. 503, 509; 89 S.Ct. 733, 738; 21 L. Ed. 2d 731 (1969) (holding that schools can punish student conduct that would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school" without violating the First Amendment); *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 266; 108 S.Ct. 562, 568; 98 L. Ed. 2d (1988) (a school need not tolerate student speech that is inconsistent with its basic educational mission, even though the government could not censor similar speech outside the school); *Bethel Sch. Dist. No. 403 v. Frazier*, 478 U.S. 675, 682; 106 S. Ct. 164; 92 L. Ed. 549 (1986) (the constitutional rights of students in public schools are not automatically coextensive with the rights of adults in other settings).

In general, threats are not protected by the First Amendment. *Watts v. United States*, 394 U.S. 705 (1969). The Court stated that an objective test for determining whether a threat is a "true threat" and falls outside of the protection of the First Amendment is "whether a reasonable person would foresee that the statement would be interpreted by those to whom the maker communicates the statement as a serious expression of intent to harm or assault." *Lovell v. Poway Unified Sch. Dist.*, 90 F.3d 367, 372, (9th Circ. 1996).

In the *Lovell* case, a high school student was suspended from school for making a statement allegedly threatening to shoot her counselor in connection with a proposed schedule change. Sarah Lovell was a 15-year-old tenth grade student. She had been working with her counselor to request changes to her class schedule. She was shuttled back and forth between the counselor's office and the administrative offices for several hours while she attempted to effect the changes. When Sarah finally arrived back at her counselor's office about 1:30 in the afternoon, she was frustrated and irritable. She thought this was to be her last stop as the changes were simply to have been entered into the school's computer system.

As her counselor entered the changes, however, she noted that Sarah had been approved for courses that were already overloaded. She told her she couldn't make the changes. At that point Sarah stated, "If you don't give me the schedule change, I'm going to shoot you!" *Id.* at 369. The counselor had reported feeling threatened by the confrontation. Sarah was suspended for three days. Her parents brought an action to expunge the incident from Sarah's record. Although the trial court held that the student's speech was entitled to First Amendment protection, the court of appeals reversed. The appellate court held that the statement made in anger constituted a threat that was not protected by the First Amendment.

In reversing the trial court, the opinion stated:

In reaching his conclusion, the judge lost sight of the fact that the ultimate inquiry is whether a reasonable person [in the student's] position would foresee that [the counselor] would interpret her statement as a serious expression to harm or assault. Considering only [the counselor's] version of the facts for a moment, there is no question that any person could reasonably consider the statement "if you don't give me the schedule change I'm going to shoot you" made by an angry teenager, to be a serious expression of intent to harm or assault. A reasonable person in these circumstances would have foreseen that [the counselor] would interpret that statement as a serious expression of intent to harm. This statement is unequivocal and specific enough to convey a true threat of physical violence. **This is particularly true when considered against the back drop of increasing violence among school children today.**

Id. at 372 (emphasis added).

The Ninth Circuit Court of Appeals decided this case prior to the Columbine shootings. There can be no question that things have changed since Columbine. School administrators are required to take threats of violence seriously. They are urged to look for “warning signs” so that similar tragedies can be prevented in the future. *In re Martin Noah*, 17 D.o.E. App. Dec. 306(1999).

In its recent *Noah* decision, the State Board applied the *Lovell* test to a student’s statements about “blowing teachers away,” and upheld the student’s expulsion for the rest of the school year. The *Noah* student’s expulsion occurred near the end of the school year and Cohen’s occurred near the beginning of the school year, but the school board still had the right to enforce its student handbook policy to expel students for threats to the general safety for the rest of the year. In applying the *Lovell* test to the present appeal case, the perspective shifts from what Cohen thought the reaction to writing “KTP” would be to what the action of the students actually was. Because it has been established that several students felt genuinely threatened by the “KTP” incidents and that academic activities were severely disrupted, the next issue is whether their reaction was reasonable. In light of all of the evidence in the record, we believe that Cohen should have foreseen that writing “KTP” meaning “Kill the Preps,” would be interpreted by students as a serious expression of intent to harm or assault. We conclude that the writing of “KTP” was a threat that the Board could reasonably punish by expelling Cohen.

The Monsons argue that the Board erroneously held Cohen responsible for the absence of 140 students at school on Friday, October 1, 1999. They believe that the gun rumor was responsible for their absence and for the disruption of the school environment that day. It is true, and perhaps unfortunate for the Monsons, that the middle-school gun rumor occurred during the same week that Cohen wrote “KTP” in the high school. However, Lt. Beaver testified that the students’ awareness of the “KTP” writings and the gun rumor “snowballed” into 140 students’ absence from school, the necessity for having police presence, and the disruption of the school environment.

It would be impossible for the School Board or the State Board of Education to know whether or not there would have been the same effect on the school environment if the gun rumor had not contemporaneously occurred. Likewise, it would be impossible for us to arbitrarily assess some sort of percentage of the absences and disruption between the “KTP” writings and the gun rumor. Therefore, Cohen must bear the responsibility for his part in causing the total “snowball effect.” For these reasons, we conclude that the Board acted reasonably and in the best interest of education when it expelled Cohen for the rest of the school year pursuant to its relevant Board policy and the student handbook provision. Therefore, the Board’s action was not out of proportion to Cohen’s conduct when it expelled him 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 also 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.

Davis v. Hillsdale Comm. Sch. Dist., 573 N.W.2d 77, 79(Mich.App. 1997).

We conclude that Cohen's expulsion was reasonably related to the Board's and the school officials' interest in protecting other students and staff from violence. The Board was aware that 140 students and/or their parents made the decision to keep their children out of school for fear of violence. Their fear was at least in part due to the fact that Cohen wrote "KTP" on school property. The absences and the grave, 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 evidence is clear that when Cohen wrote "KTP," he knew it meant "Kill the Preps." The Forest City High School handbook penalty for that kind of threat is expulsion. The Board acted reasonably and in the best interest of education when it expelled Cohen for the remainder of the 1999-2000 school year.

4. The action of the High School Administration is discriminatory as to Craig [sic] Monson. The administration did not seriously investigate other students who had written these letters on homecoming decorations and punish one other student admitting this conduct very lightly. Further, students in the past involved in disruptive incidents have not been punished to this extent or degree.

As long as the Board acted consistently with respect to students in the same situation, it had the authority to apply a different and lesser penalty to Josh Loge than to Cohen. Josh and Cohen were not in the "same situation" because of the fact that Josh's prior disciplinary record, unlike Cohen's, contained only tardies. Jeremy Sveen and Cohen were not in the "same situation" either. Jeremy did not admit to writing "KTP" until he was under oath at the appeal hearing. Since school officials had no knowledge until then that he had written "KTP," they were reasonable in deciding not to discipline him back in October.

The Appellants also claim that students involved in past disruptive incidents were not punished in a like manner. The evidence in the record was insufficient for the State Board to evaluate this claim.

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

III.
Decision

For the foregoing reasons, the decision of the Forest City Community School District's Board of Directors on October 18, 1999, to expel Cohen Monson 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