

**IOWA STATE BOARD
OF EDUCATION
(Cite as 17 D.o.E. App. Dec. 79)**

<i>In re Dustin Corning</i>	:	
Randy & Karen Corning, Appellants,	:	
v.	:	PROPOSED DECISION
Indianola Community School District, Appellee.	:	[Adm. Doc. #4089]

The above-captioned matter was heard on April 15, 1999, before a hearing panel comprising Gary Henrichs, consultant, Bureau of Technical & Vocational Education; Greg Truckenmiller, consultant, Bureau of Planning, Research, and Evaluation; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding. Appellants, Randy and Karen Corning and their son, Dustin, were present and represented by Ms. Becky Knutson of the Davis Law Firm, Des Moines, Iowa. Appellee, Indianola Community School District [hereinafter, "the District"], was also present in the persons of Thomas Narak, superintendent; Roger Netsch, secondary teacher; and John Monroe, high school principal. The District and School Board [hereinafter, "the Board"] were represented by Attorney Drew Bracken of Ahlers Law Firm of Des Moines, Iowa.

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

Appellants seek reversal of a decision of the Board of Directors [hereinafter, "the Board"] of the District made on January 26, 1999, to expel Dustin Corning for the balance of the 1998-99 school year, with the attendant loss of academic credits earned in the Spring 1999 semester for "possession of marijuana", a controlled substance, on school grounds.

**I.
FINDINGS OF FACT**

The administrative law judge finds that she and the State Board of Education have jurisdiction over the parties and the subject matter of the appeal before them.

This is an appeal of the expulsion of a senior high school student for possession of marijuana. The following are the relevant facts:

The incident giving rise to this appeal occurred on January 19, 1999. That was the first day of classes for the second semester. Dustin Corning was a senior whose class rank was 11th out of 216 students.

D.B. had been Dustin's friend and next door neighbor for over seven years. Dustin gave D.B. a ride to school that Monday. Both boys smoke Camel Lights cigarettes. Both boys admitted to smoking marijuana at a party the previous Friday night - three days earlier.

During the 15-minute drive to school, D.B. pulled a marijuana cigarette out of his package of Camel Lights and smoked it on the way to school. It is hotly disputed whether Dustin shared the marijuana [joint]. When the boys arrived at the school parking lot, the small remainder of the joint was returned to the package of Camel Lights. The cigarette package was placed in the glove compartment of Dustin's car.

During first period class, D.B.'s teacher noticed a heavy smell of marijuana smoke on him. He was sent to the office. D.B.'s parents were called to the school. After initially denying that he had smoked marijuana that morning, D.B. admitted that he had smoked in Dustin's car on the way to school. Law enforcement was called and D.B. repeated his admission to Officer Duke.

After D.B. implicated Dustin Corning, Principal John Monroe asked Counselor John Taylor to retrieve Dustin from his class. When Dustin appeared at the office, Mr. Monroe noticed a smell of smoke about Dustin Corning, but he could not determine if it was marijuana or regular cigarette smoke. Dustin denied that he was involved with marijuana. Mr. Taylor and Officer Duke then escorted Dustin to his car where it was searched with Dustin's permission. Officer Duke found the pack of Camel Lights in the glove compartment, but did not search the pack of cigarettes. Instead, he put them back in the glove compartment.

Dustin, Mr. Taylor, and Officer Duke then returned to the office and Officer Duke reported that he found no drugs or drug paraphernalia in the vehicle, although there was an odor of marijuana in the vehicle. Dustin Corning did not offer any other information and he was allowed to return to class.

As Principal Monroe continued his interview with D.B., D.B. described how both he and Dustin had smoked marijuana on the way to school. According to the unrefuted findings of fact of the expulsion hearing, "D.B. stated that Dustin Corning met him on Monday evening at the Kum and Go. They talked about smoking marijuana before school the next morning. D.B. stated that Dustin Corning left the Kum and Go to get the marijuana and came back with it later. D.B. stated that Dustin Corning rolled a marijuana cigarette using D.B.'s cigarette paper. D.B. then admitted that Dustin Corning gave him a ride to school that day and that they both smoked marijuana on the way to school." (Expulsion Hrg., *Findings of Fact*, p. 3.)

Mr. Monroe asked Mr. Taylor to retrieve Dustin Corning from class a second time. Ms. Corning was contacted and listened to the second interview of her son via conference speakerphone. Dustin was informed of what D.B. had said. Dustin said that D.B. was lying. Mr. Monroe explained that he had conflicting stories from the two students and suggested that a good way to clear up the conflict was to have a urinalysis done immediately. Dustin declined to submit to a urinalysis and explained it was because he had smoked marijuana at a party in Des Moines the previous Friday night. At this point, Dustin informed the administration that D.B. smoked marijuana on the way to school in Dustin's car. However, he denied smoking it with him.

With Dustin's mother's consent, the boys were brought into the same room and interviewed together, while Dustin Corning's mother was on the speakerphone. At that time, Dustin Corning said that D.B. was the only one smoking marijuana and D.B. said that they both were. At this point, the boys were again separated. D.B. went back to Mr. Monroe's office. Dustin Corning was put into a "storage room".

Both boys were extremely upset about the accusations and they both had a lot to lose. D.B. had been on probation since the summer for possession of marijuana with intent to deliver. A second offense could cause revocation of his probation. Dustin was an honor roll student that had already been accepted to attend UNI in the fall. He planned to be a teacher.

At the time that Dustin was sequestered in the storage room, there had only been allegations that he had used marijuana. The initial search by Officer Duke has not uncovered any marijuana, so possession by Dustin was not an issue. It can only be assumed that the stress of the situation prompted what Dustin did next.

Mr. Taylor talked with Dustin while he was in the storage room and suggested that he backtrack through everything from the time he picked up D.B. until the time they arrived at school. Dustin told Mr. Taylor that D.B. pulled the half joint from a pack of cigarettes, smoked part of it, and put it back into the cigarette pack. Dustin then took Mr. Taylor back to his car for a second time and retrieved the pack of Camel Lights from his glove compartment. Dustin still denied that he had smoked the marijuana but was supplying information about D.B.'s use and possession of the marijuana.

Since Mr. Monroe could not resolve the "use" issue as far as Dustin, he informed him that he was in violation of the school rules and board policy regarding "possession" of marijuana because it was found in his car. Mr. Monroe then called Dustin's mother and informed her that Dustin was being suspended from school for five days or until the Board hearing. He then advised her that he would make a recommendation to the superintendent that Dustin be expelled from school.

The expulsion hearing was held in closed session as part of the regular Board meeting on January 26, 1999. Both the student and the District were represented by counsel. The closed session commenced at 7:38 p.m. and adjourned at 11:00 p.m.

On January 27, 1999, the Board reconvened in closed session. Minutes of that session state that:

The Board discussed at length the possible options to the recommendation to expel student Dustin Corning. The Board drew up a list of alternatives to expulsion that could include, but not be limited to, revocation of parking privileges, community service, revocation of lunch privileges, revocation of open study hall privileges, drug tests, and the requirement that there be no further violations, including attendance. The Board discussed having the administration draw up the specifics to the alternate option to expulsion. By consensus, the Board agreed that Dustin Corning should be allowed to participate in graduation if the alternate to expulsion were accepted as a way to allow the student to earn back this privilege. ...

(Bd. Min., January 27, 1999.)

In open session, the Board voted 6-1 to accept the superintendent's recommendation that Dustin be expelled subject to modifications, and that legal counsel prepare an appropriate written decision accordingly.

At the appeal hearing, Mrs. Corning testified that she, her husband, and Dustin thought that the modifications to expulsion would be educationally constructive. They assumed that community service would involve Dustin's tutoring younger students since he had done that in the past with some success. They looked forward to receiving the details of the "conditions" on Friday, January 29th, so Dustin could begin school on Monday, February 1, 1999.

When the Cornings received the notice of the conditions Friday afternoon, they were quite upset. They believed that the conditions were punitive and humiliating. (Exh. 1.) In order to continue his enrollment and participation in academic programs at the high school, and to be eligible to participate in commencement, Dustin was required to comply with several conditions. The conditions included revocation of open campus privileges between 8:00 a.m. and 3:45 p.m.; revocation of parking privileges on school premises; loss of eligibility to participate in extra-curricular activities and other privileges available to high school seniors, including Jr./Sr. prom and National Honor Society. "Dustin and his family would be required to seek and obtain a drug abuse evaluation and to meet with the Board on or about April 29, 1999. At that time, the Administration and Dustin's family may report regarding his progress and compliance with these conditions. If the Board is satisfied that Dustin has complied with these conditions, the Board may vote to rescind this expulsion decision." (Exh. 1.)

The part of the modification that the parents objected to most strenuously involved the modification of Dustin's academic schedule to accommodate a daily work schedule. The first four periods of his day would have involved classes. The fifth period of the odd-numbered days involved lunch duty. On the even-numbered days, he would have P.E. Then from 12:45 p.m. until 4:00 p.m. (3:45 p.m. on the days that Dustin had to go to his job after school), Dustin would be required to work at school. His duties would require working in the Central Office, building and grounds, transportation, and the kitchen.

Surprised by the severity of these conditions, Randy and Karen Corning faxed a letter to the superintendent and the school board. It was faxed to the District on February 1, 1999, and stated as follows:

Due to the treatment which we have received by the administrators, most particularly Principal Monroe, and the extreme conditions placed upon Dusty by the administration following the initial recommendation by the Board of Directors, we do not feel it is in the best interests of our son, Dusty Corning, to return to school. Our son has enough credits and has met the requirements to graduate early. We will file an application with the Board for the February 8th meeting to allow our son to graduate early from Indianola High School with full privileges.

If early graduation is not granted, we will appeal the Board's expulsion decision for possession to the Iowa Department of Education and pursue any other measures that are appropriate.

(Exh. 7.)

The Cornings' request for early graduation was presented to the Board of Directors on February 8, 1999, and discussed for over three hours in closed session. In the closed session, the parents discussed their feelings that the alternative plan to expulsion was punitive and was too extreme. There was indication that the Board would consider returning classes that had been withdrawn, but the parents indicated that their preference was early graduation with commencement. Superintendent Narak advised the parents at that time that if Dustin declined the alternative to expulsion, expulsion would not be included on his permanent record. He would be provided a diploma either way. But, if the alternative plan was not followed, Dustin would not be able to participate in commencement ceremonies. "Superintendent Narak noted that the administrative recommendation was to approve the request for early graduation without graduation ceremony privileges." (Bd. Min., February 8, 1999, closed session.) The Board came out of closed session and voted that the early graduation request of Dustin Corning be granted, but that Dustin Corning not be eligible to participate in graduation ceremonies. This appeal followed.

II. CONCLUSIONS OF LAW

Appellants have raised several legal issues in challenging the Board's action in this appeal. Their complaint is that conditions imposed by the administration pursuant to the expulsion "with modification" decision were excessively harsh and punitive and subjected the student to personal embarrassment and public humiliation. Secondly, the parents argued that the same penalty

was imposed on both D.B. and Dustin who had different degrees of knowledge and culpability. Finally, the parents argued that Dustin had earned the right to graduate early *prior to the incident* on January 19, 1999, and along with that right he had earned the privilege to participate in commencement prior to the incident. As a result, it cannot later be taken away from him.

The State Board has been directed by the legislature to render a decision that is "just and equitable" [section 290.3], "in the best interest of affected child(ren)" [section 282.18(16)], "in the best interest of education" [section 281 IAC 6.11(2)]. The test is *reasonableness*. Based upon this mandate, a more precise description of the State Board's standard of review is:

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

In re Jesse Bachman, 13 D.o.E. App. Dec. 363, 369 (1996).

Applying this standard of review to the facts adduced at the hearing, we do not find that the District Board's decision as well as the administration's actions implementing that decision, should be reversed.

The remedy sought by these parents is that the State Board require the District to allow Dustin to participate in commencement exercises for the class of 1999. Unfortunately, that remedy is not appropriate under these facts. The Iowa Supreme Court has held since 1921 that a school board may deny the right of a graduate of a high school to participate in the public ceremony of graduation where the student does not comply with regulations. *Valentine v. Independent Sch. Dist.*, 191 Iowa 1100, 183 N.W. 434, 437 (1921). While a diploma cannot be denied a student who has earned it, an educational institution may deny a student participation in commencement exercises. Graduation ceremony is not within the scope of any property right as it is only symbolic of the educational end result, not an essential component of it. *Mifflin Co. Sch. Dist. v. Stewart*, 503 A.2d 1012, 30 Educ. L. R. 403 (Pa. Commw. Ct. 1986). *But, see, In re Sharon Ortner*, 16 D.o.E. App. Dec. 269(1999) (held that graduation ceremony cannot be denied as an extracurricular activity).

The Board had the authority to expel Dustin Corning for possession of a controlled substance on school grounds. Iowa Code section 282.4 provides that a school board "may by majority vote, expel any scholar from school for ... a violation of the regulations or rules established by the board. Boards have the responsibility to "prohibit and punish students for the use or possession of alcohol and controlled substances." Iowa Code section

279.9(1999). They may also set terms and conditions for readmission of students expelled. Iowa Code section 282.5(1999).

Dustin Corning was expelled under the provisions of regulations implementing Board Policy 502.9, "Smoking-Drinking-Drugs Regulation". (Exh. 2.) The parents object to Dustin's expulsion on the grounds that the regulations state that for the first offense for possession, the school administration *may* choose to handle the discipline at the building level." *Id.* In other words, expulsion was too extreme a response to his first involvement with marijuana.

The fact that the school administration *may* choose to handle the discipline at the building level does not mean that it is required to do so. The District Board had the legal authority to expel Dustin for the remainder of the school year, yet an effort was made to mitigate the sanction. The Board should be congratulated for its efforts to modifying the expulsion requirement by giving Dustin the opportunity to earn the right to attend his graduation ceremonies. The fact that the nature of the conditions may appear to be more punitive than educational is without merit. If a student is expelled, the student no longer has a right to attend any educational program provided by a district. It is not unreasonable for the administration or Board to conclude that punishment, *per se*, is the purpose. We cannot fault the Board for requiring that Dustin and his family seek and obtain a drug abuse evaluation. In spite of the fact that Dustin disputes his use of marijuana on January 19, 1999, he admitted to using it on at least one prior occasion three days earlier. While we would agree that many of the provisions imposed upon Dustin appear to be harsh, we believe expulsion from school is even harsher. Therefore, rather than criticizing this Board's actions in offering conditions such as these to the student, we think schools should be encouraged to offer alternatives to expulsion which give students the right to avoid exclusion from the academic program.

In the present case, it appears that the District bent over backwards to spare Dustin from many of the harsh consequences of his actions. The Board waived its deadline on applying for early graduation to allow Dustin to graduate after he decided not to perform the conditions imposed by the administration. The request for early graduation was granted in spite of the fact that the request was made several months after the early graduation deadline.

We are not in a position to evaluate Appellants' assertion that the punishment imposed upon their son is invalid because it is the same punishment that was imposed upon D.B. for "being under the influence". The administration's determination that D.B. should be given the same punishment as Dustin is not relevant to

whether Dustin's punishment was appropriate. D.B. admitted to smoking marijuana; Dustin did not. They were in "joint possession". The punishment imposed upon Dustin was not unwarranted in light of his possession of the marijuana. The fact that reasonable minds may differ on this issue does not mean that the action of the Board was unreasonable for the purposes of this appeal.

Accordingly, the District Board of Directors' actions are affirmed. In recommending affirmance of the District Board's decision, the Administrative Law Judge is following prior State Board precedent. See, e.g., *In re David Tensley*, 11 D.o.E. App. Dec. 399 (1994) (expulsion affirmed for possession of marijuana & sexual harassment); *In re David Ward*, 11 D.o.E. App. Dec. 39 (1993) (expulsion affirmed for drug possession); *In re Kam Schaeffbauer*, 9 D.o.E. App. Dec. 188 (1992) (expulsion affirmed for drug possession/distribution); *In re Eric Plough*, 9 D.o.E. App. Dec. 234 (1992) (expulsion affirmed for drug possession).

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

III. DECISION

For the foregoing reasons, the decision of the Board of Directors of the Indianola Community School District made on January 26, 1999, to expel Dustin Corning for the remainder of the 1998-1999 school year for possession of marijuana, is hereby affirmed. Costs of this appeal, if any exclusive of attorney fees, are to be assigned to Appellants pursuant to Iowa Code §290.4.

DATE

ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

DATE

CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION