

IOWA STATE BOARD  
OF EDUCATION  
(Cite as 16 D.o.E. App. Dec. 324)

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*In re Alicia McGee* :

Angela McGee. :  
Appellant, :

v. : DECISION

Waterloo Community School :  
District, Appellee. : [Adm. Doc. #4057]\_\_\_\_\_

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The above-captioned matter was heard on December 7, 1998, before a hearing panel comprising James Tyson, consultant, Bureau of Administration and School Improvement Services; Donald Weiderquist, consultant, Bureau of Community Colleges; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding. Appellant, Angela McGee, was present telephonically and was unrepresented by counsel. Appellee, Waterloo Community School District [hereinafter, "the District"], was also present telephonically in the persons of Gail Moon, Hoover Middle School principal; Terry Meier, Hoover Middle School assistant principal; Katha Williams, Hoover Middle School teacher; Sharon Miller, board secretary; and Bernard Cooper, director of student services. Appellee was represented by attorney Steven Weidner, Swisher & Cohrt, P.L.C., of Waterloo, Iowa.

An evidentiary hearing was held pursuant to Departmental Rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for this appeal are found at Iowa Code section 290.1(1997). The administrative law judge finds that she and the State Board of Education have jurisdiction over the parties and subject matter before them.

Appellant seeks reversal of an unanimous decision of the Board of Directors [hereinafter, "the Board"] of the District made on November 11, 1998, to expel her daughter, Alicia McGee, for the remainder of the first semester of the 1998-99 school year.

**I.  
FINDINGS OF FACT**

Appellant, Angela McGee, is a resident of the Waterloo Community School District, and her daughter, Alicia McGee, age 13, is an eighth grade student at Hoover Middle School.

The following facts are not disputed by the Appellant. The Board's decision to expel Alicia was the result of an incident at Hoover Middle School on October 23, 1998. During Alicia's language arts/reading class, a chemical, later determined to be pepper spray, was released in the classroom. This caused the school building to be evacuated, the fire department to be called, and the student body to be sent home early. Another student in the language arts/reading class, Brittany D., admitted to school authorities that she had brought the pepper spray to class in her purse. Alicia stated that another student had discharged the spray (Exh. 6), but a number of students stated that they saw Alicia take it from Brittany D.'s purse and a number of students stated that they saw Alicia spray it in the classroom (Exh. 8-15).

As a result of this incident, Alicia was suspended for three days and recommended for expulsion for violation of the District's student conduct code by discharging a chemical weapon and for causing a serious disruption of the school. Testifying for the District, principal Gail Moon said that she also recommended that Brittany D. be expelled for possession of a chemical device.

The Board met on November 11, 1998, to consider the expulsion recommendations. The Board voted to expel Alicia for the remainder of the first semester of the 1998-99 school year. It voted to place Brittany D. on probation, which entailed exclusion from extracurricular activities for the remainder of the first semester of the 1998-99 school year and immediate referral for expulsion if she committed any further violation of the student conduct code.

## II. CONCLUSIONS OF LAW

Appellant in this appeal does not dispute the accuracy of the facts of the incident at Hoover Middle School, either as they were presented to the Board or as they were presented in this appeal hearing. Neither does she find fault with the policies and procedures followed by the District in disciplining her daughter. Rather, her claim is that the Board's decision was unfair because her daughter was expelled and the other student received a lesser punishment despite the principal's recommendation that both be expelled.

The State Board of Education has been directed by the Legislature to render appeal decisions which are "just and equitable," [Iowa Code section 29.3(1997)]; "in the best interest of the affected child," [Iowa Code section 282.18(18)(1997)], 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 upon 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 Alicia McGee for the remainder of one semester was a reasonable exercise of its authority.

The minutes of the November 11, 1998, Board meeting show that the Board devoted almost two hours in closed session to this matter. It heard information on the incident at Hoover Middle School, heard testimony, heard the administrators' recommendations and deliberated. We believe that this was sufficient for the Board to make an informed decision.

The Board decided on Alicia's penalty in closed session, according to Iowa Law (Iowa Code Section 21.5(1)(e)(1997), and those deliberations are confidential. The Appellant, however, does not dispute the accuracy of the facts as they were presented in that closed session. The facts, also presented at this appeal hearing, demonstrate clearly that Alicia's actions caused a serious disruption to the entire school and justified the penalty imposed by the Board. The fact that the Board found "extenuating circumstances" (Bd Min. 11/11/98.) in the case of the other student and imposed a lesser penalty does not mitigate the seriousness of Alicia's offense.

The Board's decision shows that it used its discretion to consider Alicia McGee and Brittany D. individually, on a case-by-case basis. The State Board has previously addressed the issue of a Board's discretion in applying its policy to its students:

The alternative to the application of discretionary judgment is flat, unbending rules which fail to meet the needs of individuals or a form of "Napoleonic Code" which attempts to envision and rule on every conceivable reason under every imaginable circumstance. Neither is desirable in our view. We applaud policies which allow for special consideration and flexibility.

In re Donald and Katherine Blaess, 4 D.P.I. App. Dec. 118 (1985).

The Waterloo Board of Directors properly used its discretion in this case. We encourage other boards of directors to do likewise.

The Appellant has failed to show that the Board's decision was unreasonable. There is no other basis on which to reverse it.

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 Waterloo Community School District made on November 11, 1998, to expel Alicia McGee for the remainder of the first semester is hereby recommended for affirmance. There are no costs to this appeal to be assigned.

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DATE

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ANN MARIE BRICK, J.D.  
ADMINISTRATIVE LAW JUDGE

It is so ordered.

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DATE

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CORINE HADLEY, PRESIDENT  
STATE BOARD OF EDUCATION