

**IOWA STATE BOARD
OF EDUCATION**
(Cite as 15 D.o.E. App. Dec. 135)

In re Demetricia Powell	:	
Donna Hinton, Appellant,	:	
v.	:	DECISION
Perry Community School District, Appellee.	:	
	:	[Admin. Doc. #3884]

This case was heard on December 2 and 3, 1997, before a hearing panel comprising Mr. Lee Crawford, Bureau of Technical & Vocational Education; Ms. Susan Andersen, Office of Educational Services for Children, Families, & Communities; and Amy Christensen, J.D., designated administrative law judge, presiding. The Appellant, Mrs. Donna Hinton, was present and was represented by Mr. Patrick Hopkins. The student, Demetricia Powell, was also present, as was Mr. Stuart Hinton. The Appellee, Perry Community School District (hereinafter, “the District”), was present in the persons of Mr. Art Pixler, principal of Perry Middle School, and Mr. William Mueller, guidance counselor. Superintendent Dr. Richard Staver was medically unable to attend the hearing, and it is unlikely he will be available in the future. Therefore, the hearing proceeded in his absence. The District was represented by Mr. Jeff Krausman.

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 of the appeal before them.

The Appellant seeks reversal of a decision of the Board of Directors (hereinafter, “the Board”) of the District made on April 22, 1997, to expel her daughter, Demetricia Powell. The hearing in this case was originally scheduled for July, but was continued at the request of the parties and rescheduled for August. At the request of the parties, the hearing was again continued to October. The hearing was again continued at the request of the parties, and was held on December 2, 1997. The parties submitted briefs on January 5, 1998.

I. FINDINGS OF FACT

Mr. and Mrs. Hinton and their two daughters, Demetricia and Jennifer Powell, moved to Perry, Iowa, in September of 1994. Demetricia attended Perry Middle School, and Jennifer attended elementary school until the 1996-97 school year, when she began attending Perry Middle School. Mrs. Hinton testified she attended school through the ninth grade, realizes the value of education, and it is very important to her that Demetricia succeed in school. Mr. Hinton graduated from high school. Demetricia was not happy about moving from Clinton, where the family lived prior to moving to Perry.

Mr. Arthur Pixler is the principal of Perry Middle School. This is his eighth year as principal at the middle school. He also serves as the special education coordinator for the District and the Gifted and Talented coordinator for the District. Mr. William Mueller is the guidance counselor at Perry Middle School. He also serves as athletic director and the wrestling coach. He is acting principal when Mr. Pixler is out of the building. He has worked for the District for twenty-four years, both at the high school and at the middle school. He was the guidance counselor at Perry Middle School during all the years Demetricia attended there.

In many of the incidents discussed in these findings of fact, the parties' testimony regarding what happened differs significantly. We will attempt to discuss the differences in this decision. In addition, the panel would like to state that it does not believe that any of the witnesses in this case were intentionally lying when they testified. However, it is very apparent to the panel that the witnesses remembered situations in the light most favorable to themselves, and this is taken into consideration when judging the credibility of all of the witnesses in this case. This is particularly true because the events occurred months ago, and in some cases, years ago. It is also particularly true because many of these events were difficult and emotionally charged for all the people who were there.

INCIDENTS WHICH OCCURRED PRIOR TO THE 1996-97 SCHOOL YEAR

The following findings of fact relate to the allegations of racial bias by the Hinton/Powell family, and also provide background regarding Demetricia's difficulties at school. Mrs. Hinton testified she was not saying that Mr. Pixler, Mr. Mueller, or the other teachers, were prejudiced; but that the students were, and this caused Demetricia to become very angry. She also testified that the administration did nothing when Demetricia went to them and asked for help. Disciplinary actions discussed in this

section were not part of the basis for the April 1997 expulsion by the Perry Board¹, and are not considered as a basis for expulsion in this decision. They are not considered here for anything other than to discuss the racial climate of the Perry Middle School as perceived by Demetricia and the Hintons, and to state the actions which were taken by school officials in response to the incidents. The Appellant alleges that the racial climate affected how Demetricia behaved, and that it should be considered in judging the expulsion.

The Perry Middle School has between 250-260 students. The racial make-up is approximately 13% minority, of which 10% is Latino/Hispanic, 2% is African-American, and 1% is Southeast Asian. The percentage of minority students has increased during the last eight years.

During Demetricia's first year at Perry Middle School, the 1994-95 school year, she had some relatively minor discipline problems. She was never suspended from school.

It is unclear exactly when the following incident occurred. It was either late during the 1994-95 school year, or near the beginning of the 1995-96 school year. This was the first racial incident that occurred. Someone wrote the word "nigger" on Demetricia's locker. Demetricia came home from school crying and told her mother of the incident. No one from school had called Mrs. Hinton. Mrs. Hinton called Mr. Pixler and asked him what happened. He told her that "nigger" had been painted on Demetricia's locker, and that he had taken care of it by having the janitor paint over the word that day. Mr. Pixler told Mrs. Hinton he did not know who had done the painting. She also testified he did not discuss sanctions for the student who had done the painting if it was learned who did the painting with her. As far as the Hintons and Demetricia knew, this was all that was done regarding the incident. Mr. Pixler testified that when Demetricia came to him to tell him of the painting and to ask for help, she told him who she suspected had done the painting. Mr. Pixler talked with that student and interviewed others, although he could not determine for certain who was responsible. However, when he spoke with the student Demetricia suspected, he told that student it better not happen again, and if it did, he'd be talking with the student again. There were no more graffiti incidents. Mr. Mueller testified he did not know of the writing on the locker incident until later in the 95-96 school year, when Mrs. Hinton and Demetricia told him about it when they were discussing a separate disciplinary incident.

¹ Prior to the April 22, 1997 Board meeting, District staff provided a packet of materials to the Board members and to the Appellant. This packet included disciplinary reports for both the years 1995-96 and 1996-97. Mr. Pixler testified the 1995-96 reports were included as a result of a clerical error. He also testified that at the meeting, the Board was instructed to disregard the 1995-96 reports, and that they should not be used in influencing the Board's decision.

Mrs. Hinton and Demetricia testified to incidents involving racist comments by other students to Demetricia. One girl called Demetricia a “nigger bitch”, and said she would “rub off on her”. Mrs. Hinton called Mr. Pixler to talk about this, and told Demetricia to talk with Mr. Pixler as well. He told Demetricia if there were any problems like that, she was to come to him so he could help her. He said he had spoken to the girl about this, and it wouldn’t happen anymore. However, Mrs. Hinton testified it continued to happen every day. Mrs. Hinton testified she didn’t know if the girl had been sanctioned, and that Mr. Pixler told her she would not be told of disciplinary action against other students. Mr. Pixler testified he was not aware that the girl continued to call Demetricia names every day, and Mrs. Hinton did not testify that she or Demetricia told him.

Shortly after this, in April 1996, Mr. Pixler called Mrs. Hinton, and told her Demetricia had gotten into an altercation with a student at school. It was the same girl who had called Demetricia a “nigger bitch”. Demetricia told her mother the girl kept calling her names while she was going down the steps, ran past her, and Demetricia threw her keys at the girl when the two were near their lockers and the girl kept calling her a “nigger bitch”. The keys hit the girl on the head. Mr. Pixler testified the incident also involved a chase where the other girl picked up the keys and both girls ran into the office. He also was under the impression the girls had fought over opening their lockers, which were near each other. He testified he talked to both girls, and there were no other witnesses. Mrs. Hinton testified Demetricia was sanctioned for this incident, and she was not aware of any sanction imposed on the other girl. Mr. Pixler testified he imposed sanctions on both girls. School policy is that Mr. Pixler does not tell parents or students of disciplinary actions imposed on other students.

Mrs. Hinton testified the problems continued during the 1995-96 school year, although she did not testify to any other specific incidents. She testified she spoke to Mr. Pixler each time Demetricia was in trouble at school. Mr. Pixler testified that the only time Demetricia or Mrs. Hinton complained to him about racism was after Demetricia had been disciplined. He testified that when Demetricia was being disciplined, she often complained there was something racist involved. Mr. Pixler testified when she did so, he attempted to determine the circumstances to see if there was something to substantiate the claim. He testified that to his knowledge, the only racial incidents were the locker incident, the name calling incident, and the key incident. He testified he felt these were isolated incidents involving individual students, and that they had been dealt with. Mr. Mueller testified that Mrs. Hinton and Demetricia complained to him of racism on one occasion after Demetricia had been disciplined, but his impression was that they were speaking of the locker incident.

Ms. Linda Hoobin is the Educational Equity Officer for the Perry schools, and her name, address, title and telephone number is listed on page 4 of the Student Handbook. The Handbook is given to students at the beginning of each school year, and one was

given to Demetricia. Mr. Pixler never referred any of these incidents to Ms. Hoobin for investigation and/or follow-up action. Mrs. Hinton and Demetricia never complained about any of the incidents to Ms. Hoobin.

Near the end of the 1995-96 school year, Demetricia was expelled from school as a result of a series of disciplinary actions. She was required to repeat eighth grade.

At the end of the 1995-96 school year, Mrs. Hinton testified she asked Mr. Pixler to have Mr. Mueller counsel Demetricia. Mrs. Hinton testified she could see that Demetricia was having problems, and she asked for counseling once or twice a week. Mrs. Hinton testified she wanted counseling for Demetricia to see how things were going and make sure the other students weren't calling her names. Mrs. Hinton testified Mr. Pixler agreed to this, and that counseling was to be provided by Mr. Mueller. Mrs. Hinton testified this counseling was never provided. Mr. Mueller testified he spoke with Mrs. Hinton a number of times. He cannot remember whether she asked him to counsel Demetricia. He testified she asked him to touch base with Demetricia from time to time to make sure she was doing all right, and to try to encourage the teachers to interact with her on a positive basis. He testified he did this, although he also testified he kept no counseling records regarding these conversations.

During the 1995-96 school year, Mr. Pixler testified Mrs. Hinton did not request that Demetricia be tested for special education or any other special program. Mr. Pixler did not see anything in her conduct that suggested to him she should be tested for special education, and none of her teachers referred her for special education.

THE 1996-97 SCHOOL YEAR

At the beginning of the 1996-97 school year, Demetricia continued to have disciplinary problems at school. Mr. Pixler testified he knew she was not happy about having to repeat eighth grade. Mr. Pixler spoke with Demetricia about her temper, and suggested that her escalation of incidents caused her the problems. He said it was not her immediate action that caused the most trouble for her, but how her temper escalated. He told her if she could get her temper cooled down, perhaps the magnitude of each incident would not be as great. He testified he told her that when she felt wronged, she immediately got to an explosive point. He tried to assure her he was on her side, and that if he could help her, she should come to him for help. He told her to try and wait and take some time before she said or did anything when she was given directions she did not want to follow. Mr. Pixler testified he was concerned whether Demetricia could make it through the 1996-97 school year, and he wanted to help her prevent significant problems. Demetricia testified she remembered Mr. Pixler talking with her about being angry when something happened, and to come to see him when she had a problem. She testified she always told him her side of the story when something happened.

On September 20, 1996, Demetricia was in Study Skills Lab. Demetricia testified she and another student were sitting next to each other and were talking. The teacher asked Demetricia to move to another seat. Demetricia refused to move, even after having been asked several times. This is undisputed. Demetricia testified she refused to move because she felt she was being unfairly asked to move when the other student was not. The teacher wrote a disciplinary report for Demetricia's failure to move. On the report, she checked reasons for referral as disrespect, insubordination, and excessive talking. She also stated that Demetricia made negative comments to fellow students. She spoke with Mr. Pixler about the incident, and Demetricia was assigned twenty minutes of detention to be served on September 24, 1996. Mr. Pixler testified neither Demetricia nor her mother spoke with Mr. Pixler about the incident.

When a disciplinary report is issued, a copy is put in the working file, a copy is given to the student, a copy is mailed to the student's home, and if it is necessary, a copy is sent to an agency such as the school's liaison officer. This standard practice was followed for each of the disciplinary reports issued to Demetricia.

On September 24, 1996, Demetricia did not come to her assigned detention. Mr. Pixler issued a disciplinary report to Demetricia for her failure to serve her detention. The Student Handbook states that a student will be given a demerit for failure to appear for a scheduled detention. Demetricia was issued a demerit, and assigned detention to make up for the one missed to be served on September 27, 1996. Mr. Pixler testified Demetricia did not talk with him or offer any explanation of why she missed this detention.

On September 27, 1996, Demetricia again did not come to her assigned detention. Mr. Pixler issued a disciplinary report to Demetricia for her failure to serve her detention. She was again issued a demerit, and assigned detention to make up for the one missed to be served on September 30, 1996. Mr. Pixler testified he does not recall Mrs. Hinton or Demetricia contacting him to discuss this or to offer any explanation.

On October 2, 1996, Demetricia was in Spanish class. She testified another student called her a derogatory name in Spanish. The other student was Hispanic. Demetricia complained to the teacher. The teacher told Demetricia she had not heard the derogatory name calling, so she could not do anything. Demetricia admitted on cross-examination that she was upset, and probably said something to the teacher such as "this is bull crap." Demetricia testified the teacher sent her out of the classroom. On the disciplinary report she issued, the teacher stated that Demetricia had several outbursts in class and berated the school and staff, and was thoroughly out of control and disrespectful. Demetricia denies saying anything other than the "this is bull crap" comment. She denies being disruptive. The teacher marked disrespect, excessive talking, and causing a significant disruption to the educational process as reasons for the referral. She assigned Demetricia one demerit and detention to be served on October 9, 1996.

According to the District's demerit system, if students receive three demerits in a nine-week period, they are subject to suspension. The principal is authorized to suspend a student for up to five days. On October 2, 1996, Mr. Pixler issued a disciplinary report to Demetricia because she had received three demerits in the first nine-week period, and was therefore suspended. The suspension was an in school one-day suspension to be served on October 8, 1997. Whenever Mr. Pixler issues a suspension, he sends a copy to Superintendent Staver, and he did so in this case. Mr. Pixler testified he does not recall Demetricia or Mrs. Hinton talking to him about the suspension or the underlying incident in Spanish class. Demetricia served the first part of the in-school suspension in the office.

On October 8, 1996, Demetricia walked out of school for the last four periods of the day and was truant. A student may be suspended for truancy according to school policy. Mr. Pixler testified the policy is if a student is truant for more than two periods, the student is suspended. Therefore, Mr. Pixler issued a disciplinary report to Demetricia, and she was assigned to serve an in-school suspension on October 11, 1996. Mr. Pixler testified he spoke with Demetricia after she returned to school. They discussed her truancy and that she would have to serve the suspension. Demetricia served the suspension. The Appellant offered no evidence regarding this incident.

On October 17, 1996, Demetricia and her sister Jennifer were fighting at school. The argument had begun at home, and continued outside the school building once the girls got to school. The teacher on duty outside the building before school started saw the argument. Her written statement states that Demetricia began talking to Jennifer, and the two got into an argument. The teacher heard Demetricia repeatedly swearing at Jennifer and threatening her, and intervened. She told Demetricia she would have to stop swearing or she'd have to go to the office. According to the teacher's written statement, Demetricia responded "Like I'm really gonna go. Like I've never been to the office before." Demetricia does not deny she was swearing at Jennifer. The teacher backed off. In her written statement, the teacher said this was to allow Demetricia a chance to cool off. Demetricia and Jennifer continued to fight. According to the teacher's observations as contained in her written statement, Demetricia was the aggressor and the only one she observed using profanity. She told both girls they would have to come with her to the office. Both girls ignored her. She went inside and asked another teacher to come outside with her. The students were coming in the building. In the meantime, another teacher had already come to the entrance of the building. Demetricia, Jennifer, and the three teachers were then in the entrance together. One teacher got in between the girls and tried to break up the fight, and according to his written statement, Demetricia told him "I don't like you either, you motherfucker, I'll kick your ass too." Demetricia and Jennifer continued to fight. One teacher told Demetricia to go to the office. She did not. According to their statements and Mr. Pixler's testimony, the teachers observed Demetricia swear at Jennifer, but did not observe Jennifer swear at Demetricia. According to their statements, Demetricia also swore at the teachers. One teacher sent

Demetricia up the stairs and Jennifer down the stairs to separate them. Demetricia chased Jennifer, and both girls came into the office, still arguing. Mr. Pixler was in the office with one of the teachers involved, who had come in to tell of the argument.

The teachers involved did not testify, although their written statements of what happened were admitted. Since they did not testify, they were not available for cross-examination by the Appellant's attorney. We consider this fact in the weight we give their written statements. However, we do accord some weight to the statements because they were prepared on the same date as the argument, and are essentially consistent. Demetricia testified she does not remember a teacher trying to intervene until the girls were inside the building. Demetricia denied swearing at any of the teachers, but does not deny she swore at Jennifer. She agrees the teachers told the girls to break up the fight, and testified "a couple more words were said" after the teachers tried to break up the fight. She testified she does not remember whether she swore or not, or whether she called Jennifer a bitch. Jennifer testified both she and Demetricia were swearing during the fight, and she did not hear Demetricia swear at a teacher. She also does not remember a teacher trying to break up the fight until the girls were inside the building. We find that Demetricia was out of control during this incident. Although it would not be surprising if both girls were using profanity, the teachers present only heard Demetricia swearing, and that is what they reported to Mr. Pixler. We also find that in spite of the fact that Demetricia denies she was swearing at the teachers or does not remember whether she did or not, she swore at one teacher as well as at Jennifer. We believe that the girls do not remember intervention by teachers outside the building because they were so focused on fighting with each other. We find that the attempted intervention outside the building occurred substantially as the teachers related it in their written statements.

Mr. Pixler testified at the hearing and was subject to cross-examination. Mr. Pixler spoke to the teachers involved and to both Demetricia and Jennifer. Mr. Pixler also talked with Mrs. Hinton about the incident. Mrs. Hinton confirmed that the argument had begun at home. Mr. Pixler had the teachers prepare written statements of their observations. Based on his investigation, Mr. Pixler issued a disciplinary report with a demerit and suspended Demetricia. The suspension was a three-day, out-of-school suspension. He did not impose disciplinary action on Jennifer, because according to his investigation, it did not seem warranted. According to the Student Handbook, a student may be suspended for a number of offenses, including fighting, insubordination, and/or use of profane or indecent language.

The Appellant does not allege that race played any part in this incident. She did question why Demetricia received a suspension when Jennifer received no disciplinary action. The greater weight of the evidence shows that there was a significant difference

in the behavior of Demetricia and Jennifer, in that Demetricia was the aggressor and repeatedly used profane language toward Jennifer and a teacher. It was therefore reasonable for Mr. Pixler to impose discipline on Demetricia and not on Jennifer.

School policy dictates that after a student has been suspended three times, the student must meet with the superintendent. Mrs. Hinton and Demetricia met with Dr. Stavers, the superintendent, about the disciplinary problems Demetricia was having at school. Mrs. Hinton testified she observed Demetricia getting more and more upset about things that happened at school. Demetricia's perception was that when she was involved in situations with other students and both were at fault, she would be punished and the other student would not. Mrs. Hinton testified Demetricia was angry with teachers, because she felt she was not being treated fairly. Mrs. Hinton testified the meeting with Dr. Stavers made things worse. She testified Dr. Stavers told Demetricia she had to handle her anger in a different manner. She testified Dr. Stavers told Demetricia that if someone called her a nigger, she should tell the person "thank you". Demetricia was very upset by this, stood up and told Dr. Stavers this was wrong, and she would never say "thank you" because the other student would keep on calling her names. Mrs. Hinton testified Dr. Stavers told them there was nothing wrong with people saying "nigger", and his own mother does it. Dr. Stavers was medically unavailable to testify at the hearing, and it is unlikely he will be available in the future, so we do not know his version of the conversation. Minutes of the April 22, 1997, Board meeting were introduced into evidence. Although the minutes are somewhat incomplete, we note the Hinton did not allege Dr. Stavers made these remarks at the Board meeting. Therefore, we do not make a finding whether or not the statements were actually made as Mrs. Hinton testified to them. If the racial statements were made as testified to, we find them to be absolutely shocking, inappropriate, and unacceptable, and we would expect that the recipient would report the comments to the District's Educational Equity Officer, the School Board, and/or the Iowa Department of Education. No such report was made. We also would expect that the Appellant would have told the Board of the remarks at the April 22 hearing, which was not done.

Because of the repeated discipline problems, Mrs. Hinton and Dr. Stavers decided it would be better for Demetricia to attend school for a half day, because it seemed that most of her problems occurred late in the day. Mr. Pixler testified he also observed Demetricia's problems seemed to be associated with unstructured time. Therefore, it was agreed that Demetricia would be dual enrolled and receive competent private instruction. She attended classes at school for the first through fourth periods, and was home schooled for the remainder of the day. On the request for dual enrollment form, Mrs. Hinton marked "no" to special education.

There was a disciplinary report introduced as evidence regarding a smoking incident at school that took place on November 19, 1996. No consequences were assigned because Mr. Pixler could not prove Demetricia was the person smoking. The

panel completely disregards any reference to this incident, because there is no proof the smoking was done by a student as opposed to a teacher, staff member, or member of the public in the building, and therefore there is insufficient evidence that Demetricia was responsible. We note Mr. Pixler investigated this and determined Demetricia was the only student free at the time, and therefore, we do not believe Mr. Pixler's discussion with Demetricia was racially or unfairly motivated.

With the change to a half-day schedule, Demetricia's disciplinary problems lessened for several months. However, on February 2, 1997, she was issued a disciplinary report with a demerit for three unexcused tardies to classes that quarter. The Appellant offered no evidence regarding this disciplinary report.

During January and February 1997, Demetricia attended her first four classes, and then went home. She did not eat lunch at school. At the end of February, the school lunch schedule changed. Fourth period became a split period for Demetricia, and she began eating lunch at school. Mr. Mueller is the lunchroom monitor at the middle school.

The events that occurred in the lunchroom on March 5, 1997, are hotly contested by the parties. According to Demetricia's testimony, she and another student entered the lunchroom together. Demetricia got her lunch, which was a baked potato with cheese, and sat down. She testified the other student wanted her food, and she would not give it to him. She testified he took his fork and was stabbing it into her baked potato. She told him he wasn't getting the food, and he then sat at a table next to the one where Demetricia was sitting. Demetricia testified she did not throw food at the other student. Demetricia testified she really does not remember how or when she had the interaction with Mr. Mueller. She testified she remembers Mr. Mueller came up to her and asked her whether she had thrown food at the other student's shirt. She testified there was no potato mess on the table when Mr. Mueller came to the table. She denied having thrown the food. She testified Mr. Mueller said the other student had said that she had thrown the food, which she denied again. She then testified Mr. Mueller told her if she wasn't going to eat and follow the rules in the Perry school building, she should take her tray and scrape it and leave. She testified she had not even started to eat at that point. She denied playing with her food. She told Mr. Mueller she was not done eating. She testified he then tried to take her tray away from her. She pulled her tray back down, and told him she was not finished with her lunch. At that point, she testified, food fell off the tray and Mr. Mueller went to get a rag. She testified he came back and told her to scrape her tray and leave now. She testified they were arguing back and forth about her leaving. She testified he was standing right over her because she was sitting at the end of the table and yelling at her. She testified he told her to get up, get up now, and leave. However, she testified, she couldn't get up because Mr. Mueller was standing in the only space available for her to stand. On cross-examination, Demetricia testified she could not remember Mr. Mueller leaving the table at any time. When asked whether Mr. Mueller was cleaning up the table at the time, she answered "I guess". On cross-examination, she

testified there was probably food on the table because it had fallen off the tray when he tried to take the tray away and she pushed it back down, although she does not remember what happened. She testified on cross-examination that Mr. Mueller had a rag when he came to the table. Demetricia testified Mr. Mueller finally moved away from her after she pushed beside him and stood up. She testified she accidentally kicked Mr. Mueller as she was getting up. Demetricia denied that she broke any rule or did anything to cause her to be kicked out of the lunchroom. Demetricia testified Mr. Pixler came into the lunchroom at the very end of the conversation. She does not remember what was being said when he came in. She testified he came and got her and took her to the office. She denied she was swearing at Mr. Mueller when Mr. Pixler came in. She denied calling Mr. Mueller a “motherfucker”. She does not remember swearing at Mr. Mueller at all during the incident. She testified she did tell Mr. Mueller “I hate you.” She denied telling Mr. Pixler “fuck you too”. She denied saying “fuck this fucking school”, and denied using obscenities at any point during the incident.

Demetricia’s sister Jennifer testified in support of Demetricia. She was not at the table at first, so did not see who threw the potato at the other student. She testified she saw Mr. Mueller standing over Demetricia and loudly telling her to scrape her plate and leave and that she had to follow the rules. She does not remember if Mr. Mueller left the table at any point. She testified Demetricia told Mr. Mueller “I hate you”, but does not remember her swearing. Jennifer Gilliland also testified in support of Demetricia. She observed the confrontation between the two, and testified Mr. Mueller ended up yelling at Demetricia to get up and leave. She testified neither Demetricia nor Mr. Mueller were swearing.

Mr. Mueller testified Demetricia and the other student came running into the lunchroom before everyone else. He testified he was standing in the middle of the lunchroom so he could see the entire room. He saw Demetricia get her food and sit at one table, and the other student got his food and sat at another table with his back to Demetricia. Several girls came and sat with Demetricia at her table. Mr. Mueller testified he saw some verbal badgering between Demetricia and the other student, and the other student might have gotten out of his chair, although Demetricia did not. Mr. Mueller testified Demetricia did not seem to be eating. He testified he saw her take her fork and flip her potato and cheese onto the table off her tray, which made a mess. He testified he then got a rag, and went back to the area. The other student had a spot of potato and cheese on the back of his shirt. The student told Mr. Mueller he hadn’t seen who threw the potato, but he guessed it was Demetricia. Mr. Mueller told him he hadn’t seen who threw it. Mr. Mueller testified he went to Demetricia’s table and made a statement that food is for eating not throwing. Mr. Mueller testified he did not accuse Demetricia of being the one who threw the food. He also testified he did not ask the students at Demetricia’s table who threw the food, because in his experience, he would not have gotten an answer. He testified he did not ask her to get up and leave. He

observed Demetricia had a mess of cheese and potato on the table, so he began cleaning it up. He testified he looked at her tray, and she was not eating. He testified he asked her if she was done, and said if she was done, she was to go scrape her plate. He testified Demetricia told him he could not tell her what to do. He testified he said something like if you are going to eat with us, you need to do what we ask. He testified he could not remember what else was said. He denies shouting at her, although acknowledged that his voice was raised. He testified that it is a common practice in the lunchroom to pick up a student's tray and move it to a new location, if the student refuses to move when asked. This is done to avoid a conflict. Mr. Mueller does not remember picking up Demetricia's tray, but testified he may have done so. He testified there was some jostling of her tray, and milk was spilled onto the table, so there was a milk/potato/cheese mess. Mr. Mueller testified that from prior experience with Demetricia and her statement that he could not tell her what to do, Mr. Mueller was concerned that Demetricia would become a problem, so he then called for Mr. Pixler to come to the lunchroom.

Mr. Mueller testified he walked to the intercom, called, and waited for Mr. Pixler away from the area of Demetricia's table. He testified he did not go back to the table because he did not want the situation to escalate. Mr. Mueller testified Mr. Pixler got to the lunchroom in less than a minute. Mr. Mueller testified when Mr. Pixler arrived, he said something like he was having a problem with Demetricia. He testified the two went to Demetricia's table, and Mr. Mueller said something to Mr. Pixler like "somebody here does not know how to behave." Mr. Mueller testified Demetricia was not sitting on the very end of the table, and that he was not standing over her as testified to by Demetricia. Mr. Mueller testified Mr. Pixler then said, "come with me" to Demetricia. He testified it is possible his leg was in the way of Demetricia when she stood up, and her foot kicked his shin. Mr. Mueller testified he did not say anything else to Demetricia. Mr. Mueller testified when Demetricia stood up, she got right in his face and said "I hate you, you motherfucker." Mr. Pixler then took Demetricia out, and Mr. Mueller heard Demetricia shouting and swearing as she was leaving the lunchroom.

Mr. Pixler testified when he entered the lunchroom, Mr. Mueller was holding a rag, and made some statement to him like he had an individual who did not know how to behave in the lunchroom. The two came over to Demetricia's table. He testified Demetricia was sitting near the end of the table. Mr. Pixler testified Mr. Mueller leaned over to clean up the milk on the table. Mr. Pixler also testified he did not hear Mr. Mueller say anything to Demetricia, and he did not hear Demetricia say anything to Mr. Mueller. Mr. Pixler testified he did not know what the circumstances were before he got to the lunchroom, but it appeared that Demetricia was agitated. He asked her to come with him to remove her from the situation, because he testified he did not want her to have to be in that situation. At that point, Mr. Pixler testified Demetricia jumped up and bumped into Mr. Mueller. He testified she called Mr. Mueller a motherfucker, and he told her to keep her voice down and not use that kind of language. He also testified as they got into the hall, she said "fuck you too," "fuck this fucking school," and continued

to yell. He testified she was so loud she disrupted two floors of classrooms. When the two got to Mr. Pixler's office, he testified he told her that her language was inappropriate and that she had significantly disrupted the school. He then suspended her. Mr. Pixler testified he suspended her for the language she used toward Mr. Mueller and himself and for the disruption to the school by her yelling. He testified she claimed she had been falsely accused, had not thrown food, and it was someone else. Mr. Pixler testified he did not suspend Demetricia for throwing food, or for anything which occurred in the lunchroom before he got there. Mr. Pixler wrote a disciplinary report in which he gave Demetricia a demerit and a five-day out of school suspension. Mr. Pixler testified he could not recall talking with Mrs. Hinton about this incident, although she may have called him.

The specific details of what happened in the lunchroom prior to Mr. Pixler getting there are not critical, because Demetricia was not disciplined for anything that occurred prior to the time Mr. Pixler entered the lunchroom. However, we do not believe Demetricia was treated unfairly by Mr. Mueller or Mr. Pixler, nor do we believe she was singled out by them for discriminatory reasons. In the Appellant's Brief at pages 3, 4, and 23, the Appellant's attorney alleges that Demetricia was subject to disparate treatment during the March 5 lunchroom incident, because Mr. Mueller did not ask the students at Demetricia's table who had thrown the potato, and because Demetricia was taken out of the lunchroom solely on the accusation of the young man that she had thrown food at him. This is contrasted in the brief with Mr. Pixler's handling of the locker incident, in which no discipline was imposed on the suspected student because Mr. Pixler was not sure who had done the writing. The preponderance of the evidence does not support this assertion, and it is contrary to Mrs. Hinton's testimony that it was the students, and not Mr. Pixler, Mr. Mueller, or the teachers who were prejudiced. Demetricia was disciplined for her behavior that occurred after Mr. Pixler entered the lunchroom. Mr. Pixler was reasonable when he asked Demetricia to come with him to get her out of the lunchroom. She was obviously upset. She had a history of escalating temper. Removing her from the situation to give her a chance to calm down was a good decision. We believe Mr. Mueller's and Mr. Pixler's version of the incident from the point where Mr. Pixler asked Demetricia to come with him. We find that Demetricia used obscenities toward Mr. Mueller and Mr. Pixler, and disrupted the school when she yelled obscenities down the hall on the way to the office. Demetricia's behavior was not justified by her view that she had been unfairly accused of throwing food and unfairly asked to move.

Under the progressive discipline policy, after four suspensions, a student is supposed to go to the Board for possible expulsion. Even though this was Demetricia's fourth suspension of the year, Mr. Pixler did not refer her to the Board. Mr. Pixler testified this was because there was a long period of relative calm in Demetricia's record, and he was hoping this was an isolated incident. He also testified he was not sure how the disciplinary rules applied to a dual-enrolled student, and had not yet received advice on this issue.

On April 1, 1997, a lunchroom associate issued a disciplinary report to Demetricia. The disciplinary report was issued because Demetricia was playfully yelling at other students in the lunchroom, and when the associate asked Demetricia to keep her voice down, Demetricia made disrespectful remarks that she didn't have to do so, and used very disrespectful facial expressions toward the associate. She also said she didn't need to listen to the associate no matter what her name was. Demetricia received a demerit and was assigned detention to be served on April 3. Mr. Pixler sent a copy of this report to Mrs. Hinton, and gave a copy to Demetricia, just as he always did. Mr. Pixler testified he did not remember Mrs. Hinton calling him about this disciplinary report.

On April 3, 1997, Mr. Pixler issued a disciplinary report because Demetricia failed to serve her detention. He assigned her a makeup detention to be served on April 9, 1997 and issued her a demerit.

Also on April 3, 1997, Mr. Pixler sent Mrs. Hinton a letter that told her Demetricia had been issued two demerits that quarter, and if she received another one, she would be suspended.

On April 9, 1997, Mr. Pixler issued a disciplinary report because Demetricia did not show up for her assigned detention. He gave her a demerit and assigned a makeup detention to be served on April 14th. Mr. Pixler testified he cannot remember that Mrs. Hinton called to talk with him about why Demetricia was missing assigned detentions. He does not remember whether he talked with Demetricia about her failures to appear or not.

Also on April 9, 1997, Mr. Pixler issued a disciplinary report to Demetricia because she had received three demerits that quarter, and under the guidelines, he therefore suspended her. The suspension was a one-day in school suspension to be served in the office on April 16, 1997. On the disciplinary report, Mr. Pixler wrote: "Any additional suspensions will result in needing to appear before the Board of Education." A copy of this disciplinary report was given to Demetricia, and a copy was sent to Mrs. Hinton.

Even though this was the fifth suspension Demetricia had received that year, Mr. Pixler did not send her to the Board for consideration of expulsion because he had not yet received advice regarding how the disciplinary policy applied to dual-enrolled students.

On April 14, 1997, Mr. Pixler issued another disciplinary report to Demetricia because she missed her assigned detention. He gave her a demerit and assigned a makeup detention to be served on April 17, 1997.

On April 16, 1997, during the twenty-minute advisory period at the beginning of school, Demetricia's teacher issued her a disciplinary report with a demerit for disrespectful comments made to him. The teacher told her she was supposed to be at in-school suspension, and for the remainder of the day, Demetricia served her suspension in the office. Demetricia did not complain to Mr. Pixler that she had been unfairly treated. Demetricia received a copy of this report according to standard practice.

Also on April 16, 1997, Mr. Pixler sent Mrs. Hinton a letter telling her that Demetricia had received five demerits that quarter, and that if she received one more demerit, she would receive a two-day suspension. He also enclosed the guidelines explaining the demerit system. Mr. Pixler does not remember whether Mrs. Hinton contacted him regarding this letter.

On April 17, 1997, Mr. Pixler issued Demetricia a disciplinary report with a demerit for missing her assigned detention. He assigned her a makeup detention to be served on April 22, 1997. Based on the letter of the previous day, Mr. Pixler could have suspended Demetricia because she had then received six demerits. He testified he believes he did not do so because he had not yet calculated the number of demerits she had received.

The events of April 18, 1997 are also hotly contested by the parties.

Demetricia testified she came into the office to use the telephone to call her mother to pick her up. Mrs. Hinton and Demetricia testified this was common practice by Demetricia. Demetricia denied brushing against any teachers to get into the room with the telephone. She testified she did not ask permission, but didn't think she needed to. She called her mother. As she was making the call, Demetricia testified Mrs. Mueller came into the room where she was using the telephone, and told her she didn't believe she had permission to use the telephone and what did she think she was doing? Demetricia testified she looked at her calmly and said politely what is the problem and she had to call her mom. Demetricia testified Mrs. Mueller then walked into the other office behind the counter and pulled out about three detention slips and started filling them out, and told Demetricia she was getting an attitude with her and being disrespectful to her. Demetricia testified she went to the side of the counter opposite Mrs. Mueller. She testified Mrs. Mueller gave her about three disciplinary reports for that day. Demetricia testified she asked Mrs. Mueller why she was giving her detention, and she replied because Demetricia was being rude and disrespectful. Demetricia testified she then said she didn't think she deserved detention and her mom would be at school in a little while and that she could talk to her. She testified Mrs. Mueller gave her the discipline slip, and she tore it up and threw it on the counter. She denied using vulgar language or swearing at her. She testified she told her she was upset. Demetricia testified Mr. Mueller was not present until then. She testified he came in, and Mrs. Mueller started yelling she's being disrespectful. She testified Mr. Mueller started raising

his voice and told her to get out of the office now and that she was not supposed to be there. She testified she said “why can’t I just sit here and wait for my mom to come, that way you guys can talk to her,” and “I don’t see why I can’t sit here, I didn’t do anything wrong.” She testified he told her she couldn’t, that she had to leave, and started to push her out of the office. In April 1997, Demetricia was approximately 5’4” tall and weighed about 110 pounds. Mr. Mueller was 6’1” tall and weighed about 205 pounds. Demetricia testified he grabbed both her shoulders and pushed her out of the office with her back to the doorway. She testified that as she went through the doorway, she struck the edge of the doorsill. She testified that as he was pushing her out the door, she struggled with him and told him to get his hands off her. She testified her sister Jennifer joined the two as soon as they went into the hall, and came up between Demetricia and Mr. Mueller. She testified Jennifer grabbed her around her waist, and both her hands were down by her side. She testified Mr. Mueller hit her with his open palm somewhere on her upper body. She testified she cannot remember where he hit her. She testified Jennifer told Mr. Mueller to stop hitting Demetricia. She testified that when Mr. Mueller started hitting her, she started cussing at him, and she got one arm free and she swung back at him. She testified she cannot remember where she hit him or even if she hit him. She only remembers swinging at him. She denied kicking Mrs. Mueller. She testified she did not see Mrs. Mueller in the hall. She testified she called Mr. Mueller names, but did not remember what she called him. She testified she probably called him a “fucker”, and that she cussed at him. She cannot remember specifically what she said. She testified Mr. Mueller pushed both girls about halfway down the hall almost out the door. She testified he pushed them a distance of about the width of the State Board conference room.² She testified she was swearing at him and he was swearing at her. She testified she was basically calm until Mr. Mueller grabbed her by the shoulders. She testified she did not hear any comments by any other teachers because she was focused on Mr. Mueller. She testified Mr. Mueller let her go about at the gym doors. She testified they were both yelling at each other. She testified Jennifer was yelling at him to let her go, and he eventually did so. She testified Mr. Pixler did not arrive until the end after everything had already calmed down. She testified she was standing a couple of feet away from the outside of the building when Mr. Pixler got there. She testified he asked her to leave, and she did. She denied telling Mr. Pixler “he could eat her motherfucking pussy.” She testified she and her sister ran out the doors and around to the front of the building, and by that time, their parents had arrived. Demetricia testified she told her mom what happened, and that’s when her mom came up to the school. She testified she had no other conversation with Mr. Mueller or Mr. Pixler that day. She testified she went to the doctor the next day because her backbone hurt and she had a big bruise on her leg. She testified the injuries had not been there prior to the April 18th incident.

Jennifer Gilliland, Jennifer Powell, and Jennifer Thompson testified on behalf of Demetricia. The three girls were in the hall near the office on April 18, and testified they saw Mr. Mueller pushing Demetricia out of the office and against the doorsill. The girls

² The State Board conference room is 22 feet wide.

testified Jennifer Powell got in between Demetricia and Mr. Mueller and told Mr. Mueller to let go of her. Jennifer Gilliland testified she heard Mr. Smith tell Mr. Mueller to stop because he would get in trouble. She testified she heard Demetricia and Mr. Mueller yelling and swearing at each other, and that Mr. Mueller pushed the girls down the hall almost to the gym doors. She testified she could not remember specifically what words were said. She then left because a teacher told her to get to class. Jennifer Thompson's testimony was consistent with Jennifer Gilliland's. Jennifer Thompson testified as they were moving down the hallway, Demetricia was swinging her arms at Mr. Mueller, and Mr. Mueller swung a couple times at her shoulders, but kept pushing Demetricia. She also testified she could not tell whether Mr. Mueller was swinging at Demetricia to hit her, or to defensively block Demetricia's swings, although her impression is that he was swinging to hit her. Jennifer Powell, Demetricia's sister, also testified consistently with the other two Jennifers, although she did not hear Mr. Smith's statement to Mr. Mueller. Jennifer testified she was yelling at both of them to stop, but they would not. She testified she has no idea how the group broke apart. She testified she was pushing Demetricia, and when they got to the gym door, Mr. Mueller wasn't behind her anymore. She testified they then ran outside and met their parents.

Mr. Mueller testified that he became aware there was a problem on April 18th when Mr. Smith, the band instructor, came to Mr. Mueller said he had to get into the office because there was a problem with Demetricia Powell. Mr. Mueller was in the hall next to the office at that point. Mr. Mueller testified he then went into the office and saw Mrs. Mueller writing a disciplinary report and Demetricia standing by the counter. Mrs. Mueller is Mr. Mueller's wife, and also a teacher at the school. Mr. Mueller testified he heard no profanity, and heard Demetricia wondering why she was being written up. He testified Demetricia's disposition started to deteriorate as she kept talking. He testified he does not recall whether he said anything to Demetricia when he came in the room. He testified her anger escalated. He testified he does not recall the exact words exchanged between Mrs. Mueller and Demetricia. He testified Demetricia reached out and grabbed the disciplinary report Mrs. Mueller had been writing off the counter, tore it up, and threw it on the counter. Mr. Mueller testified he then told Demetricia she had to leave the office, because it was time for her to move from her in-school instruction to home-school instruction. Mr. Mueller testified Demetricia ignored him, kept talking to Mrs. Mueller, and it culminated in her saying, "you bitch" and swearing at Mrs. Mueller. Mr. Mueller testified he then grabbed the back of Demetricia's shoulders on her jacket, and turned her and pushed her out through the door. Mr. Mueller testified Demetricia had a pattern of behavior that if asked to do something she did not want to do, she would refuse. Then if she was somewhat forced to do it, her temper would escalate and she would start to yell and swear at the teacher. Mr. Mueller testified this is why he felt it was important to get her out of the office, because she was supposed to be moving out of the building anyway. He testified he pushed her out the door face first. He testified she did not hit a sill or the wall, but went straight out through the door. He denied shoving Demetricia into the doorsill or any other hard object. He testified Demetricia's sister, Jennifer, appeared and

got between the two, held Mr. Mueller's arms and said something like: "leave her alone, don't bother my sister, or don't touch my sister". Mr. Mueller testified Demetricia broke loose, turned around, and hit him on the side of the face twice. He testified Demetricia called him a "motherfucker", and he did not remember specifically what else was said. He testified Jennifer then backed into Demetricia, and Mr. Mueller pushed the two of them down the hall. He testified Demetricia kicked him in the leg. Mr. Mueller testified he pushed the girls about to the display case on the wall next to the office. He denied pushing the girls all the way to the gym door, which he testified is about 65 feet from the office. He testified he then backed up, Demetricia jumped over Jennifer's left shoulder, up along the wall, and hit him on the head and knocked his glasses down and bent them. He testified Jennifer then pushed Demetricia back, and to his knowledge that is when Mr. Pixler arrived. He testified he heard Demetricia repeatedly use profanity once Mr. Pixler was there. He does not remember any specific language other than repeated use of the term "fuck." He testified Mrs. Mueller was kicked during the confrontation. He testified another teacher, Mr. Long, was in the hallway during the confrontation. He testified there were other students in the hall, but he does not know who they were other than Jennifer Powell. He testified once Mr. Pixler arrived, he went back into the office. Mr. Mueller denied swinging at either Demetricia or Jennifer. He did not hear Jennifer swear. He did not hear Mr. Smith tell him to stop. He testified he asked Mr. Smith if he had made the statement after the April 22 Board meeting, and Mr. Smith told him he did not recall. He testified Jennifer came into the office, he assumed to call her mother, and when she went back into the hallway, Mr. Mueller also went into the hallway. He testified Demetricia came back and got in his face and said: "my sister did not hit you" and to leave her alone. He testified that he had originally thought both Demetricia and Jennifer hit him, but other witnesses convinced him that was not the case, that only Demetricia hit him. He testified he then went back in the office. He also testified Mr. Pixler came back in later and called the police and told them they'd better hurry up and get there. He also testified Mr. Pixler and the police asked him and others to prepare written statements of what happened. He testified they did so right away, because they had to give the statements to the police before the police left the school.

Mr. Pixler testified he was not in the office when the incident began. He was in the science room doorway, and heard some loud voices. It was the passing period, and students told him there was an altercation going on down the hall. Mr. Pixler could not tell whose voices he heard. He quickly came down the hallway toward the office. He heard voices, and saw a group of people in front of the office and people beyond the office. He heard someone say Demetricia was having some difficulty. He stopped in the office doorway and told the secretary to call the police. He got past the office door and came near Demetricia and Jennifer. He was focused on Demetricia and Jennifer, and so did not see whether Mr. Mueller was in the area at that time. Demetricia, Jennifer, and Mr. Mueller were not physically connected when he saw them. There is a conference room next to the school office. When Mr. Pixler arrived, Demetricia and Jennifer were in the hallway between the conference room and the office. It appeared to Mr. Pixler that

Demetricia was coming back toward the office. Mr. Pixler testified she was calling staff members “motherfuckers,” and used the terms “fucker”, “fucking,” and “fuck” in various forms. Mr. Pixler testified he told Demetricia she needed to quiet down and needed to get out of there. He also informed her the police were coming, and that they needed to get her out of the situation. He testified when he told her to quiet down and leave the building, she told him “he could eat her pussy.” Mr. Pixler believes Jennifer was trying to encourage Demetricia to leave. Mr. Pixler, Demetricia, and Jennifer eventually got outside the building. Mr. and Mrs. Hinton came up the steps, and very shortly after that the police arrived. Demetricia told her parents the events as she perceived them. Mr. Pixler had no idea what had gone on previously. He listened to some of what Demetricia said. He heard her telling her parents she had been pushed out of the office. Mr. Pixler left the Hintons, Demetricia and Jennifer with the police and went back into the building. Mr. Pixler testified he went back into the building to try to ascertain a little of what had gone on. One police officer also came in. Mr. Pixler testified he got basic information about what had happened from Mrs. Mueller, Mr. Mueller, Mr. Smith, and Mr. Long. Mr. Smith had been in the office, and Mr. Long had been in the hall. Mr. Pixler testified he learned that Demetricia had called Mrs. Mueller a bitch, used obscenities, and tore up a disciplinary report Mrs. Mueller had written. He testified he learned Demetricia had refused to leave the office when asked, and that Mr. Mueller had pushed her out of the office. He testified he learned Demetricia had repeatedly used obscenities in the hallway, struck Mr. Mueller and kicked Mrs. Mueller in the hall, and refused to leave the building when asked. The police officer also began gathering information. Mr. Pixler and the police officer asked those present to prepare written statements of what had occurred. Mr. Pixler testified he went back outside and told the Hintons he was going to suspend Demetricia for five days, and that he would request that she appear before the Board. He testified he told them he did not know when that appearance would take place, that he would contact Dr. Staver to set up a Board meeting, and that he would let the Hintons know when the meeting would take place. Mr. Pixler issued a disciplinary report to Demetricia with a demerit, and which included an out of school five-day suspension. Mr. Pixler testified he does not remember whether he gave Mrs. Hinton and Demetricia a copy of the disciplinary report he issued that day, or whether he mailed it that afternoon. Mr. Pixler testified he did not suspend Demetricia because she used the telephone without asking permission. He testified he suspended her for her behavior that occurred after the use of the telephone, both before and after he was present.

The District introduced written statements by Mrs. Mueller, Mr. Mueller, and Mr. Long of what had occurred on April 18. However, the District did not introduce the written statement by Mr. Smith. Mr. Pixler testified the police had the only copy of his statement, and were unwilling to release it without a subpoena. Mr. Smith is deceased. The District also did not introduce written statements prepared by Jennifer Gilliland and Jennifer Thompson because no one knew what happened to them. The hearing panel found it troubling that the only written statements of the incident available at the hearing were those which appeared to be favorable to the school, and those statements which may

have supported Demetricia's version of the events were not available. We therefore take this into consideration in giving limited weight to the three statements introduced as Exhibit 2.

We find that the most credible testimony regarding what happened was given by Mr. Pixler. While we do not believe that Demetricia or Mr. Mueller were intentionally lying at the hearing, we believe their memory of what happened is colored in the light most favorable to themselves. We find that the testimony of Demetricia that she was calm in the office until Mr. Mueller grabbed her shoulders is not credible. We find that the evidence at the hearing most likely showed that Demetricia was disrespectful toward Mrs. Mueller which led to her writing a disciplinary report, and that she then called Mrs. Mueller a bitch and swore at her. Demetricia admitted she tore up the disciplinary report. We also find that Demetricia refused to leave the office when asked to do so.

We find that grabbing Demetricia's shoulders to force her to leave the office was the worst way Mr. Mueller could have handled the situation. We believe he overreacted because Mrs. Mueller was his wife, and because of the history of objectionable behavior by Demetricia in the past. Once Demetricia's anger escalated, we believe the worst place for her to be was in the hallway during passing period. It would have been far wiser for Mr. Mueller to get himself and Mrs. Mueller out of the office, and leave Demetricia there while he went to get Mr. Pixler. Nevertheless, we find that Demetricia's response was totally unjustified and unacceptable behavior in a school. Her behavior was not merely defensive, but escalated to the point where she was the aggressor. We find that Mr. Mueller did not intentionally push her into the doorsill or into a wall when he pushed her out the door. However, we find it possible that her shoulder was unintentionally struck by the doorsill or wall as Mr. Mueller was pushing her out the door or shortly thereafter. We find it equally possible that she struck her shoulder on the wall as she was lunging at Mr. Mueller to hit him. At this point, there is no way to determine exactly how Demetricia was hurt, and it is not critical to the decision to be reached in the case that we do so. We also find that Demetricia repeatedly used obscenities and hit Mr. Mueller. She admits doing this, although testified that she only did so after Mr. Mueller started hitting her. We do not believe Mr. Mueller struck either Demetricia or Jennifer. We find the testimony to the contrary to be not credible. We find that once Mr. Pixler arrived on the scene, Demetricia repeatedly used obscenities and refused to leave the building. We find that Mr. Pixler conducted an adequate investigation to learn what happened before he came on the scene. We therefore find that Mr. Pixler's suspension of Demetricia was in accordance with District policy and the Student Handbook. Even if the only events that occurred had been the behavior observed by Mr. Pixler, this would have formed an adequate basis for suspension. Since this was Demetricia's sixth suspension that year, Mr. Pixler referred her to the Board for possible expulsion pursuant to District policy and the Student Handbook. He referred her to the Board because his hopes that Demetricia's

behavior in March was an isolated incident were gone, and because he had received advice that he was to apply the disciplinary policy to dual-enrolled students the same as to other students.

In the Appellant's Brief at page 23, Appellant's attorney states that Mrs. Mueller denied Demetricia the ability to use the telephone without asking permission, something which was "freely granted to all white students." There is no evidence in the record to support the assertion that Mrs. Mueller's actions were racially motivated. Furthermore, it is contrary to Mrs. Hinton's testimony that it was students, not teachers, who were prejudiced.

Mrs. Hinton testified she does not remember whether Mr. Pixler gave her a written document about the April 18th incident on that day. She testified she and her husband came to pick up the girls at school and saw Demetricia and Jennifer running out of the school. She testified she spoke with Mr. Pixler outside the building regarding what had happened. Mrs. Hinton testified she does not remember exactly what was said. She testified Mr. Pixler said he did not know what had happened since he wasn't there at the beginning. She testified they talked about what they could have done to stop things like this from happening. She testified they brought up the nigger written on the locker incident and that nothing was done and Mr. Pixler acknowledged that maybe he could have done more. She testified Demetricia was very upset and complained that her shoulder and leg hurt. Mrs. Hinton testified the police were there and they would not let the Hintons into the building. She testified she took Demetricia to the doctor the following day, and a copy of the medical record from that visit was introduced into evidence. The medical record states that Demetricia came in with complaints of pain in her back and neck as the result of an altercation with a teacher where she was thrown against the wall.

The Student Handbook at page 25 states that upon receiving a fourth suspension, the student will be required to appear before the Board of Directors, and that "it may be recommended to the Board that the student be expelled from school." Mrs. Hinton testified she knew it was the policy of the school that after Demetricia received four suspensions, she would be subject to expulsion. At the hearing, Mrs. Hinton questioned the validity of the suspensions on which the expulsion was based. Mrs. Hinton testified that by the time she got to school, the suspensions had already been written up. She testified she asked Mr. Pixler if there was anything they could do to overturn the suspensions or figure out what happened, and he told her there was no appeal.

About six p.m. on April 21, 1997, Mr. Pixler called Mrs. Hinton and told her the Board meeting regarding Demetricia's expulsion would be held the following evening at 7 p.m. This was the first time Mrs. Hinton received notice of the time and date of the Board meeting. Mr. Pixler testified he believes he spoke with her earlier in the day to tell her he did not yet know when the Board meeting would be held. Mrs. Hinton was given

no written notice of the hearing that contained a statement of charges. She was given the same packet of materials given to Board members, which included the disciplinary reports issued to Demetricia during the 1995-96 school year, and the 1996-97 school year.

Mrs. Hinton testified she searched for an attorney, and was able to reach Mr. Hopkins at about 10 or 10:30 a.m. on April 22, 1997. She testified that between April 18 and April 22, Demetricia was out of school serving her suspension. (April 19 and 20, 1997, were a Saturday and a Sunday.) Prior to the 7 p.m. hearing, the Appellant and her attorney did not know that the Board's decision would be based solely on those events of 1996-97, because she received only the packet of materials which included both the 1996-97 year, and the 1995-96 year.

Prior to the Board meeting on April 22, Mr. Pixler gave the Board members a packet of materials that included all the disciplinary reports issued to Demetricia for both the 1995-96 school year, and the 1997-98 school year. Mr. Pixler testified the 1995-96 reports were included by mistake. At the Board meeting on April 22, the Appellant's attorney asked that a level one investigation be done, and for a continuance, before the Board took action. This was denied. At the Board meeting, Superintendent Staver directed the Board to disregard the disciplinary reports for the 1995-96 school year, because any action the Board took was to be based only on the events of 1996-97. Dr. Staver presided over the meeting. Mr. Mueller and Mr. Pixler were present, as were Mr. Hopkins, the Hintons, and Demetricia. Jennifer Gilliland, Jennifer Powell, and Jennifer Thompson were also present, but only during their testimony. Board members asked questions of the witnesses. Mr. Hopkins asked questions of the witnesses. The District did not present a case in oral form, but relied on the disciplinary reports given to the Board members, and questions asked by Board members. Dr. Staver reviewed his meeting held in October with Mrs. Hinton and Demetricia with the Board. Mr. Hopkins was allowed to present evidence on behalf of Demetricia.

The Board issued written Findings of Fact, Conclusions of Law, and Decision. The Board found Demetricia had violated rules of conduct which justified the suspensions, and that she failed to prove there was any connection between her disruptive behavior and the incident of race discrimination by a fellow student which occurred in 1995. The Board expelled Demetricia for the remainder of the school year. It also provided that if she successfully passed summer school, she could return to school as a ninth-grader in the fall of 1997. Demetricia is in ninth grade in the 1997-98 school year. Mrs. Hinton testified she fulfilled the terms of the suspension.

During the 1996-97 school year, Mr. Pixler did not think Demetricia needed to be tested for learning or other disabilities or special education, and she was not tested. Mrs. Hinton testified Demetricia is being tested for attention and learning disabilities this year, although the results of the tests were not available yet. She testified Demetricia had not

been tested prior to April 18, 1997, and Mrs. Hinton did not ask that she be tested prior to that date. The parties stipulated that at the time of the Board meeting on April 22, 1997, the Board did not have any information that Demetricia may have had a disability.

We note that at the hearing, Demetricia was obviously hostile and disrespectful to the attorney for the District when he cross-examined her. Her testimony also showed that at least during 1996-97, Demetricia did not believe that when a teacher gave her a direction, she had to comply. Rather, if Demetricia did not like the direction given to her, or felt it was unfair, she refused to follow the direction, became angry when the teacher insisted, and sometimes used profanity toward the teacher. It was clear to the panel that Demetricia has not yet learned that her attitude and treatment of others is harmful to herself. The evidence is overwhelming that Demetricia needs to learn appropriate outlets for her anger which are not so harmful to herself and others around her, and which are not so disruptive of school. We applaud the high school for having her tested. However, this will not solve Demetricia's problems by itself.

We find that the Perry Middle School provided inadequate services to Demetricia. Given her repeated behavior problems as a result of her uncontrolled anger, she should have been tested, and she should have been in the school's at-risk program. Clearly she is a student at risk for dropping out. She should have been provided counseling, which could have been provided by the AEA social worker, since it appears Mr. Mueller and Demetricia did not get along well. We also find that the school's handling of the "nigger" on the locker incident was inadequate, and contributed to a perception by Demetricia that nothing had been done other than to paint over the word. Obviously that was the appropriate first step. The panel has difficulty believing that Mr. Mueller, the guidance counselor, did not know of the incident until much later when Mrs. Hinton told him. Mr. Pixler should have called Mrs. Hinton that day to tell her of the incident. Specific follow-up counseling services should have been offered to Demetricia and the Hinton family. Mr. Pixler should have discussed the incident with all his staff, and a plan to discuss the unacceptability of this behavior and the school's discrimination policies with students should have been implemented. The same should have been done when Demetricia was called racial names by a fellow student. The Perry Middle School has an increasing minority population, and the school needs to address these issues more appropriately than was done here. The panel is also disturbed that it appears that Mr. Mueller and Mr. Pixler believe that because Mrs. Hinton and Demetricia alleged racial bias only after disciplinary action had occurred, that it should not be taken as seriously as if alleged without associated disciplinary action.

However, we note that Mrs. Hinton's testimony that the other students were not disciplined is not correct. The fact that Mr. Pixler could not divulge disciplinary action taken against another student pursuant to school policy does not mean that disciplinary action was not imposed. We also find that Demetricia and the Hintons bear some responsibility for the situation. When an incident occurred which they believed to be

racial discrimination, they had a responsibility to bring the specific situation to the attention of school authorities. If, as they allege, nothing was done, the name and telephone number of the school's Educational Equity Officer is in the Student Handbook, and they should have reported the incident to her. Or they could have reported the incidents to her first. It is impossible for school officials to address allegedly racial incidents if they do not know about them at the time they occur. In addition, at the hearing, Demetricia and the Hintons did not allege that any of the suspensions that occurred in 1996-97 were the result of racial bias. As discussed above, allegations of disparate treatment were made regarding the March 5 and April 18 in the Appellant's Brief, but are not supported by the evidence. Although we believe the Perry school system can and should do more to proactively address racial issues in the school, we find that race was not a factor in the suspensions during 1996-97. While we believe some of Demetricia's anger may be attributable to the past discriminatory incidents, this in no way justifies her behavior in violation of school rules.

II. CONCLUSIONS OF LAW

In hearing appeals brought under Iowa Code section 290.1(1997), the State Board must render a decision which is "just and equitable", and "in the best interest of education". Iowa Code 290.3(1997); 281 IAC 6.11(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 6.11(2).

Iowa Code section 282.4 provides that the local school board may:

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 on 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.

A student who commits an assault, as defined under section 708.1, against a school employee in a school building, ... 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.

A student shall not be suspended or expelled pursuant to this section if the suspension or expulsion would violate the federal Individuals with Disabilities Education Act.

In the hearing brief, the Appellant asserts that the District failed to put on evidence that Demetricia was not a student who fell within the protection of the federal IDEA, and that Demetricia was currently being tested for learning disabilities. The Appellant therefore asserts that without discrete proof that she falls outside IDEA protection, Demetricia may not be expelled without following heightened due process procedures. At the hearing, the parties stipulated that at the time of the Board meeting on April 22, 1997, the Board did not have any information that Demetricia may have had a disability. Any testing or test results (which were not available at the December 1997 hearing) are irrelevant to the decision the Board made on April 22, 1997. Therefore, we hold that the Board did not violate Iowa Code section 282.4 or the federal Individuals with Disabilities Education Act when it expelled Demetricia. Furthermore, it was not incumbent on the District to put on evidence that Demetricia was not a student who fell within the protection of the federal IDEA at the hearing on December 2 and 3, 1997. It was incumbent on the Appellant to show that she was protected by the IDEA. The evidence presented at the hearing was merely that Demetricia was being tested currently, and that test results were not yet available. Since the action being appealed occurred on April 22, 1997, the only evidence presented showed that Demetricia was not a student within the IDEA protections as of that date, and was not even subject to its protection as of the December 2 and 3, 1997 hearing.

The Board had the authority to set the disciplinary policy that is set forth in the Student Handbook. It had the authority, which it exercised, to delegate the power to suspend students to the principal, Mr. Pixler. "It is an often stated legal axiom in Iowa that when a school board adopts a policy for the operation of its schools, the policy is presumed to be reasonable. The burden of proving the policy unreasonable is upon those challenging the policy." *Mallet, supra at 334*. The Appellant does not allege that the disciplinary policy itself was unreasonable, but rather that application of the policy to Demetricia was unreasonable in a number of the underlying disciplinary actions and suspensions.

The question before the State Board is whether the decision to expel Demetricia was reasonable and in the best interest of education, in conformance with the District's disciplinary policy as expressed in the Student Handbook, and whether the decision violated Demetricia's procedural due process rights. Because the decision to expel Demetricia was based on a number of underlying disciplinary actions and suspensions, and because the Appellant contests some of those actions and suspensions, the validity of the underlying disciplinary actions and suspensions is also before the State Board.

Goss v. Lopez, 419 U.S. 565(1975), provides that the due process clause gives students facing short-term suspensions certain procedural protections. The students in *Goss* were suspended for periods of up to 10 days. The Court stated that "interpretation and application of the Due Process Clause are intensely practical matters and that '[t]he very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation.'" *Goss, supra* at 578 (quoting *Cafeteria Workers v. McElroy*, 367 U.S. 886, 895(1961).) The Court recognized that "events calling for discipline are frequent occurrences and sometimes require immediate, effective action." *Goss, supra* at 580. However, the Court held that the students subject to suspensions of 10 days or less have a right to oral or written notice of the charges against them, and if the charges are denied, an explanation of the evidence school authorities have and an opportunity to present their side of the story." *Goss, supra* at 581. The purpose of this rudimentary due process is to protect "against unfair or mistaken findings of misconduct and arbitrary exclusion from school." *Id.* *Goss* held that there did not need to be any delay between the time the student was informed of the charge and the time of the informal hearing. *Id.* at 582. The Court said that "In the great majority of cases the disciplinarian may informally discuss the alleged misconduct with the student minutes after it has occurred. We hold only that, in being given an opportunity to explain his version of the facts at this discussion, the student first be told what he is accused of doing and what the basis of the accusation is." *Id.* The Court held that in cases involving short suspensions, the student does not have a right to counsel, to confront and cross-examine witnesses supporting the charge, or to call his or her own witnesses. *Id.* at 583. At page 584, the Court stated: "Requiring that there be at least an informal give-and-take between student and disciplinarian, preferably prior to the suspension, will add little to the factfinding process where the disciplinarian himself has witnessed the conduct forming the basis for the charge. But things are not always as they seem to be, and the student will at least have the opportunity to characterize his conduct and put it in what he deems the proper context." *Id.* at 584. The Court also stated that more formal procedures may be required for longer suspensions or expulsions, or in unusual situations. *Id.*

In this case, the Appellant argues that the underlying suspensions are unconstitutional because when Mrs. Hinton asked Mr. Pixler whether there was any right to appeal, he told her there was not. *Goss* does not require a school district to provide a formal appeal process in cases where parents disagree with minimal disciplinary action or short-term suspensions imposed on their child. We would expect that if a parent called the school, as Mrs. Hinton did on occasion, the principal would informally discuss the situation leading to discipline or suspension with the parent. This was done in this case.

In addition, the Appellant argues that because the suspensions could later form the basis of her expulsion, something more than the rudimentary due process outlined in *Goss* was due to Demetricia. At the time the underlying suspensions were imposed, nothing else was required. *Goss, supra*. Since Demetricia's suspensions eventually formed the basis for expulsion, it was at that time that the right to an attorney and the opportunity for cross-examination and presentation of witnesses on Demetricia's behalf arose. The Appellant exercised those rights at both the hearing before the Perry Board, and at the hearing before this panel.

The Appellant relies on *Winegar v. Des Moines Independent Community School District*, 20 F.3d 895 (8th Cir. 1994) for the propositions that an investigation by school authorities is inadequate process, and that an assessment of the adequacy of pre-deprivation procedures is tied to the availability of post-deprivation procedures. The Appellant's reliance on *Winegar* is misplaced. That case involved the suspension of a school employee, and the Court stated that teacher suspensions are not in the same category for due process purposes as short-term student suspensions. *Winegar* at 900, n. 6. The Court distinguished *Goss* and stated that, "the need for only an attenuated hearing in a short-duration student suspension is based on a school district's need to maintain student discipline." *Id.*

We hold that the procedures followed by Mr. Pixler when he imposed the underlying suspensions on Demetricia did not violate her due process rights, and conformed to the disciplinary policy as stated in the Student Handbook. There was no violation of due process in each of the disciplinary actions that were taken. Demetricia had either oral or written, or both, notice of each situation leading to disciplinary action and each suspension. Each time a disciplinary report was issued, a copy was sent to the Appellant as well. Demetricia had the opportunity to express her version of the events in each of the underlying disciplinary actions, did so on a number of occasions, and did not contest some of the disciplinary actions. Due process does not require that Mr. Pixler perform more elaborate investigations than he did before imposing short-term suspensions. *Goss, supra*. Furthermore, in many of the underlying disciplinary situations and suspensions, Demetricia was disciplined or suspended for actions that occurred in Mr. Pixler's

presence. In each instance, the notice, opportunity for Demetricia to express her version of events, investigation by Mr. Pixler, and discipline or suspension imposed were not constitutionally inadequate. Furthermore, we find they were in conformance with the District's disciplinary policy as expressed in the Student Handbook, and were reasonable.

The Appellant argues that a lunchroom associate issued a disciplinary report with a demerit to Demetricia on April 1, 1997 without authority to do so. The Appellant argues that the Student Handbook does not grant associates the authority to issue demerits. We find this argument to be without merit. Mr. Pixler testified the associate had the authority to issue a demerit. The Student Handbook is silent on the question of who may issue demerits. An associate is granted authority by his or her employer, not by the Student Handbook. The only limit to this would be if the Handbook specifically stated that an associate did not have certain authority.

In the brief, the Appellant argues that since Mr. Pixler chose not to refer Demetricia to the Board for an expulsion hearing after the March 5 lunchroom incident, that this incident could not later serve as the basis for the expulsion. We disagree. In effect, Mr. Pixler gave Demetricia a break after the March 5 incident because he was hoping the incident would be isolated and she would not have further disciplinary problems. Just because an administrator decides to exercise discretion in a student's favor does not forever bind the District to that decision if it appears the basis for the decision no longer exists. Demetricia was suspended as a result of the incident, and that suspension could later serve as part of the basis for the expulsion even though an immediate referral to the Board was not made.

In the case of expulsions, due process and State Board cases require more elaborate procedures before a student is expelled. *In re Don A. Shinn*, 14 D.o.E. App. Dec. 185 (1997); *In re Isaiah Rice*, 13 D.o.E. App. Dec. 13 (1996); *In re Joseph Childs*, 10 D.o.E. App. Dec. 1 (1993). As reaffirmed in *Shinn*, the following are the elements of due process for students facing expulsion in Iowa.

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;³ 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.⁴

³ 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.

⁴ 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.

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.

Shinn, supra at pp. 190 – 192.

Although the above are 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). Due process is a flexible concept, and what is due in each case depends on the specifics of that case. *Matthews v. Eldridge*, 424 U.S. 319 (1976); *In re Rashawn Mallet*, 14 D.o.E. App. Dec. 327 (1997). The fundamental requirement is “the opportunity to be heard ‘at a meaningful time and in a meaningful manner’.” *Id. at 333* (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

The Appellant argues that the procedures followed by the District with respect to the April 22 expulsion hearing violated her right to due process in a number of respects. First, the Appellant received only twenty-four hours notice of the hearing before the Board when Mr. Pixler called her at about 6 p.m. the day before the hearing. Second, the Appellant did not receive a written notice of the hearing with a sufficiently specific statement of charges. She only received oral notice, and a packet of materials containing all the disciplinary reports for the years 1995-96 and 1996-97. Third, she argues that providing the Board members with the 1995-96 disciplinary record unfairly prejudiced the Board. Fourth, she argues that the District’s conduct of the case by providing the disciplinary reports to the Board and asking her to tell the Board where she disagreed with them shifted the burden of proof to the Appellant to show she was not guilty, rather than requiring the District to prove she was guilty. The Appellant appears to be arguing that the District had an obligation to present its evidence through the testimony of witnesses rather than by written documents. Finally, the Appellant argues that the disciplinary records from 1996-97 were never offered into evidence, that this denied her the right to object and cross-examine, and also that the Board therefore had nothing in the record on which to base its decision.

The District argues that the notice given to the Appellant was not constitutionally inadequate, because the Appellant had a copy of the handbook that outlined the progressive discipline policy and a copy of the disciplinary reports. Furthermore, the District asserts that the disciplinary report of April 9, 1997, put Demetricia and her parents on notice that another suspension would lead to a Board hearing. The District asserts that Mr. Pixler gave Mrs. Hinton only twenty-four hours verbal notice of the hearing because it was the only day within the suspension period (five days) that the Board could meet. Furthermore, the District argues that the one-day notice was not inadequate because Mr. Pixler told the Hintons Demetricia would be referred to the Board on Friday, April 18. The District also states in its Brief that Mr. Pixler gave the Hintons written notice of the suspension that described the incident on April 18th. However, Mr. Pixler testified at the hearing he could not remember whether he gave the Hintons a copy of the disciplinary report on April 18th, or whether he mailed it. The District further argues that since Demetricia had been expelled the previous year, she and her parents were familiar with expulsion procedure, and this lessened the need for compliance with the three-day notice suggested in the guidelines. In addition, the District argues, the Board's action amounted to an extended suspension rather than a complete loss of credit for the semester, since Demetricia was allowed to take summer school and continue on to ninth grade. Finally, the District argues there was no prejudice to the Appellant by the lack of notice because she presented essentially the same case at the appeal hearing that she presented at the hearing before the Perry Board.

In determining whether the pre-hearing procedures were sufficient to comply with due process, we must look at what was done and determine whether it allowed the Hintons to be heard at "a meaningful time and in a meaningful manner." *Matthews v. Eldridge, supra*. Previous State Board decisions have suggested that a minimum of three working days is required. Those decisions have also stated that the student is entitled to written notice containing the time of the hearing, a statement of charges sufficiently specific to enable the student to prepare a defense, and an enunciation of the rights to representation, to present documents and witnesses on the student's 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. *In re Don A. Shinn, supra* at 190-191. We do not believe that rigid adherence to the procedures outlined in *Shinn* and other State Board cases is necessary in every case. However, in this case, we hold that the notice procedures before the April 22 expulsion hearing were constitutionally inadequate and a violation of the due process rights of the Appellant. If a case were relatively simple, twenty-four hours notice might be adequate if written notice containing all the requirements were given to the student. This might be sufficient to allow the student to be able to prepare a meaningful defense. Furthermore, if a case were

relatively simple, oral notice containing the required elements in combination with the specific disciplinary reports relied on by the District and a clear Student Handbook might be constitutionally adequate to allow a student to present a meaningful defense. We are sensitive to the fact that the District wanted to have the hearing during the suspension period, and recognize that students also have an interest in prompt hearings before the Board. However, this was not a simple case. The District's case depended on numerous disciplinary reports regarding many incidents. Twenty-four hours' notice, when it was combined with no written notice as contemplated by the guidelines, and particularly when it was combined with an entire year's worth of disciplinary reports upon which the Appellant and her attorney believed the District would rely until the hearing itself, was not adequate to allow the Appellant and her attorney to prepare a meaningful defense. The fact that the April 9 disciplinary report told Demetricia and the Hintons that further suspensions would result in referral to the Board, and that the Hintons knew that Demetricia had been suspended on Friday, April 18 does not cure the inadequate time for preparation. If April 18 had been a Monday, and the Appellant had had the opportunity to seek counsel ahead of the actual notice by the District, it is possible the twenty-four hour notice would have not been as inadequate. However, April 18 was a Friday. If the District had provided the Appellant with written notice that specifically told her which incidents the District would rely on in pursuing the expulsion, it is possible the twenty-four hour notice would not have been inadequate. However, it is incumbent on the State Board to look at the combination of circumstances in this case. The combination of circumstances show clearly that Mrs. Hinton did not have enough time to hire a lawyer and prepare a meaningful defense, when she was only given the packet of two years' disciplinary reports as the basis for the expulsion. We therefore hold that the notice of the expulsion hearing provided to the Appellant violated the due process clause as interpreted by previous State Board decisions. We also find no merit in the District's arguments that: a) Demetricia's expulsion the previous year meant the Hintons were familiar with expulsion procedure and less notice was required; and b) there was no prejudice to the Appellant by the inadequate notice, because there was little difference in presentation of the Appellant's case to the Perry Board and the hearing panel.

We do agree with the District that the procedures at the hearing itself before the Perry Board were constitutionally adequate. Due process requires a neutral decisionmaker, the right to counsel, the right to present evidence on the student's behalf, and the right to cross-examine adverse witnesses. It requires that the student receive copies of all documents relied on by the District. It requires a decision based solely on the evidence presented at the hearing, and an adequate factual basis for the decision. The Appellant had all these protections afforded her at the hearing before the Perry Board. Due process requires essentially that the hearing be fair. The District could present its case in primarily written form

through the disciplinary reports. We find the Appellant's argument that the reports were not introduced into evidence to be without merit. Due process does not require formal introduction of documents, so long as it is clear to all parties which documents the Board is relying on in making its decision. The Appellant was represented by counsel, although we recognize he was hampered by the lack of notice. The Appellant's attorney cross-examined Mr. Pixler and Mr. Mueller, and they presented testimony. Dr. Staver was also present, testified as to the meeting in October with Mrs. Hinton and Demetricia, and was subject to questioning by the Appellant's attorney. Demetricia called witnesses on her behalf. Formal legal procedures followed in district court are not required in local Board hearings. Although it prejudiced the Appellant in terms of adequate notice, Dr. Staver clearly told the Board that documents regarding the 1995-96 year were not to be used in the decision. The Board issued written Findings of Fact, Conclusions of Law, and Decision. Therefore, we hold that the procedures followed by the Board at the hearing itself were not constitutionally inadequate.

Under the terms of the expulsion, Demetricia was allowed to attend summer school, and upon successful completion, was allowed to enter ninth grade in the fall of 1997. Therefore, the only remedy available is to expunge the record of her expulsion.

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

III. DECISION

For the reasons stated above, the decision of the Perry District's Board of Directors made on April 22, 1997, to expel Demetricia for the remainder of the school year is recommended for reversal on procedural due process grounds. The underlying disciplinary actions and suspensions are affirmed. The Board is hereby ordered to remove any reference to Demetricia's expulsion from her permanent record. However, the records of the underlying disciplinary actions and suspensions are not to be expunged, and will remain in Demetricia's permanent record. There are no costs to be assigned in this appeal.

DATE

AMY CHRISTENSEN, J.D.
ADMINISTRATIVE LAW JUDGE

It is hereby ordered.

DATE

CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION