

IOWA STATE BOARD  
OF EDUCATION  
(Cite as 14 D.o.E. App. Dec. 327)

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In re Rashawn Mallett :  
  
Connie & Frederick :  
Mallett, Appellants :  
  
v. : DECISION  
  
Waterloo Community :  
School District, :  
Appellee. :

[Admin. Doc. #3752]

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The above-captioned matter was heard telephonically on April 2, 1996, before a hearing panel comprising Judge Brown, Bureau of Administration, Instruction, & School Improvement; Jeff Lorenz, Bureau of Internal Operations; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding. Appellant Connie Mallett was unable to be present telephonically, but was represented by her husband, Frederick Mallett. Appellee, Waterloo Community School District [hereinafter, "the District"], was present telephonically in the persons of Walter Cunningham, deputy superintendent; Ray Richardson, associate superintendent for Alternative Education and Alternative Programs; Cora Turner, administrative facilitator for the Educational Discipline Center [hereinafter, "EDC"]. Appellee was represented by Mr. Steven Weidner, Swisher & Cohrt, P.L.C., of Waterloo, Iowa. Appellants were *pro se*.

An evidentiary hearing was held pursuant to Iowa Code chapter 290 and Departmental Rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for this appeal are found at Iowa Code §290.1(1997). Appellants seek reversal of an unanimous decision of the Board of Directors [hereinafter, "the Board"] of the District made on March 5, 1996, to expel their son "for the remainder of the second semester of the 1995-96 school year for willful disobedience and continued disrespect of school rules." (Bd. min. at p. 1). 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.

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**I.  
FINDINGS OF FACT**

At the time of this appeal hearing, Rashawn Mallett was a 15-year-old ninth grader who had been recently expelled from the Educational Discipline Center (EDC) in Waterloo. The mission of the EDC is:

To improve the learning climate in the intermediate and secondary classrooms of the Waterloo Community Schools by:

- Removing students from the intermediate and secondary classrooms who chronically disrupt classroom learning or the teacher's ability to teach.
- Providing the identified students a highly structured learning environment exposing them to skills and knowledge necessary to be a productive learner.

(EDC Handbook at 2.)

Students come to EDC as a last resort. However, it is not intended to be a long-term placement. Typically the goal is to return the student to his home school in six or seven weeks. "It is viewed as an opportunity for the student to make a 'choice' in maintaining enrollment in the Waterloo Community School District." (Id. at 1.)

Rashawn was initially referred to the EDC from East High School in February of the 1994-95 school year. He was referred to the Center because he was considered disruptive in class. Rashawn had to return to EDC for the start of the 1995-96 school year. As a condition of entry into EDC, both Rashawn and his father signed a parent/student contract. In so doing, Rashawn certified that he had read and understood the policies of the EDC regarding his behavior, attendance,

and tardies. He agreed to act according to the policies set forth by the staff at EDC to become a more productive academic achiever and community member. Mr. Mallett's signature certified that he had read and agreed to the policies set forth at the EDC. He agreed to work with the staff at EDC to encourage Rashawn to become a more productive student. He also agreed to attend any scheduled conferences for his child. (Parent/Student Contract 2/21/95.)

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Rashawn was described by Cora Turner, an EDC administrator, as capable of doing the work; not a violent student; and one who has never been involved with juvenile authorities. However, she testified that Rashawn has experienced some major difficulties in school because he will not "follow the rules." His behavior included: horseplay, teasing, rude comments, disrespect for staff, pouting, temper tantrums, refusing to work, and ignoring staff directions. (Exh. 8.) Although none of these behaviors, considered individually, seem too disruptive; the combination of his behavior and attitude was sufficient to qualify him for the EDC. According to Ray Richardson, associate superintendent of Alternative Education, student placement at EDC is based on a recommendation from administrators, teachers, counselors, and other team members. Some reasons for student placement are:

- continuous classroom disruptive behavior.
- continued disregard for rules and policies.
- lack of educational progress based on attitude or behavior.
- continuous negative interaction with teachers and other students.
- repeated disregard for classmates' right to learn.
- habitual verbal/nonverbal threats or intimidation of classmates and/or staff.

(EDC Handbook.)

By the third week of school, a parent conference had been arranged to discuss Rashawn's behavior. By letter dated September 11, 1995, Cora Turner memorialized the outcome of the meeting in a letter to Mr. Mallett. After thanking

him for his involvement in Rashawn's educational program, Ms. Turner stated, "To enforce our meeting Rashawn needs to:

1. Remain on task in class.
2. Respond positively to teacher interaction and direction on his behavior.
3. Eliminate goofing off and playing during class time.

The above three problems as identified during our meeting are the reasons Rashawn has been removed from the class.

(Exh. 11.)

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Two days later on September 13, Rashawn was sent home by Ray Richardson for inappropriate behavior. On September 21<sup>st</sup>, a conference was held with Mr. Mallett and he was told that if Rashawn continued to act-out and disrupt class, he would be suspended. The chronology of behaviors and interventions is quite extensive. (See, Exh. 4.) Between September 21, 1995, and December 11, 1995, there were at least seven conferences or meetings between school staff and Rashawn's father. Most of these conferences followed behavior infractions where Rashawn had been put in "isolation" (in-school suspension) for horseplay, problems with other students or talking back to teachers.

On December 11, 1995, Cora Turner wrote to confirm her parent conference with Mr. Mallett. She re-enforced the expectations stated at the meeting as: 1)attend school daily; 2)control behavior in class, which means no horseplay and stay on task; and 3)follow directions from staff without questions. (Exh. 9.) In addition, Ms. Turner stated "[t]he outcome of our meeting was that we all agreed that if Rashawn's behavior does not improve, he will leave me no choice but to take him to the Board of Education for expulsion." Id.

A meeting with both parents, Rashawn, Mr. Richardson and Ms. Turner took place on December 15, 1995, after Rashawn had been requested to follow directions by a staff member and called the staff member a faggot and threatened to beat him up. As a result of the December 15<sup>th</sup> meeting,

Rashawn was asked to draft a Behavior Contract for himself in order to be allowed to return to EDC. Rashawn listed eight behaviors that he would not engage in and had this contract signed by all of his teachers, as well as Cora Turner. (Exh. 7.) In a letter written by Cora Turner to Mr. and Mrs. Mallett dated December 18, 1995, she stated that if Rashawn "can follow the rules that he has suggested for himself, he will have no problem staying in school." (Exh. 6.) The implication was clear that his failure to follow the rules would mean that he would not be able to stay at EDC.<sup>1</sup>

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By December 15, 1995, the staff at EDC was becoming discouraged with Rashawn's progress. In a report written by Sally Priebe, a behavior specialist, she states in part

Staff at EDC has tried really hard with Rashawn. We find that he is a good kid and we all like him and want him to succeed. However, Rashawn leaves the staff very frustrated. No matter what we say or do, it has, if any, only a short attempt to behave appropriately[sic]. Students no longer want to be around Rashawn because "he play too much." After much effort, it seems that EDC has been ineffective in working with Rashawn. Through observation and documentation, it appears that the only one that can help Rashawn is himself.

(Exh. 8.)

In her report, Ms. Priebe listed the interventions which the staff had tried with Rashawn, but which she felt had failed. Her list included:

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<sup>1</sup> Rashawn agreed: 1) I will not ignore the staff's directions when they are told to me at anytime. 2) I will not tease anybody and if anybody teases me, I will ignore them. 3) I will not make rude comments to anyone. 4) I will not throw temper tantrums when I don't get my way. 5) I will not be involved in any horseplay. 6) I will not pout if I don't get my way. 7) I will not be disrespectful to the staff. 8) I will not refuse to do my work.

... intervention, conferences with staff and Cora [Turner], conferences with Dad, phone calls, sent home for the day, suspended, isolation, major point lost, warnings, re-enforcement, lack of privileges.

(Exh. 8 at 1.)

When school resumed after Christmas break, Rashawn got into trouble again. During the first week in January, Rashawn was suspended for cheating on a language-arts test. On January 18, 1996, he disobeyed a directive not to bring a walkman to school. The final incident occurred when a local TV station contacted EDC about doing a story. Rashawn had told his classmates that he was going to show gang signs during the filming. He did this even after Cora Turner had met with the group of students and told them that there was to be no acting out or showing of gang signs during the filming by the TV station. As a result, Rashawn was put in isolation (in-school suspension). On February 5, 1996, Rashawn had a confrontation with another student. At this point, Ms. Turner contacted Mr. Mallett and told him to keep Rashawn home until a meeting could be arranged with Mr. Richardson to discuss Rashawn's future at EDC. Two more

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contacts with Mr. Mallett occurred before the meeting of February 12, 1996, in which he was advised that the administration of EDC would recommend expulsion for Rashawn for the remainder of the second semester.

In her recommendation to Mr. Richardson for Rashawn's expulsion by the Board of Education, Ms. Turner stated that the reason for her recommendation was:

Several interventions, family conferences, and suspensions have been tried with Rashawn and were not successful. Rashawn will not follow staff directions, complete assigned tasks, and accept feedback on a consistent basis. Overall Rashawn has made the choice not to change his behavior, has continued to act-out during class time, not remain on

task, and has demonstrated inappropriate behavior during school hours.

Rashawn's behavior has reached a point where he is out of instructional control. Any intervention tried was not successful. ...

(Exh. 3 at 1-2.)

In a closed session held on March 5, 1996, the School Board considered the EDC staff's recommendations. The Board minutes reflect that the Board unanimously voted to expel Rashawn for the remainder of the second semester "for willful disobedience and continued disrespect of school rules." (Bd. Min. at 1.) This appeal followed.

The basis of Appellants' appeal is that the District failed to follow its own policy in expelling Rashawn from EDC. In particular, Mr. Mallett cites two provisions of the Student Conduct Code which he maintains the staff at EDC failed to follow:

1. Rule #9(a) of the Student Conduct Code states as follows:

In all suspensions the building administrator shall:

- a. mail to the head of the household within twenty-four hours after the suspension has been imposed, a written notice of the suspension and the reason therefore. The student and his/her head of house

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hold must be informed as to which day he/she is expected to return to school. Reports of suspension are to be signed by the building administrator or his/her designee.

(Exh. 14 at 5.)

The second concern raised by Mr. Mallett is that Rashawn was not given "probation" as described on pages 3

and 4 of the policy. In particular, he was not given "a clearly written statement identifying school expectations and a time limit for the probationary period established." (Exh. 14 at 4.)

Mr. Mallett was asked by the hearing panel whether Rashawn had been evaluated for special education, or whether the school had ever approached him for permission to conduct such an evaluation. Mr. Mallett stated that at one of the last conferences held with the school, Mr. Richardson had indicated that perhaps the next step should be an evaluation for a special education program. Mr. Mallett testified that he then looked at Rashawn and said, "Did you hear that? If you don't shape up, they're going to put you in special education!" Rashawn agreed that he did not want to be put in special education. Mr. Mallett testified that he did not want Rashawn to be "labeled" for the rest of his life and that he and Rashawn agreed that a special education program was not a positive alternative.

In response to Mr. Mallett's position that the EDC had failed to properly follow the District's Student Conduct Code, Dr. Cummingham, deputy superintendent, responded as follows: First of all, the District's Student Conduct Code is the umbrella under which the EDC's specific program falls. The EDC has its own Student Handbook written to provide students with information about the EDC's policies and procedures. Since the crux of success at the EDC is the involvement of the parents, there is much more "personal" contact between the staff and parents than there would be at a traditional high school. Therefore, a parent is called when there is a suspension rather than notified by mail "within 24 hours" as the District policy provides. Dr. Cummingham testified that in terms of the "probation" requirement of the policy, it is clearly stated that this is simply an option that may be used by administrators. "The Board of Directors of the Waterloo Community School District believe

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that one form of disciplinary action is the placement of students on probationary status. This action will be at the discretion of the building administrator or his/her designee or the Board." (Exh. 14 at 3.) Dr. Cummingham and Mr. Richardson further emphasized that with the student population



at EDC, it would be counterproductive to give students a time limit for the probationary period. That is because the EDC needs more flexibility to work out student behavior problems.

## II. CONCLUSIONS OF LAW

In hearing appeals brought under Iowa Code section 290.1, the State Board has been directed by the Legislature to render a decision which is "just and equitable," "in the best interest of the affected child," and "in the best interest of education." See, Iowa Code sections 290.3, 282.18(20), and 281-IAC 6.11(2). The test is *reasonableness*. Based upon this mandate, a local school board's decision will not be overturned unless it is "unreasonable and contrary to the best interest of education." In re Jesse Bachman, 13 D.o.E. App. Dec. 363 (1996).

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. In re Sandra Mitchell, 1 D.P.I. App. Dec. 201, 204 (1978) (citing, Board of Directors v. Green, 147 N.W.2d 854 (1967)).

The sole issue before the State Board is whether the decision to expel Rashawn from EDC was unreasonable and constituted a denial of procedural due process under the terms of the District's Student Conduct Code and the EDC Student Handbook. In particular, the question is whether Rashawn's right to due process was violated by the District's failure to:

- 1) Give written notice to the parents within 24 hours of each of Rashawn's suspensions; and
- 2) Give Rashawn a formal probationary period "identifying school expectations and a time limit for the probationary period. ..."

(Exh. 14.)

In light of this record, we conclude that Rashawn's expulsion was proper. The requirements of constitutional procedure of law are a flexible application of fairness. The exact process that is "due," differs in each circumstance. Gross v. Lopez, 419 U.S.565, 95 S.Ct.729(1975).

The gravamen of due process is "notice." It is the idea that fundamental fairness requires that government representatives warn their citizens, or in this case, students, before depriving them of a right, like the right to an education. The requirement of written notice to the parents after each suspension is contained in the Waterloo Community School District policy. Failure to give the written notice would have been a problem, but for the fact that EDC always gave Appellants verbal notice. For an opposite result See, In re Keith Boenig, 12 D.o.E. App. Dec. 414 (1996)(District failed to give notice to head of household of student's three truancies before expelling him). In fact, Mr. Mallett introduced the tapes of phone messages left by Cora Turner in which she advised him of any disciplinary action taken against Rashawn and what the penalty would be. Many of these were suspensions. Parent conferences usually followed each period of suspension, whether the suspension was in-school (isolation) or out-of-school. (See, Exh. 4.)<sup>2</sup>

Mr. Mallett's second complaint concerns the EDC's failure to specify a formal probationary period with a time limit. (Exh. 14 at 3-4.) There are two problems with this contention. The first is that the decision to give a student probation is left to the discretion of the building administrator. (Id.) EDC did not have to give Rashawn a probationary period. The record shows, however, that Rashawn was put on probation in December of 1995. By letter dated December 11, 1995, Cora Turner specifically advised Mr. Mallett of her expectations and expressly stated that "[t]he outcome of our meeting was that we all agreed that if Rashawn's behavior does not improve, he will leave me no

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<sup>2</sup> A more difficult case would have been presented if the District had failed to give the parents any notice following the suspensions because it is doubtful that the State Board would have jurisdiction to review this practice. Under Iowa Code 290, appeals cannot be maintained before the State Board unless there is a decision at the local board level and the appeal is brought within 30 days of that decision. In other words, the practices of local administrators cannot be reviewed at the State Board level unless there is some local board decision which affirms the administrator's actions.

choice but to take him to the Board of Education for expulsion." (Exh. 9.)

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On December 18, 1995, just a week later, Cora Turner again wrote to Fred and Connie Mallett to confirm a December 15<sup>th</sup> meeting in which they had discussed strategies for "keeping Rashawn in school." (Exh. 6.) This resulted in Rashawn's behavior contract with his teachers in which he indicated "[i]f I don't do these, I will suffer the consequences." (Exh. 7.) In reality, there was a time limit for this probationary period, but it was not established by the school. The time limit was left to Rashawn and that is consistent with the policies of the EDC to help students develop responsibility for their own behavior.

Although Mr. Mallett would like us to reverse the District Board and require EDC to give Rashawn another chance, we cannot do that. With all the hard work Mr. and Mrs. Mallett have invested in Rashawn's education, it is difficult to be unable to offer them a solution. However, the staff at EDC has probably experienced the same frustration.

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

**III.**  
**DECISION**

For the foregoing reasons, the decision of the Board of Directors of the Waterloo Community School District to expel Rashawn Mallett for the remainder of the 1995-96 school year is hereby recommended for affirmance. There are no costs to be assigned in this appeal.

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DATE

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ANN MARIE BRICK, J.D.  
ADMINISTRATIVE LAW JUDGE

It is hereby ordered.

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DATE

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CORINE HADLEY, PRESIDENT  
STATE BOARD OF EDUCATION