IOWA STATE BOARD
OF EDUCATION
(Cite as 13 D.o.E. App. Dec. 332)

In re Joshua James Hakes, Aaron James Aeschliman, & Mathew S. Petersen	:	
Jeffrey & Laura Hakes, et al. Appellants,	:	
v.	:	DECISION
Dallas Center-Grimes Community School District, Appellee.	:	[Adm. Doc. #3777-3779]

The above-captioned matters were consolidated by order of the administrative law judge on May 5, 1996, and were heard on May 30, 1996, before a hearing panel comprising Roger Foelske, Bureau of Technical and Vocational Education; Diana Billhorn, Bureau of Special Education; Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding. The Appellants were present and were represented by their attorney, Becky Knutson, Davis Law Firm, Des Moines, Iowa. Appellee, Dallas Center-Grimes Community School District [herein-after "the District"], was also present in the persons of Mr. Sam Wise, board president; Dr. Dennis Bishop, superintendent; Richard Adkins, principal; and Ms. Anne White, Spanish teacher at the high school. Appellee was represented by its attorney, Mr. Ralph R. Brown, of McDonald, Brown, and Fagen, Dallas Center, Iowa.

An evidentiary hearing was held pursuant to Departmental Rules found at 281--Iowa Administrative Code 6. Authority and jurisdiction for the appeal are found in Iowa Code chapter 290 (1995). Appellants filed affidavits seeking review of a April 17, 1996, decision of the Board of Directors [hereinafter "the Board"] of the District which sustained disciplinary action imposed on each of the students by the District's administration.

I.
FINDINGS OF FACT

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

This appeal is being brought by Appellants to question the disciplinary action taken against their sons by the administration of the District. The incident giving rise to the disciplinary action occurred on Friday night, March 8, 1996. On that evening an AAU-type of basketball game was being held at the high school. It was sponsored by the local Booster Club. Ms. Anne White, a Spanish teacher at the high school, was attending the basketball game with her own children. Many of the District's high school students also attended the game, including Joshua James Hakes, Aaron James Aeschliman, and Mathew S. Petersen. These three boys were sophomores at the high school during the 1995-96 school year.

At the conclusion of the game, Ms. White and her children returned to her car, which was parked north of the industrial arts building at the high school. In the darkness, she noticed that the rear view mirror on the passenger side of the vehicle had been kicked or bumped off, leaving it dangling by a couple of wires. She didn't notice that her brand-new, red Dodge Neon had been dented extensively on the hood, roof and trunk until she reached her home in Urbandale, Iowa. As she drove into her garage, her husband came out and was the first to notice the damage to her car. The color photographs introduced at the appeal hearing revealed extensive damage, almost like the car had been rolled.[1] It was later determined that the cost to repair the damaged vehicle was in excess of $3,000.

Principal Adkins testified that he learned about the incident on Sunday night, March 10, 1996. When he saw the condition and extent of the damage on Monday morning, he was shocked. Principal Adkins informed the Superintendent and they began an investigation. The Principal talked with other students who had been seen in the parking lot adjacent to the school on March 8th and those students Ms. White

[1] The evidence introduced at the appeal hearing focused on the issue of the disciplinary action. The fact that the car had been damaged and the extent of the damage was no longer as issue.

recalled seeing at the game. On the morning of Wednesday, March 13, 1996, Principal Adkins contacted the parents of the students accused. He informed the parents that an interview had been set for that afternoon with Larry Sadler of the Dallas Center-Grimes Police Department for each of their sons. The facts are disputed about whether the parents were also instructed that they could not talk to their children until after that interview. In any event, all three parents promptly went to the school to speak with their children.

Upon questioning, each student admitted being involved in the vandalism. The students did not appear at the appeal hearing, and the only evidence pertaining to why they vandalized Ms. White's car were their reported statements in the juvenile court proceeding that "they didn't know why they did it." Since all three boys were students in Ms. White's Spanish class, she felt that their act of vandalism was directed toward her personally. In a letter to the School Board signed by 26 teachers at the high school, they shared their concerns regarding the disciplinary matter before the Board. In supporting the punishment imposed by the administration, the letter states:

> [i]n vandalizing her car, the young men also vandalized her feelings of safety and security here at school. ... This incident has unnerved all of us. Those of us who teach here and who live in the community were hurt and saddened by the incident, but we were also quick to wonder, "Will I be next?"

(Cert. tr. p. 4-L.)

The first notice of the sanction which the administrators intended to impose upon the three students was revealed on Friday, March 15, 1996. At that time, the students were presented with disciplinary options entitled, "Agreement for Consequences." Principal Adkins indicated to the parents that this document had been drafted in consultation with the Board's attorney, Ralph Brown. The "Agreement for Consequences," presented to all three students and their parents, imposed the following discipline:

> A. Three days of suspension from school. Those days being March 26, 27, and 28.[2]

[2] Principal Richard Adkins met with each set of parents on Friday, March 15, 1996. At that time he advised them that he was suspending each student from school for three days. Due to Spring Break, the next three days of school were March 26, 27, and 28.

> B. All my work must be made up and, on my return, turned in. That work shall receive no more than 50% credit (student handbook, p. 20).
>
> C. I will not be allowed to attend prom, the academy awards, or the steak fry.
>
> D. I shall be mentored by a staff member for the rest of the 1995-96 school year.

In addition, the agreement required the student, and his parents, to chose from one of the following two additional disciplinary actions:

> A. Be suspended from school for an additional seven (7) days by Dr. Bishop. Those days being March 29, April 1, 2, 3, 4, 5, and 8. All of my homework must be made up and, upon my return, be turned in and that work shall receive no more than 50% credit (student handbook, p. 20). Meet with the director of any spring activity in which I am involved and receive the consequences as outlined in Board Policy on pages 14 and 15 of the student handbook.[3]
>
> B. Agree not to enter any school grounds prior to 7:45 a.m. and to leave the school grounds by 3:15 p.m. unless under the direct supervision of a staff member (Ex. tutoring, etc.). This shall start on March 25 and end on June 5, 1996.

(Cert. tr. p. 4-G).

The parents testified that in their individual meetings with Principal Adkins, they were informed that if they chose Option A and lost 50% credit for ten (10) school days, it was most likely that their students would flunk the semester. As a result, the parents testified that they didn't feel they had a choice other than to chose Option B and to appeal to their School Board. After agreeing to Option B, each set of Appellants also received a letter from Principal

[3] This refers to the Good Conduct Policy of the Student Handbook.

Adkins setting forth the disciplinary penalties imposed upon the students, and detailing additional penalties as well. Specifically, students were not permitted to take part in any spring practices or performances of co-curricular activities until June 6, 1996; were prohibited from attending commencement and baccalaureate ceremonies unless a relative was involved, and, each student was scheduled to meet with and apologize to the entire teaching staff. (Cert. tr. at 4-I.)

Subsequent to the imposition of discipline on each of the three students, the students and parents appealed the disciplinary action of the administrators to the School Board. The matter was heard on April 17, 1996, in closed session. Prior to the April 17, 1996, meeting, the staff of the high school sent a letter to the Board urging that the discipline imposed by the administration be upheld. (Cert. tr. p. 4-L.)

Both parties were represented by counsel at the District Board hearing. Attorney Ralph Brown, who had previously advised the administrators on the disciplinary actions, sat as Board Counsel. Becky Knutson represented the parents and students. At the conclusion of the four-hour meeting, the Board of Directors voted to sustain the discipline imposed upon each of the students by the administrators. This appeal followed.

While the parents have not questioned the severity of the crime committed by their sons, they have two problems with the disciplinary action taken by the school as “Option B.” First of all, the parents do not feel that the reduction of grades is an appropriate method of discipline. In support of this proposition, they cite Board Policy 501-R(V) which states:

V. Reduction of Grades Prohibited.

> Reduction of grades shall not be used as a disciplinary measure against a student because of absence from school.

(Cert. tr. p. 4-E.)

Secondly, the parents feel that the length of time for which the students were banned from participation in extracurricular activities is in violation of the Good Conduct Policy laid out in the Student Handbook. That policy states that, for a first time offender who comes under the jurisdiction of the juvenile court, there is a minimum of one contest and a maximum of one-third of a season that a student will be required to sit out. Because Option B banned the students from school property before 7:45 a.m. and after 3:15 p.m., the students were restricted from participation in a full season of either track or golf and the first seven (7) games of the baseball season as well. (Exh. 5; Cert. tr. p. 4-A.) As a corollary concern, the parents question the Board's authority to exclude their sons from attendance rather than participation in District-sponsored events.

The parents complaint is that the school has exceeded its authority and has interfered with the ability of the parent to impose what they feel is appropriate discipline for their sons. For example, as a consequence of their juvenile court appearance on April 8, 1996, the boys were required to make restitution to Ms. White for the damage done to her car; a curfew of 10:00 p.m. on week nights and 12:00 p.m. on weekends was imposed; and they were required to participate in 8 hours of community service. The parents, however, wanted to require more. They put their sons under "house arrest" for six weeks and required the boys to get a job so that they could pay for all the lawyer fees, as well as the restitution for the damaged vehicle to Ms. White. The parents did not think the 8 hours of community service was enough. They would have liked to have their sons help coach the younger children in town for sports, but they could not do that without being in violation of the School's discipline to stay off school grounds prior to 7:45 a.m. and after 3:15 p.m. The parents also took the boys' driving privileges away.

In support of its position that the disciplinary action should be sustained, the District Board cites its 1995-96 Student Handbook. The Student Handbook was changed on May 16, 1995, at the suggestion of Principal Adkins to impose a 50% penalty in grade for work made up during unexcused or truancy absences. Board Policy 501-R was not amended to reflect this change. The policy still prohibited grade reductions as a disciplinary measure. (See, 501-R(V) Cert. tr. p.4-E.) . However, the District Board argues that the policy's prohibition against grade reduction for unexcused absences does not pertain to suspensions. This is because suspensions are not defined

as unexcused absences under 501-R as they are under the Student Handbook. Additionally, the District Board raised for the first time at the appeal hearing before the State Board, Policy 203.11 which states:

Administration in Absence of Policy

> When there is no Board policy in existence to provide guidance on a matter before the Administration, the Superintendent is authorized to act appropriately under the circumstances surrounding the situation, keeping in mind the educational philosophy of the School District. The Superintendent shall draft a policy recommendation if deemed appropriate.

(Appellee Exh. 2.) This is a policy taken from the series on "Procedures of Operation for the Board of Directors." (Appellee's Exh. 2.) It is not part of the Student Behavior and Discipline Code.

II.
CONCLUSIONS OF LAW

Applying the appropriate standard of review to the facts of this case, we must ask whether the District Board's action in upholding the discipline imposed by the Administration, "was arbitrary, capricious, an abuse of authority, ill-advised, unwise and inexpedient." In re Debra Miller, et al., 13 D.o.E. App. Dec. 302, 318 (1996). In answering that question under the controlling principles of law and State Board precedent, we are forced to find that sustaining the disciplinary action taken by the Administration, was an abuse of the Board's authority.

We recently discussed the authority of a high school principal to administer discipline in the appeal of In re Dean Nielsen, Jr., Andrew Nelson, and Jerod Burns, 13 D.o.E. App. Dec. 284 (1996). Relying on Iowa Code section 279.21 which gives the principal authority for the administration and operation of the school, the State Board cautioned that this task must be done within the bounds of duly-adopted Board policy. Id. at 296, citing Iowa Code section 279.21. Board policy, in this case, prohibits the use of grade reduction "as a disciplinary measure against a student because of absence from school." (Policy 501-R, cert. tr. at 4-L.) A student handbook, although approved by

the Board, does not supersede Board policy. A student handbook is intended to elaborate upon, or explain Board policy. (See, e.g., Appellee's Exh. 1; 502.1 *Student Conduct*.) It is not intended to supplant Board policy. If the student handbook takes a position contrary to a policy adopted by the Board, then the Board policy should be revised or amended before the handbook is adopted. (See, *The Iowa School Board Member, A Guide to Better Boardmanship*, p. 28, IASB (1994-95).)

At all times material to this appeal, Board Policy 501-R was in effect and it was binding upon the Board of Directors. Because of that alone, Options A and B were invalid disciplinary actions because they were in violation of existing Board policy. Appellee's arguments to the contrary are without merit.

The first argument is that the policy does not define "suspension" as an absence, so the prohibition for grade reduction as discipline because of "absence," does not apply to a suspension. (Appellee's Br. at 15.) Even if that argument logically followed, it would not hold up in the face of State Board precedent.

The State Board policy addressing the use of grade reduction sanctions for non-academic misbehavior has been applied in a line of decisions dealing with penalties for absences from school. In In re Korene Merk, 5 D.o.E. App. Dec. 270 (1987), the State Board condemned the practice of lowering student grades for non-academic infractions. As the Board noted:

> [W]e feel compelled to comment on the district's practice of denial of credit for the time a student spends in suspension. Although the practice was not made an issue in this case, it bothered the hearing panel and seriously concerns the State Board.
>
> ...
>
> In Iowa, we would prefer that the practice of lowering grades be eliminated except for rare circumstances. We have "come a long way" from the days when school work was assigned as punishment.

> Nevertheless, there is much to be said for detention, double make-up time, and the in-school suspension and the opportunities those avenues provide for students to contemplate their actions and get or stay caught up in their studies. Boards, administrators, and teachers would be wise to remember why the students are compelled to attend schools in the first place. Denial or reduction of credit as a punishment may work as a deterrence for some students, but for others, primarily the "at-risk" population, it may be "the last straw."

Id. at 277.

The Merk decision was decided under the principles outlined by the State Board of Education in its policy dated October 15, 1987 entitled **Statement of the State Board of Education Concerning Academic Sanctions or Penalties Imposed for Student Misconduct**

> While recognizing behavioral facts, such the degree of participation in class, although not "graded," may influence a student's academic grade, the State Board of Education nevertheless strongly discourages the reduction of grades or denial of credit as a disciplinary tool or punitive measure when the misconduct necessitating discipline does not involve academic performance. Inasmuch as possible, a student's academic grade should accurately reflect the quality of work performed rather than extraneous factors related to misbehavior. Instances such as cheating and plagiarism constitute academic-related offenses for which reduction of grades or loss of credit may be appropriate.

State Bd. Policy, p. 1 (Cert. tr. p. 4-L).

Two paragraphs of the State Board policy pertain to the practice of the District in this case and their repetition:

> 6. Any distinction between approved/excused or unapproved/unexcused absences should not affect a

> student's grade, the potential for credit, or right to make up missed assignments. Additional work could be assigned to compensate for the class time lost due to absences. However, the failure to complete make-up assignments satisfactorily within a reasonable time is a separate act and constitutes grounds for no credit or reduced credit.
>
> ...
>
> 8. Students serving in-school or out-of-school suspensions of ten days or less should have the opportunity to take tests and hand in assignments for credit.

Id. at p. 2 (cert. tr. at 4-L).

Recently, the State Board has reversed disciplinary action because it penalized students academically for non-academic behavior. In re Dean Nielsen, Jr., Andrew Nelson, and Jerod Burns, 13 D.o.E. App. Dec. 284 (1996). In that appeal, the principles of the 1987 Board statement on grade reduction were re-enforced by the recognition that this type of discipline is hardly ever upheld.

> Courts have generally disfavored the practice of reducing grades or denying academic credit based on non-academic misconduct or reasons. Courts have considered grade reductions an unwarranted "double punishment" and an improper technique whereby an educational institution makes a "clear misrepresentation of the student's scholastic achievement." Grade reduction policies usually must be academically-based and their purpose must be directly related to improving the education of the students in order for them to meet with judicial approval.

In re Dean Nielsen, et al., supra at 298 (citing, James A. Rapp, Education Law, vol. II, section 805(2)(c) (1996). See, also, Larry Bartlett, Academic Evaluation and Student Discipline Don't Mix, A Critical Review, J.L. & Educ., vol. XVI, Spring 1987 at 155.

For the reasons discussed above, even if, for the sake of argument, there was no conflict between existing Board policy 501-R and the 1995-96 Student Handbook, the practice of requiring that all class work missed during a suspension must be made up and given no more than 50% credit, is invalid. If it hadn't been for the 50% grade reduction contained in Option A, it would have been a reasonable approach to discipline. Because the selection of Option A would have entailed failing grades for the entire semester, the students didn't have a choice but to chose Option B. Option B was the lesser of two evils. It only required a 50% grade reduction for three days instead of ten.

By choosing Option B, the students put themselves out of participation and attendance at all extracurricular activities for the remaining school year. In adopting Option B, the Administration went beyond any duly-adopted and published Board disciplinary policies. The evidence presented at the appeal hearing showed that the Board did have policies to address the situation, but the Administration felt that these sanctions were not a severe enough punishment for the students' misconduct.

The evidence showed that the District did have the tools to "punish" the students appropriately. Series 502 of the District Board policies address "Student Behavior and Discipline." Policy 502.7 provides that "a student who intentionally causes or attempts to cause substantial damage to private property on the school grounds, during a school activity, function or event off the school grounds, will be subject to consequences outlined in section 502 of the Board policies." (Exh. S.) Policy 502.1 provides in part, that students in violation of the discipline policies may be subject to "removal from the classroom, detention, suspension, probation, and expulsion." (Appellee's Exh. 1.) Suspension is defined as "either an in-school suspension, an out-of-school suspension, a restriction from activities. ... The student may not attend school activities or may not participate in a contest of extracurricular activities. ... An out-of-school suspension will not exceed ten days." Id.

The Administration clearly had the authority to suspend these students for the maximum of ten days. In addition, the Administration could prohibit the students from attending or participating in extracurricular activities and events during that ten day suspension. What was wrong with Option B was that it prohibited the students from attending or participating in any school-related activities well

beyond the period of suspension. As such, this punishment was in excess of the maximum set forth in Board policy and contrary to State Board precedent. In the appeal of In re Joseph Fuhrmeister, 5 D.o.E. App. Dec. 335 (1988), the State Board considered the penalty imposed upon a student for an admitted violation of the school alcohol and substance abuse rule. The penalty imposed included the requirement that the student seek drug and alcohol counseling; be removed from participation in co-curricular activities; and that he also be prohibited from attending co-curricular activities. Citing, Bunger v. Iowa High School Athletic Association, 197 N.W.2d 555 (Iowa 1972), the State Board determined that:

> The portion of the rule purporting to deny Joe [Fuhrmeister] the opportunity to attend school-sponsored events open to the public is invalid as beyond the scope of the Board's authority and unreasonable on its face.

Citing, Bunger, the State Board in Fuhrmeister determined that "the connection between the prohibited acts and the discipline and welfare of the school must be direct and immediate, not remote or indirect." Bunger at 340.

While the State Board found in Fuhrmeister that conviction of illegal possession of beer during the football season was a violation of the district's rules, and subject to the good conduct policy which suspended Fuhrmeister from participation in co-curricular activities, the State Board did not find that the exclusion from attendance at district-sponsored events was appropriate. This was discussed in a footnote to the opinion as follows:

> There was notable disagreement between the Superintendent and the Principal as to whether students expelled by the Board would be permitted to attend school-sponsored activities. We think a prohibition against attendance by an expelled or former student could only be applied to those circumstances such as the prom, where the function is only open to students and their guests -- not to those functions to which the public is invited and required to pay an admission for spectator privileges.

Id. at 343-44 n. 5.

In the present case, we think the exclusion from attendance at school-sponsored events is appropriate during the period of suspension. These students are not expelled students. In addition, there is a connection between their behavior at school-sponsored or school-related activities and the conduct that occurred on the night of March 8, 1996. We do not think a Board policy that prohibits a student, while under suspension, from participating and attending school activities is an unreasonable exercise of Board authority. Beyond the permissible ten day suspension authorized by Policy 502.1, however, there is no authority to prohibit the students from attending school-sponsored activities.

In addition to the Administration's authority to suspend the students for up to ten days under its vandalism policy (502.7), and its suspension policy (502.1), further sanctions could be taken against the boys under the Good Conduct Policy (502.9).

By its own terms, the Good Conduct Policy applied to student behavior that was in violation of 502.7 (the vandalism policy). Furthermore, the policy provided that a student was specifically subject to being declared ineligible "[i]n the event the student comes under the jurisdiction of any court for juvenile delinquency or is charged with a crime, except minor traffic violations." 502.9(A)(Exh. T). It was undisputed that the boys were covered by this policy. It was also undisputed that this act of vandalism was their first offense under the Good Conduct Code. As a result, their ineligibility was to be "a minimum of one contest or performance or a maximum of one-third of the scheduled contests or performances in the activity in which the student is involved at the time of the violation." Id.

As eggrievous as the boys' misconduct was, and no one disputes that fact, there was no authority in the District's policies for the imposition of a period of ineligibility that extended from March 26, 1996, through June 5, 1996. The Administration's additional penalties dealt not only with the suspension from participation in extra-curricular activities, which involved two sports seasons for each student, but extended to attendance at any and all district-sponsored events, and simple physical presence on the school grounds.

School Boards are required to adopt policies for at least two reasons: first, to put the district and all constituencies on notice as to the board's general views on a given subject, and second, to

guide the board in its decision making. In re Anthony Schultz, 9 D.o.E. App. Dec. 381, 385 (1993). In the present case, there is no dispute about the presence of Board policies which appropriately cover the situation. The dispute concerns whether the Administration may depart from these policies when they are "appalled" by the misconduct of a student. The District Board argued that it had the authority to do this under its "Procedures of Operation for the Board of Directors'," policy 203.11. This policy basically says that when "there is no Board policy in existence to provide guidance on a matter before the Administration, the Superintendent is authorized to act appropriately under the circumstances surrounding the situation. ..." The problem is, this was not a policy that was intended to cover student conduct and discipline. This policy was placed in the Board procedure section of the policy book. As a practical matter, such a policy does not give much guidance to parents, students or administrators.

Pursuant to the Department of Education's General Accreditation Standards,

> [t]he Board shall develop and maintain a policy manual which provides a codification of its policy actions with the adoption date, the review date, and any revision date of each. Policies shall be reviewed at least every three years to insure relevance to current practices and compliance with the Iowa Code, Administrative Rules and Decisions, and court decisions." 281--Iowa Administrative Code 12.3(2). When policies are adopted that pertain to student responsibility and discipline, the Board has an obligation to "involve parents, students, instructional and non-instructional professional staff, and community members.

281--Iowa Administrative Code 12.3(8).

The Board policies on vandalism (502.7); suspensions (502.1); and the Good Conduct Policy (502.9) were developed under the procedures required by the accreditation standards. Parents and students alike have a right to expect that the Board and Administration's actions will be taken pursuant to adopted and publicized policies. Although the Administration felt frustrated that it could not do more to punish the behavior of these students and satisfy the teachers' needs for support and protection, the existing policies applicable to the

present case were adopted with community input, and discussed in an open public meeting. Because of that, they are presumably reasonable and adequate for their expressed purpose. Once a policy is enacted, the District may not ignore it because an unforeseen situation arises.

REMEDY

The students had already served most of their penalty before this matter could be heard on appeal. The parents were aware of that fact. They urged on appeal that the State Board reverse and invalidate any policy or guideline used by the District Board which penalizes students for non-academic offenses by reducing their grades. In light of this, we reverse the District Board's decision insofar as it penalizes the students 50% of their daily grade for the three days in which they served their suspensions.[4] The Administration is directed to review the evidence it submitted to the State Board and adjust the grades of these students accordingly. For the record, the discipline taken by the District Board in excess of the discipline that could be taken under its policies is invalidated. We realize this will have no effect, as a practical matter, on the students at this point.

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

III.
DECISION

For the reasons discussed above, the decision of the Dallas Center-Grimes Community School District's Board of Directors made on April 17, 1996, is hereby recommended for reversal. The costs of this appeal shall be assigned to Appellee School District.

[4] On June 18, 1996, the District Board Secretary filed a notarized certification of the students' final grades. This certification detailed each boy's grade reduction made pursuant to the policy. It showed what grades would have been given if the policy had not been followed. On June 25, 1996, the attorney for Joshua Hakes filed a "corrected copy" of his grade report which reflected a change in his grades due to the application of the policy. The District is directed to correct the students' grades to what they would have been if no reduction had occurred as shown by these documents.

DATE

ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

_____

DATE

_____

CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION