IOWA STATE
BOARD OF EDUCATION
(Cite as 13 D.o.E. App. Dec. 284)

In re Dean Nielsen Jr., Andrew Nelson, and Jerod Burns	:	
Dean and Jane Nielsen, Roger and Evelyn Nelson, Bill and Kathy Wallander, and John and Tracy Burns, Appellants	:	
v.	:	***DECISION***
Audubon Community School District, Appellee.	:	***[Adm. Doc. # 3792]***

The above-captioned matters were consolidated and were heard on July 1, 1996, before a hearing panel comprising Don Helvick, consultant, Bureau of School Administration and Accreditation; Paul Cahill, consultant, Office of Educational Services for Children, Families and Communities; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding. Appellants Tracy and John Burns (father and step-mother of Jerod Burns) could not be available for the hearing, but were represented by Kathy Wallander, Jerod's mother. Appellants Roger and Evelyn Nelson could not be available for the hearing, but were represented by Jane Nielsen. All appellants were telephonically "present," unrepresented by counsel. The Appellee, Audubon Community School District [hereinafter the "District"], was also "present" by telephone in the persons of Superintendent Quentin Reifenrath and Board Secretary John Roberts, also *pro se*.

A hearing was held pursuant to Departmental Rules found at 281--Iowa Administrative Code 6. Appellants seek reversal of a decision by the Board of Directors [hereinafter the "Board"] of the District made on May 20, 1996, which upheld the decision of the administration to expel these students from band and to withhold academic credit for band class for the last quarter of the 1995-96 school year.

Authority and jurisdiction for this appeal are found in Iowa Code section 290.1 (1995).

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 of the appeal before them.

On Saturday night, March 23, 1996, Jerod Burns went to the local Amoco Station, where Andy Nelson was working. Dean Nielsen was there working on his pickup truck. All three boys were seniors at Audubon High School. Throughout their high school careers, all of the boys had been active in extracurricular activities. Dean Nielsen participated in football, golf, band, and show choir. He had also played basketball and baseball until recently when an eye problem forced him to drop out of these activities. Andy Nelson participated in golf, band, chorus, basketball, baseball, and football, in addition to maintaining a place on the honor roll. Jerod was active in football, track, wrestling, baseball, and band. He, too, was an honor roll student.

At the time of the "incident" in question, the three friends were members of the percussion section of the school band. They were looking forward to playing in the Festival of Bands and the large group state band contest. But most of all, they were anticipating the band's trip to Florida, which was to occur the first part of June. The Florida trip was an event that had been scheduled by the school four years before. Since that time, the funds to pay for the trip were being raised by band students working in conjunction with the Band Parents Booster Club.

Unfortunately, because of the "incident" that occurred on the evening of March 23, 1996, the boys were not allowed to participate in any of the band activities. Here is what happened.

After Andy Nelson got off work that evening, the three boys decided to drive around together in Dean's pickup truck. They were driving in the country when they found some dead animals beside the road. There were three pigs, a ewe and a sheep. Apparently, these animals were awaiting pick up by a local rendering plant. The boys loaded the dead animals in the back of the pickup truck and drove into town.

On the way, they passed by the home of Mr. Ewing, the chorus teacher. Noticing that their band teacher's car was at Mr. Ewing's, they proceeded to drive to the band teacher's home and dump all of the dead animals on his lawn. Later that evening, they reconsidered their actions. When they returned to the band teacher's home to remove the animals, they discovered that Mr. Tinder had come home and called the police. Too scared to stop, they drove on by.

The next day, Sunday, Jerod "confessed" to his parents. It is not clear when the other two boys told their parents, but on Tuesday, March 26, 1996, all three students went to see Mr. Tinder to confess and apologize. The reason they did not go in to talk to him on Monday was because Dean Nielsen was serving the final day of a three-day suspension.[1] When Dean was available on Tuesday, the boys went to talk to the band teacher. Mr. Tinder accepted the boys' apologies and thanked them for coming in.

Shortly after that, Mr. Lowe, the high school principal, advised the parents that he was going to expel the boys from band for the rest of the year. In addition, all three boys were required to make individual reports to the police.[2] In spite of the parents' protests to Mr. Lowe that the "punishment didn't fit the crime," the principal would not agree to modify the discipline. According to the parents, Mr. Lowe advised them that he had decided not to enforce the good conduct policy against the boys because the results would be too harsh for Dean Nielsen. Because this was Dean's third offense under the good conduct policy, Dean would have been out of "everything for the remainder of his high school career." This way, Dean would only miss the three band activities. He would not suffer the loss of eligibility for track and baseball.

None of the parents were very happy about this result. Especially, the parents of Andy Nelson and Jerod Burns who would suffer a much greater penalty under the principal's approach than

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[1] Dean Nielsen had been suspended by the principal for chewing tobacco in Mr. Tinder's band class. This appears to provide some motivation for Dean to select Mr. Tinder's lawn for the disposition of the animal carcasses.

[2] At the time of the appeal hearing, no further proceedings had been brought against the boys by juvenile court. Mr. Tinder had dropped all charges against them.

under the operation of the good conduct policy. Because it was their first offense under the good conduct policy, Andy and Jerod would not have missed the Florida band trip. All three parents asked to take their case before the local school board. They were told a meeting could not be scheduled until May 14, 1996.

When the parents filed their appeals, first to the local school board and then to the State Board, they filed one affidavit of appeal and appointed Kathy Wallander as their spokesperson. Kathy is the mother of Jerod Burns and is also a teacher in the Anita Community School District. Because of her position as a teacher, she was sensitive to the impact of the boys' "prank" on the band teacher's household. The parents, she assured us, "are in no way condoning the actions of our boys on the night in question. We, and they, believe that what they did was wrong and that they should be disciplined." The gist of the parents' appeal is that the boys were expelled from a class for which they receive credit even though the act did not take place in band class or on school property. They question whether the students could have been expelled from any other academic class for behavior occurring outside of that class. In addition, the parents complain that the good conduct policy was not followed by the principal when he disciplined the boys. They disagree with the principal's decision to discipline the boys without discussing the incident with them; obtaining parental input or involvement with the decision; without taking into account any mitigating circumstances or considering the boys' prior discipline records. The parents also cited three other examples of inconsistencies in discipline and policy carried out by the administration and the Board.[3]

Although the boys' action was characterized as a "prank" by Jerod's mother, we can only speculate about how Mrs. Tinder felt when she saw the dead animals that had been deposited on her lawn. We only know that Mrs. Tinder was "upset" from Jerod's mother who indicated that Jerod wanted to personally apologize to her to let her know that it was "nothing personal." Although it may not have been a personal act on the part of Jerod Burns or Andy Nelson, the hearing panel inferred that Dean Nielsen did have Mr. Tinder in mind when he picked up the dead animals in his pickup truck. There was some testimony that he worked at the

[3] The hearing panel asked the superintendent to address each of these situations, and we were satisfied that those cases were inapposite to the present appeal.

rendering plant so that he knew where the animals could be found. Because he was serving a suspension for chewing tobacco in Mr. Tinder's band class, it is easy to conclude that, at least on Dean Nielsen's part, Mr. Tinder was not the victim of a random prank.

Unfortunately, the school district did not have either Mr. Lowe, the principal, nor Mr. Tinder, the band teacher, available to testify at the appeal hearing. If it appears that the facts are weighted in favor of the parents, that is because practically all of the facts were supplied by Appellants. The Superintendent stated at the outset that "Mr. Lowe is in charge of discipline at the high school. He decided on the punishment." Mr. Lowe, however, was not there to present his side of the story. Nevertheless, the *ultimate* fact is not in dispute. Both the parents and the Superintendent testified that Mr. Lowe knew that the good conduct policy applied and did not choose to apply it. In fact, all of the parties agree that Mr. Lowe said it would be better for the boys if they were not disciplined under the good conduct policy. Kathy Wallander added that the parents were told that it would put Dean Nielsen out of everything for the rest of the year if he came under the good conduct policy.[4]

During the course of the appeal hearing, the ALJ asked Superintendent Reifenrath to fax a copy of the good conduct policy to the hearing panel. The policy consists of one page with signature lines for both parent and student to acknowledge their receipt and understanding of the policy.

AUDUBON STUDENT ACTIVITY

GOOD CONDUCT RULES

> Any student of Audubon High School who participates in any school-sponsored activity will be subject to the following rules during the time of his/her participation:

[4] The hearing panel was very concerned about Mr. Lowe's reasoning in this regard. For one thing, it was grossly unfair to increase the severity of the punishment for Andy Nelson and Jerod Burns under the guise of "saving" Dean Nielsen. Especially since Dean Nielsen was out of baseball because of an eye problem.

1. Any student, while participating in school sponsored activities and is observed using or in possession of tobacco products (cigarettes, cigars, pipes, chewing tobacco); any form of alcoholic beverage; or any controlled substance by any member of the administration or faculty, will be reported to the Principal, Activities Director, or Head Sponsor or Coach of his/her activity. The student will then be brought before the Activities Good Conduct Board for action.
2. Any student while participating in school sponsored activities and [sic] is reported by law enforcement authorities for any illegal act pertaining to tobacco, alcohol, or controlled substances use or possession will be brought before the Activities Good Conduct Board for action.
3. Any student while participating in school sponsored activities whose habits or conduct in or out of school are such as to make them unworthy to represent the ideas, principles, and standards of our school will be brought before the Good Conduct Board for action.

The Activities Good Conduct Board will consist of the Principal, Activities Director, and Coach or Director for whom the affected student participates. The student may be accompanied by a parent and/or guardian when brought before the Board. The following action or actions may be taken:

1. Allow the student to respond to allegations.
2. Immediately suspend the student from three contests or performances in each activity that he/she is to participate. Notify the student’s parents immediately of the action.

3. Give the student the opportunity to reduce their suspension from one contest or performance by telling the Good Conduct Board the complete truth about their involvement in the violation.

4. Give the student the opportunity to reduce their suspension from one contest or performance by volunteering to go for professional help for their problem. This professional help will be secured through the cooperation of the student's Principal, Guidance Counselor and parents.

5. Give the student the opportunity to establish their innocence by producing reliable and creditable witnesses on their behalf.

In the event of any further offenses, the penalty will be as follows:

1. Second offense will result in suspension from six contests or performances.

2. Third offense will result in suspension from activities for one year.

In addition to the above, each student participant is subject to:

1. The eligibility rules of the Iowa High School Girls Athletic Union and the Iowa High School Athletic Association.

2. Grade eligibility requirements of the Audubon High School.

I acknowledge reading the above Good Conduct Rules as it [sic] pertains to Audubon Junior-Senior High School students while participating in all school sponsored activities. I also understand these rules apply whether I sign the sheet or not.

(Audubon Community School District Good Conduct Policy, 8/17/90.)

The parents were asked if either they or their sons had appeared before the "Activities Good Conduct Board" as provided by the policy. They testified that "no meeting like that was ever held."

When the special meeting of May 14, 1996, was convened, only three of the five Board members were present. One Board member was missing because of an illness in her family, and the other Board member was missing "because he had another commitment." The Board did not want to vote on a decision at this meeting because they wanted to question the principal and teacher involved. When the parents asked why the principal and teacher were not present at this meeting, they testified that they did not receive an answer. The parents then agreed to wait until May 20, 1996, for a meeting in which all the Board members could be present and a vote could be taken.

At the May 20th meeting, the parents were advised that the two members of the Board who were not present at the special meeting would not be allowed to vote on the appeal. The meeting of May 20th was "open" at the request of the parents. The minutes of that meeting reflect that two motions were made and each failed for a lack of second. The first motion was to uphold the decision regarding the students' removal from band. It died for a lack of a second. The second motion would have allowed Jerod Burns and Andy Nelson to participate in the band trip to Florida, but disallow Dean Nielsen, Jr. from attending the trip. This also died for a lack of a second. At that point, the Board president took one of the Board members outside in the hallway and conducted a private discussion. When that Board member returned to the meeting, the Board president repeated the process with the other Board member. After this was done, the motion was made to "uphold the disciplinary action administered by Dan Lowe regarding students removed from band." (Min. 5/20/96.) The motion was seconded by one of the Board members who could not vote because he had not been present at the May 14th special meeting. The parents contend that this procedure was improper.[5] The motion received one aye and one nay vote, forcing the

[5] According to Roberts' Rules of Order, a school board has the authority to determine its own operational procedures. In order to "streamline" the process, a motion need not be seconded to be voted upon. The record is devoid of whether this school board is required to second its motions. See, The Iowa School Board Member, a Guide to Better Boardsmanship, p. 33-34 (IASB 1994-95). Therefore, we cannot reach the merits of this issue.

Board president to break the tie, which he did by voting to uphold the principal's discipline decision. The parents also raised questions about the propriety and legality of the conduct of the Board's May 20th meeting.

At the time of the State Board appeal hearing, the boys had already missed the Florida trip, the Festival of Bands, and the state large group band contest. The students had received their final grades and the grade for 4th quarter band was blank. The record is unclear about the Board's decision on withholding the grade for band. The superintendent did not recall what the Board decided to do. The minutes simply reflect that there was "a discussion regarding the passing grade in band that would be received by Dean Nielsen, Jr., Jerod Burns, and Andy Nelson." (Min. 5/20/96.) Upon the hearing panel's attempts to clarify the Board's position on the grade issue, the Superintendent stated that Andy Nelson had said before the Board: "We don't care about the grade —- we want the trip to Florida. ..." Because of this, the Superintendent said the Board "probably decided the grade was not an important issue for the boys."

In light of all this, the parents seek the following relief from the State Board:

(a) that the students' grades be finalized and awarded with the suggestion that the grade be an average of the previous two quarters;

(b) that the Board publish a statement that the students' discipline was overturned because it went beyond the applicable discipline policy; and

(c) that the students' fees for the band trip raised over the previous four years, be returned to them.

II.
CONCLUSIONS OF LAW

The Appellants have questioned the substantive due process issue of the reasonableness of the punishment as applied to their sons' conduct. They do not question the authority of the school board to adopt rules, which punish the conduct of their sons; nor do they attempt to minimize the seriousness of the conduct.

Their primary challenge is to the authority of the principal to abandon a duly-adopted and applicable policy of the school board in favor of his own system of justice. Secondly, they challenge the administration's denial of academic credit for misconduct which did not occur on school grounds or at a school-sponsored activity.

School districts have the authority to promulgate rules for the governance of pupils. Iowa Code section 279.8 mandates that the board of directors of a school district "shall make rules for its own government and that of its directors, officers, employees, teachers and ***pupils*** ... and shall aid in the enforcement of the rules. ..." Id. (Emphasis added.)

In general, school discipline policies address student conduct which occurs on school grounds during the school day. This is because a school district's regulation of student conduct must bear some reasonable relationship to the educational environment. This principle was enunciated over 100 years ago in the case of Lander v. Seaver, 32 Vt. 114 (1859).

In the Seaver case, eleven-year-old Peter Lander referred to his teacher, in the presence of some of his classmates, as "old Jack Seaver." This comment occurred 90 minutes after school as he was walking his father's cow passed his teacher's home. Mr. Seaver overheard the comment and whipped the boy with a rawhide strap at school the next day. The boy's father thought the punishment was too severe and beyond the teacher's authority because the conduct occurred after school. The Vermont Supreme Court decided the teacher's action was justified because the student's misconduct had a "direct and immediate" relationship to the operation and management of the school. Id. at 120. The Court reasoned that the student's behavior was disrespectful and showed contempt for the teacher's authority in front of other students. Unpunished, his misconduct would result in a weakening of the teacher's authority in the eyes of the other students. See, Bartlett, Larry D., The Court's View of Good Conduct Rules for High School Student Athletes, 82 Ed. Law Rep. (1087)(July 29, 1993).

A more recent expression of the school district's authority was stated by the court in Martinez v. School Dist. No. 60, 852 P.2d 1275 (Colo. App. 1992). In considering the school district's policy in that case, the court observed that

> a school district's regulation of students' conduct must bear some reasonable relationship to the educational environment; a school district cannot regulate purely private activity, having no effect on the environment. Id. at 1278 (citing, Annotation, Right to Discipline Pupil for Conduct Away From School Grounds or Not Immediately Connected With School Activities, 53 ALR3d 1124 (1973). See, also, Board of Education v. Ambach, 96 A.D.2d 637, 465 N.Y.S.2d 77 (1983)(school district may not discipline student for conduct occurring at home over school holiday).

In the case before us, it is possible that these students' misconduct could have been reached by the Board's general discipline policy. There appears to be the requisite "direct and immediate relationship to the operation and management of the school" required by the courts. See, Seaver, supra, at 120. Instead of walking a farm animal by their band teacher's house on a weekend evening, these boys deposited dead farm animals on his lawn -- certainly a non-verbal form of disrespect toward the teacher.[6] We cannot address the application of a "non" good conduct policy to the facts of this case; however, because the record is devoid of any reference that Principal Lowe's actions were taken pursuant to any such policy. The only policy referenced by the parents as well as the Superintendent during the appeal hearing was the good conduct policy.

Districts can also reach out-of-school conduct by student athletes and those involved in extracurricular activities when the conduct directly affects the good order and welfare of the school. Bunger v. Iowa High School Athletic Assn., 197 N.W.2d 555, 564 (Iowa 1972). Therein it was stated:

[6] We mention this because it is possible to reach the out-of-school conduct of students who do not participate in extracurricular activities under some circumstances. However, there must be a very direct relationship between the misconduct and the operation of the school. Generalization is not possible since each case turns on its own facts.

> The present case involves the advantages and enjoyment of an extracurricular activity provided by the school, a consideration which we believe extends the authority of the school board somewhat as to participation in that activity. The influence of the students involved is an additional consideration. Standout students, whether in athletics, forensics, dramatics, or other interscholastic activities, play a somewhat different role from the rank and file. Leadership brings additional responsibility. These student leaders are looked up to and emulated. They represent the school and depict its character. We cannot fault a school board for expecting somewhat more of them as to eligibility for their particular extracurricular activities.

Id. at 564.

Such a policy had been adopted by the Audubon District Board. (See, "Good Conduct Rules" reproduced infra at page 288.) By its terms, the policy applies to students who "while participating in school sponsored activities whose habits or conduct in or out of school are such as to make them unworthy to represent the ideals, principles, and standards of our school, will be brought before the Activities Good Conduct board for action." (Policy at par. 3.)

There is no dispute that the good conduct policy applied to Appellants' sons when they deposited the animal carcasses on the band teacher's lawn. It is also undisputed that the policy was not followed. Both Superintendent Reifenrath and the parents testified that Principal Lowe did not want to follow it,[7] and that he devised his own punishment.

[7] Once again, it would have been helpful had the District produced Mr. Lowe for testimony at the appeal hearing. It was obvious that Superintendent Reifenrath believes disciplinary decisions should be left to the high school principal. If the principal acts within the bounds of the Board policy, we would agree. However, we would have appreciated hearing the Principal's rationale for taking the position he did.

The authority of a school principal is spelled out in Iowa Code section 279.21. That subsection makes it clear the principal "shall be responsible for administration and operation of the attendance center to which the principal is assigned." Id. The Principal, however, is not given unfettered discretion in running the school. The administration and operation of the attendance center must be performed "under the supervision of the superintendent of the school district ***and pursuant to rules and policies of the board of directors of the school district***." Id. (Emphasis added.)

Superintendent Reifenrath testified that he had delegated the responsibility for discipline in the high school to Principal Lowe. That would be a permissible delegation of authority under both the statutory provisions of chapter 279 and the terms of the good conduct rules. As a member of the Good Conduct board, which consists of the Principal, Activities Director, and Coach or Director of the student activity, Mr. Lowe would have a fair amount of discretion to devise appropriate discipline for out-of-school misconduct. However, he has to do it within the bounds of the policy. The policy is notice to the parents and students that certain procedures will be followed before disciplinary action is imposed. A fair reading of the policy implies that the following steps will be taken before discipline is imposed:

1. A student engaging in the covered misconduct "will be brought before the Activities Good Conduct board for action." This was never done in the present case.

2. The Activities Good Conduct board consisting of Principal Lowe, the Activities Director, and Mr. Tinder should have met with the students. The students could have been accompanied by parents when brought before the board. This was never done.

3. The students could be allowed to respond to the allegations. This was never done.

4. The students could be immediately suspended from three contests or performances in each activity in which they participate with immediate notification to the parents. It is unclear from the record whether these students were suspended from any extracurricular activities. Apparently, they were expelled from band, but it is unclear when that action occurred.

5. The students could have the opportunity to reduce their suspension from one contest or performance by telling the Activities Good Conduct board the complete truth about their involvement in the violation. There is no evidence that there was any mitigation of the boys' penalty because of the varying degrees of their culpability.

6. The students would be given the opportunity to establish their innocence by producing reliable and credible witnesses on their behalf. Since the students admitted their involvement in the incident, the determination of innocence or guilt was not a factor.

7. Finally, the imposition of the penalty would be determined by looking at whether this was a first, second, or third offense. The evidence was undisputed that as to Jerod Burns and Andrew Nelson, this incident was their first offense. Dean Nielsen, on the other hand, was committing his third offense. There was no consideration of mitigating circumstances or concern for the even application of the good conduct rules by considering the boys' prior records.

Instead of following this policy, Principal Lowe made the decision that the boys should be excluded from band activities for the remainder of the year. We cannot begin to speculate about his reasons for doing this. He was not present to tell us. Although we agree with the Superintendent that the Principal should be responsible for administering discipline at the high school, this can only be done within the bounds of duly-adopted Board policies. The good conduct policy in this case gives the principal a lot of discretion to deal with student misconduct. The policy envisions an informal hearing process by which the discipline is worked out with student and parent appearing before or meeting with the Activities Good Conduct board. There is no authority in the Law for a school principal to go outside of the bounds of duly-adopted board policies to impose suspensions or academic sanctions for misconduct.

> When we talk of administrative discretion, we really mean possession by the official or agency of the freedom to make a choice among possible courses of action or inaction. The reviewing court, however, has the power to ensure that the choice made is not wholly

> dependent upon the personal will of the administrator. ... Who would be willing to submit his case to the unfettered discretion of other than a saint?

Lennon v. United States, 387 F.Supp. 561, 564 (SDNY 1975). It has been held to be a violation of due process for a school board to "substitute for its own independent judgment that of the principal of the school." Dothan City Board of Ed. v. V.M.H., 660 So.2d 1328, 1283 (Ala. 1995). See also, Lee v. Macon Co. Bd. of Ed., 490 F.2d 458, 460 (5th Cir. 1974). In Lee, the Fifth Circuit held that the board's failure to use its independent judgment, by simply following its practice of confirming the principal's judgment, was a denial of due process. We would like to emphasize the necessity for school boards and administrators to act within the four-corners of duly-adopted policies. We hold that as a matter of essential fairness, when a board has adopted a rule or guideline establishing the procedure to be followed in relation to discipline, whether it's a short-term suspension or expulsion, that the procedure must be substantially observed.

The failure of the Principal to follow the good conduct policy, alone, would have prevented us from sustaining the discipline imposed. But there is another problem: denying the students their fourth quarter grade in band. The withholding of academic credit as punishment for non-academic misconduct is hardly ever allowed.

> 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.

James A. Rapp, Education Law, vol. II, section 8.05(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. In a related case, the Iowa Supreme Court has invalidated the practice of denying credit or a diploma to a student as a means of non-academic discipline. Valentine v. Independent Comm. Sch. Dist., 187 Iowa 555, 174 N.W. 334 (1919).

There is no evidence that the grades for fourth quarter band were withheld pursuant to any board policy. Indeed, it is not even clear whether the board decided to withhold the grades. The minutes of the May 20, 1996, special meeting simply state: "Discussion regarding the passing grade in band that will be received by Dean Nielsen, Jr., Jerod Burns, and Andy Nelson." There is no record of board action taken. The Superintendent was not aware that the grades had been withheld. The parents had received the final report cards at the time of the appeal hearing and reported that no grades had been given. Perhaps the grades were withheld at Mr. Lowe's insistence. We do not know. We do know that Appellants' sons are entitled to receive a grade for band for the last quarter. Since their participation in band was most likely affected adversely by the improper discipline imposed (expulsion from band), we would caution the administration to take that fact into account when awarding a grade for the fourth quarter.

Two other issues raised by Appellants must be addressed. The first is the conduct of the board members at the May 20th special meeting. The second issue is the parents' request that their sons' contribution of fees for the band trip to Florida be returned to them.

Board Conduct:

The parents were upset that after waiting two and a half weeks for their requested board meeting to review Principal Lowe's actions, neither Principal Lowe nor Mr. Tinder were present at the meeting. They were also concerned that only three of the five board members came. The three board members present at the May 14th meeting wanted to question the Principal and the teacher before they voted to uphold the action. Therefore, the Board members postponed taking action until May 20th. At that second meeting, it was decided that only the three board members

who had been present on May 14th would be allowed to vote. When these members could not agree on a motion, the President of the Board took each of the members out into the hall, separately, to talk privately. After these members returned, they voted to uphold the Principal's action.

While not articulated in legal terms, the gist of the parents' complaint was that this conduct on the part of the Board was a violation of the Open Meetings Law. Although we would not condone this practice, we are unable to reach its legal merits. The State Board does not have jurisdiction to decide violations of the Open Meetings Law. "The exclusive mechanism for enforcement of the Open Meetings Law is an original action in the District Court for the county in which the governmental body has its principal place of business." Keeler v. Iowa State Board of Public Instruction, 331 N.W.2d 110, 111 (Iowa 1983). Iowa Code chapter 21 provides that "[i]gnorance of the legal requirements of this chapter shall be no defense to an enforcement proceeding brought under this section." Iowa Code section 21.6(4)(1995).

Return of Fees:

This appeal could not be heard before the band took the Florida trip. So Appellants modified their original request for relief to include the return of a portion of the money their sons raised over the last four years which was applied toward the band trip. The Superintendent stated that this money was raised by the "Band Parents' Booster Club" and was not under the control of the school. Actually, the Superintendent was mistaken. All moneys raised by individuals acting on behalf of the school belong to the school. Reading several of the school laws *In Pari Materia*, we find the Board has jurisdiction over all funds raised in the name of the District. See, Iowa Code sections 274.1, 279.8, and 291.13. See also, In re Chad Buhrow, 4 D.P.I. App. Dec. 242, 248 (1986)(citing, 1967 Class of Pekin High School v. Tharp, 154 N.W.2d 874 (Iowa 1967). Since the boys have no personal property interest in the funds they helped raise, and the funds were co-mingled with all other students' moneys, they are not entitled to receive a proportionate share. We therefore deny the relief sought by the Appellants here.

Conclusion:

For the foregoing reasons, the Board's decision on May 20, 1996, to uphold Principal Lowe's discipline of Appellants' sons, must be reversed. The students' grades should be finalized and awarded as soon as administratively possible, but in no event, should the grades be delayed after the start of the 1996-97 school year. In addition, the parents requested that the Board publish a statement that the students' discipline was overturned because it went beyond the applicable discipline policy. We do not require boards to publish statements of this nature. The rendering of this decision, which is now a public record pursuant to Iowa Code chapter 22, should satisfy this request. Finally, there is no basis for a return of the students' fees for the band trip raised over the previous four years. This request for relief will be denied.

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

IV.
Decision

For the reasons discussed above, the decision of the Audubon Community School District's Board of Directors made on May 20, 1996, is hereby recommended for reversal. There are no costs of this appeal to be assigned.

_____ _____

DATE ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

_____ _____

DATE CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION