

IOWA STATE BOARD
OF EDUCATION

In re Keith Boenig

Donna Dunkelberg,
Appellant,

v.

Waterloo Community
School District,
Appellee.

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NOTICE OF APPEAL HEARING

[Admin. Doc. # 3680]

TO: Ms. Donna Dunkelberg, Superintendent Arlis Swartzendruber
Board Secretary Sally Turner

You are hereby notified that the above entitled matter has been set down for hearing on the 7th day of November, 1995, at 10:30 a.m. The hearing will be held in the State Board Room, which is located on the Second Floor of the Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa. It will be held before a hearing panel consisting of Don Helvick, consultant, Bureau of School Administration and Accreditation; Ann Molis, consultant, Office of Director; Ann Marie Brick, J.D., legal consultant and administrative law judge, presiding.

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

Appellant requests a hearing regarding Appellee's expulsion of her child for the remainder of the first trimester of the 1995-96 school year due to truancy.

If you have any questions or need any assistance with this matter, please feel free to contact me.

Jeannie M. Ramirez
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Grimes State Office Building
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**IOWA STATE BOARD
OF EDUCATION**

(Cite as 12 D.o.E. App. Dec. 144)

<i>In re Anthony Main</i>	:	
Cindy Main, Appellant	:	
	:	
v.	:	DECISION
	:	
Newton Community School District,	:	
Appellee.	:	[Admin. Doc. #3557]

The above-captioned matter was heard on November 30, 1994, before a hearing panel comprising Mr. Roger Stirler, chief, Bureau of Internal Operations; Dr. Joseph Freilinger, consultant, Bureau of Special Education; and Ann Marie Brick, legal consultant and designated administrative law judge, presiding. Appellant, Cindy Main, was present in person and represented by Mr. Eugene Knopf. Appellee, Newton Community School District [hereinafter, "the District"], was present in the persons of Dr. Phil Hintze, Superintendent; Ms. Jean Morgan, Board President. The District was represented by Attorney Carol Greta of Matthias, Campbell, Tyler, Nuzum, Greta and Rickers.

A mixed stipulated and evidentiary hearing was held pursuant to departmental rules found at 281 Iowa Administrative Code 6.

Appellant sought reversal of a 6-0 decision of the board of directors [hereinafter "the Board"] of the District made on October 26, 1994, expelling her son, Anthony for the remainder of the 1994-95 school year for a weapons violation. The parties filed briefs through counsel. Authority and jurisdiction for the appeal are found at Iowa Code chapter 290.

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 case before them.

The undisputed facts are these:

Anthony Main was enrolled in the ninth grade at the Newton Community High School in the Fall of 1994.

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He is small for his age, probably less than 80 pounds

and under 5 feet tall. As a freshman, he attended orientation and was given a copy of the Newton Senior High School Handbook 1994-1995. Page 14 of the manual contains a statement regarding suspension and expulsion which reads in part as follows:

"Violations of alcohol policies, drug policies or other major infractions or repeated violations of school policies will result in suspension and possibly a subsequent expulsion hearing. Expulsion is the permanent removal of a student from school for at least the current semester or longer, depending upon the decision of the Board of Education."

Anthony admits that he "just glanced through the manual."

On September 26, 1994, the Board passed Policy #502.11. This policy states:

School district facilities are not the place for dangerous weapons of any kind. Dangerous weapons shall be taken from students and others who bring them onto the school district property or onto property within the jurisdiction of the school district or from students who are within the control of the school district.

The board believes dangerous weapons on school district facilities cause material and substantial disruption to the school environment or present a threat to the health and safety of students, employees and visitors on the school district premises or property within the jurisdiction of the school district.

Parents/guardians of students found to possess a dangerous weapon or a look alike on school property shall be notified of the incident. Such activity may be reported to the police and the student will be subject to disciplinary action which may include expulsion up to one (1) year.

Weapons under the control of law enforcement employees shall be exempt from this policy. The principal may allow authorized persons to display dangerous weapons for educational purposes. Such a display shall also be exempt from this policy.

It shall be the responsibility of the superintendent, in conjunction with the principal to develop administrative regulations regarding this policy.

Date of Adoption: September 26, 1994

LEGAL REF: McClain v. Lafayette County Bd. of Education, 673 F.2d 106 (5th Cir. 1982).

The Policy had been discussed by the Board for some time before it was finally adopted. It was published in the local newspaper within a week of its passage. Neither Appellant nor her son had seen the Policy prior to the incident cumulating in Anthony's expulsion.

On October 14, 1994, approximately two weeks after the adoption of the Policy, Anthony was observed on school grounds with a weapon. The weapon consisted of a set of brass knuckles with a retractable 3" blade. He had taken the object to a football game. He contended that he was returning the weapon to its owner. He admitted possession of the weapon on school grounds. Anthony also testified that he showed the weapon to at least 15 different students at the football game. Neither Anthony nor his mother was aware that the possession of such an item on school property could result in an expulsion from school for up to one year.

The Board met in closed session on October 26, 1994, after proper notice of the charges and an opportunity to be heard was delivered to Anthony's mother. Following the hearing, the Board returned to open session and voted to expel Anthony Main for the remainder of the 1994-95 school year. A transcript of the closed session was provided and reviewed by each member of the hearing panel.

No alternative educational program is available to Anthony in Newton. He stays at home with his grandmother, who cannot drive. Appellant Cindy Main is a single parent who commutes to Des Moines for work.

II. CONCLUSIONS OF LAW

Appellant's Affidavit of Appeal questions the quality and sufficiency of the evidence against Anthony, the seriousness of the penalty imposed, and whether the Board should have given more consideration to the fact that Anthony had no alternative education available to him after his expulsion.

We do not disagree with Appellant that a student like Anthony is better off in school. But we have absolutely no basis on which to overturn the District Board's decision in this case.

Our standard of review of local school board decisions is to determine whether the action taken was arbitrary, capricious, without basis in fact, upon error of law, without or beyond legal authority or constitutes an abuse of discretion. In re Jerry Eaton, 7 D.o.E. App. Dec. 137, 141 (1989).

Clearly it was not made upon error of law or without or beyond legal authority, for the Iowa Code specifies that:

The board may, by a majority vote, expel any pupil from school for a violation of the regulations or rules established by the board, or when the presence of the pupil is detrimental to the best interest of the school. ...

Iowa Code § 282.4 (1993). (Emphasis added.)

Essentially, Appellant is left to argue that she and her son did not realize the gravity of the situation, and that expulsion is too serious a consequence for the offense. The Iowa legislature, however, has left that determination to local school boards. It is up to local boards to enact policies that will provide for the safety and welfare of the students and teachers under their jurisdiction. See, § 282.4 (1993).

The Newton District Board has lawfully enacted a policy on dangerous weapons to help ensure the safety of its teachers and students and to provide notice of the punishment to those who violate that policy. Unfortunately for Appellant and her son, it is a legal cliché that "ignorance of the law is no excuse." Whether or not Anthony had actual notice of the Board's policy, he should have known that bringing a weapon like the one he brought to the football game, would result in serious consequences. Even though it is very regrettable that Anthony has no alternative educational placement during the term of his expulsion, under present Iowa law, the District has no legal obligation to provide for Anthony's education once he is expelled.

While it may be a restraint upon liberty and an infringement upon happiness for the Legislature to inhibit a parent from sending his child to any school, it is neither restraint nor infringement for the Legislature to enact laws to debar a child from the mere privilege of acquiring an education at the expense of the state until he is willing to submit himself to all reasonable regulations enacted for the purpose of promoting efficiency and maintaining discipline. There is a marked

difference between the inherent right to conduct private school -- that is, to select and pursue a given legitimate vocation -- and the right to attend a public school.

1944 Atty. Gen. Op. (letter opinion).

If a student violates a policy properly adopted by the school board, the student forfeits his right to a tuition-free education. At that point, the school board is not legally required to provide any alternative education. While the State Board has encouraged school boards that expel students to consider providing alternative education, the Law in Iowa currently does not place such a requirement on the boards. Whether or not this is good public policy is for the legislature to determine, weighing all the pros and cons of such a concept. In the absence of legislation to the contrary, we cannot prevent Anthony's expulsion because it will deprive him of an education for the remainder of this school year.

The transcript shows that the Board was very aware of the competing factors which made their decision an especially difficult one. The Board is responsible for the safety of over 3,500 students in its district. The policy of properly educating one student must be balanced against the policy to ensure the safety of all the remaining students in the District. As difficult as it is to come to the conclusion that the Board reached in this case, it was a legally correct conclusion and one which we cannot overturn on this appeal.

In recommending affirmance of the District Board's decision, the Administrative Law Judge is following prior State Board precedent. See, e.g., In re David Ward, 11 D.o.E. App. Dec. 39 (1993); In re Korene Merk, 5 D.o.E. App. Dec. 270, 276 (1987); In re Kam Schaeffbauer, 9 D.o.E. App. Dec. 188, 192 (1982); and In re Jeremy Stephens, 11 D.o.E. App. Dec. 394 (1994).

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

III. DECISION

For the foregoing reasons stated above, the decision of the Newton Community School District board of directors to expel Anthony Main for remainder of the 1994-95 school year for possession of a dangerous weapon is accordingly recommended for affirmance.

DATE

ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

DATE

RON MCGAUVVRAN, PRESIDENT
STATE BOARD OF EDUCATION