

**Iowa State Department
of Education**
(Cite as 12 D.o.E. App. Dec. 406)

In re Curtis Faist	:	
Mary Bruns,	:	
Appellant,	:	
v.	:	DECISION
Schaller-Crestland Community	:	
School District,	:	
Appellee.	:	[Adm. Doc. #3688]

The above-captioned matter was heard telephonically on December 20, 1995, before a hearing panel comprising Erik Eriksen, consultant, Bureau of Instructional Services; Sharon Slezak, consultant, Office of the Director; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding. Appellant was "present" by telephone and represented by counsel, Attorney at Law, Storm Lake, Iowa. Appellee, Schaller-Crestland Community School District [hereinafter "the District"] was also present on the telephone, in the persons of Superintendent Alan Meyer and Dennis Mozer, High School Principal. Other board members were present on the conference call but did not testify.

An evidentiary hearing was held pursuant to Departmental Rules found at 281 Iowa Administrative Code, chapter 6. Authority and jurisdiction for the appeal are found in Iowa Code section 290.1.

Appellant seeks reversal of a decision of the Board of Directors [hereinafter "the Board"] of the District made on November 28, 1995, where they expelled her son from school for twelve months for "possession of a dangerous weapon on school grounds."

**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.

The facts of this case, as they pertain to Curtis Faist, are fairly straightforward. They are also undisputed. Curtis is seventeen years old and, until November 28, 1995, was enrolled in the 11th grade at Schaller-Crestland High School. On the morning of November 13, he drove his car to school and was about to enter the building just before 8:00 a.m. At the door to the school, he encountered a female student and he stopped to talk to her. She showed him a handgun which she said belonged to a fellow student that they both knew. Somehow, the girl had obtained the handgun from the fellow student the night before, and she brought it to school with the intention of returning it to him.

Curtis convinced the girl that it was not a good idea to take the gun with her into the school. He offered to take it to his car for safe keeping until it could be returned to the "owner." The girl agreed to this.

Within minutes after Curtis put the handgun in his car, the fellow-student pulled into the parking lot. Curtis approached the student and after a brief conversation, the student retrieved the gun from Curtis' car and put it in his own car. That was the extent of Curtis' involvement with and possession of the gun. None of the parties could testify about whether or not the gun was loaded at the time it was on the school premises. There is no evidence that the girl knew whether it was loaded or not, but Curtis did not know and did not ask. He simply took the gun from the girl and put it in his car with the idea that to do so would be better than letting the girl take it into school.

On November 14, the next day, Dennis Mozer, who is the principal of the high school, received information that there had been a handgun on school property.¹ He questioned Curtis who admitted his brief possession of the gun while he transferred it to his car. Curtis, along with the girl and the fellow-student, were immediately suspended for ten days. The Board met in closed session on November 28, 1995 and voted to expel all three students

for twelve months (November 29, 1996) with the following modifications for the opportunity to re-enroll in August of 1996 if all requirements are met: Each student shall participate in counseling and obtain a clinical evaluation showing that the student is not a threat to self or to others; each

¹ This information came to the principal as a result of a police investigation in which the fellow-student and another juvenile (not a district resident) were picked up in Storm Lake as runaways. They had the gun in their possession. Apparently, the gun had been stolen.

student shall continue an independent study of core curriculum classes (math, science, language arts & social studies) either by home-schooling or correspondence which the Board will grant credit; and, each student shall abide by all laws and the Board's good conduct policy prior to, and upon readmission." (Bd. tr. at page 2)

One Board member moved to amend the motion to allow the two boys to be readmitted to school on November 29, 1995 and the girl to be readmitted the first day of the second semester. This motion failed for a lack of a second. The original motion carried 3-1.

Appellant, Mary Bruns, through her attorney, appealed the Board's decision on the grounds that "the facts of this case do not fit within the intent and meaning of the school district policy requiring expulsion of students and we believe that Curtis Faist should not have been expelled from school."

II. Conclusions of Law

The Gun-Free Schools Act (GFSA) was enacted on October 20, 1994, as part of the Improving America's Schools Act of 1994 (the reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA)), Public Law 103-382. The GFSA provides that each state receiving federal funds under ESEA must have in effect, by October 20, 1995, a state law requiring local educational agencies to expel from school for a period of not less than one year a student who is determined to have brought a weapon to school. Each state's law also must allow the chief administering officer of the local education agency (in Iowa this is the superintendent) to modify the expulsion requirement on a case-by-case basis.² The Iowa Legislature not only complied with the federal law, it expanded it by enacting H.F. 528 which will be codified as Section 280.21 B. See H.F. 528, 76 General Assembly, 1st Reg.Sess., section 23 (1995). This new section entitled "Expulsion-Weapons in School" provides in pertinent part as follows:

² This discretionary requirement was put in the legislation so that the GFSA would not conflict with the Individuals With Disabilities Education Act (IDEA). That law makes federal funds contingent on providing a free appropriate public education to all children who are identified for special education services. It would be contrary to the IDEA for school officials to expel a special education student for behavior related to the student's disability. Guidance issued by the United States Department of Education and revised October 31, 1995, does not limit the use of the case-by-case exception to special education students. However, the guidance specifically states that "this exception may not be used to avoid over-all compliance with the one-year expulsion requirement." (Guidance at page 6, Q15).

The board of directors of a school district and the authorities in charge of a nonpublic school which receives services supported by federal funds shall expel from school for a period of not less than one year a student who is determined to have brought a weapon to school or knowingly possessed a weapon at a school under the jurisdiction of the board or the authorities. However, the superintendent or chief administering officer of a school or school district may modify expulsion requirements on a case-by-case basis. This section shall not be construed to prevent the board of directors of a school district or the authorities in charge of a nonpublic school that have expelled a student from the student's regular school setting from providing educational services to the student in an alternative setting. ... For the purposes of this section, "weapon" means a firearm as determined in 18 U.S.C. section 921. This section shall be construed in a manner consistent with the federal Individuals With Disabilities Education Act, 20 U.S.C. section 1400 et seq.

Id. (Emphasis added.)

The section above which is emphasized is the section which was added by the Iowa Legislature that went beyond the requirements of the federal GFSA.³

The facts are undisputed that Curtis took the handgun, a

³ The Iowa Legislature added additional requirements for school districts involved in disciplinary actions for weapons. School districts must adopt procedures:

- a. Requiring "school officials to report to local law enforcement agencies any dangerous weapon, as defined in section 702.7, possessed on school premises in violation of school policy or state law." (H.F. 528, section 21-codified as section 280.17A);
- b. "Prescribe procedures for continued school involvement with a student who is suspended or expelled for possession of a dangerous weapon... ." H.F. 528, section 22 (codified as section 280.17B).
- c. "For the reintegration of the student into the school following the suspension or expulsion." Id.
- d. The new Iowa law requires that students who "possess" a "dangerous" weapon on school premises must be referred to the criminal justice or juvenile justice delinquency system. H.F. 528, section 21 (codified as section 280.17A).

dangerous weapon, from the girl and transported it to his car for

410

"safekeeping." He admitted doing it and explained why he did. His actions constitute "possession."⁴

The Superintendent referred to the District's weapons policy and recommended that Curtis be expelled for 12 months. Additionally, the Superintendent exercised his discretion to modify the expulsion requirement. He recommended that Curtis be allowed to re-enter school at the beginning of the 1996-97 school year upon fulfillment of certain prescribed conditions.

One board member thought the expulsion was too harsh under the circumstances and recommended suspension only. This motion was defeated by a vote of 3-1. Appellant, through her attorney, agreed with this board member that the expulsion was too harsh and appealed the Board's decision on the grounds that it went beyond the punishment required by the District's policy, and therefore, constituted an abuse of discretion.

Looking only at the weapons policy enacted by the Board, one could argue that expulsion for "possession" alone is not a requirement. Appellant relies on the third unnumbered paragraph of the policy which states as follows:

Parents of students found to possess a weapon or dangerous objects on school property shall be notified of the incident. Confiscation of weapons or dangerous objects shall be reported to the law enforcement officials and the student will be subject to disciplinary action including

⁴Even under the more stringent requirements of a criminal "possession" statute, Curtis would have been found to have "knowingly possessed" a weapon under the terms of the statute. See, e.g., U.S. v. Wight, 968 F.2d 1393, 1397 (1st Cir. 1991). (Element of "knowing possession" under statute prohibiting being in possession of a firearm may be established by proving that defendant was in constructive possession of the firearm, and as long as convicted felon knowingly has the power and the intention at a given time of exercising dominant and control over a firearm or over the area in which the weapon is located, directly or through others, he is in "possession" of the firearm.); State v. Thomas, 252 A.2d, 215, 217, 105 N.J. Super. 331 (1967) (although defendant did not own the gun, where he voluntarily took possession of it and made no effort to deliver it to lawful owner or to police authorities but participated in an effort to conceal it in his brother's pocket, his dealings with the gun constituted "possession."). Contra, In re Amy A. Cline, 2 D.P.I App. Dec. 16 (1979) (Board was overruled for expelling a student who was found to have "possessed" narcotics in violation of the school's drug policy when she was found in possession of a white pill she had picked up off the floor without knowing that it was a controlled substance).

suspension or expulsion.

Schaller-Crestland Policy 502.9 (approved 2-8-95).

Although a district is originally bound to act in accordance with its duly adopted policies, this policy conflicts with

411

current State law.⁵ State law does not give the Board the option to suspend a student who possesses a weapon. The student who possesses a weapon, under Iowa Law, must be expelled. "The Board of Directors ... shall expelled from school for a period of not less than one year a student who is determined to have brought a weapon to school or knowingly possessed a weapon at a school under the jurisdiction of the Board" H.F. 528, section 23.

Although the Board's expulsion of Curtis appears too harsh under the circumstances surrounding his case, the Board's action was mandated by State law. When a student is found in possession of a weapon on school premises, the Board must expel rather than suspend the student. This represents the message of "ZERO TOLERANCE" that our representatives want to send to students in Iowa. There is no indication that the legislature wanted school authorities to forebear with respect to students who only "possess" guns until such time that these guns are actually used. See, Doe v. Superintendent of Schools of Worcester, 421 Mass. 117, 653 N.E.2d, 1088 (1995) (school authorities did not abuse discretion by expelling students for possession of lipstick case knife in violation of school's weapons policy).

In spite of the expulsion mandate, there is room for the exercise of judgement and discretion on the part of the local board and superintendent when circumstances warrant.

Schools are charged with the daunting task of educating children from diverse backgrounds, with diverse abilities, needs, and problems If effective education is to be possible, school authorities must provide and maintain a safe learning environment. Educators of necessity have broad authority to maintain order, discipline, and safety; the exercise of such authority must be left to their sound discretion since so many variables are inherently involved. ...

⁵The Board's policy 502.9 was adopted from a model policy developed by the Iowa Association of School Boards (IASB) that was drafted prior to the passage of H.F. 528 by the Iowa Legislature. IASB subsequently updated this model policy to reflect Iowa's more restrictive weapons legislation. The District Board is advised to review 502.9 and adopt the revised version.

Doe v. Superintendent of Schools of Worcester, supra at 1094.

Both the GFSA and H.F. 528, § 23 recognized the broad disciplinary authority historically conferred on schools. There is authority given to the superintendent to "modify the expulsion requirement on a case-by-case basis." Id. The State Board cannot prescribe when these expulsions should be modified. That would further fetter the freedom of local boards to respond to

412

the specific needs of their own students and community. The State Board can, however, offer some guidance on how such modifications should be considered by reiterating these principles.

- The superintendent's authority to recommend that the expulsion be modified should not be used arbitrarily, but only when the superintendent determines that expulsion for one year is not appropriate. The superintendent should state in writing to the board, the reasons for the recommendation. In this statement, the superintendent should give an opinion that the continued presence of the student in the school will not pose a threat to the safety, security and welfare of the other students and staff in the school. See, Doe v. Superintendent of Schools of Worcester, 653 N.E.2d at 1093.
- The recommendation to modify should take into account "the unique or peculiar aspects of each case, the nature of the misconduct, the degree of culpability of the student(s) involved and what punishment would be felt without totally destroying the student's motivation to continue his or her education." In re Carl Raper, 7 D.o.E. App. Dec. 352, 355 (1990).

The school board, as the final arbiter of a district's policies and views, may but is not required to consider mitigating circumstances in deciding whether or not to exact the full measure of punishment due a student for violating the rules. In re Eric Plough, 9 D.o.E. App. Dec. 234, 242 (1992). In the present case, the Superintendent and the Board did choose to modify the expulsion requirement. We congratulate them for their efforts to provide the students with alternative education and counseling during the period of their expulsion. While we cannot find any abuse of discretion in the Board's decision to modify Curtis' expulsion, neither are we saying that the Board lack authority to do more if it wished to do so. Under the principles just enunciated, the Board may decide to distinguish further between the students in the application of its discipline. That's a decision that we leave entirety to the local board.

Our decision is to uphold the Board's action despite our sympathy for Curtis' situation. The Board's actions in light of the Superintendent's recommendation to expel with modification is

consistent with both State and Federal law. We do caution, however, that the Board's weapons policy 502.9 should be revised to be consistent with H.F. 528, § 23.⁶

413

**III.
Decision**

For the foregoing reasons, the decision of the Schaller-Crestland Community School District's Board of Directors, made on November 28, 1995, is hereby affirmed. There are no costs to be assigned under Iowa Code chapter 290.

DATE

ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

DATE

CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION

⁶Any school districts having weapons policy with the legal reference "Goals 2000, Educate America Act, Pub. L. 103-227, 108 stat. 125 (1994), should be revised because these model policies were drafted prior to the enactment of the State legislation.