IOWA STATE BOARD
OF EDUCATION
(Cite as 9 D.o.E. App. Dec. 234)

In re Eric Plough	:	
Linda K. Plough, Appellant,	:	
v.	:	DECISION
West Des Moines Community School District, Appellee.	:	[Admin. Doc. #3167]

The above-captioned matter was heard on consecutive Mondays, April 20 and 27, 1992, before a hearing panel comprising Dr. Barbara Wickless, consultant, Bureau of School Administration and Accreditation; Don Helvick, consultant, Bureau of School Administration and Accreditation; and Kathy L. Collins, legal consultant and administrative law judge at the designation of Dr. William L. Lepley, director of education. Appellant Linda Plough was present in person and was represented by Michael Galligan of the Galligan Law Office, Des Moines. Appellee West Des Moines Community School District [hereafter the District] was present in the persons of Board President Eugene Meyer, high school Principal Dr. Robert Brooks, and Assistant Principal, Jim O'Dea. The District was represented by David Swinton and Andrew Bracken of the Ahlers law firm, Des Moines, Edgar A. Bittle, also on the brief.

An evidentiary hearing was held pursuant to departmental rules found at 281 Iowa Admin. Code 6. Appellant sought reversal under Iowa Code chapter 290 of a decision made by the board of directors [hereafter the Board] of the District made on January 6, 1992, expelling her son, Eric, for possession of LSD, as a second offense of the substance abuse policy during his high school career.

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 this appeal.

Eric Plough is a 17 year-old junior who attended Valley High School in the fall semester of the 1991-92 school year. On a Tuesday or Wednesday in mid-December, a student we shall refer to as "O.S." suggested to Eric and at least two of his classmates that O.S. could obtain "hits" or doses of LSD, an hallucinogenic controlled substance, for $5 each. None of the students indicated an interest at that time. O.S. approached Eric again on two more occasions that week, and Eric put him off.

However, on Friday thereafter, the 13th of December, Eric Plough gave O.S. $5 sometime in the morning at school for a single hit of the drug. O.S. obtained the LSD from a third party ("T.P.") in the restroom and tossed it to Eric in the Valley High School cafeteria as Eric and David

Richards were having lunch. Eric apparently had second thoughts,[1] for before he and David left the lunchroom he threw away the foil-wrapped substance with his lunch refuse.

Shortly thereafter, Valley High School administrators learned that T.P. had been selling drugs on school grounds and called him into the office. T.P. admitted selling LSD and told Vice Principal Jim O'Dea that he had sold one hit to O.S. and more to another student. Mr. O'Dea called O.S. into his office and confronted that student with the accusation; O.S. initially denied any knowledge or involvement but ultimately changed his mind and admitted he had received $5 from Eric Plough, which O.S. gave to T.P. in exchange for a package, presumably containing LSD. A search of O.S. revealed he had no drugs in his possession.

Eric was then called in by Mr. O'Dea and asked about a purchase of LSD. Eric denied it. Mr. O'Dea searched Eric, found nothing, and sent him back to class.

Mr. O'Dea had an admission from T.P. to selling illegal drugs on school grounds and an admission from O.S. of paying for and delivering drugs, and he spoke with both of their families regarding suspension from school. In his conversation with O.S.'s parent, Mr. O'Dea apparently indicated that O.S.'s statement (that he provided one hit to a student) was not verified because that student had not admitted any involvement, nor was he in possession at the time he was called in.

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[1] Eric, attending school in Minnesota at the time of this hearing, did not testify before the panel. At his hearing before the Board on January 6, Eric stated,

> After speaking to some of my friends during this time . . . we decided that this was a big risk. This was something that is not known to any of us, and we then talked about it. As they left for class I sat down again and finished my lunch . . ., then threw it away with my lunch. Mostly because I was scared. I didn't know anything about [LSD]. I was looking for an escape for awhile, so that is why I purchased it. But I never proceeded to taking it.

Appellant's Exhibit J at p. 12.

Later in the Board hearing, Eric said,

> I didn't -- I threw the drug away. I never used it. I thought if I could get by this, this wouldn't happen again and I didn't want to be expelled. I knew the consequences if I got caught. I would be up here where I am right now today, and I tried to avoid that because I like Valley and I didn't want to be expelled.

Id. at p. 26.

O.S.'s parent suggested to O.S. that O.S. call Eric Plough and tape record the conversation, which O.S. did. The conversation between O.S. and Eric took place on Saturday, December 14. In the course of their discussion, O.S. told Eric how the investigation had proceeded and that O.S. had given the administration Eric's name. O.S. asked Eric if he had been called in, to which Eric replied, "Yeah, I didn't have any, though. . . . I threw mine away." Appellant's Exhibit N.

O.S.'s father delivered the tape to the administrative offices[2] on Monday, and Mr. O'Dea played the tape, heard Eric's incriminating statement, and called Eric into his office again. After once more denying he had bought LSD, Eric finally admitted the truth of the accusation when Mr. O'Dea played the tape for him.[3]

Eric was suspended from school on Monday, December 16, for violation of the District's policy on controlled substances. The Vice-Principal, Mr. O'Dea, and the principal, Dr. Robert Brooks, determined that this was Eric's second violation of the drug and alcohol policy; thus, pursuant to the administration's rules, Eric was recommended for immediate expulsion.

His first violation of the policy occurred in October, 1990, when Eric was a sophomore. He came to school on the day of a delayed (10 a.m.) start after having drunk beer at (apparently) an early morning party with some other students. When the administration heard rumors of students' drinking before school, they investigated and Eric's name came up. He was called into the school nurse's office and she made some observations about Eric, including the presence of an odor of alcohol on his breath. Eric admitted having drunk beer prior to school. He and three or four other students were suspended from school for five days. He was required to submit to a substance abuse evaluation pursuant to the policy, share the results of the evaluation, and he and Appellant had to meet with administrators prior to his readmission. The results of Eric's first chemical assessment did not suggest a belief by the counselor that he was abusing drugs or alcohol.

After his suspension was imposed for the current offense, Eric gave a urine sample to his mother on December 19 for the purpose of being tested for drugs. It was his own suggestion. Appellant is a nurse, so she took the sample to work and sent it to a hospital where it was tested for six chemicals. The test results, all negative, were admitted into evidence at the Board hearing and before the panel here. Previous Record at Tab 5. Eric also returned to the Central Assessment Center of the National Council on Alcoholism and underwent a second assessment. Appellee's

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[2] We do not agree with Appellant's view that a discrepancy between Mr. O'Dea's recollection (that the tape was not delivered to him personally) and O.S.'s father's recollection (that he gave the tape directly to Mr. O'Dea) is in any way significant in this case.

[3] Although Eric admitted buying and receiving LSD, the foil container was not recovered from the cafeteria waste containers; consequently no test was ever done to determine if it was, in fact, LSD. Eric did not open the small package nor examine the contents prior to discarding the foil package. He testified before the Board that he would not know LSD by sight.

Exhibit 5. The assessment counselor recommended that Eric and his mother attend an alcohol education program through Our Primary Purpose (OPP) and that Eric seek grief counseling. Id. She did not express concern that he needed treatment.

Eric and Appellant attended the January 6 Board expulsion hearing and were represented by counsel there. In addition to their own statements, they provided two character witnesses who spoke to the Board encouraging fairness and justice for Eric. Eric's mother Linda, Appellant in this case, shared with the Board the history of Eric's father's recent death, asking the Board members to take this information into consideration in reaching their decision.

Eric is an only child, and his parents were divorced when he first began school. Eric lived with his mother in Carson, Iowa, until they moved to West Des Moines in 1982. Eric had continued if sporadic contact with his father until Eric's freshman year. At that time, apparently Mr. Plough, living in the Council Bluffs area, was suffering from a drug or alcohol addiction. He and Eric reconnected in the spring of that year (1989-90) through letters while his father underwent inpatient drug treatment. However, Mr. Plough experienced a setback during Eric's sophomore year. Appellant stated that her ex-husband "fell off the wagon" and subsequently lost his job. Again Eric and his father lost touch. The last time Eric had contact with is dad was last September; Mr. Plough committed suicide in October of 1991.

According to the testimony of two of Eric's friends and his mother, Eric did not actually confront his own grief over his father's death. Although he spoke increasingly of his father to his friends, he seemed to one of his friends to be harboring some guilt, as the relatives of suicides sometimes do. One or two counselors at Valley suggested to Eric that he may wish to attend a meeting of the Loss Support Group, a grief counseling program at Valley, and his mother tried to arrange counseling for him but he expressed no interest in participating at that time.[4]

The Board was privy to this background that occurred only two months prior to the LSD incident at school. They may have even given it weight, for their decision in Eric's case was to suspend him for the balance of first semester, allowing him to take his final exams and receive credit for that term, and to expel him from school for second semester.[5] The Board took action the same night on three other students who were also

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[4] Eric changed his mind after the LSD incident and agreed to seek counseling to help him deal with his dad's death. He sees a counselor in Des Moines when he visits here from Minnesota.

[5] The vote was 4-3 to impose the sanctions stated above. Two of the three directors casting nay votes clarified at the next meeting that their dissent was due to their preference that Eric be "expelled from the time the Board considered the matter, forward." Previous Record, Tab 8, Board minutes of January 13, 1992, p. 1.

involved in drug transactions.[6] The Board was not presented with an administrative recommendation to expel O.S., so there is no record of Board action related to O.S. The Valley High School administration had made a determination that O.S. had not been a seller or deliverer of controlled substances under the policy. Instead he was given a five-day suspension for a first violation of the drug and alcohol policy as having been only "in possession" of controlled substances.

Appellant and her counsel have made much of the treatment O.S. received. Their position is that O.S., who had approached Eric Plough for three consecutive days asking if Eric and his friends wanted to buy some LSD, and from whom Eric actually bought the illegal substance, should have been treated as a "distributor" under the policy, which requires an expulsion recommendation for even a first offense. Instead, Mr. O'Dea and Dr. Brooks found him to have been a "go-between" in the transaction, and he was consequently given the lesser penalty.

O.S.'s father is a man of some stature in the Des Moines business community, and his company -- along with many other local businesses -- has donated money or equipment to the District. See Appellant's Exhibit 6. Appellant suggests O.S. was given deferential and preferential treatment from school administrators because of this. Mr. O'Dea testified that he sought rather to treat O.S. similarly to the treatment he and Dr. Brooks agreed to last year when a student also acted as a go-between in a drug transaction at school. Mr. O'Dea testified that the significant difference in his mind between a dealer/distributor of controlled substances and a possessor of controlled substances has to do with two factors: quantity and whether or not the student in question actually brought the contraband to the campus. In this case, O.S. admitted to providing one hit of LSD to Eric Plough, and he had not brought the substance onto school grounds.

The Board heard the evidence in all four student expulsion cases in separate closed sessions on January 6, and then went back into closed session to deliberate the fate of all four students. The tapes and a rough transcript of the Board's deliberation were submitted for the consideration of the administrative law judge and hearing panel in this case. Appellant has specifically asked us to evaluate the propriety of one or two Board members' statements in the executive session.

One member of the Board of directors made statements of purported fact in reference to Eric's past experience with drugs and other problems that were not based on evidence submitted to the Board. Appellant's Exhibit K at pp. 7-8. A director also spoke as if relatively in-depth conversations between this Board member and Appellant Mrs. Plough had occurred in the past; Mrs. Plough denied having anything but social exchanges with the director in the past. Most of the other areas of executive session discussion to which Appellant directs our attention involved directors' assessments of Eric's credibility.

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[6] T.P. was expelled effective January 6 for the rest of the school year for delivery of a controlled substance based upon his admission. Thus T.P. lost two semesters' credits. A special education student's punishment was postponed because of the unique responsibilities public schools have toward the education of students with disabilities. A third student who bought LSD from T.P. was suspended for the balance of first semester and expelled for second semester, as was Eric Plough. Previous Record, Board minutes of January 6, 1992, Tab 7, at pp. 2-3.

II.
Conclusions of Law

Appellant has raised several legal issues in challenging the Board's action in this case. None is, of course, an attack on the Board's authority to make the decision in this case. Iowa Code section 282.4 provides that a school board "may by majority vote, expel any scholar from school for . . . a violation of the regulations or rules established by the board." Boards have the responsibility to "prohibit and punish students for the use or possession of alcohol and controlled substances." Iowa Code §279.9 (1991). They may also set terms and conditions for readmission of students expelled. Iowa Code §282.5 (1991).

Instead, Appellant focuses on the following issues, as summarized by the panel:

1. Whether Eric Plough was denied due process of law in violation of the Fifth and Fourteenth amendments to the Constitution when a director assumed a "prosecutorial" stance in questioning Eric at the hearing, and "introduced" alleged but unsubstantiated facts not in evidence into the deliberation portion of the hearing. Appellant contends this discussion had the effect of expanding the charges against Eric beyond what was in the stated notice to Mrs. Plough, and denied him the opportunity to be advised of all of the evidence against him and effectively to cross-examine the "witness" relating that evidence.

2. Whether Eric was denied procedural due process when some of the decision makers in his case appeared to base their personal, voted decision on alleged prior knowledge of Eric's past. Did the statements by these directors rise to the level of partiality in violation of Eric's fundamental right to a decision by an impartial tribunal?

3. Whether the first violation of the drug and alcohol policy, occurring in October 1990, was erroneously taken into consideration by the Board because Eric's mother had never been notified of that charge and because he was technically not "in possession" of alcohol.

4. Whether Eric was denied due process of law in the absence of any proof that the substance bought by and given to Eric Plough was LSD, a controlled substance, or even a "lookalike" substance, which is to be treated the same under the policy.

The student handbook lays out the drug and alcohol policy applied to Eric in this case. It reads as follows:

> Any student possessing, using, or being under the influence of any liquor or beer, controlled substance, look-alike, or substitute . . . shall be strictly prohibited while the student is on any school property or under school supervision.[7]

Board Policy 502.7; Previous Record at Tab 11, p. 1. The policy provides

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[7] Appellant points out that the syntax of this policy is poor, a fact with which we agree, and that its lack of grammatical clarity casts doubt on its enforceability, with which we disagree.

for separate consequences for a first offense and second/subsequent offenses "during . . . enrollment [in] ninth through twelfth [grades]." Id. The consequence for a second violation is out-of-school suspension and a mandatory recommendation of expulsion. Id. A separate policy dealing with the "sale and/or distribution of alcoholic beverages and/or controlled substances" has the mandatory consequences of referral to law enforcement, out-of-school suspension, and a recommendation for expulsion for even a first offense. Appellee's Exhibit 2 (Student Handbook) at p. 54; Previous Record at Tab 10. This policy also reflects the fact that quantity will be considered in reaching a determination as to whether there exists an intent to sell or distribute. Id.

We conclude without hesitation that Eric Plough was not denied procedural due process of law by the administration in this case. There was no question of Eric's guilt in this matter. Although he initially denied his involvement, he subsequently admitted that for some ten to fifteen minutes he was "in possession of" what no one contends was not LSD, a controlled substance. Although Eric may have been induced to make the purchase and may have exhibited within a one hour period of time both terrible judgment and commendable judgment, the fact remains that he was aware of the policy, knew that the purchase of LSD would be in violation of it, and knew what the consequences of his violation would be. He was given clear oral notice of the charge and the evidence against him and an opportunity to be heard prior to his suspension. Goss v. Lopez, 419 U.S. 565 (1975). He was given written notice of the bases for the recommendation to expel; was given the opportunity to appear; to examine the evidence; to know the identity of his accusers;[8] to confront and cross-examine witnesses against him at the Board hearing; and have the advice of counsel at his own expense. He was provided copies of all documents, and received written findings of fact and conclusions of law. There was a full measure of process given Eric Plough. We will discuss the alleged bias of board members at some length infra.

In his zealous representation of his client, Appellant's counsel was critical of the policy language, the investigation, and the adequacy of nearly every aspect of the District's and Board's actions. He asked us to remember that in deciding this case we are teaching Eric and his fellow students about due process and fairness. We are mindful of our educational responsibility and hope that our explanation teaches all of the parties about how the courts have defined and discussed due process of law.

The challenges here stem from alleged procedural due process violations. Let us not forget that the primary purpose of the rudimentary "notice and an opportunity to be heard" is to guard against mistakes. Goss v. Lopez, 419

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[8] Most of the case law indicates that this "right," if it applies at all in the context of an expulsion hearing, applies to the ability to question the administrator who proffers the evidence at hearing. See e.g., Paredes by Koppenhoefer v. Curtis, 364 F.2d 426 (6th Cir. 1988); Cooper, D.J. and Strope, J.C. "Long-Term Suspensions and Expulsions After Goss," 57 Ed. Law Rptr. 29, 36-39 (Jan. 18, 1990). Valley High School goes farther than it appears the law would require by its promise that the student shall have the right at an expulsion hearing "to learn the names of the witnesses who are responsible for having reported the alleged violation," Previous Record, Tab 3, notice of hearing.

U.S. at 565 "[R]equiring effective notice and informal hearing permitting the student to give his version of the events will provide a meaningful hedge against erroneous action." "[D]ue process requires, . . . that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story." Id. at 581 (emphasis added). Eric never contended that there was a mistake made; he admitted having bought LSD and there isn't even a hint that his admission came under coercion or undue influence. No mistake was made. Eric was mature enough to accept the consequences of his (perhaps momentary) bad judgment, and we believe he can take pride in having done the right thing in the end, even though he opened himself up to punishment for his regrettable short-term lapse of good sense.

As to the adequacy of the policy language, the United States Supreme Court has determined that school rules need not be written with the precision of a criminal code. Bethel v. Fraser, ___ U.S. ___, ___, 106 S.Ct. 3159, 3166 (1986). Moreover, it is inappropriate for a reviewing body to substitute its interpretation of the wording of a school board's policy for that of the board itself. Board of Education v. McCluskey, ___ U.S. ___, ___, 102 S.Ct. 3469, 3472 (1982)(Board policy providing that the school board may suspend or expel any student for "good cause," and "good cause" was defined as "sale, use or possession of alcoholic beverages or illegal drugs," was sufficient foundation to expel students for drinking off school grounds and returning to school under the influence or intoxicated). This authority supports our upholding of the policy, the first (1990) offense (being "under the influence" of alcohol at school[9]), and the Board's finding that Eric was in possession of LSD.

The rule applied here has a valid educational purpose. The deterrence of drug and alcohol use and abuse is consistent with the mission of all schools today. See Iowa Code §§279.9; 256.11(5)(j); 279.50(1)(i)(1991). It is clear that the directors and administrators of the District are aware of their need for vigilance in the area of drugs and alcohol offenses. If the hearing panel had any second thoughts about this case, they lay in the fact that it doesn't seem that Eric was given much credit for throwing away the LSD, nor much empathy for his state of mind in mid-December. However, our purpose is not to sit as a "super school board" in these cases, substituting our judgment for that of the elected officials. In re Jerry Eaton, 7 D.o.E. App. Dec. 137, 141 (1987). We also recognize that nearly any student who is foolish enough to experiment with drugs and alcohol -- let alone a powerful and purportedly unpredictable substance such as LSD -- is probably suffering from some kind of problems in his or her life. See e.g., In re Eugene Whisenand, 8 D.o.E. App. Dec. 37 at 41 (1990):

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[9] See also Rohrbaugh v. Elide Board of Educ., 63 Ohio App.3d 685, 579 N.E.2d 782 (1990); In re Suspension of Huffer, 47 Ohio St.3d 12, 546 N.E.2d 1308 (Ohio 1989). Also, Goss requires only oral or written notice to the student. 419 U.S. at ___. Due process was not lacking when Appellant was not given notice of Eric's suspension in October of 1990 prior to its imposition. Moreover, the time to have challenged that punishment has long passed.

> It is sad that almost without exception the students who experience disciplinary problems at school also have significant home, family, or social problems outside of school. Understanding this connection has, in part, given rise to a wave of national concern over students 'at risk' of failure.

A 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. Accord Cross v. Princeton City School Dist. Bd. of Educ., 49 Ohio Misc.2d 1, __, 550 N.E.2d 219, 221 (Ohio Comm.Pl. 1989); In re Carl Raper, 7 D.o.E. App. Dec. 352 (1990).

The matter of the extraneous "accusations" and statements made by board members while in the deliberation phase of Eric's hearing gives us more pause. We do not agree with Appellant that questions posed during the hearing or two statements made in executive session amount to the assuming of a prosecutorial role by those directors; nor do we believe that such discussion rose to the level of a denial of Eric's right to know all of the evidence against him and to confront and cross-examine his accuser. If the facts were other than they are in this case (that is, an admission of the offense of possessing LSD) we would be quite seriously concerned about whether or not Eric received a fair hearing. See, e.g., Alex v. Allen, 409 F.Supp. 379, 388 (W.D.Pa. 1976); Rucker v. Colonial School Dist., 517 A.2d 203 (Del.Super. 1986); Gonzales v. McEuen, 435 F.Supp. 460 (C.D.Cal. 1977). However inappropriate the remarks made may have been, a review of the entire discussion reveals that on more than one occasion both counsel for the Board and individual directors reminded the governing body as a whole of their obligation to made a decision on the evidence before them at the hearing. It is certainly not clear that one or two unsubstantiated statements tainted the entire procedure. Of course, we on the panel wish to add our voice to those who discouraged the inclusion of this type of discussion by any director.

We do not conclude that Eric's rights to a decision on the evidence presented and a decision by an impartial tribunal were violated in this case, or that he was prejudiced by the inclusion of rumor and innuendo in the Board's deliberation process. See Jones v. Board of Trustees, Pascagoula Mun. Sep. School Dist., 524 So.2d 968, 972 (Miss. 1988)(. . . "to sustain a violation of procedural due process, the aggrieved party must show 'substantial prejudice.'"[citations omitted); In re Dustin Stober, 7 D.o.E. App. Dec. 306, 319 (1990)(Although procedures for expulsion were inadequate by Goss standards, Appellant "was unable to show prejudice or detriment of a sufficient degree to justify outright reversal.")

Finally, the discussion during deliberations of the directors' assessments of Eric's credibility during the hearing is well within the scope of any decision making body. We cannot, on review and without the benefit of seeing Eric in person, presume to judge his credibility or lack thereof.

The hearing panel has asked that I add a few words of unsolicited advice to the parties in the "for what it's worth" vein.

The Board may wish to discuss and adopt a policy on its procedure for making multiple expulsion decisions in one Board meeting. It may be wise to consider each case immediately after each hearing to avoid confusion.

The Board is reminded that standards for accreditation require a review of all policies every three years. 281 IAC 12.3(2).

It is not clear from the Student Handbook that the "equity grievance procedure" is the appeal process to be used for all reviews of administrative decisions. A clearer statement in the Handbook of a student's avenue of appeal of non-equity disciplinary issues would be in order.

We would encourage administration to follow up with suspended or expelled students to encourage their return to school,[10] and to consider other avenues of publicizing the many helping groups that exist at Valley High School, or alternative educational opportunities for excluded students, such as tuitioning them to another school through the consortium agreement among schools within Area XI. These programs look good on paper, but if the general student population isn't aware of them or options exist but are not utilized, their value is significantly reduced.

In sum, this case is about a young man who made two mistakes, one in October of 1990 and a second in December of 1991. The policy under which he was disciplined is reasonable, is rationally related to valid educational purposes, and was applied evenhandedly. That Appellant holds a different view of how another student should have been treated under the policy is regrettable for it is possibly the reason this case has continued despite Eric's admission of wrongdoing. In our view, although "reasonable minds may differ," the administration's determination that T.P. was the dealer/distributor and O.S. was a "go-between" who is guilty of possession only was based on past interpretation of the rules and reasonable factors (quantity and whether or not the student brought the substance to campus). Accord In re Carl Raper, 7 D.o.E. App. Dec. 352 (1990)(Fact that board chose to expel Carl for striking a teacher when it had not expelled students for calling in a bomb threat earlier in the semester did not constitute evidence of arbitrariness).

Our decision to uphold the Board's action, despite our considerable sympathy for Eric's state of mind last December, is consistent with State Board precedent. See, e.g., In re Kam Schaefbauer, 9 D.o.E. App. Dec. 188 (1992)(senior student expelled for selling one hit of LSD to another student on campus; first offense; upheld); In re Starla Roach, 8 D.o.E. App. Dec. 169 (1991)(senior expelled for a "death threat" note composed but undelivered to a faculty member; expulsion upheld); In re Eugene Whisenand, 8 D.o.E. App. Dec. 37 (1990)(freshman expelled for consuming

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[10] Surely the District doesn't want to establish the reputation of holding an attitude of "out-of-sight, out-of-mind" with respect to students who have been excluded or have dropped out of school. Also, notwithstanding a statement at the hearing that despite Eric's absence from the state, threats made against O.S. were being attributed to Eric or that he would somehow be held responsible if anything happened to O.S., we are confident that the Board and administration will accept Eric at Valley next fall for his senior year. We refuse to believe Eric will be blamed for alleged threats to O.S. under these circumstances.

alcohol and coming to school under the influence, upheld); In re Jason Clawson, 7 D.o.E. App. Dec. 271 (1990)(freshman expelled for school year for physical assault on teacher; affirmed as to expulsion; remanded for consideration of alternative education); In re Carl Raper, 7 D.o.E. App. Dec. 352 (1990)(freshman's expulsion for striking a teacher upheld); In re Troy Hudson, 7 D.o.E. App. Dec. 144 (1989)(junior expelled for physical assault on fellow student; affirmed); In re Douglas Williams, 2 D.P.I. App. Dec. 42 (1979)(expulsion for multiple offenses affirmed)[But see In re Korene Merk, 5 D.o.E. App. Dec. 270 (1987)(expulsion for two truancies and a smoking violation violated substantive due process; reversed).]

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

III.
Decision

For the foregoing reasons, the decision of the board of directors of the West Des Moines Community School District made on January 6, 1992, to suspend Eric Plough for the balance of the first semester and expel him for the second semester for possession of a controlled substance is recommended for affirmance.

May 27, 1992
DATE

Kathy L. Collins
KATHY L. COLLINS, J.D.
LEGAL CONSULTANT AND DESIGNATED
ADMINISTRATIVE LAW JUDGE

It is so ordered.

6/4/92
DATE

Ron McGauvran
RON McGAUVRAN, PRESIDENT
STATE BOARD OF EDUCATION