IOWA STATE BOARD
OF EDUCATION
(Cite as 7 D.o.E. App. Dec. 271)

In re Jason Clawson	:	
Christine Bergmeier, Appellant,	:	
v.	:	DECISION
Ottumwa Community School District, Appellee.	:	[Admin. Doc. #2082]

The above-captioned matter was heard on January 4, 1990, before a hearing panel composed of David H. Bechtel, special assistant to the director and designated presiding officer; Don Helvick, consultant, Bureau of School Administration and Accreditation; and Richard Boyer, consultant, Bureau of School Administration and Accreditation. Appellant Christine Bergmeier appeared in person and was represented by James Elliott of Legal Services Corp. of Iowa, Ottumwa. Appellee Ottumwa Community School District [hereafter the District] was present in the persons of Superintendent Richard Geith, Board President Dwight ("Butch") Jones, and was represented by Thomas Walter of Johnson, Hester & Walter, Ottumwa.

An evidentiary hearing was held under the provisions of Iowa Code chapter 290 and departmental hearing procedures found at Iowa Administrative Code 281--6. Appellant sought review of a decision made on October 16, 1989, by the District board of directors [hereafter the Board] to expel her son Jason Clawson for, at a minimum, the balance of the 1989-90 school year for a physical assault on a teacher.

I.
Findings of Fact

The presiding offcier finds that he and the State Board of Education have jurisdiction over the parties and subject matter of this appeal.

Jason Clawson is a fifteen year old boy who was a freshman at Ottumwa High School in the fall of 1989. One year earlier, when he was in eighth grade at Evans Junior High in Ottumwa, Jason was sent by his mother to the Laughlin Pavillion, a juvenile treatment center in Missouri. While he was there, Appellant sought an adjudication from the juvenile court that Jason is a child in need of assistance (CHINA) because of the trouble she had been having with him and to obtain the assistance of social service organizations in order to help Jason. He was at Laughlin Pavillion for approximately one month, in October-November of 1988.

Upon his release, Jason received psychiatric and psychological counseling and was placed on medication for several months. Jason's

family met with social workers from the Department of Human Services [DHS] and received family therapy and parenting skill development from First Resources of Ottumwa. Appellant retained legal custody of Jason throughout this period. Jason had no serious problems either at school or at home following his release from Laughlin. He signed a "Code of Conduct" voluntarily, which was a contract between himself, his mother, and DHS. Appellant's Exhibit 1.

Shortly after this school year began, Jason was in a brief altercation with another student at the high school. Vice Principal Joe Ferguson spoke with Jason about the incident, but imposed no penalty nor discipline as a result of the incident, instead warning him that there would be disciplinary consequences if he got into another fight. Within two weeks, Jason hit a teacher.

The incident occurred in math class shortly after lunch on October 5, 1989. Jason and another boy were talking, and the teacher, Harley Hecker, told the boys to stop talking and moved the other boy to a different seat in the back of the room. Jason then took a different seat himself, directly behind the seat he was to be in. Sometime during this period, Jason went to the water cooler in the classroom and made a remark about Mr. Hecker's having brushed his teeth in the drinking fountain. He also made a comment about the toilet paper in the classroom restroom. When told by Mr. Hecker to take his seat, Jason refused. Mr. Hecker then promptly wrote up a conduct referral (to the vice-principal) slip. Jason, upset at being sent to the office, told Mr. Hecker he would take the slip but he wouldn't go to the office. Mr. Hecker walked over to Jason's desk and said, "Let's go." Jason brushed his bookbag onto the floor, jumped up in anger and shoved his teacher into a machine of some sort in the classroom. Mr. Hecker picked up Jason's book bag, took Jason by the shoulder and said again, "Let's go." At that point, Jason punched Mr. Hecker in the nose, bending his glasses and causing his nose to bleed.[1]

At this point several students in the classroom restrained Jason, and Mr. Hecker went into the hallway where he found Mr. Ken Staton, a counselor, who had come out of his office when he heard the commotion. Mr. Hecker told Mr. Staton what had happened and asked for his help. Mr. Staton ordered Jason to the office and accompanied him. When the two of them were outside, on their way to the office in the main building, Jason indicated he intended to go straight home rather than to the office since he was "going to get kicked out anyway." When Mr. Staton tried to dissuade him from that course of action, Jason threw down his book bag and threatened to do to Mr. Staton what he had just done to Mr. Hecker. Mr. Staton wisely stepped in close to Jason and verbally convinced him to go to the office. Jason then picked up his book bag and accompanied the counselor to the office of Mr. Joe Ferguson, associate principal.

Jason told Mr. Ferguson what had happened, admitting he had hit Mr. Hecker in anger and without physical provocation. Mr. Ferguson told Jason

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[1] Mr. Hecker has experienced two heart attacks and is on the prescription medication Coumadin, a blood thinner, which makes it difficult for his blood to clot. It took Mr. Hecker the better part of the afternoon to stop his nosebleed and regain his composure.

he was suspended for ten days, and he called Jason's mother. No one answered, but he sent Jason home anyway.

There is no evidence, nor was there any indication at the time of the incident, that Jason was under the influence of alcohol (Mr. Staton got close enough to smell Jason's breath) or drugs.

Appellant returned home to find Jason there early in the afternoon. He told her what had happened, again admitting his assault. Appellant called Mr. Ferguson and learned that Jason was suspended from school for ten days and would probably be recommended for expulsion. Appellant claims she did not receive written notification of Jason's suspension in the mail, although Mr. Ferguson testified that the written notice was prepared and should have been mailed out that afternoon.[2]

Appellant was later informed by Mr. Ferguson that the Board would take up the issue of Jason's expulsion at its October 16 meeting. She attended with Ms. Stacey Utter, DHS social worker who testified in Jason's behalf, but without legal representation. Appellant did not receive written notice of the Board's hearing as required by Board policy 502.3A. Appellant's Exhibit 6.[3] She was informed orally, however.

The Board met and went into closed session for another expulsion recommendation and then for Jason's hearing.[4] The administration presented the facts of the assault on Mr. Hecker and the threat to Mr. Staton, and either alluded to or discussed the September altercation with another student, despite the fact that Jason was not found to have been at fault in that incident and no disciplinary action was taken against either boy. The administration's recommendation was to expel Jason for the duration of the school year.

Appellant did not contest the truth of the allegations against Jason, but attended in the hope of mitigating the recommended punishment.

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[2] The District's "Student Guide" states that written "due process notice of all suspensions shall be placed in the mail to the parent/legal guardian and the superintendent no later than one day after the close of the investigation." Appellant's Exhibit A at p. 18. No explanation was forthcoming as to why Appellant did not receive the notice. Appellee's Exhibit 1 (Jason's student records) indicate the form was prepared.

[3] According to Board policy 502.3A, the student is to be given five rights: "clear notice of the reasons for the expulsion; the names of the witnesses and an oral or written report on the facts to which each witness testifies; an opportunity to present a defense against the charges and provide either oral testimony or written affidavits of witnesses on the student's behalf; the right to be represented by counsel; [and] the results and finding of the board in writing open to the student's inspection." Appellant's Exhibit 6.

[4] The other student, unnamed at this hearing and in Board minutes of the October 19 meeting, was recommended for expulsion for using "brass knuckles" in an assault on another student. He or she was expelled for the balance of first semester, or until approximately mid-January, 1990.

Jason's family social worker testified as to Jason's improvement since his release from the Laughlin Pavillion, pointed out his perfect attendance record, and also sought leniency from the Board.

The Board apparently did not have Jason's entire record[5] before them. The directors only considered Jason's infractions, whether or not they were grounds for expulsion, and, if so, what the duration of the expulsion should be. They voted 7-0 to expel Jason from the District for the full school year, with conditions for readmission as follows:

> under the provisions that the student receive counseling through the Southern Iowa Mental Health Agency and that readmission be provided during the summer, 1990,[6] or at a time subsequent to that providing that the student has given evidence that the student is ready to return.

Previous Record, Board minutes of October 16, 1989, at page 5.

Board President Jones testified that in his opinion, hitting a teacher is about the most serious offense he can think of, and that the counseling requirement plus the full year's expulsion was intended to punish Jason severely, and send a message to Jason, the student body and the staff that the Board does not condone such behavior.

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[5] As a matter of informal discovery prior to this hearing, attorney for Appellant asked for a copy of all of Jason's school records. Those given to him did not include Jason's disciplinary records as maintained by the associate principal. The District apparently believed that only a student's "cumulative record" constitutes "student records." We remind the District that the federal regulations implementing the Family Educational Rights and Privacy Act (FERPA) defines "records" to mean "any information recorded in any way, including but not limited to, handwriting, print, tape, film, microfilm, and microfiche." In addition, an "educational record" is "directly related to a student," and exempt from the definition are those "records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record." 34 C.F.R. Part 99, §99.3 (emphasis added). This means that Mr. Miller's responsibility, as business manager and records custodian, is to turn over, on request all student records except those exempted by regulation. This would mean inclusion of Mr. Ferguson's disciplinary records on Jason, which were not provided to Appellant's attorney on request.

[6] The District operates a summer school program for which Jason could earn 4 1/2 credits, or the equivalent of one semester. Mr. Staton testified that if Jason goes to summer school and takes extra courses over the next three years, he could theoretically graduate with his class in 1993.

The Board did not create written findings of fact and did not provide Appellant with any written decision following the hearing. Appellant contacted the District in November, following the filing of the appeal, asking for Board minutes or some written evidence of the Board's action. Board secretary and business manager, Max Miller, sent Appellant a cover letter and copy of the minutes on November 22.

The District has operated an alternative high school for approximately eleven years. At the present time about 30-35 students attend there. They can be accepted at the alternative high school upon returning to school after dropping out, or the high school vice principal can offer the option to students he feels are candidates for the program. Mr. Staton, testified that students with personal problems that interfere with their performance in the regular classroom, disruptive students who do not qualify for special education, and students with emotional or financial constraints that make attendance in the regular high school difficult are likely to be offered the option of attending at the alternative school.

The Board was not asked to consider, nor did it raise the issue on its own, Jason's attendance at the alternative high school.

Jason had not, in his school career, ever hit a teacher before. No one at the District who testified could remember any District student ever striking a teacher. Mr. Hecker testified that he had had no problems with Jason prior to the October 5 assault. Although Jason had problems controlling his temper at home since his early adolescence, he had never been referred for a special education evaluation by either his mother or District staff. He and his family are receiving counseling and social services, and he is currently seeing a psychiatrist from Southern Iowa Mental Health agency as well as receiving individual therapy from social worker Stacey Utter. His mother believes he will probably again be placed on medication; although it makes him sleepy, it does help control his temper.

Jason currently is not receiving any educational services. Appellant has laid down some stringent rules at home. Jason cannot leave the house or watch television until 3:00 p.m. when he would be released from school if he were enrolled. Jason has obeyed the rules, but his social worker testified that he is growing increasingly restless and calls her requesting her help in getting him into school somehow, someplace.[7] Ms. Utter also testified that she could probably get Jason into a foster home or group home somewhere, but she is extremely reluctant to take a child out of the home solely for the purpose of getting him in school.

Jason testified that he knows what he did was very wrong and that his problem concerns his attitude and his reluctance to accept the consequences of his acts. He also stated he is very eager to return to school.

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[7] Shortly after Jason's expulsion, Appellant contacted a number of districts in the area attempting to get him into school. Eddyville accepted him initially, but after discovering the District would not pay his tuition, Appellant had to withdraw him because she could not afford tuition on her own.

II.
Conclusions of Law

A school board has the statutory authority to "make rules for its own government and that of the . . . pupils, and shall aid in the enforcement of the rules . . . ." Iowa Code §279.8 (1989). School boards "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 interests of the school; and it may confer upon any teacher, principal, or superintendent the power temporarily to dismiss a pupil, notice of such dismissal being at once given in writing to the president of the board." Iowa Code §282.4 (Supp. 1989).

It is, therefore, unquestionable that the District Board had the authority to expel Jason for his violation of the rules adopted by the Board. Although all school rules have to be reasonable, Greene v. Board of Directors, 259 Iowa 1260, 147 N.W.2d 854 (1967), the prohibition against student assaults -- be they upon teachers or other students -- is clearly a reasonable rule. Neither Jason nor Appellant contests the validity of the rule,[8] and Jason's actions have been fully admitted. The primary issue in this case is the reasonableness of the punishment, particularly the duration (nearly eight months with no credit for two semesters) of the expulsion.

Expulsion is the most extreme penalty a school board has in its arsenal. The State Board of Education has reasoned that "expulsion and its attendant loss of credit for the work performed up to that time is a significant loss which we believe should be reserved for singularly egregious conduct or for incorrigible behavior, if exercised at all." In re Korene Merk, 5 D.o.E. App. Dec. 270, 276 (1986). See also State Board Position Paper, "Statement of the State Board of Education Concerning Academic Sanctions or Penalties Imposed for Student Misconduct," 1987. We do not quibble with the District Board's conclusion that striking and injuring a teacher, without provocation, is "singularly egregious conduct." Therefore, the Hearing Panel agrees with the decision to expel.

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[8] The Board policy that gave birth to the administrative rule in this case is No. 502.1 "Maintenance of Orderly Conduct." Appellee's Exhibit 3. The rule violated, as stated in the Student Guide reads as follows:

> Suspensions may be invoked for but are not limited to the following actions:
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> 1. Threat to/or assault on any school employee
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> . . .

Appellant's Exhibit A at p. 17.

We do not agree with Appellant that the failure of the Board or administration to cite specifically the rule and Board policy Jason allegedly violated results in a denial of procedural due process. Even if there were no rule prohibiting assaults, the criminal laws of the State proscribe such behavior. We, as citizens, are all charged with the knowledge of state laws, and it is not necessary to repeat, as school offenses, all crimes in Iowa. Moreover, there was never any contention regarding the conduct that resulted in the recommendation to expel Jason.

The duration of an expulsion is not addressed by statute. However, an opinion of the Attorney General issued in 1944 addressed the question of duration of expulsions and concluded as follows:

> . . . I am of the opinion that the expulsion of a pupil would extend only to the end of the school year. That such pupil must be enrolled the next school year if he desires, and would be again subject to another expulsion for valid reasons.

1944 Op. Att'y Gen. (Strauss to Bruner, October 28, 1944).

Representatives of the District testified at this hearing that two expulsions were ordered on October 16: Jason's and another student's, who was found to have engaged in threatening or assaultive behavior with a weapon involving another student rather than a teacher. That student was expelled for first semester only. The difference between that student's penalty and Jason's was due primarily to the identity and position of the victim. The District claimed that the two semester duration of Jason's expulsion was to protect the welfare and best interests of the District and student body. Apparently the Board does not have the same level of concern in the other student's case as in Jason's, or the student fighting with brass knuckles would have also been expelled for the full year "for the welfare and best interests of the District and student body."

A loss of one full school year to a student who exhibits "at-risk" behaviors is significant, especially considering the fact that the student, at least in Iowa, is not free to attend school in another district at no cost to his parents. The dropout statistics in Iowa attest to the fact that students who encounter difficulties in school are often not motivated to continue the struggle for an education, and many dropouts are, more correctly, "dropped-outs."

The Hearing Panel believes it is commendable that the District operates an alternative high school for students who, due to personal problems of one sort or another, may continue their education outside the regular school environment. We believe Jason's history qualifies him for consideration for attendance there. Unfortunately, however, the Board was not given this option to consider for Jason.

We do agree that the Board had the authority, and was correct in exercising it, to set conditions for Jason's readmission to school.[9]

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[9] We are somewhat concerned, however, about the specificity of the Board's directive that Jason seek counseling from a certain, named agency. Under the circumstances present in this case, there was no problem getting Jason into the Southern Iowa Mental Health agency, but the possibility exists that a student would be unable to receive treatment at a certain facility, and would therefore be barred from performing the act required for his return. The better practice would be, we believe, to require counseling by a licensed psychologist or psychiatrist, and to leave the discretion to the parent or guardian to determine where those services are to be obtained.

Iowa Code section 282.5 states that "when expelled by the board, the scholar may be readmitted only by the board or in the manner prescribed by it." Appellant and Jason understand that in order to be readmitted, Jason must produce evidence that he is ready to return to school;[10] they intend to offer a statement from Jason's psychologist or psychiatrist to that effect, whenever that professional is able to attest to Jason's readiness. However, the Board, while appearing to defer to such a professional judgment, does not accept the possibility that Jason may be "ready to return" -- and thus eliminate or reduce the likelihood that his attendance will be detrimental to the welfare of the District or student body -- prior to "summer 1990." Nor did the Board consider that he might be ready to return to an alternative setting prior to that time.

We are not inclined to overturn the Board's decision in this case, believing it to be made within the bounds of the law and reasonableness. Nevertheless, the State Board is empowered to make a "just and equitable" decision (Iowa Code §290.3) and, as educators, the Hearing Panel believes that children, particularly those at-risk as Jason appears to be, should not be denied an education for such an extended time period when viable alternatives exist. (Unfortunately, students in many Iowa districts do not have an alternative high school that they could attend. We are supportive of the District's initiative in this area.)

Therefore, our decision in this case is to remand the issue to the District Board to consider the following options for Jason:

> (1) second semester enrollment in the alternative high school at such time as Jason's professional psychologist or psychiatrist is able to provide a statement to the effect that Jason's assaultive behavior is under control; or
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> (2) payment of one semester's tuition to allow Jason to attend in Eddyville or any other district that will accept him second semester, exclusive of transportation or parental reimbursement of transportation.

The Board is, of course, free to reject these alternatives after considering them, and Appellant would again be free to appeal to the State Board under Iowa Code chapter 290. The effect of this decision is to reverse the Board's action, temporarily, for reconsideration in light of this opinion.

In passing, we also wish to point out that established principles of due process (and even Board Policy 502.3A here) dictate that a written decision, including findings of fact, be provided by the Board to the student's parent or guardian reasonably soon following a hearing before the Board. See Goss v. Lopez, 419 U.S. 565, 95 S.Ct. 729 (1975); In re Scott Sadler, 2 D.P.I. App. Dec. 164, 166 ("Procedural due process

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[10] We would also suggest that a clear expectation is set of what proof is required for the student to return. In this case, the only record of the Board's action and reasoning appeared in the minutes and stated that Jason was required to receive counseling or "provide evidence that the student is ready to return." A fair question arises as to what "evidence" is necessary for Jason to produce.

requires, we think, that a . . . school board's decision be adequately set out in written form, including findings of fact," citing In re Monica Schnoor, 1 D.P.I. App. Dec. 136, 139.)

We do not conclude, as Appellants would have us, that procedural due process errors[11] require reversal in this case. We would advise that the District review its suspension and expulsion policies to make certain that the actions of administrators correspond to established procedures.

All motions or objections not previously ruled upon are hereby denied and overruled. Costs of this appeal, if any, under chapter 290 are assigned to Appellee.

III
Decision

For the foregoing reasons, the decision of the Ottumwa Community School District board of directors made on October 16, 1989, to expel Jason Clawson for school year 1989-90 is hereby remanded to the District Board for immediate action consistent with this opinion.

January 12, 1990
DATE

January 10, 1990
DATE

Karen K. Goodenow
KAREN K. GOODENOW, PRESIDENT
STATE BOARD OF EDUCATION

David H. Bechtel
DAVID H. BECHTEL, SPECIAL ASSISTANT
TO THE DIRECTOR
AND PRESIDING OFFICER

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[11] The only glaring error in procedure, aside from the failure of the Board to supply written findings of fact and conclusions, is the associate principal's decision to suspend Jason for ten days. Board Policy 502.2 allows building principals to suspend for up to five days, and the Superintendent may extend the suspension an additional five days. Appellee's Exhibit 4. Mr. Ferguson believed he had the authority to suspend a student for a full ten days, which he did in Jason's case. Although technically Mr. Ferguson violated Board policy 502.2, Superintendent Geith ratified his decision by not intervening to shorten the suspension to five days.