IOWA STATE BOARD
OF EDUCATION
(Cite as 6 D.o.E. App. Dec. 48)

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| In re Kevin Haffner | : | |
| Carol and Robert Haffner, Appellants, | : | |
| v. | : | DECISION |
| Clarinda Community School District, Appellee. | : | [Admin. Doc. #974] |

The above-captioned matter was heard on March 18, 1988, before a hearing panel consisting of Dr. William L. Lepley, director, Department of Education and presiding officer; Dr. Oliver Himley, chief, Bureau of Compensatory and Equity Education; and Dwight Carlson, assistant chief, Bureau of School Administration and Accreditation. Appellants were present in person and were not represented by counsel. Appellee Clarinda Community School District (hereafter the District) was present in the person of Superintendent Clarence Lippert, also not represented by counsel.

An evidentiary hearing was held pursuant to Iowa Code chapter 290 and departmental rules found at 670 Iowa Administrative Code 51. Appellants sought reversal of a decision made by the District's board of directors (hereafter the Board) made on December 14, 1987, affirming a disciplinary punishment decision to suspend their son, Kevin, from transportation privileges for five days in addition to an in-school suspension penalty.

## I.
## Findings of Fact

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

On December 8, 1987, Kevin Haffner, an eighth grade student, and another boy got into a physical fight. They had both been riding the bus. The facts were unclear as to whether the fight occurred on the bus or just as the boys got off the bus and stepped onto the school grounds. The bus driver informed Kevin's junior high principal, Mr. Whitney, of the fight. After speaking with both of the boys involved, Mr. Whitney concluded that a fight had taken place and that Kevin was primarily responsible. Kevin was given a two-day in-school suspension (alternative classroom) by Mr. Whitney. The principal believed the fight had taken place on the school grounds rather than the bus. This fact is significant because the authority within the District for disciplining

students apparently differs depending upon the site of the infraction. However, it is clear the fight occurred on school property, whether it was on the bus or the school grounds, and thus within the school board's jurisdiction.

Mr. Robert L. White is the District's administrative assistant in charge of auxiliary services and special programs. Transportation is one of his areas of responsibility. Mr. White has always applied disciplinary sanctions against students for violations occurring on the school bus.

The morning of December 8, Mr. White was also informed by the bus driver of the fighting incident. In addition, Mr. White received a telephone call that morning from a parent of a child who rides the same bus as Kevin does. The parent reported that her son had been verbally threatened ("You're dead!") by Kevin Haffner on the bus the day before the incident.[1] She was concerned for her son's welfare; her son was intimidated by and afraid of Kevin.

As a result of being notified of both the fight and the threat, Mr. White called and then wrote a letter to Appellants informing them that because of Kevin's threat and the fight, he was suspending Kevin from bus riding privileges for five days. See Appellee's Exhibit S-18; Appellants' Exhibit B. Kevin served one day of the five day bus suspension; the remainder of the penalty was stayed because Appellants chose to appeal Mr. Whitney's and Mr. White's decisions to the superintendent. Mr. Lippert apparently affirmed the two suspensions, the in-school suspension imposed by Mr. Whitney and the bus suspension imposed by Mr. White. Appellants then requested a board hearing on the matter. In a special board meeting on the evening of December 14, Appellants and the Board went into closed session (see Iowa Code § 21.5(1)(e)(1987)) to hear the Haffners' appeal. After the hearing, the Board voted five to zero to uphold both suspensions. This appeal followed.

Appellants' main contention in this case is that Kevin was subjected to "double jeopardy" or disciplined twice for the same offense. They do not question the wisdom or necessity of some punishment for Kevin's misbehavior.

## II.
## Conclusions of Law

Local control of education, including rules of conduct, disciplinary measures and procedures for students, is a statutory right vested in the board of directors of a public school district. The Iowa Code states, "The board shall make rules for its own government and that of the directors, officers, teachers, and pupils, . . . and aid in the enforcement of same . . . ." Iowa Code § 279.8 (1987).

In considering the validity of a school rule or punishment, the primary principle is that the rule must pertain to conduct which directly

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1 Apparently the boy who was allegedly threatened by Kevin is not the same boy involved in the fight on December 8.

relates to and affects the management and efficiency of the school. Board of Directors v. Green, 259 Iowa 1260, 1267, 147 N.W.2d 854, 859 (1967). To be valid and enforceable, the rules must be reasonable. Id. at ___, 147 N.W.2d at 858.

Such rules can address student conduct on school transportation. See 1983 OAG 81 (Fleming to Benton 8/31/83). Riding privileges may be suspended for student misconduct even where the student is entitled to free transportation. Id. Also, the school is not required to furnish an alternative form of transportation in such a circumstance. Id. Suspension of bus riding rights or privileges is appropriate especially when the misconduct could endanger the safety of all passengers because the driver's attention may be diverted. Id.

The rules applied in this case are included in the student handbook and read, in pertinent part, as follows:

> Students shall be expected to conduct themselves in keeping with the usual standards of good behavior. A student shall not by the use of violence, force, noise, coercion, threat, intimidation, fear, passive resistance, or any other conduct, cause disruption or obstruction of any process, function or lawful mission of the school. Neither shall the student urge other students to engage in such conduct. . . . Students shall not be insubordinate or fail to comply with the reasonable directions of teachers, student teachers, teacher aides, bus drivers, custodians, principals, or other authorized school district personnel any time when the student is under the authority of school personnel.

Appellee's Exhibit 1 at p. 4. The rules cover both fighting ("violence," "force") and threatening or intimidating behavior. The handbook also covers procedures for dealing with misconduct. Id. at pp. 5-6. Appellants do not allege a violation of due process, and in fact there was none.

Instead, Appellants argue that their son was twice punished for the same offense. They liken this to the concept of "double jeopardy" prohibited by the fifth amendment to the United States Constitution. The clause known to most of us as the double jeopardy or former jeopardy clause actually states ". . . nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; . . . ." U.S. Const. am. V. The General Assembly of Iowa enacted our state's version of the double jeopardy prohibition, found at chapter 816 of the Iowa Code: "A conviction or acquittal by a judgment upon a verdict shall bar another prosecution for the same offense, . . . ." Iowa Code §816.1 (1987). The United States Supreme Court has defined the guarantee as follows:

> Congress may impose both a criminal and a civil sanction in respect to the same act or omission; for the double jeopardy clause prohibits . . . attempting a second time to punish criminally for the same offense.

Helvering v. Mitchell, 303 U.S. 391, __, 58 S.Ct. 630, 633 (1938) (emphasis added).

Therefore, being punished by two different penalties for one offense is not double jeopardy, particularly not when it is school discipline rather than a criminal trial. To illustrate, penalties for criminal violations often include the possibility of both a fine and imprisonment. See, e.g., Iowa Code §902.9(3)(1987). ("A class 'C' felon . . . shall be confined for no more than two years, and in addition may be sentenced to a fine of not more than ten thousand dollars.")

In this case, Kevin was punished for the same incident by two different administrators in two different ways.[2] This is not double jeopardy or punishing twice for the same offense. It is two separate penalties — both appropriate in the view held by the hearing panel — for one act. We therefore affirm the decision of the Board in this case and in so doing affirm the reasonableness of the rule and the methods of punishing Kevin for this serious misbehavior.

We wish to add a comment or two regarding the District's policies and procedures. First, Kevin, an eighth grader with a significant history of disciplinary violations, has only recently been recommended for evaluation for special education instruction and services. We are concerned that this avenue for helping Kevin was not addressed earlier in his school career.

Second, the witnesses for the District could not recall any individualized counseling or intervention being made for Kevin and his parents before his behavioral situation reached the level where it is today. It is clear to the hearing panel that Kevin has some serious problems evidencing themselves in bullying and aggressive behavior and that he will benefit from counseling and behavior modification techniques offered to him.

In another vein, the testimony before the panel evidenced the fact that despite articulated concepts of the demarcations of authority, the District's procedures remain somewhat unclear. Mr. Whitney was not certain, for example, that as principal he could punish a student for misconduct on the bus. He conceded that had he known the fight occurred at least in part on the bus, he would have deferred to Mr. White's authority. While a separation of the power to discipline students between Mr. Whitney and Mr. White is a legitimate exercise of the Board's power, it is clear that such a separation may cause confusion, as it did initially in this case. It appears to the hearing panel that the school district would be wise to review existing policies to clarify these areas and eliminate such confusion.

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

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2 The District attempted to distinguish the bus suspension penalty as having been applied for the threat Kevin allegedly made rather than for the fight. Although the incidents occurred on separate days, Mr. White's letter to Appellant suggests the bus suspension was for both actions, not the threat alone. See Appellants' Exhibit B; Appellee's Exhibit S-18.

III.
Decision

For the reasons stated above, the decision of the board of directors of the Clarinda Community School District made on December 14, 1987, in the matter before us is hereby affirmed. Costs of this appeal, if any, under chapter 290 are assigned to Appellants. The parties shall provide receipts and explanations of costs incurred so that we may certify and forward them as provided for in Iowa Code §290.4. Appeal dismissed.

April 14, 1988
DATE

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

April 8, 1988
DATE

William L. Lepley
WILLIAM L. LEPLEY, Ed.D.
DIRECTOR, DEPARTMENT OF EDUCATION
AND PRESIDING OFFICER