IOWA DEPARTMENT OF EDUCATION
(cite as 30 D.o.E. App. Dec. 074)

In re Expulsion of Student W,	)	
	)	
Student W. & Mother of Student W,	)	
	)	Admin. Docket No.: 5138
Appellants,	)	
	)	
vs.	)	PROPOSED DECISION
	)	
Hudson Community School District,	)	
	)	
Appellee.	)	

The Hudson Community School District's ("District") Board of Directors ("Board") expelled Student W[1] for a private message sent on Snapchat that contained the following message "nah fr i'm finna shoot that school up." The message was to a fellow student, whose parent reported it to law enforcement. After an investigation that included law enforcement, Dr. Anthony Voss, the District's superintendent, recommended that the Board suspend Student W for the remainder of the 2020-21 school year and expel him for the 2021-22 school year. The Board accepted the recommendation in a closed session on May 11, 2021, notice of which was mailed to Student W's parent on May 12, 2021. Student W and his mother timely appealed, in an affidavit received by the Iowa Department of Education on May 24, 2021. Iowa Code § 290.1 (2021).

This matter was scheduled before the undersigned, acting in the capacity of administrative law judge, for an evidentiary hearing via video conference on June 22, 2021. Student W was personally present[2] and did not testify. Student W's mother was personally present and testified. Attorney Nina Forcier represented the interests of Student W at this hearing. The District and Board were represented by Attorney Steven A Weidner. Present on behalf of the District and Board and providing sworn testimony were Dr. Voss, secondary principal Jeff Dieken, and at-risk coordinator Jeff Bell. Daniel Banks, Chief of Police for the City of Hudson, also provided sworn testimony on behalf of the District and Board. The exhibits offered by the parties were received and admitted. Any objection was noted in the record.

After considering the evidence presented and the arguments of very skilled counsel for both parties, the undersigned recommends that the Board's decision be AFFIRMED.

---

[1] This is a randomly selected initial, used as a pseudonym to attempt to protect the privacy of this minor student.

[2] The undersigned expressly states he draws no inference, either positively or negatively, from Student W's decision not to testify.

Standard of Review

The State Board's prior decisions set forth the applicable scope of review.

> The State Board in reviewing appeals under Iowa Code section 290.1 has been given broad authority to make decisions that are "just and equitable." Iowa Code § 290.3 (2013). The standard of review in these cases requires that the State Board affirm the decision of the local board unless the local board decision is "unreasonable and contrary to the best interest of education." *In re Jesse Bachman*, 13 D.o.E. App. Dec. 363 (1996). Thus, the test is *reasonableness*.
>
> The Iowa Legislature has conferred broad statutory authority upon local school boards to adopt and enforce its own rules and disciplinary policies. *See* Iowa Code § 279.8. Under Iowa Code section 279.8 "the board shall make rules for its own government and that of the . . . pupils, and for the care of the school house, grounds, and property of the school corporation, and shall aid in enforcement of the rules. . . . " Local school boards have the explicit statutory authority to expel or suspend students for violating school rules pursuant to Iowa Code section 282.4, which provides as follows:
>
> > 1. The board may, by a majority vote, expel any student from school for a violation of the regulations or rules established by the board, or when the presence of the student is detrimental to the best interests of the school. The board may confer upon any teacher, principal, or superintendent the power temporarily to suspend a student, notice of the suspension being at once given in writing to the president of the board.
>
> . . . .
>
> The State Board will not overturn a local board's decision unless it is unreasonable. *In re Jesse Bachman*, 13 D.o.E. App. Dec. at 363.

In re Expulsion of Student A., 27 D.o.E. App. Dec. 726 (2016) (emphasis in original).

The standard of proof is whether the Board's decision is supported by a preponderance of the evidence. *In re Jesse Bachman*, 13 D.o.E. App. Dec. at 363. The State Board has expressly rejected applying the standard applicable in criminal prosecutions and juvenile delinquency adjudications ("beyond a reasonable doubt") to school discipline proceedings. *Id.*

Findings of Fact

In light of the evidence presented and the above-stated standard of review, the undersigned makes the following findings of fact.

Student W is a resident and student of the District. On Saturday, May 1, 2021, Chief Banks received a communication from a parent, forwarding the "nah fr[3] i'm finna shoot that school up" private message, identifying Student W as the sender, and noting the message was being passed around among students. Later that evening, Chief Banks provided the message to Student W's mother, and to Dr. Voss, Mr. Dieken, and Mr. Bell. Student W's mother reported that Student W denied making this statement, reported that he was at a racing event, and wondered whether someone else had used his phone.

On Sunday, May 2, 2021, Chief Banks continued his investigation. Dr. Voss was returning from an out-of-state vacation. District leadership contemplated cancelling classes on Monday. On the evening of May 2, Chief Banks met with Student W and his mother.[4] Student W stated that he was "blacked out drunk" when the message at issue would have been sent but continued to deny sending the message.[5] Chief Banks determined that Student W did not have access to firearms and that he was the author of the offending message. After Chief Banks communicated his conclusions to Dr. Voss, District leadership made the decision to not close school on Monday and to release a public statement that there was no threat to the school.

School was not cancelled. That being said, eighty-six students were absent on May 3, compared to forty-three on the previous Friday and forty-three on the next Monday. The District released an additional public statement intended to assure the public about its efforts and the efforts of the City of Hudson to maintain a safe learning environment.

The Board has adopted a policy on Student Conduct (Board Policy 503.1), which reads in relevant part:

> Students who fail to abide by this policy, and the administrative regulations supporting it, may be disciplined for conduct which disrupts or interferes with the education program; conduct which disrupts the orderly and efficient operation of the school district or school activity; conduct which disrupts the rights of other students to participate in or obtain their education; conduct that is violent or destructive; or conduct which interrupts the maintenance of a disciplined atmosphere.

---

[3] The undersigned is presuming "fr" is an abbreviation for "for real."

[4] Chief Banks had initially requested to meet with Student W and his mother on Monday morning, but he changed his mind after further consultation with Dr. Voss.

[5] Student W voluntarily surrendered his phone to Chief Banks during this interview.

> Disciplinary measures include, but are not limited to, removal from the classroom, detention, suspension, probation, and expulsion.

On May 7, 2021, Dr. Voss notified Student W's mother that he was recommending suspension for the balance of the current year and expulsion for the following school year. Dr. Voss wrote, in relevant part:

> This post caused a substantial disruption to the operation of the school district which not only negatively impacted daily attendance, but diverted local resources away from the public, and caused unnecessary notoriety to the district.

Dr. Voss's letter notified Student W of the date and time of the school board hearing, as well as his rights. The Board adopted Dr. Voss's recommendation. Because Student W was suspended for the present school year, he was able to earn his second semester's credits. During the next school year, Student W will not earn credits but will still receive the special education services to which he is entitled. It will still be possible for Student W to earn enough credits to graduate with his cohort. The Board has expelled students in the past for possession of a controlled substance, possession of a firearm, and for bullying and harassment.

Since Student W is eligible for special education and has an individualized education program ("IEP"), the District and Central Rivers Area Education Agency were required to convene a meeting to determine whether Student W's conduct was a manifestation of his disability. *See* Iowa Admin. Code r. 281-41.530. On May 5, 2021, his team determined his threat is not a manifestation of his disability. As a consequence, Student W may be punished as if he were a student without a disability (including being expelled) but he remains entitled to a free appropriate public education. *Id.*

Student W saw a master's level social worker for an alcohol and substance abuse assessment on May 10, 2021. The social worker determined Student W had no present need for drug or alcohol treatment, and encouraged him to continue his plan of treatment with his therapist.

Based on the evidence before it, the undersigned determines the Board could permissibly conclude that Student W sent the message, which substantially disrupted the orderly operation of the District, based on increased absences and a climate of fear.

Further findings of fact are included in the discussion of the arguments of the parties, below.

Conclusions of Law

Jurisdiction

The undersigned and the State Board have jurisdiction of the parties and of the subject matter. Iowa Code § 290.1.

Whether Student W Committed the Alleged Offense

Schools are able to punish students for disruption caused by off-campus speech. *Mahanoy Area School District v. B.L.*, 141 S. Ct. 2038 (2021).[6] The undersigned concludes that the Board's determination that Student W sent the threatening message was not unreasonable. *In re Jesse Bachman*, 13 D.o.E. App. Dec. at 369.

Student W asserts that others could have sent the message, that the message lacked a "context," that it was unclear about how the message got from the initial recipient to Chief Banks, and that no specific school was mentioned in the message ("that school" versus a specific, named school). Before imposing discipline, the District and Board are not required to exclude any other potential or hypothetical sender, known or unknown, or rule out any other possible innocent meaning. All that is required is that their decision be reasonable, which it is in the circumstances, even considering the weaknesses noted by Student W and his counsel.

Additionally, the possibility of a hypothetical and unknown sender cannot be reasonably considered in this matter. Under the relevant standard of review, there is no evidence that anyone other than Student W sent the message and all credible evidence, warts and all, points to Student W as the sender.

Student W attacks Chief Banks's credibility. Specifically, he asserts that references in the record to noncooperation from Student W and his mother on May 2, 2021, are inconsistent with the timing of the messages his mother received from Chief Banks. Even if Chief Banks's testimony is given low weight, the record would permissibly support the Board's finding that Student W sent the threatening message.

Finally, Student W's denials of sending the message are significantly weakened by his concession that he was "blacked out drunk" at the time the message was sent. The complete inability to remember is directly related to the weight the Board was entitled to give his denial.

> It does not follow that the capacity of observation and the powers of memory are destroyed by intoxication, which is not to the degree producing stupor. While it must be admitted intoxication does not destroy

---

[6] This case was decided by the Supreme Court the morning after the evidentiary hearing in this case. Both attorneys skillfully addressed *B.L.* in their post-hearing briefs.

> credibility, it undoubtedly impairs it. But if the evidence of one who was intoxicated at the time of the occurrences of which he testifies is corroborated, or his memory of the transactions appears to be distinct and clear, he is entitled to belief.

State v. Castello, 62 Iowa 404, 17 N.W. 605, 606 (1883). Student W's admitted intoxication was "to the degree producing stupor," in the words of our supreme court, and he need not be believed.

The undersigned further concludes that the message substantially disrupted the school environment and operations, in violation of policy 503.1. The large number of students who were absent on the school day after the threat, as well as the unease and concern among students and employees - especially in light of the current environment - would allow a reasonable school board to conclude that a violation of the language in policy 503.1 resulted from a social media message stating "nah fr i'm finna shoot that school up."

Whether the Discipline Imposed Was Reasonable

Student W makes several attacks on the discipline imposed by the District and Board. While different districts and boards may have weighed the evidence differently when imposing punishment, that is not the role of the undersigned. He and the State Board do not "sit as 'a super school board'," *see In re Cameron Wilson*, 25 D.o.E. App. Dec. 223, 224 (2010), or substitute their judgment when they find a local board's decision "unwise and inexpedient," see *In re Jesse Bachman*, 13 D.o.E. App. Dec. at 369. When giving proper respect to the Board's decision, the undersigned concludes it is reasonable, in spite of the objections raised by Student W. *In re Jesse Bachman*, 13 D.o.E. App. Dec. at 369.

1. *Status as a Student with a Disability.* Student W takes issue with the IEP he had at the time of the incident, which focused on academic concerns and which did not contain mental health services that his mother had requested. Any challenge to Student W.'s IEP, as well as any challenge to the manifestation determination meeting's conclusion that the threatening message was not a manifestation of Student W's disability, is to be addressed through the dispute resolution process established by special education law. Iowa Admin. Code r. 281-6.23(2)"b". That process, contained in Iowa Administrative Code chapter 281-41, is the sole vehicle by which these challenges may be raised. The undersigned and the State Board are bound by the as-yet-undisturbed conclusion of Student W's team that his threat was not a manifestation of his disability.

2. *Status as a Target of Bullying and Harassment.* Student W points to three instances in the spring semester of 2021 where he was the target of bullying and harassment: an incident where he was assaulted on District grounds by a student of a nearby school, and two incidents involving a fellow District student: a social media message from the fellow

student (Student P[7]) stating the student wanted to "fight" Student W and crude, sexualized graffiti about Student W purportedly written by Student P with a permanent marker in one of the District bathrooms. While bullying and harassment may, in certain theoretical cases, may be a mitigating factor in a suspension or expulsion case, it is neither a mitigating factor nor an excuse in this present case. This is largely attributable to the protective actions the District took.

Regarding the on-campus assault by the non-District student, Student W and his mother declined to press charges (apparently for fear of reprisal). The District did so on its own initiative. This action was reasonable in light of the circumstances, and protective of Student W's safety.

Regarding the bullying by Student P, the District took action to keep Students P and W separate while on school grounds, including a safety plan. Regarding the obscene graffiti purportedly written by Student P, the District - while unable to determine whether Student P wrote the graffiti (surveillance video of the hallway containing restroom entrance was not conclusive) - took the restroom out of service until the graffiti could be removed. Further, the evidence of record supports a conclusion that Students P and W remain in frequent contact and that the power imbalance characterizing many bullying situations does not exist in the present circumstances.

3. *Inability to Carry Out The Threat.* Student W forcefully argues that he was unable to "shoot up that school" because he had no access to firearms. While he had no access to firearms, the recipients of his message (whether direct or second- or third-hand) had no way of knowing that. They were not required to presume his inability to carry out his threat. While it may be unreasonable to discipline a student for a threat that a hearer knew the student had no ability to carry out, *see generally State Complaint Concerning Seclusion Rooms*, 28 D.o.E. App. Dec. 41, 56 (2017) (improper to seclude or restrain a student "solely for threats that the student had no capability of carrying out"), that was not the case here. The hearer had no way of knowing, and it would be unreasonable to ask the hearer to presume inability until shown otherwise.

The speech itself, not the ability to carry out the threat contained in the speech, was what substantially disrupted the school. It is within the sound discretion of the Board to punish Student W for the harms his speech caused, even if he could not inflict the harms his speech threatened.

4. *The "Private" Nature of the Threatening Message.* Student W asserts that the social media message was not a "post" but a private message, not designed for the world to see (relying on a reading of *B.L.*, 141 S. Ct. 2038). While the intended audience was narrow, no "private" social media message is ever truly private. Once sent and shareable and subsequently shared, the message and the threat it contained became disruptive to the District's operations. The shaving cream was out of the can. The

[7] This is another randomly selected pseudonym.

message and its disruptive power that Student W created by sending it took on a life of its own.

The undersigned notes that *B.L.*'s plain language does not forbid schools from considering messages that are sent to small groups, rather than posted publicly. Rather, *B.L.* states schools have a lesser interest in doing so. The messages at issue in *B.L.* were vulgar but not threatening, in contrast to the message at issue. The messages in *B.L.* "did not involve features that would place it outside the First Amendment's ordinary protection." *B.L.*, 141 S. Ct. at 2047. Student W's message - a threat of a mass casualty event - does. Further, the record in *B.L.* reflects precious little disruption of her school's academic or extracurricular program. In contrast, Student W's speech caused a spike in student absences and a need to provide support to a fearful school community. Balancing all of the facts in the present case, *B.L.* does not pose a barrier to the Board reasonably imposing the discipline it imposed.

5. *The Disruption Allegedly Attributable to the District's Public Statements.* Student W apparently argues that the disruption was attributable to the District's public statements that called attention to the threat and thereby amplified it. Taking this assertion to its logical conclusion, the District was apparently obligated to not address the message, lest it create an incremental additional panic or distress. The record shows that the message was spreading throughout the school community. The District could reasonably conclude it needed to publicly address the message to restore faith in the safety of the District's schools and reassure the school community that there was no present threat. The undersigned struggles to imagine what might have happened had District leadership not made its public statements.

Had Student W not sent the threat, there would have been no need for the District to respond and no threat to amplify. This is not a ground to upend the balance the district struck in this matter.

6. *Alternatives to a One-Year Expulsion.* Student W's mother requests lesser discipline, such as transfer to an alternative school or a semester's expulsion. Student W's attorney notes that expulsion for violent threats is fairly rare in state discipline data. Both lines of thought strike at the proportionality of the Board's response to Student W's threats.

While it might be permissible to place Student W in an alternative environment or to impose a shorter period of expulsion, so is the decision reached by the Board. This is a "policy decision" that the undersigned and the State Board are not permitted to second-guess. *In re Cameron Wilson*, 25 D.o.E. App. Dec. at 224. Further, the fact that other school boards may have imposed other discipline on other students who made violent threats is not binding on the Board's evaluation of the facts before it in the present case.

While a different discipline might be "the preferred educational outcome," what the undersigned and the State Board view as "preferred" is not relevant once the Board's decision is shown to be reasonable. *See, e.g., In re Expulsion of Student A*, 27 D.o.E. App. Dec. at 732. The undersigned further notes that the District and Board granted some grace and latitude to Student W by suspending him for the balance of the past school year - as opposed to expelling him - so he could still earn credits for the second semester.

Taken as a whole, the record reflects the Board "thoughtfully considered," *see id.*, the facts before it when imposing discipline. That is what the law requires. The undersigned and the State Board are in no position to disturb that thoughtful consideration.

Proposed Order

The undersigned has considered all evidence and issues presented, whether or not discussed in this decision.

It is recommended that the May 11, 2021, decision of the Board of Directors of the Hudson Community School District in this matter be AFFIRMED.

No costs.

This proposed decision will be presented to the State Board of Education at its regularly scheduled meeting on August 5, 2021. The State Board will review this proposed decision based on the record made and the post-hearing briefs. The parties are able to present arguments during the public comment period on the Board's agenda. The Board's presiding officer may also allow oral argument during its deliberations.

If either party desires additional proceedings pursuant to the Department's chapter 6, the party or counsel may notify the undersigned and this matter will be rescheduled for later State Board consideration.

Done on July 30, 2021.

/s/ Original Signed
Thomas A. Mayes
Administrative Law Judge

IOWA DEPARTMENT OF EDUCATION

In re Expulsion of Student W,	)	
Student W. & Mother of Student W,	)	Admin. Docket No.: 5138
Appellants,	)	
vs.	)	FINAL DECISION
Hudson Community School District,	)	
Appellee.	)	

After due consideration by the State Board of Education, the proposed decision in this matter is

X AFFIRMED.

_______ OTHER:

This is final agency action in a contested case proceeding.

Any party that disagrees with the Department's decision may file a petition for judicial review under section 17A.19 of the Iowa Administrative Procedure Act. That provision gives a party who is "aggrieved or adversely affected by agency action" the right to seek judicial review by filing a petition for judicial review in the Iowa District Court for Polk County (home of state government) or in the district court in which the party lives or has its primary office. Any petition for judicial review must be filed within thirty days of this action, or within thirty days of any petition for rehearing being denied or deemed denied.

Dated: 9/15/21

Iowa State Board of Education, by:

Brooke Axiotis, President