IOWA STATE BOARD OF
PUBLIC INSTRUCTION

(Cite as 3 D.P.I. App. Dec. 174)

In re Jori Ekis	:	
	:	
Frances Ekis, Appellant	:	DECISION
v.	:	
Prairie Community School District, Appellee	:	[Admin. Doc. 700]

The above entitled matter was heard on July 26, 1983, before a hearing panel consisting of Dr. James Mitchell, deputy state superintendent and presiding officer; Mr. Dwight Carlson, director, school transportation and safety education division; and Dr. Leland Tack, chief, data analysis and statistical section. Dr. Mitchell served as presiding officer pursuant to Iowa Code section 257.22, 1983. The hearing was held pursuant to Iowa Code chapter 290, 1983, and Departmental Rules, Chapter 670--51, Iowa Administrative Code. Mrs. Ekis was present and represented by her husband, Belmer Ekis. The Prairie Community School District (hereinafter District) was represented by Attorney Dean Erb.

The Appellant is appealing a decision of the District Board of Directors regarding the suspension of her daughter, Jori.

I.
Findings of Fact

The Hearing panel finds that it and the State Board of Public Instruction have jurisdiction over the parties and subject matter.

In March and April of 1983, the District's Junior High Center experienced a greatly increased volume of note writing and the passing of notes among its seventh and eighth grade students. While the vast majority of the notes were typical teen-age notes about school, friends and activities, some contained cruel and untruthful allegations about peers, sexual overtones and vulgar language. One note to a boy resulted in an altercation between two girls. In another incident a female student was released to leave school early after she became emotionally upset over the contents of a note.

Some members of the student body, staff and some parents complained to the school's principal that the note writing was getting out of hand. It was felt that the school's educational environment was being disrupted unnecessarily, and the entire school climate was in jeopardy.

The District's junior high principal, Richard Phillips; administrative assistant, Samuel Tvrdik; and the District's guidance counselor handled the situation at first with referrals for counseling, detention, extra class assignments, and parental conferences. In instances of notes containing inappropriate language or resulting in fights, suspensions were imposed.

By the latter part of April, it became apparent that early attempts to discourage the note writing were ineffective. The principal, administrative assistant and guidance counselor met to discuss strategies to solve the problem of excessive note passing. It was determined that the situation called for a more firm disciplinary approach. The three decided that a temporary rule should be imposed. The rule developed by the three prohibited the writing, passing, receiving or reading of "notes of any kind." There was no differentiation between notes based upon content, time, place, activity, or resulting disruption. The rule prohibited all notes on all subjects at all times in all places and under all circumstances. Students engaged in writing, passing, receiving or reading notes would receive an in-school suspension of one to ten days and have their grades reduced by two percent for each day of suspension. Mr. Tvrdik testified at the hearing that personal notes are not relevant to education, and he could see no reason for students to pass notes in school. There was no corresponding effort to control what students said orally to each other.

On April 29, Mr. Tvrdik personally visited each junior high school classroom and informed the students orally of the new temporary rule and its potential consequences. There is no allegation that Jori was not informed of the rule. There was no direct notification of the new rule to parents.

Imposition of the rule had an immediate and, according to Mr. Phillips and Mr. Tvrdik, a positive effect. From the first day of implementation of the rule on May 2 to the end of the school year, only four incidents of attempted note passing came to the attention of school administrators. On May 2, two students were given one-day in-school suspensions for writing notes. On May 4, a student was given a three-day in-school suspension for writing a note containing vulgarities. The addressees of the notes were not punished because they refused to accept the unsolicited notes.

On May 9, the incident involved in this hearing took place. An eighth grade student wrote a note to Jori Ekis, a seventh grade student, and passed it to her in the school lunchroom during lunch period. Jori at first refused to accept the note, but the author of the note was insistent. The author needed a response as to whether Jori was going to accompany her on a paper route. The note received and read by Jori, for which she was punished, reads in its unedited version as follows:

Jori,

if Danny asks you to go with him, what are you gonna say? if you say no will you back to Mike? Or not, get me a picture of Mike I want to know what he looks like if hes cute or not. give this back to me as soon as possible W/B/S

your friend,
Sandi Strunk
8th grade

P.S. Do you want to go on the paper route with me or not

The note was apparently written, passed, received and read without incident. There was no apparent disruption or disturbance caused by the note. The school administration was not aware of the existence of the note until near the end of the lunch period. As Mr. Trvdik passed by Jori and a group of other girls at a table in the lunchroom, one or more of the students called his attention to the fact that Jori had a note in her possession.

Upon Mr. Tvrdik's request, Jori handed the note over to him and accompanied him to a place where they could talk privately. She admitted receiving and reading the note. Jori and the writer of the note were awarded a one-day in-school suspension and loss of two percent of their quarterly grade in each class missed. The author of the note served her suspension without question. Although the student lunch period is "closed" and students cannot leave the general vicinity of the lunchroom, they are allowed to talk, move about the area, get drinks of water and go to the restroom.

The record is not clear as to whether Mr. Tvrdik or Mr. Phillips actually gave Jori the suspension. Documentation in the record indicates that both were involved in some manner. Neither is the record clear as to whether teachers, such as Mr. Tvrdik, are authorized by District Board policy to suspend students as is provided in Section 282.3. Because the issue as to proper authorization is not crucial to a resolution of the issue before us, we need not make any conclusive determinations of the issue here.

Upon receiving notice of the suspension, Mr. and Mrs. Ekis requested a conference with Mr. Phillips and Mr. Tvrdik. The conference was held on May 10. The primary issue discussed was the severity of Jori's punishment. Mr. and Mrs. Ekis argued that a one-day in-school suspension and a two percent grade reduction were unduly harsh for the act of receiving and reading a note during lunch period. Mr. Phillips conferred with Mr. Tvrdik and the guidance counselor who had previously raised an issue with the grade reduction. A decision was made to waive the grade reduction, but the one-day in-school suspension was not altered. (All the other students previously disciplined under the note rule subsequently had the two percent grade reduction removed from their records.)

Mr. and Mrs. Ekis took the matter to District Superintendent Mike Book for his review. After an informal discussion of the matter, Mr. Book upheld the one-day in-school suspension.

Mr. and Mrs. Ekis then requested a review of the issue by the District Board. The matter was placed on the agenda of the May 18 Board meeting. Mr. and Mrs. Ekis requested that their daughter be given a detention or a letter of reprimand rather than an in-school suspension. They argued that the suspension was too severe a penalty for the act of reading a note during lunch period. Following a review of the issue and discussion, the District Board voted to uphold the previous administrative action in the matter.

Other than the incident at issue here, Jori Ekis has no history of past offenses against school rules.

II.
Conclusions of Law

In the matter currently before us, the Hearing Panel is faced with a most difficult decision. The Appellant has challenged a decision of District officials regarding discipline imposed upon her daughter on the grounds that the punishment meted out was excessive and a violation of her rights to free speech under the First Amendment to the United States Constitution. District officials, on the other hand, have defended their actions on the basis of what they felt were appropriate actions necessary to meet a difficult and growing disruptive problem among the District's seventh and eighth grade students. Recognizing that the factual and legal issues presented here are among the most difficult to come before the State Board, we are inclined to agree with the position of the Appellant.

District officials are to be commended generally for their efforts in meeting a difficult and potentially serious problem brought about by an excessive infatuation with note writing, passing and reading. They at first attempted to resolve the growing problem of school disruption with moderate discipline, counseling and parent conferences. When the problem continued in spite of their efforts, they discussed the matter among themselves and resolved to promulgate a new, temporary school rule forbidding involvement with student notes. They wisely and appropriately made efforts to notify all the students potentially involved of the new rule prior to its implementation and informed the students of the potential consequences of their acts. When District officials were confronted about the questionable practice of reducing grades based on academic performance for disciplinary reasons, they wisely reconsidered their earlier position and made appropriate adjustments.

Where District officials went afoul was in the overly broad approach they took to a relatively narrow problem. The role was not narrowly tailored to further the school's legitimate interests in light of students' First Amendment rights. School officials here attempted to paint the issue of student notes with too broad a brush and ended up covering over protected constitutional rights.

The Hearing Panel has little doubt that District officials faced with a growing problem of note writing, passing and reading, could have promulgated and enforced a rule which would punish students for involvement with notes which contained vulgar language, statements defaming the character of other persons or which resulted in actual serious disruption of the school environment. Due to the nature of the school environment, students could probably be prohibited from writng, passing and reading notes during class time. But the facts currently before us do not substantiate a sufficiently great need on the part of the District officials to promulgate and enforce a rule prohibiting the writing, passing, receiving and reading of all notes, with any content, at any time, at any place and under any circumstance. Such an approach was overly broad for the narrow problem before them and exceeded that which was reasonably required to solve the problem. The rule resulted in a crossing of the threshhold of protected student rights.

There is no such thing as an absolute right under the Constitution. All constitutional rights, including those contained within the First Amendment, must be weighed and judged in the factual context in which they are found. In the situation before us, we find a seventh grade student has received punishment for receiving and reading a note during lunch period which did not contain

vulgar language, defamatory statements and which did not result in any disruption of the school environment. She was punished merely because she was the recipient of a communication. The right to receive communications is protected by the First Amendment. Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 96 S.Ct. 1817 (1976). True, the contents of the note would not be considered of national importance by some adults. It did not express position statements on American involvement in Central America, nuclear disarmament or potential 1984 presidential candidates. But it could have and, if it had, it would have made no difference under the newly promulgated rule. The new rule prohibited all communication by note.

Merely because some adults would not consider the issues of boyfriends and agreements to accompany others on paper routes as important issues does not mean that they are not protected. The First Amendment protects communication regardless of its perceived relative importance and its private or public nature. See Givhan v. Western Line Consolidated School District, 439 U.S. 410, 99 S.Ct. 693 (1979). It should not be forgotten that to students of junior high age, issues of boyfriends, friendships and paper routes may be of at least approximate importance to those national issues previously listed.

The importance of personal intercommunication among students and the protection it receives by way of the First Amendment have been outlined by the United States Supreme Court in its decision in Tinker v. Des Moines Independent School District, 393 U.S. 503, 89 S.Ct. 733 (1969). The Tinker decision involved a group of public school students who were disciplined for wearing black arm bands to school in opposition to continued United States involvement in Vietnam. The Supreme Court decision noted no serious disruption of the school environment had occurred or was reasonably predicted by the student's acts. Relevant portions of that decision read as follows:

> First Amendments rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakable holding of this Court for almost 50 years. (p. 506, 89 S.Ct. at 736)
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> But, in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression. Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken in class, in the lunchroom, or on the campus, that deviates from the views of another person, may start an argument or cause a disturbance. But our Constitution says we must take this risk, . . . (p. 508, 89 S.Ct. at 737)
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> The principal use to which the schools are dedicated is to accommodate students during prescribed hours for the purpose of certain types of activities. Among those activities is personal intercommunication among the students. This is not only an inevitable part of the

process of attending school. It is also an important part of the educational process. A student's rights therefore, do not embrace merely the classroom hours. When he is in the cafeteria, or on the playing field, or on the campus during the authorized hours, he may express his opinions, even on controversial subjects like the conflict in Vietnam, if he does so "[without] materially and substantially interfering with . . . appropriate discipline in the operation of the school" and without colliding with the rights of others . . . (emphasis added) (p. 512-13, 89 S.Ct. at 739-40)

* * *

The Constitution says that Congress (and the States) may not abridge the right to free speech. This provision means what it says. We properly read it to permit reasonable regulation of speech-connected activities in carefully restricted circumstances. But we do not confine the permissible exercise of First Amendment rights to a telephone booth or the four corners of a pamphlet, or the supervised and ordained discussion in a school classroom. (p. 513, 89 S.Ct. at 740)

School officials did not apparently attempt to limit oral communication under the new rule and, therefore, for many students total communication was not overly restricted. However, for students in different grades, as was the situation here, with different class schedules or who wanted to communicate through the privacy of a note, oral communication did not offer a suitable alternative. Even the presence of alternative means of communication does not alter the result here. See Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 96 S.Ct. 1817 (1976).

School officials have a right, and perhaps even a duty, to maintain order and discipline in the school environment. In carrying out their responsibilities, school officials should expect students to obey valid school rules and hold them accountable for violation of those rules. A rule which encroaches upon the constitutionally protected rights of students, however, is not valid and is not enforceable. The authority of school officials ends where constitutionally protected rights begin.

In this instance, had the note reading been at a time and place other than the lunchroom at lunch time, or had the reading of the note resulted in a disturbance, a different result might have followed. As it is, District officials have exceeded, be it ever so slightly, their authority to control and discipline students.

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

III.
Decision

The May 18, 1983, decision of the Prairie Community School District Board of Directors regarding the suspension of Jori Ekis is hereby overruled.

Appropriate costs under Chapter 290, if any, are hereby assigned to the Appellee.

September 9, 1983
Date

Karen K. Goodenow
KAREN K. GOODENOW, PRESIDENT
STATE BOARD OF PUBLIC INSTRUCTION

August 25, 1983
Date

James E. Mitchell
JAMES E. MITCHELL
DEPUTY STATE SUPERINTENDENT OF
PUBLIC INSTRUCTION
AND
PRESIDING OFFICER