IOWA STATE DEPARTMENT
OF PUBLIC INSTRUCTION

(Cite as 2 D.P.I. App. Dec. 75)

In re Patrick Donahey	:	
	:	
	:	
Patricia Donahey, Appellant	:	DECISION
v.	:	
	:	
Des Moines Independent Community School District, Appellee	:	[Admin. Doc. 512]

The above entitled matter was heard on December 19, 1979, by a hearing panel consisting of Dr. Robert Benton, state superintendent and presiding officer; Dr. LeRoy Jensen, associate superintendent, school administration; and Mr. Gayle Obrecht, director, administration and finance. The Des Moines Independent Community School District (hereinafter District) was represented by Attorney Edgar Bittle, and Patricia Donahey represented herself. The hearing was held pursuant to Chapter 290, The Code 1979, and Chapter 670--51, Iowa Administrative Code. Mrs. Donahey appealed a decision of the District Board of Directors refusing the removal of certain records from her son's school record file.

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.

On October 25, 1978, The Appellant's son, Patrick, then a seventh grade student, was suspended from school because of his involvement in an altercation at Meredith Junior High School. On that day, M. Charlene Wallace, the school's vice principal, had received reports that Pat had been harrassing and threatening another student. At the end of the school's fourth period, Ms. Wallace observed Pat hitting the student "extremely hard between the shoulders with his fist" while the other boy's back was turned. She took Pat into her office and warned him that if he continued to threaten or hit the other boy he may have to be suspended from school. She told Pat to stay away from, to stop talking to or about, to stop threatening and to keep his hands off the other boy. Pat agreed to her demands.

During the fifth period, Ms. Wallace was informed by several students that Pat threatened to beat up the same boy and to get his two brothers to assist him. At the conclusion of the sixth period, Pat came from another class and stood by the door of the other boy's classroom. When the other boy came out, Pat grabbed him by the shirt and attempted to provoke a fight. Pat called his two older brothers to the scene from a nearby area and the other boy left and went to the school's office. The Donahey boys immediately ran out of the building and went home. These events were observed

from a distance by Ms. Wallace. The Appellant contended that a written statement obtained from the other boy two days later contradicted Ms. Wallace's recollection of the events. We do not consider the two to be in significant disagreement.

Because the Donahey boys had left the school, it was not possible for Ms. Wallace to immediately talk with Pat in person. Later that afternoon, she telephoned the Donahey residence and talked with the three boys in turn on the phone while Mrs. Donahey listened on an extension. Pat and his two brothers gave Ms. Wallace their version of the incident.

At the end of the conversation Ms. Wallace informed Mrs. Donaney and Pat that Pat was suspended from school and was to report to a social worker in the District's Department of Pupil Services before returning to classes. Mrs. Donahey was given the appropriate phone numbers and told that she would need to call the social worker in order to arrange a conference and get Patrick back into school.

Later in the day, the Appellant's husband telephoned the school. The problem was discussed and he was informed of the process necessary to get Pat back into school. The next day written notice of the suspension was sent to the Donaheys.

On October 30, three school days later, Pat and Mrs. Donahey met with the social worker, and Pat returned to school the same day.

The District's Discipline Policy authorizes a student suspension by an administrator for a period of time not to exceed ten days.

In a letter dated November 31, 1978, Mrs. Donahey asked the District Board President to have Pat's records involving the October 25 suspension expunged from his school record on the basis that he was denied procedural due process and that the suspension had been for an indefinite period. In a letter dated November 20, District Board President Karen Williams did not specifically address the question of expungement, but did review the events and the fact that discipline matters do not become part of a student's permanent record.

On June 28, Mrs. Donahey met with Karen Williams and several District administrators regarding the problem. The matter was then referred to the District's legal counsel, Edgar Bittle. Mr. Bittle, in a letter dated July 26, 1979, responded that he saw no reason why the matters involving student discipline should be expunged from the student's record.

On August 14, Mrs. Donahey filed a request for a public hearing on the matter with the District's Board Secretary. Her request for hearing was granted, and she appeared before a committee of five Board members on August 28, 1979. At the hearing, Mrs. Donahey was given full opportunity to present her position. At the conclusion of the hearing, the Committee voted five to zero to recommend that the full Board support the administration's decision to not expunge the suspension records. On September 4, the District Board approved a motion that the Board support the administration's decision not to expunge the suspension records by a vote of six to zero.

II.
Conclusions of Law

At the outset of the hearing, the District moved for dismissal on the ground that the State Board of Public Instruction lacks jurisdiction to review local boards' discretionary decisions regarding student records. On the basis of the many court decisions which clearly indicate that the appeals of discretionary decisions are appropriate matters to be heard before the State Board, the motion is hereby overruled.

See Altman v. Independent School District, 32 N.W.2d, 392, (Ia. 1948); Security National Bank v. Bagley, 210 N.W. 947, (Ia. 1926); and Riecks v. Independent School District, 257 N.W. 546 (Ia. 1935).

At the hearing, Mrs. Donahey focused her objection, as she had done throughout her correspondence with the District, upon the issue of the procedure under which her son was disciplined. She argued that since her son was suspended without the benefit of due process of law as guaranteed by the Fourteenth Amendment to the U.S. Constitution, any mention of the suspension in Pat's student records kept by the District should be expunged. She waived issues related to an earlier suspension, which occurred while Pat was in the sixth grade, the validity of the discipline rule under which her son was disciplined, and the merits of the specific reasons for the discipline action taken against Pat on October 25, 1978.[1]

While the remedy of removal of a suspension record may be appropriate upon a finding of violation of procedural due process, we find none here. Mrs. Donahey relied heavily in her argument upon the provisions of due process enumerated in the United States Supreme Court Decision in Application of Gault, 387 U.S. 85, 87 S.Ct. 1428, (1967). We do not feel that those provisions of due process are directly relevant to the public school setting. The Gault decision, while a foundation stone for later federal court decisions involving discipline of students by public schools, involved the due process rights of a juvenile who was charged in a court of law with being a juvenile delinquent.

We instead rely upon the Supreme Court decision in Goss v. Lopez, 419 U.S. 565, 95 S.Ct. 729, (1975). That decision bears directly upon the due process requirements involved in the discipline of students of public secondary schools and has been relied upon previously by the State Board of Public Instruction. See In re Monica Schnoor, 1 D.P.I. App. Dec. 136, and In re Jason Clark, 1 D.P.I. App. Dec. 168.

The Court in Goss ruled that for suspensions from school for durations of 10 days or less, that as a minimum, the student must be given oral or written notice of the charges, and if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story. While generally such a rudimentary hearing must precede any suspension, the court recognized that some exceptions are appropriate.

> Students whose presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process may be immediately removed from school. In such cases, the necessary notice and rudimentary hearing should follow as soon as practicable, as the District Court indicated.

On the basis of the facts before us, we do not feel that the procedural due process rights of Patrick Donahey have been abridged. Ms. Wallace talked to Pat about the continuing problem and warned him that his conduct had to be changed only two hours prior to her witnessing the offense which immediately precipitated Pat's suspension. Pat ran from the school building and was unavailable for immediate hearing. Ms. Wallace talked to Pat and in turn to two of his brothers on the telephone with the boys' mother listen-

[1]On December 26, 1979, Mrs. Donahey contacted Larry Bartlett, Administrative Consultant of the Department of Public Instruction, by phone and asked that the merits of the suspension be considered by the Hearing Panel and that her arguments regarding due process be disregarded. She was informed that under the provisions of the State Administrative Procedures Act, Chapter 17A, and Departmental Rules for Chapter 290 hearings, that the record was closed and the request which she made at that time could not be fulfilled.

ing on an extension phone. Pat and his mother were given oral notice of the suspension. Later the same day Pat's father contacted the school and discussed the situation with school officials. The oral notice of suspension was followed by a written notice. Three school days later, Pat and Mrs. Donahey met with yet another school official and discussed Pat's conduct generally and future conduct more specifically. We find that the actions of Ms. Wallace in the suspension of Patrick and subsequent contacts with school officials were in compliance with the legal requirements of procedural due process.

Mrs. Donahey also alleged in her affidavit of appeal that the suspension for an indefinite length of time with re-entry to school conditioned upon Pat and Mrs. Donahey meeting with a school social worker violated Pat's due process. We do not agree.

Indefinite or conditional suspensions do have the potential for resulting in violations of a student's due process rights. Such a violation could occur if the student did not meet the condition or if the indefinite suspension was not concluded within ten days. See Graham v. Knutzen, 351 F.Supp. 642, 667, (Ne. 1972). An indefinite or conditional suspension which exceeds ten days may effectively become an expulsion which in Iowa only a board of directors has authority to determine, and then only after greater procedural due process than is required for a suspension has been granted. See In re Monica Schnoor.

Even though the potential for a violation of procedural due process existed under the facts presented here, such a violation did not occur. Under the suspension, Pat missed only two entire days of school and a portion of a third before he returned to school.

Taking into account all of the circumstances involved, we do not feel that Pat or his parents were treated unfairly nor had their procedural due process rights violated. Neither have we been shown any other valid reason for expunging the record of suspension involved in this appeal. The practice of keeping this type of a record for short periods of time for the purpose of counseling with a student and future planning is obviously important. Historical prospectives are often vital to properly respond to the needs of the child and to protect others. At some time the relevance of the records involved with Pat's suspension will be sufficiently diminished so that they may be appropriately removed from his school record. In the absence of arbitrary or capricious actions, local school officials must be allowed a great deal of discretion in making such determinations of relevance.

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

III.
Decision

The decision of the Des Moines Independent Community School District Board of Directors in this matter is hereby affirmed.

January 11, 1980
DATE

Susan M. Wilson
SUSAN M. WILSON, PRESIDENT
STATE BOARD OF PUBLIC INSTRUCTION

January 3, 1980
DATE

Robert D. Benton
ROBERT D. BENTON, Ed.D.
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
AND
PRESIDING OFFICER