

**IOWA DEPARTMENT OF EDUCATION  
(Cite as 27 D.o.E. App. Dec. 587)**

<i>In re: Suspension of A.W.,</i>	)	
	)	
Claudia W.,	)	
	)	DECISION
Appellant,	)	
	)	
v.	)	
	)	
West Des Moines Community School	)	Admin. Doc. No. 4797
District,	)	
	)	
Appellee.	)	

**STATEMENT OF THE CASE**

The Appellant, Claudia W. (“Claudia”), seeks reversal of a September 5, 2014, decision by the West Des Moines Community School District (“WDCSD”) Board (“WDCSD Board”) to suspend her son, A.W., from the tenth grade at Valley High School (“VHS”) for the remainder of the 2014-2015 school year. The affidavit of appeal filed by Claudia on October 3, 2014, attached supporting documents, and the school district’s supporting documents are included in the record. Authority and jurisdiction for the appeal are found in Iowa Code § 290.1 (2013). The administrative law judge finds that she and the State Board of Education (“the State Board”) have jurisdiction over the parties and subject matter of the appeal before them.

An in-person evidentiary hearing was held in this matter on December 11, 2014, before designated administrative law judge, Nicole M. Proesch, J.D., pursuant to agency rules found at 281 Iowa Administrative Code chapter 6. The Appellant was present on behalf of her minor son, A.W., and represented by Attorney Erik Fisk. Also present with the Appellant was A.W. and Kyle W. (“Kyle”), A.W.’s father. Superintendent Lisa Remy (“Superintendent Remy”) appeared on behalf of the WDCSD and was represented by attorney James C. Hanks. Also present for the district was Elizabeth Brennan, WDCSD Board President (“Mrs. Brennan”), Carol Seid (“Mrs. Seid”), and Officer Craig Weatherall (“Officer Weatherall”), a school resource officer (“SRO”) and police officer for the West Des Moines Police Department.

Claudia, Kyle, and A.W. testified in support of the appeal. Appellant’s exhibits were admitted into evidence without objection. Superintendent Remy testified for WDCSD and the school district’s exhibits were admitted into evidence without objection.

## FINDINGS OF FACT

At the time of A.W.'s suspension, A.W. was beginning the 2014-2015 school year and was entering the 10<sup>th</sup> grade at VHS. The underlying reason for A.W.'s one year suspension from school was that A.W. was involved in four separate incidents of vandalism to VHS during the summer of 2014 causing a total estimated \$4,580.00 in damages to VHS's auditorium, football stadium, and baseball complex.<sup>1</sup> The issue on appeal is the harshness and the disparity of the punishment. The record establishes the following facts and circumstances leading up to this appeal.

The facts regarding the incidents of vandalism are undisputed. To A.W.'s credit, A.W. was confronted by law enforcement about his involvement in the vandalism and A.W. admitted that he was involved in all four incidents. He also admitted discharging fire extinguishers in three of the four incidents and breaking lightbulbs. A.W. was remorseful and cooperated with law enforcement in its investigation, which included assisting law enforcement in identifying other students involved in the vandalism.

A.W. was immediately suspended from school for ten days by VHS's principal, Tim Miller (Principal Miller), for his involvement. Principal Miller also made a recommendation to the school board to expel A.W. At the hearing, Claudia testified that when she received the letter from Principal Miller regarding the possibility of expulsion she went to the student handbook. Under vandalism the handbook outlines a disposition of restitution and a 1-5 days out of school suspension. Exhibit 17 at 32. The student handbook also includes a table of discipline dispositions. *Id.* at 2. Claudia reviewed the section on vandalism and estimated that A.W. would get, at most, a twenty day suspension for the four separate incidents.

Claudia admitted that the handbook also outlines in two different places that the administration reserves the right to use discretion in each case. *See id.* at 2 & 28. While both Claudia and Kyle felt that A.W. should be punished for his actions, both felt that the local board's decision was excessive and not in A.W.'s best interest. Neither Claudia nor Kyle feel that A.W.'s placement at Four Oaks is in the best interest of A.W.

An expulsion hearing for A.W. was held on September 5, 2014, before the WDM Board. During the hearing, the board met in a closed session for approximately two and a half hours to hear from witnesses, A.W., Claudia, and to deliberate on the administration's<sup>2</sup> recommendation. In making a recommendation, Superintendent Remy testified that administration reviewed A.W.'s student history including behavior, discipline, attendance, and grades. They considered the number of incidents, police records, school policies, and past practice in similar situations. They also considered whether or not they could ensure a safe and orderly school environment for other students if they allowed A.W. to remain in school. After a review of all the facts and circumstances, the administration recommended that A.W. be expelled. The administration

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<sup>1</sup> A.W. was charged with criminal mischief the fifth degree, trespass, criminal mischief in the second degree, and burglary in the 3<sup>rd</sup> degree for his involvement in these incidents.

<sup>2</sup> Administration included Superintendent Remy, Principal Miller, and Associate Superintendent Carol Seid.

based its recommendation on the repeated offenses, severity of the damages, and the need to address misconduct well known to the school community.

A.W. was given an opportunity to address the board. A.W. admitted being involved in all four incidents and apologized to the board for his conduct. After closing statements from student representatives the board inquired if administration would change its recommendation after hearing from all parties. After a short caucus the administration made the same recommendation for expulsion. However, the administration offered an alternative option of a long term suspension to the end of the school year with services through Four Oaks<sup>3</sup> in lieu of expulsion, should the board decide not to follow their recommendation.

The board voted in a 3-2<sup>4</sup> vote to suspend A.W. immediately until the end of the school year. In the local school board's written decision the board noted:

[w]hile expulsion would not be an unreasonable disciplinary sanction for such action, the Board elects to adopt the alternative of a long term suspension in the hope that [A.W.] will continue to earn credits through the Four Oaks program and thereby maintain [A.W.'s] academic progress toward graduation.

Superintendent Remy testified that two other WDCSD students were disciplined by the district for their involvement in the vandalism, but to a lesser degree than A.W. because they were involved in only one incident each.<sup>5</sup> One student received a one to five day suspension and the other student was suspended for a semester. The other individuals involved in the vandalism were not students in the district at the time and the district had no authority to discipline them.

Claudia W. filed a timely notice of appeal with the State Board on October 3, 2014. The Appellants argue that the district failed to consider the educational needs of A.W., gave A.W. a harsher punishment than the other students involved, and the student handbook and board policies were unclear and thus the punishment was unfair to A.W. The District argues that the punishment was not unreasonable and was made in the best interest of education.

### CONCLUSIONS OF LAW

In reviewing appeals under Iowa Code section 290.1 the State Board 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

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<sup>3</sup> Four Oaks offers continued educational services to students outside of the regular student population.

<sup>4</sup> The other two board members wanted to support the administration's recommendation.

<sup>5</sup> Superintendent Remy testified that one student was suspended for a semester and the other student received a five day suspension.

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.

School districts have broad discretion to punish students who break the rules as long as the district follows appropriate due process requirements. Due process requires “notice and opportunity for hearing appropriate to the nature of the case.” *Goss v. Lopez*, 95 S. Ct. 729, 738 (1975). However, due process does not “shield [a student] from suspensions properly imposed”. *Id.* at 739 (1975). An expulsion or a long-term suspension will generally be upheld as long as the student received written notice of the alleged offense; notice of the time, date, and place of the hearing; sufficient time to prepare an adequate defense, to present witnesses, and to cross examine witnesses; notice of individual rights; and if the hearing conducted by the board was free of bias. *See In re Cameron Wilson*, 25 D.o.E. App. Dec. 223, 224 (2010). 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.

#### *Harshness and Disparity of Punishment*

In this case, Claudia does not dispute that A.W. violated a school rule. Nor does she dispute that A.W. should be punished. Instead the appellants argue that A.W.’s punishment is too harsh in comparison to other students and that decision of the WDCSD Board is not consistent with its own student disciplinary policies that are contained in the student handbook. Claudia believes that a suspension for a semester is a more reasonable punishment.

The equal protection clause requires that similarly-situated persons be treated alike. *See City of Cleburn v. Cleburne Living Ctr.*, 473 U.S.D. 432, 439 (1985). Thus, the argument that A.W. was treated differently than his peers requires a showing that A.W. was “similarly-situated” to the other students involved in the vandalism. *See also In re Cameron Wilson*, 25 D.o.E. App. Dec. 223, 224 (2010). The evidence shows that A.W. is not similarly-situated to the other students. A.W. was involved in not just one incident, but all four incidents of vandalism. The other students were only involved in one incident each. The recurrence of the A.W.’s conduct and the significant amount of damage is evidence of a more egregious violation. One cannot compare A.W. with the others under these facts.

While we note that A.W. confessed to his involvement in the vandalism and assisted law enforcement in locating the other student offenders, this does not change A.W.’s conduct. Nor, does the fact that A.W. is a good student, who volunteers in the community. If anything these facts weigh against A.W. A student with A.W.’s grades should have the good sense to not

commit these offenses even once, let alone four times. Because we find that A.W. is not similarly-situated, there is no requirement to treat A.W. exactly the same as the other students.

We also find the appellant's argument that the board policy was unclear to be unpersuasive. The handbook clearly provided A.W. notice that his criminal acts, more specifically vandalism, were subject to discipline. Furthermore, the handbook provided that the administration reserved the right to use discretion in each case. In a case such as this, where there is not one or two incidents of vandalism, but four significant incidents, a case specific determination is required by the district. To do otherwise, would be an abuse of the district's discretion.

As long as the punishment of the local board is reasonable, the decision will be upheld. This Board cannot say that the decision of the WDCSD Board was unreasonable given the circumstances in this case. It is clear from the record that the WDCSD Board thoughtfully considered the recommendation of administration to expel A.W. and the appellant's argument for a lesser punishment. To the board's credit, instead of accepting the administration's recommendation, the board voted to suspend A.W. for a year with the option of A.W. receiving educational services through Four Oaks. This act alone shows a sincere concern for A.W.'s continued educational interest.

While we understand that this is not the preferred educational placement for A.W., we also understand that A.W.'s conduct was not the preferred conduct that WDCSD expects of its students. The WDCSD Board has provided A.W. the opportunity to continue to receive credit, an option A.W. would not otherwise have if he were expelled. If A.W. continues to comply with the WDCSD Board's decision he will be eligible for readmission on July 1, 2015. As such, the decision of the WDCSD Board was reasonable.

### DECISION

For the foregoing reasons, the decision of West Des Moines Community School District Board made on September 5, 2014 to suspend A.W. from the tenth grade at Valley High School for the remainder of the 2014-2015 school year is hereby AFFIRMED. There are no costs of this appeal to be assigned.

3/26/2015  
Date

/s/  
Nicole M. Proesch, J.D.  
Administrative Law Judge

3/26/2015  
Date

/s/  
Charles C. Edwards Jr., Board President  
State Board of Education