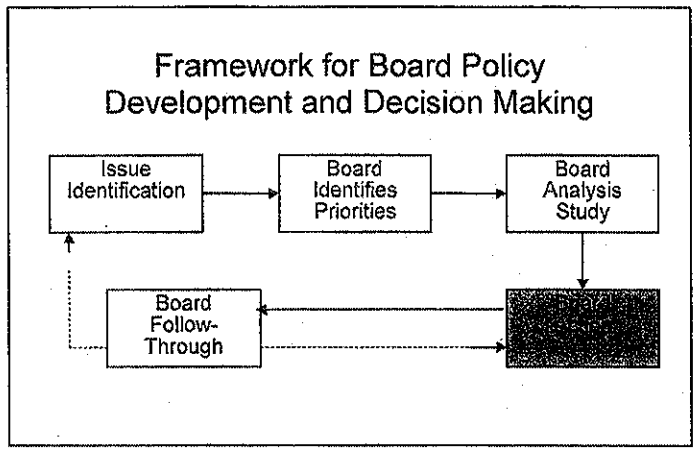
Iowa State Board of Education

Executive Summary

January 27, 2011



Agenda Item: In re Ian Michael G., Karla A. K. vs. Cedar Falls Community School District

Iowa Goal: All K-12 students will achieve at a high level.

Equity Impact Statement: This decision will provide guidelines for districts to follow when implementing disciplinary policies.

Presenter: Carol Greta, Administrative Law Judge

Attachments: 6

- Proposed Decision
- Appellant's (parent's) Notice of Appeal of Proposed Decision
- Appellant's (parent's) Written Brief to Appeal Proposed Decision
- Appellee's (district's) Written Brief in Response to the Appellant's Appeal of Proposed Decision
- Statement from "Steve"
- Statement from "Pete"

Recommendation: It is recommended that the State Board approve the administrative law judge's proposed decision.

The Appellant has requested that the State Board go into closed session to discuss this proposed decision. To go into closed session, a member makes a motion "to hold a closed session under Iowa Code section 21.5(1)(f), to discuss a decision to be rendered in a contested case conducted according to the provisions of chapter 17A." The vote on that motion is taken while in open session.

For passage, the motion requires six votes in the affirmative.

The Appellant has also exercised her right to file an appeal under administrative rule 281—6.17, but she did not request oral argument before the State Board. Accordingly, the attachments include all briefs filed by both parties, as well as two witness statements referred to in one of the briefs.

Background:

The Appellant seeks reversal of a decision of the Cedar Falls Community School District Board of Directors made on August 23, 2010, suspending her son Ian from school for the first semester of the 2010-11 school year. Ian was found by the local school board to have been in possession of marijuana at school on June 8, 2010.

The sole challenge raised by the Appellant on appeal is whether the local board's decision is supported by a preponderance of the evidence.

Conflicting evidence does not preclude a finding made by a preponderance of the evidence. The local school board had the opportunity to weigh the evidence, which it did at length, and to determine the credibility of witnesses. There are no grounds by which the State Board must overturn the local school board's decision.

In the event of an appeal of a final decision, the State Board is represented in district court by the Iowa Attorney General's office. Therefore, if any State Board member has one or more questions for the Attorney General's office, let us know several days in advance of the January 27th meeting so we can arrange for an assistant Attorney General to be present either in person or via telephone.

IOWA DEPARTMENT OF EDUCATION
(Cite as 26 D.o.E. App. Dec. 71)

In re Ian G.

Karla K., Appellant,	:	
	:	PROPOSED DECISION
vs.	:	[Admin. Doc. 4719]
Cedar Falls Community School District, Appellee.	:	

The above-captioned matter was heard telephonically on October 21, 2010, before designated administrative law judge Carol J. Greta, J.D. The Appellant ["Ms. K."] and her minor son, Ian, were present and represented by attorney Timothy Luce. The Appellee District was present through Superintendent David Stoakes and was represented by attorney John Larsen.

Hearing on a stipulated record was held pursuant to agency rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for the appeal is found in Iowa Code chapter 290 (2009). The administrative law judge finds that she and the State Board of Education have jurisdiction over the parties and subject matter of the appeal before them.

Ms. K. seeks reversal of the decision of the local board of directors of the Cedar Falls School District to suspend Ian from Holmes Junior High School for the first semester of the 2010-11 school year. This decision was made initially on August 9, 2010, and was re-affirmed by the local board on August 23, 2010.

FINDINGS OF FACT

At the time of Ian's alleged misconduct, he was nearing completion of the 7th grade at Holmes Junior High School, the sole junior high attendance center of the Cedar Falls Community School District. Ian was found to have violated the District's policy prohibiting "[p]ossession, use or distribution of a controlled substance or controlled substance look alike." Marijuana is a Schedule I controlled substance under Iowa Code section 124.204.

The facts are in dispute. The local board found that Ian participated in a marijuana transaction with another student ["Pete"] in a school restroom the morning of June 8, 2010, a day when classes were still in session. Ian admits that he used this particular restroom at the time in question, but he denied seeing Pete in the restroom and denied being in possession of marijuana. When Ian was searched two hours after the time of the alleged transaction, no illegal drugs were found in his possession.

The local board met on August 9, 2010 in closed session to take evidence and discuss the underlying incident and the administration's recommendation that Ian be suspended from school for the first semester (August 25, 2010 – January 13, 2011) of the 2010-2011 school year. The District agreed to allow Ms. K. and Ian to present

additional evidence and argument at the local board's August 23rd meeting. The local board devoted over five (5) hours to receiving and reviewing evidence in this matter.

Part of the evidence reviewed by the local board consisted of three student statements that Ms. K. claims contradict each other. Pete, who was also found to have been in possession of marijuana and punished by the local board, admitted that he had a prearrangement with Ian to meet in the restroom to transfer marijuana for money. It is not clear from the rest of Pete's statement who was the buyer and who was the seller, but Pete was unambiguous in implicating Ian as the other party to the transfer. Another student, "Steve," claimed that Pete had the marijuana, Ian had the money. Steve added that he saw Pete walk out of the bathroom, followed about 15 seconds later by Ian. A fourth student saw nothing, but stated that Steve told him very shortly after the incident that he, Steve, had witnessed Pete give Ian a bag of some drug.

The local board found that Pete admitted being in possession of marijuana in the Math Wing restroom of the school at approximately 8:10 a.m. on June 8, and that Pete and Ian participated in a drug transaction at that time. The local board acknowledged that Ian steadfastly denied any involvement and that no controlled substance was found in Ian's possession when he was searched two hours after the restroom incident. However, the local board found Ian's denial not to be credible, and affirmatively found that a "preponderance of the evidence supports the position of the administration that [Ian] was in possession of drugs at Holmes Junior High School on the morning of June 8, 2010, and that he was involved in a drug transaction with [Pete] in the Math Wing men's restroom at that time." [Findings and Decision of Cedar Falls Community School District Board of Directors, August 9, 2010.]

The specific terms and conditions of Ian's long term suspension are not at issue, and shall not be repeated here.

CONCLUSIONS OF LAW

The sole challenge raised on appeal by Ms. K. is whether the local board's decision is supported by a preponderance of the evidence.

As this Board stated in *In re Shinn*, 14 D.o.E. App. Dec. 185 (1996), "a 'preponderance of the evidence' exists when there is enough evidence to 'tip the scales of justice one way or the other' or enough evidence is presented to outweigh the evidence on the other side." *Shinn* at 196. Another explanation of this is that preponderance of the evidence means superiority in weight, influence, or force, but evidence may preponderate and yet leave the mind in doubt as to the very truth. *Walthart v. Board of Directors of Edgewood-Colesburg Community School Dist.*, 694 N.W.2d 740, 744 (Iowa 2005). The evidence does not settle the fact question, but merely preponderates in favor of that side whereon the doubts have less weight. *Id.*

The fact that there is conflicting evidence in the record does not preclude, as a matter of law, a finding made by a preponderance of the evidence. *See Green v. Harrison*, 185 N.W.2d 722, 723 (Iowa 1971) (so holding regarding a finding of clear and convincing evidence, a lower standard than preponderance of the evidence). It was not necessary that the local board find whether Ian was the buyer or the seller or a go-between in a drug transaction. Marijuana is a Schedule I controlled substance according to Iowa Code section 124.204. Possession of the drug is illegal. This is not a criminal

action; the local board was not required to determine Ian's precise role in the transaction. It was sufficient that the board found Ian to be a party in the transaction because any participation in the transaction required Ian to be in possession of the drug at some point.

It is the factfinder's duty to weigh credibility. *See Iowa Supreme Court Attorney Disciplinary Board v. Weaver, 750* N.W.2d 71 (Iowa 2008). "It is entirely reasonable to give credibility to the students who admitted their own guilt and implicated the Perrys... ." *In re Perry*, 22 D.o.E. App. Dec. 175, 181 (2003). There is no evidence that Pete had a motive to lie either about his own guilt or about Ian's involvement.

This is not a criminal proceeding; accordingly, the local board also had the right to draw an inference from Ian's lack of presentation of corroborating evidence of his denials. Ian's explanation that he failed to present corroboration because he would not be believed does not ring true, particularly given that a full semester of his education at the District was at stake.

One of the points made by Ms. K. is that the District's administrators and some students are "predisposed" to conclude that Ian is involved in illegal drug use or possession. To the extent that this is true, it appears that any such predisposition was not created in a vacuum. Ian has cultivated and portrayed to his peers an image of himself as a participant in the drug culture.

Nor can this Board conclude that Principal Welter personally was predisposed to believe that Ian was culpable in this incident. Prior to the events of June 8, Principal Welter had received reports or concerns about Ian from various sources. The principal did not initiate or create any of the situations involving Ian. He merely investigated them as is his duty to do so. These are summarized as follows:

- On April 1, another student told one of the school's counselors that Ian took a pill out of his wallet at lunch and said it was a drug. It is likely that this was a candy "dot" and not a pharmaceutical. However, this incident shows that Ian appears to want to present himself as "doing drugs."

- On April 2, more than one student reported to the principal's office suspicious behavior at Ian's locker, and an anonymous parent called to state that Ian had told other students that he was doing crack cocaine. There is no evidence that any wrongdoing took place at Ian's locker, and we accept his mother's assertion that Ian was repaying a loan, which accounts for open wallets at his locker. Also, there is no evidence that Ian was a user of crack cocaine. However, again this incident shows that, for whatever reason, Ian wanted to be known as a participant in the local drug culture.

- On April 19, a sixth grader in another attendance center of the District told the principal of that building that there are drugs at Ian's home and that Ian was saying that he has access to weapons. Ms.K. states that Ian has two Airsoft BB guns, but denies the presence of drugs at the residence.

- Finally, on June 4, Ian was sitting in class and decided to transfer six bills (folding money) from one pocket to the other in a conspicuous enough manner to attract the attention of the teacher. The teacher reported Ian having a "bunch of money" and suggested to Ian that he have the school's bookkeeper keep it until day's end.

This case is not factually dissimilar to the appeal, *In re Hodges*, 22 D.o.E. App. Dec. 279, 283 (2004). In that case, this Board upheld the local board's expulsion of a student for possession of a Schedule II controlled substance (oxycodone) at school when the only direct evidence was the statement of a fellow student.

> The only direct evidence that the pills Zach bought and ingested one of were a Schedule II controlled substance was the statement of Student A. Student A told school and law enforcement authorities that the pills he sold to Zach came from a group of pills he had purchased from Student B, the remainder of which he relinquished to the District and one of which was tested by the DCI and identified as oxycodone.
>
> No testing could be conducted of the two pills purchased by Zach. He claims to have swallowed one and lost the other. No testing of Zach's blood or urine was requested of or volunteered by Zach. Zach did not show any outward signs to his principal of being under the influence of a drug. ...
>
> But, direct evidence is not required. Even in a criminal case, where the standard of proof is "beyond a reasonable doubt" (as opposed to the "preponderance of the evidence" standard in local board hearings), direct and circumstantial evidence are equally probative. *E.g., State v. Schmidt*, 588 N.W.2d 416, 418 (Iowa 1998). "An inference of knowledge and intent can be drawn from the circumstances." *In re Amy Cline*, 2 D.P.I. App. Dec. 16, 19 (1979).

In re Hodges, 22 D.o.E. App. Dec. at 283.

The local board met at great length to review all of the evidence presented to it, and agreed to permit Ms. K. and Ian to present additional evidence prior to its final deliberations. By no means did the local board merely rubber-stamp the administration's punishment recommendation. We have no basis upon which to overturn its decision.

DECISION

For the foregoing reasons, it is recommended that the decision of the Board of Directors of the Cedar Falls Community School District made on August 9, 2010 and reaffirmed by that board on August 23, 2010, suspending Ian from the District for the first semester of the 2010-2011 school year be AFFIRMED. There are no costs of this appeal to be assigned.

11/17/10
Date

/s/
Carol J. Greta, J.D.
Administrative Law Judge

It is so ordered.

Date

Rosie Hussey, President
State Board of Education

December 6, 2010

Mr. Kevin Fangman, Acting Director
State of Iowa
Department of Education
Grimes State Office Building
400 East 14th Street
Des Moines, Iowa 50319-0146

Re: Notice of Appeal of Proposed Decision In re Ian G. 26 D.o.E. app. Dec. 71)
(Admin. Doc 4719)

This is a notice of our appeal of the proposed decision made by Administrative Law Judge Carol Greta to uphold the decision of the Cedar Falls School Board regarding Ian G, son of Karla K (Karla K., Appellant vs. Cedar Falls Community School District, Appellee, 26 D.o.E., App. Dec. 71).

We understand that the State Board will not meet until the second semester of the 2010/2011 school year, by which time Ian will have met with the Cedar Falls board and will have met the criteria set forth in his long-term suspension and will be reinstated in the public school system. However, we respectfully request that Judge Greta recommend to the State Board that the Cedar Falls School District Board's findings be overturned in order to clear Ian's name and to allow him to attend school in another district for the 2nd semester of the current school year.

We take issue with several of the statements in the Findings of Fact namely:

The Findings of Fact show a less than careful reading of the student statements and several misstatements of the actual words in the statements,which have led to misrepresentations of facts in evidence. Considering that these statements are the only evidence of the incident in question, it is vitally important that an accurate reading of the statements be made to understand the disparities between the statements.

We take issue with several findings in the Conclusions of Law.

The above mentioned statements are again referred to in the Conclusions of Law where statements about motivation for students to lie is used against Ian when all the facts argued by us about the process which these statement were obtained is not addressed.

The cases cited are not informative in Ian's case and, most importantly without exception, the cases cited have met a higher preponderance of evidence or burden of proof then in Ian's case. In addition, all the cases cited refer to individuals who are significantly older than Ian, who is 13 years old.

Namely: In Re Schinn, 14, D.oE. app. Dece. 185 (1996) (student was charged by the Police)

In Re Perry, 22 D.o.E. App. Dec. 175, 181 (2003) (Sixteen different people cited)

In Re Hodges, 22 D.o.#. App. Dec. 279, 283 (2004) (student admits to buying and ingesting the tablet in question)

We also take exception with the statements saying Mr. Welter was not predisposed to believe that Ian was culpable in this incident. The findings list several incidents from the school's version of events without once giving any weight to Karla's (Ian's) version. In addition, Mr. Welter's investigation of these alleged incidents actually shows that they were rumors and innuendo and do not support the contention that Ian intended to portray himself as part of a drug culture.. These statements in the Proposed Decision are only a small portion of what occurred on those dates and need elaboration to be fully evaluated by the Board.

In the Conclusions of Law Portion it is stated our sole challenge raised on appeal is whether the local board's decision is supported by a preponderance of the evidence yet the evidence we provided is not considered, discussed or talked about in the Proposed Decision. The Proposed Decision does not take any of the evidence we provided to the school and only considers the school's evidence. In fact there is a statement on page 73 of the decision that states "Ian's explanation that he failed to present corroboration because he would not be believed does not ring true, particularly given that a full semester of his education at the District was at stake." This statement is taken out of context and is not a clear statement of Ian's assertions. Other students who had first hand knowledge of the events presented corroboration of Ian's denial of pretending to use drugs but Mr. Welter dismissed their statements in a derisive manner. Therefore, it was unreasonable to call those students as witnesses in the hearing with the Cedar Falls Board and subject them to further derogatory comments from Mr. Welter.

There is also a misstatement in the conclusion about the April 1st incident. There are misstatements about what Ian said during the alleged experience and no refutation of the incident provided by us at both hearings before the Cedar Falls School board.

There is also nothing about the misstatements made at the initial board meeting that were prejudicial and would have impacted the board's initial decision that they then later upheld. It is much more difficult to overturn a board decision after prejudicial statements were made and we presented this information/and evidence at the second hearing. This is not considered.

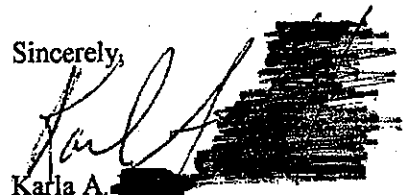
The Cedar Falls Schools have also not given us access to records of Mr. Argotsinger, the Assistant Principal, documenting that I met with him in October to discuss concerns about Ian being targeted by Mr. Welter. They also did not provide documentation of Mr. Welter's meeting with the students who attempted to defend Ian in the alleged lunchroom

incident of April 2, 2010. These records are vital to defend Ian but have not been made available to us after multiple requests.

The grounds for relief are that not all evidence was available to Administrative Law Judge Greta, adversely affecting her finding of facts. Also, certain actions by the Cedar Falls School District were indicative of unfair prejudice. These actions occurred through the entire process.

We were led to believe that no new evidence or testimony could be introduced at the hearing with Judge Greta on October 21, 2010. Our attorney, Tim Luce, and the CFSD attorney, John Larsen, had consulted each other and agreed that nothing new could be I introduced and that the hearing was only to review what had previously been presented and argued. As a result, we were not prepared to present other information or arguments. By relying only on the written summary and documents, Judge Greta did not have access to all of the verbal testimony from our two hearings on which to base her proposed decision.

Sincerely,



Karla A. [redacted]
Mother of Ian G.
[redacted]
Cedar Falls, Iowa 50613

Cc: John Larsen, Counsel for the Appellee
Tim Luce, Counsel for the Appellant
Doug Nefzger, Board Secretary for the Cedar Falls Community School District
Carol Greta, Administrative Law Judge

Attachment: Certificate of Service

BEFORE THE IOWA DEPARTMENT OF EDUCATION

In re Ian G.

Karla K.,

Appellant,

APPELLANT'S WRITTEN BRIEF
TO APPEAL PROPOSED DECISION

vs.

Cedar Falls Community School District,

Appellee,

COMES NOW Appellant Karla K. for my written brief states as follows that it is our contention that the Proposed Decision of the Administrative Law Judge upholding the Cedar Falls' School Board's Decision should be overturned because of lack of evidence, misinterpretation of evidence and the continual assertion that Ian G. is innocent of the charges he is accused of.

1. THE PROPOSED DECISION DOES NOT ACCURATELY RECOUNT THE FACTS CONTAINED IN THE STIPULATED RECORD.

The findings of Fact in the Proposed Decision state that "three students statements that Ms. K. claims contradict each other". However, Pete's statement is, in fact, self-contradictory and the other statement of "Steve"implies that he only heard but did not see what he was alleging was a drug transaction.

Furthermore, Pete lied throughout his statement as changed his story multiple times. He alternately denied exchanging anything; he accused Ian of proposing to sell; he admits in his statement that he was lying earlier and then finally alleges that he took drugs from Ian. It is hard to know which truth to accept. The other student "Steve" who claims to have been in the bathroom referred to hearing something being given to Ian. All he admits to seeing was to seeing the other student and Ian walk out of the restroom. He claims

to be an earwitness rather than an eyewitness and his version of events is a direct contradiction to the final version of events recounted by Pete.

Although it was argued that it doesn't matter whether Ian was the recipient or seller of drugs, it matters in that if he sold drugs he would have had money on him and if he bought drugs he would have had drugs on him. It is undisputed by all parties that Ian had neither drugs nor money in his possession. The board and it's attorney and the administrators argue that due to the two hour gap between before Ian was brought to the principal's office could explain why he didn't have drugs or money on him but in actuality Ian was in class and under teacher supervision during that time. He would have had neither the opportunity nor the motive to dispose of the drugs or money during that time. Therefore the only conclusion is that he never possessed drugs nor engaged in any illicit activity and the contradictory statements do not support the conclusions.

II. THE CONCLUSION OF LAW CONTAINS QUESTIONABLE ASSERTIONS

In the Proposed Decision the cases cited are vastly different from our case and the preponderance of evidence is stronger in the cases cited then in Ian's case.

- The Schinn case cited by the Cedar Falls Schools during the telephonic hearing with Carol Greta and the proposed decision by Carol Greta states (I quote the case in question)

> and because the evidence presented before the Board is the same type of evidence constitut-ing "probable cause" for the police to file charges against Don Shinn and the other students

The evidence in the Schinn case was enough for the police to file charges against Don Schinn and other students. In our case the evidence did not warrant charges against Ian. No charges were filed against Ian because there was not enough evidence to file charges.

- Another case that was cited in your decision is the case of Diana Hodges and her son Zach Hodges written by you in 2004 wherein you state our case is "not factually dissimilar" to the Hodges case.

We believe the Hodges case is not a good match to our case because Hodges admitted to taking the substance **and** admitted to buying the substance. Ian has always steadfastly denied being a part of the transaction that occurred in the bathroom on the date in question.

In the Proposed Decision it states "There is no evidence that Pete had a motive to lie either about his own guilt or about Ian's involvement"

One of "Pete's" motives for lying is that he was accused by "Steve" of selling drugs which is a felony versus receiving drugs which is a misdemeanor. As the facts show, "Pete" was found with drugs and money in his possession and charges were filed against him with the Cedar Falls Police Department.

Pete's credibility is extremely questionable as he lied in his own statement and had several different versions of events. Again, we ask which truth to accept of Pete's version of events.

How did "Pete" come to name Ian? As was discussed at both School Board meetings, Mr. Welter began his questioning of Ian by asking Ian what were you doing in the bathroom with "Pete" and we could therefore infer that Mr. Welter introduced Ian's name to "Pete" when he was first questioned.

The school had admitted that Ian was perceived by others as trying to act as if he were involved in a "drug culture", making him a target for anyone looking to blame others. The fact that Ian's locker was searched

for drugs, based on precarious reasoning, was widely known among other students. In addition, when Ian's locker was first searched his parents were not notified until after a second search had occurred. While this is a violation of the district's policies, it also did not allow his parents to know of the school's concerns until after administrators had established a pattern of wrongly suspecting Ian of illicit behavior.

III. THE SCHOOL BOARD'S DECISION AND THE PROPOSED DECISION ARE NOT SUPPORTED BY A PREPONDERANCE OF EVIDENCE.

Along with the information presented in our Letter of Appeal, we add the following:
Department of Education Board members and School Board Members all take an oath of office to uphold the Constitution of the United States of American and the Constitution of the State of Iowa. This is a noble and important job. Administrators do not take this Oath and have a different task then you do. As Board members, it is vital that you consider the facts in this case and not just the Administration's allegations and recommendations. In studying the evidence presented, we believe that Ian's constitutional rights have been jeopardized, namely his Fourth Amendment and Fourteenth Amendment rights. For certain, the burden of proof has not been met in this case as there is no physical evidence and one eyewitness that heard the transaction and saw two boys enter the restroom (one of who was allegedly, Ian). We have no access to this student to cross examine him or to try to determine his reliability. We do know that a bathroom stall opening is less than one inch wide by which this boy supposedly viewed Ian in an exchange. No drugs nor money were found in Ian's possession. Our son's future is put in jeopardy by someone peering through a bathroom stall. Eyewitness testimony is often unreliable in a court of law yet, in our schools, where you have sworn to uphold the Constitution of the United States, it is enough to condemn our son. He is indicted on the word of one student who was not in a position to make reliable observations. Please reconsider this case and overturn the Proposed Decision and the Decision of the Board of Education from Cedar Falls Schools.

Respectfully submitted,

Karla K. , Mother of Ian G.

BEFORE THE IOWA DEPARTMENT OF EDUCATION

In re Ian G. Karla K., Appellant, vs. Cedar Falls Community School District, Appellee.	APPELLEE'S WRITTEN BRIEF IN RESPONSE TO APPELLANT'S APPEAL OF PROPOSED DECISION

COMES NOW Appellee Cedar Falls Community School District, by and through its attorneys, Redfern, Mason, Larsen and Moore, P.L.C., and for its written brief states as follows:

In this matter, school administrators, the Board of Directors of the Cedar Falls Community School District (the "school board"), and the Administrative Law Judge who authored the Proposed Decision, have all found that a preponderance of the evidence demonstrates that Ian G. engaged in a drug transaction in a school restroom at Holmes Junior High School. However, the Appellant continues to deny Ian's involvement in the transaction and has now appealed the Proposed Decision. Because the Proposed Decision fully recounts the relevant facts contained in the stipulated record and correctly holds that the school board's decision is supported by a preponderance of the evidence, the Board of Education should affirm the Proposed Decision in full.

I. THE PROPOSED DECISION ACCURATELY RECOUNTS THE FACTS CONTAINED IN THE STIPULATED RECORD.

The Proposed Decision properly addresses only the evidence that was before the school board. As Appellant concedes in the Notice of Appeal, the parties agreed to hold the appeal hearing on the stipulated record, pursuant to 281 Iowa Admin. Code § 6.12(1). Therefore, "the

appeal hearing on stipulated record is nonevidentiary in nature. No witnesses will be heard nor evidence received." Id. Appellant now argues that "not all evidence was available to Administrative Law Judge Greta." (Notice of Appeal, p. 3). However, Appellant, when given the opportunity to present any additional evidence relevant to Ian's involvement in the alleged transaction, agreed to a stipulated record containing only the evidence that was before the school board. The Proposed Decision, therefore, properly limits its scope to the facts contained in the stipulated record.

The evidence before the school board was straightforward and is accurately recounted in the Proposed Decision. On the morning of June 8, 2010, Principal Dave Welter received reports that two students had engaged in a drug transaction in a school restroom at Holmes Junior High School, one of two junior high attendance centers of the Appellee district. A student, referred to as "Steve," told Principal Welter that he had been in a restroom in the Math Wing of the school when he witnessed Ian and a second student, referred to as "Pete," engage in a transfer of drugs for money. Another student, referred to as "Cary," stated that "Steve" had told him about witnessing the drug transaction when "Steve" emerged from the restroom, and convinced "Steve" to report the matter to the principal. About two hours after the incident, Ian was called into Principal Welter's office and questioned about the incident. Ian denied any involvement, admitting only that he was in the restroom at the time the alleged incident took place, but stating that he did not see "Pete" at that time. When police were called, they found "Pete" to be in possession of marijuana, but a search of Ian and his locker yielded no drugs.

Because the incident occurred during the final week of the school year, the Holmes administration decided to suspend Ian from school for the final three days of classes and recommended that Ian be suspended from the first semester of the 2010-2011 school year. The school board conducted its first hearing on this matter on August 9, 2010, in which it considered

the school administration's findings and recommendations. Various members of the school administration, Ian, and Ian's mother and stepfather all attended the meeting and presented statements and evidence. Ian, along with his mother and stepfather, was allowed to question Mr. Welter about his Incident Report and they presented their position that Ian had been falsely accused. At the conclusion of that hearing, the school board found by a preponderance of the evidence that Ian had engaged in the drug transaction, in violation of the school's policy prohibiting the possession of illegal drugs on school property. (See Findings and Decision, Aug. 9, 2010). The school board adopted a resolution suspending Ian from school for the first semester of the 2010-2011 school year and imposing conditions on his subsequent return to school. At the Appellant's request, the District allowed for a rehearing of the matter at a subsequent hearing, held on August 23, 2010. At that hearing, Ian and his mother, who were then represented by counsel, made additional statements and submitted additional evidence. After deliberation, the school board unanimously upheld its previous decision. The District adopted a similar resolution, suspending Ian from the first semester of the 2010-2011 school year and imposing conditions on his return to school. (See Findings and Decision, Aug. 23, 2010).

At the hearings, the administration presented the statements of "Pete," "Steve," and "Cary" as well as the Incident Report prepared by Principal Welter, who also testified and was subject to cross-examination by Appellant. In his defense, Ian presented his own denial, his mother's response to prior incidents, the results of alcohol counseling that showed Ian was at a low risk for substance abuse, and a police incident summary indicating that only "Pete" was ultimately arrested for the incident. The school board dedicated just less than two hours in closed session during the August 9 meeting and nearly three hours during the August 23 meeting to conduct the hearing and weigh the evidence. (See Minutes, Aug. 9 and Aug. 23, 2010). In the school board's detailed Findings and Decision of both hearings, the board made detailed factual

findings and a legal determination in light of the relevant disciplinary policy. (See Findings and Decision; Aug. 9 and Aug. 23, 2010). In both hearings, the Board ultimately determined that the preponderance of the evidence supported the administration's allegations and that Ian's denials were not credible.

II. THE SCHOOL BOARD'S DECISION IS SUPPORTED BY A PREPONDERANCE OF EVIDENCE.

The Proposed Decision correctly holds that the preponderance of the evidence supports the school board's decision. Disciplinary decisions are to be supported by a preponderance of the evidence. *In re Shinn*, 14 D.o.E. App. Dec. 185 (1996). "A 'preponderance of the evidence' exists when there is enough evidence to 'tip the scales of justice one way or the other' or enough evidence is presented to outweigh the evidence on the other side." *Id.* at 196. Hearsay evidence presented by school administrators charged with the duty of investigating school incidents can be sufficient to support a finding that a student has violated district rules. *Id.* at 195-96. The school board's findings, which accept "Pete's" version of events and discount Ian's testimony, were appropriate. "It is entirely reasonable to give credibility to the students who admitted their own guilt and implicated the" accused student. *In re Perry*, 22 D.o.E. App. Dec. 175 (2003).

In a case that is factually very similar, this Board held that the incriminating statements of a co-participant constitute sufficient evidence to expel a student for possession of illegal drugs despite the disciplined student's denials. *In re Hodges*, 22 D.o.E. App. Dec. 279, 283 (2004). In that case, a third-party witness and the other participant stated to the principal that Mr. Hodges had been involved in a drug transaction. This Board held that the preponderance of the evidence in that case supported the local board's finding that Mr. Hodges had possessed illegal drugs and that expulsion was an appropriate punishment. As in *Hodges*, the evidence in this case is sufficient to support a long-term suspension.

III. THE SCOPE OF THE PROPOSED DECISION IS PROPERLY LIMITED TO THE ISSUES CONTAINED IN THE APPEAL.

Appellants further contentions contained in the Notice of Appeal of the Proposed Decision are not properly within the scope of the appeal and are therefore irrelevant to this Board's review of the Proposed Decision. In Appellant's Request for Appeal of the school board's decision, Appellant states that the grounds for appeal are that the "decision is not supported by the evidence presented by the Cedar Falls School Administrators and is not in the best interest of Ian." However, Appellant now raises entirely new issues, such as an argument that "certain actions by the Cedar Falls School District were indicative of unfair prejudice." This allegation is simply incorrect and is also far afield of the issues Appellant properly placed before this Board by the appeal. This Board's appeal procedures require an appeal affidavit to "set forth the facts, any error complained of, or the reasons for the appeal in a plain and concise manner." 281 Iowa Admin. Code § 6.3(1). Therefore, it would be inappropriate to expand the scope of the Board's review of the appeal to address these newly stated issues.

Even if the Board would address Appellant's new grounds for appeal, the arguments are unfounded. As the Proposed Decision states, there is no reason to "conclude that Principal Welter was predisposed to believe that Ian was culpable in this incident." (Proposed Decision 73). Appellant now alleges that Principal Welter was predisposed to believe that Ian was engaged in drug-related activities. However, this argument simply ignores the fact that it was the school board, not Principal Welter, who ultimately determined Ian's guilt and imposed the punishment, pursuant to Iowa Code § 282.4. The Appellant now takes exception to Principal Welter's account of incidents that occurred prior to June 8, 2010. (See Aug. 23, 2010 Hearing Exhibit 4). At a minimum, however, it is clear from these prior incidents that many of Ian's

fellow students were reporting to Principal Welter concerns about Ian's suspicious behavior. As the Proposed Decision states, Principal Welter did not initiate any of these prior incidents involving Ian. He merely investigated these incidents, as it was his duty to do so. The school board explicitly found that "Principal Welter responded effectively and credibly to the parents' statements." (Findings and Decision, Aug. 23, 2010 ¶ 9). Furthermore, the school board determined that the prior incidents "are not a central focus of the (school board's) Findings and Decision in this matter, (although) those events do demonstrate a history and pattern of disturbing behavior". (Id.) While Appellant now disputes Principal Welter's exact account of the prior events, the prior events were not integral to the school board's decision in this case. As in the *Hodges* case, the facts before the school board relating to the June 8 incident were themselves sufficient to determine Ian's guilt and impose a long-term suspension.

It is notable that, while Appellant continues to debate the school board's findings with regard to the prior incidents, Appellant has presented very little evidence directly relevant to the June 8 incident. The only evidence Appellant has presented is Ian's admission that he was in the restroom around the time the alleged incident occurred, but denial that he was involved in the transaction or saw "Pete", and the fact that when he was searched two hours after the alleged occurrence, no drugs were found. Appellant has not disputed the credibility of the witnesses who made statements implicating him, other than arguing that there are "disparities between the statements." (Notice of Appeal p. 1). Ian presented no witness statements or alibi to support his denial. Simply put, Ian's only defense is his own denial and a baseless argument that Principal Welter was predisposed to believe his guilt. Balanced against the statements of two eyewitnesses, one of whom was a direct participant in the transaction whose statement admits his own guilt, it was not unreasonable for the school board to determine that a preponderance of the evidence implicated Ian's guilt. The Proposed Decision accurately recounts the facts contained

in the stipulated record, and correctly rules on the one issue within the scope of Appellant's appeal – that the school board's decision was supported by a preponderance of the evidence. Therefore, the Proposed Decision should be affirmed.

For the foregoing reasons, Appellee Cedar Falls Community School District respectfully requests that the Board AFFIRM the Proposed Decision and uphold the decision of the Board of Directors of the Cedar Falls Community School District suspending Ian from the District for the first semester of the 2010-2011 school year, with accompanying conditions for his return.

Respectfully Submitted,

REDFERN, MASON, LARSEN & MOORE, P.L.C.

By: _____

John C. Larsen, AT0004541
415 Clay Street, P.O. Box 627
Cedar Falls, Iowa 50613
Phone: (319) 277-6830
Fax: (319) 277-3531
Email: jclarsen@cflaw.com

ATTORNEYS FOR APPELLEE

Original to:
Iowa Department of Education
Attention: Carol J. Greta, J.D.

Copy to:
Karla A. [redacted]
[redacted]
Cedar Falls, IA 50613

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon the Iowa Department of Education, Attention: Carol J. Greta, J.D., and Karla A. Koch at their respective addresses disclosed, on December 20, 2010.

BY: X U.S. Mail; __ Hand Delivered; __ Certified Mail; __ FAX; __ Overnight Carrier; __ Other

REDFERN, MASON, LARSEN & MOORE, P.L.C.

By _____

C

VOLUNTARY STATEMENT

CASE # _____

Date: 6-8-10 Place: Holmes Time Started: _____

Person Giving Statement: "Steve" (Student name) Age: _____ Birthdate: / /

Address: _____ City/State: _____ PBX#: _____

Employed By: _____ Statement Taken By: Mr. Welter

I was in the restroom in the math wing while "Pete" (student name) and Ian [redacted] walked in. It was around 8:10. "Pete" (Student name) was carrying his backpack and pulled it off and unzipped it and took a bag I could hear him unzip it and give it to Ian and Ian said, "good, nice and compact." "Pete" (Student name) asked for the money then Ian gave it to him. I saw "Pete" (student name) walk out after that followed by Ian about 15 seconds after. He carried his backpack to 1st hour and went to the restroom again at 8:25 – 8:35. That could be another deal. I heard him tell "Will" (student name) about his drugs. "Will" (Student name) said that "Jeff" (student name) had received some too.

Statement Completed at _____ on the _____ day of _____ 20 ____

Witness (Student name) X 6/8/10

Witness _____

D

VOLUNTARY STATEMENT

CASE # _____

Date: 6-8-10 Place: Holmes Time Started: _____

Person Giving Statement: "Pete" (Student name) Age: _____ Birthdate: __/__/__

Address: _____ City/State: _____ PBX#: _____

Employed By: _____ Statement Taken By: Mr. Welter

Me and Michael Ian [redacted] met in the bathroom in the math wing to transfer marijuana. He was going to give me some. When we got in there he took it out and I didn't want it. We didn't exchange anything. I didn't give him anything and he didn't give me anything. I didn't get any money for it. He and I had made a prearranged plan to make a trade at school. The marijuana was in his pocket and was in a plastic bag that was twisted up. I talked to him about this at school the previous week. I lied and said I didn't have anything but I did. Michael Ian [redacted] brought a small amount of marijuana to school for me. I took it. The money (47$) is my B-day money. My B-day was yesterday. I got 20$ from my Gpa Wes and gma Connie and 20$ from my Gpa Larry and gma Marlene.

Statement Completed at _____ on the _____ day of _____ 20 ____

Witness (Student name) _____

Witness _____