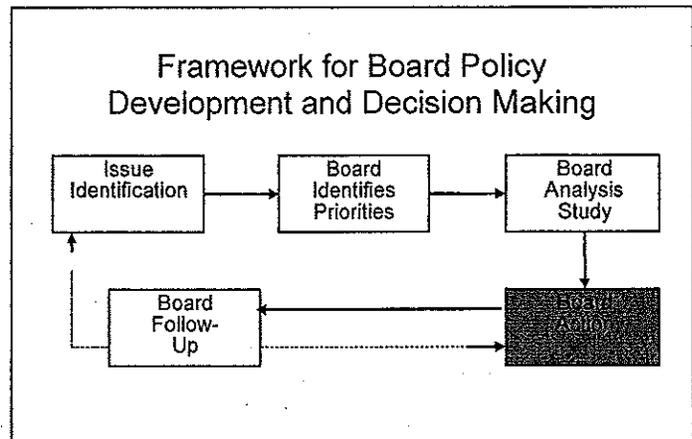


# Iowa State Board of Education

## Executive Summary

November 18, 2015



**Agenda Item:** *In re School Building Closing (Gladbrook-Reinbeck Community School District)*

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

**State Board Role/Authority:** Under Iowa Code section 290.1 the State Board of Education has authority to hear appeals from local school board decisions.

**Presenter:** Nicole Proesch, Administrative Law Judge

**Attachments:** 1

**Recommendation:** It is recommended that the State Board approve the proposed decision affirming the decision of the local board of directors of the Gladbrook-Reinbeck Community School District (GRCSB Board) to close the Gladbrook Attendance Center.

**Background:** In January of 2014, faced with declining enrollment and a negative financial outlook, the GRCSB Board began to look at options for reducing expenditures for the district. The board reviewed financial projections prepared by Gary Sinclair, who is the Director of Financial Planning Services for the Iowa Association of School Boards. After making several cuts, the board determined that they would need to continue to make additional cuts to the budget or they would be looking at a negative unspent balance in the future.

The board began to look at several options for closing attendance centers in the district. The board appointed a committee to review two of those options and then to report back to the board with pros and cons of each option. After seven meetings, the committee reported back to the board. The board reviewed the options and voted to close the Gladbrook Attendance Center on February 25, 2015. The Appellants appeal this decision.

The proper standard of review of a decision of the local school board that involves discretion is for an abuse of discretion. Thus, we apply that standard here. There is no evidence that the local board abused its discretion. While we understand the Appellants did not like the decision and would have preferred an alternative outcome, this is not enough to overturn the local board.

Thus, it is recommended that the State Board affirm the decision of the local board.

The Appellants have filed an Appeal of the Proposed Decision to the Board and requested oral arguments. Oral arguments will be allowed. Each side will have five minutes to present to the State Board prior to the State Board making a decision.

IOWA DEPARTMENT OF EDUCATION  
(Cite as \_\_\_ D.o.E. App. Dec. \_\_\_)

---

*In re School Building Closing* )  
)  
Scott and Jamie Schmidt, )  
) PROPOSED DECISION  
Appellant, )  
)  
v. )  
)  
Gladbrook-Reinbeck ) Admin. Doc. No. 5007  
Community School District, )  
)  
Appellee. )

---

*In re School Building Closing* )  
)  
Chad and Karen Mussig, )  
) PROPOSED DECISION  
Appellant, )  
)  
v. )  
)  
Gladbrook-Reinbeck ) Admin. Doc. No. 5008  
Community School District, )  
)  
Appellee. )

---

*In re School Building Closing* )  
)  
Scott and Kathy Vavroch, )  
) PROPOSED DECISION  
Appellant, )  
)  
v. )  
)  
Gladbrook-Reinbeck ) Admin. Doc. No. 5009  
Community School District, )  
)  
Appellee. )

---

## STATEMENT OF THE CASE

The Appellants, on behalf of their minor children, seek reversal of a February 25, 2015 decision by Gladbrook-Reinbeck Community School District ("GRCS D" or "District") Board ("GRCS D Board" or "Board") to close the Gladbrook attendance center effective for the fall of 2015 leaving an attendance center in Reinbeck only. The affidavit of appeals filed by the Appellants, 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 (2015). 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 June 9, 2015, before designated administrative law judge, Nicole M. Proesch, J.D., pursuant to agency rules found at 281 Iowa Administrative Code chapter 6. The Appellants were present on behalf of their minor children and represented by attorney Darrell G. Meyer. The Appellee, GRCS D, was represented by attorney Kristy M. Latta. Also present for the school district was Superintendent Shawn Holloway ("Superintendent Holloway") and GRCS D Board President, Josh Hemann ("President Hemann").

Deb Osborn testified for the appellants. Appellants' exhibits #1-31 were admitted into evidence without objection. Appellant's also submitted sworn depositions for Douglas W. Rowe, Matthew R. Wyatt, President Hemann, Chris L. Frischmeyer, and Superintendent Holloway, which were admitted without objection. Superintendent Holloway and President Hemann testified for GRCS D. The school district's exhibits #A-W were admitted into evidence without objection.

## FINDINGS OF FACT

The GRCS D currently has three school buildings in the district:

1. The Gladbrook-Reinbeck High School located in Reinbeck, Iowa, which currently houses grades nine through twelve for the entire district;
2. The Reinbeck Elementary School located in Reinbeck, Iowa, which currently houses kindergarten through second grade for residents of Gladbrook, and grades three through four for both residents of Gladbrook and Reinbeck; and
3. The Gladbrook Elementary/Middle School located in Gladbrook, Iowa, which currently hosts grades kindergarten through second grade for residents in Gladbrook, and grades fifth through eighth for both residents of both Gladbrook and Reinbeck.

In January of 2014, faced with declining enrollment<sup>1</sup> and a negative financial outlook,<sup>2</sup> the GRCS D Board began to look at options for reducing expenditures for the district. The board reviewed financial projections prepared by Gary Sinclair, who is the Director of Financial

---

<sup>1</sup> Exhibit E on page 122 shows that enrollment in 2014 was 522 students, which is down from 17 students from the previous year, and down from 618 students in 2009.

<sup>2</sup> Based on enrollment projections the district was projecting a negative unspent balance of \$262,593.00 for the fiscal year 2016.

Planning Services for the Iowa Association of School Boards.<sup>3</sup> The Board considered several cost saving options to include: closing an attendance center, staff reductions, programming reductions, sharing programs, and transportation costs. The Board established a goal of having an unspent balance<sup>4</sup> of \$500,000.00 and a goal of \$600,000.00 in cost reductions. On February 19, 2014, after reviewing the options and the budget projections the District decided not to close any school buildings at that time. Instead the district cut some positions, reduced some positions to part-time, and discussed sharing programs. From February of 2014 to June of 2014 the Board continued to review the budget and find ways reduce spending to achieve its goals. At the June 19, 2014, meeting the Board voted to contract with RSP to conduct an enrollment analysis and to facilitate a facility planning process based on its goals.

At the September 3, 2014, meeting the Board reviewed the enrollment projections from RSP, which included projections from 2014-2019 as well as previous enrollment information. GRCS D's certified enrollment has declined from 618 students in 2009 to 522 students in 2014.<sup>5</sup> The new projections showed a slight decrease in enrollment moving forward. After reviewing all of the information the Board agreed to assume that the District would continue to see a loss of an estimated ten students per year in future years. A loss of students equals a loss of approximately \$6400.00 per student in state aid. The board reviewed historical and projected financial information regarding budget projections out to fiscal year 2019.<sup>6</sup> Based on these assumptions the District would be at a negative unspent balance of -\$168,919 in fiscal year 2019. A District cannot operate on a negative unspent balance. Faced again with a loss in state aid, rising costs, and increasing teachers' salaries, the Board discussed the need to review additional cost saving measures to include: sharing athletics, use of an online course for health, reducing class sections, and closing an attendance center. The Board agreed to have Superintendent Holloway contact two facilitators to discuss next steps in long range facility planning.

At the September 18, 2014, meeting the Board reviewed and discussed two options for closing attendance centers in GRCS D and the costs savings associated with each option. The first option was to close the Gladbrook attendance center and send all grades to Reinbeck and the second option was to close the Reinbeck Elementary/Middle School and have grades kindergarten through sixth attend in Gladbrook and grades 7-12 attend in Reinbeck. The Board discussed operational costs, transportation costs, and the savings from the closure of buildings. The Board agreed to have a work session to continue to review these options.

On October 1, 2014, a work session was held with two facilitators contacted by Superintendent Holloway, Superintendent Joe Kramer ("Superintendent Kramer") from South

---

<sup>3</sup> Mr. Sinclair prepared the financial projections using FPP Lite which is financial projection software. The Appellants challenge the accuracy of these projections and the use of this software instead of ISFIS software.

<sup>4</sup> Local school district funding is determined primarily but the number of students and the districts costs per pupil. Iowa Code § 257.1 (2015). School districts have limited spending authority in their budgets. *Id.* § 257.31. An available unspent spending authority is an amount the district has available to spend, if cash is available. Any unused spending authority carries over to the next fiscal year. However, if there is a negative unspent balance, this is a violation of the districts statutory spending authority. Thus, a district cannot have a negative unspent balance.

<sup>5</sup> Exhibit E, page 122.

<sup>6</sup> Exhibit E, pages 118-135.

Central Calhoun and Superintendent Jeff Kruse ("Superintendent Kruse") from Pocahontas. Both had recently experienced consolidations and building closings in their own districts. The Board continued to discuss costs of facilities, costs of transportation, condition and location of facilities, and academic offerings. At the October 15, 2014, meeting the Board appointed a long-range facility planning committee<sup>7</sup> to discuss the best solution between the two building closure options previously presented.

Over the course of seven meetings the long-range facility planning committee and the two facilitators met and reviewed the enrollment history and projections, District financial information, student scheduling and classroom arrangements, transportation costs and savings based on the different options, building costs savings for each option, staff, and other savings. The committee toured both the Gladbrook and Reinbeck attendance centers at issue. The committee also met with the Board and Mr. Sinclair in a question and answer session to review financial projections related to the two scenarios.<sup>8</sup> The projections showed that closing the Gladbrook attendance center would provide the district an estimated savings of \$402,025.28 per year and that closing the Reinbeck attendance center would provide an estimated savings of \$296,880.42 per year.

The committee also reviewed a third and fourth option.<sup>9</sup> The third option was to keep the Gladbrook campus open, close the Reinbeck elementary, and serve students in grades kindergarten through eighth at the Gladbrook campus. Grades nine through twelve for both towns would continue to be served at the high school in Reinbeck. This would result in an estimated savings of \$248,320.00 per year. The fourth option was to keep the Gladbrook Campus open, serve students in grades kindergarten through second who live in Gladbrook and serve students in third through eighth grade for both towns at the Gladbrook campus. The Reinbeck elementary would remain open and serve grades kindergarten through second who live in Reinbeck. Grades nine through twelve for both towns would continue to be served at the high school in Reinbeck. This would result in an estimated savings of \$270,880.14 per year. Although, there was initial discussion that the committee would provide a recommendation as to which option to choose the Board elected to get a list of pros and cons from the committee so the Board could make the final decision.

On January 14, 2015, the GRCSB Board held a work session to review the report from the committee. The committee provided a list of pros and cons to the Board.<sup>10</sup> The committee also provided a list of priorities for the District which included academic offerings, general fund/enrollment, community impact, and status quo. The committee members shared positive rationales for keeping each of the buildings. Additionally, the committee presented thoughts on the third and fourth option to the Board for consideration.

---

<sup>7</sup> The committee was to be made up of four teachers, four business or city leaders, one mayor or council member from Gladbrook, one mayor or council member from Reinbeck, four District Advisory Members, and six parents. Deb Osborn was a member of the committee and served as Co-Chair.

<sup>8</sup> Exhibit M, page 249.

<sup>9</sup> Exhibit M, page 249.

<sup>10</sup> Exhibit R, page 310.

On January 21, 2015, and January 28, 2015, the Board met for two public work sessions to discuss the options with the community. The Board provided a recap of the work of the Board and the long-range facility planning committee up to that point. Superintendent Holloway presented savings projections for four scenarios requested by the board. A survey was available for questions and comments and the Board answered questions from the survey. Community members were given an opportunity to address the Board with comments or questions. The board set the date for a vote on the school closing for the February 25, 2015 meeting.

During a work session with the Board on February 4, 2015, Superintendent Kramer and Superintendent Kruse provide a written recommendation to the Board regarding which option it should choose.<sup>11</sup> The recommendation outlined the pros and cons related to academics, community impact, financial/enrollment variables, and status quo. The recommendation stated:

If the board feels the community impact is the primary consideration in their decision, we recommend maintaining the Gladbrook building as an attendance center. If the long-term financial picture is the board's primary consideration, we recommend maintaining the Reinbeck elementary building. Academic offerings are enhanced or reductions mitigated if the Reinbeck elementary is maintained through the reduction in transportation and utility costs. The ability to share staff within the district is enhanced by maintaining two buildings in the same community. It is important for the community to stay united once a final decision is made.

At the February 25, 2015, meeting each of the Board members was given the opportunity to speak and then to vote. The GRCSD Board voted 5-2 to close the Gladbrook Elementary/Middle school building prior to the beginning of the 2015-2016 school year, and subsequently to realign the grades of the Reinbeck Elementary school building to now serve all students from the District in grades K-6 and to realign the grades of the Gladbrook-Reinbeck high school building to now serve all students in the District in grades 7-12.<sup>12</sup>

As discussed below, we must determine whether there was substantial, credible evidence to support the decision to close the Gladbrook attendance center. Thus, it is probative to know why the majority of the local Board voted to close the Gladbrook attendance center. The rationales given by those in the majority during the meeting included the following:

- The Board looked at the various financial considerations.
- They considered the difference in costs savings between the options.
- They considered the amount of students who historically open enrolled in and out of the District.
- They considered the transportation of students for each of the options.

---

<sup>11</sup> Exhibit V, page 427-429.

<sup>12</sup> A motion was made to amend the decision to close the Reinbeck Elementary building instead but that motion failed.

It was a mixed vote with pros and cons given to both sides. President Hemann felt there was sufficient evidence to support both decisions and that reasonable minds could differ regarding the appropriate outcome. President Hemann voted to close the Gladbrook attendance center. Board member Matthew Wyatt also voted to close the Gladbrook attendance center.<sup>13</sup> He raised a concern that roughly 60% of the students come from the north end of the district and it didn't make sense to transport that many kids to southern end of the district to Gladbrook.

The Appellants agree with the Board members who voted against the closing of the Gladbrook attendance center. Specifically, Board member Douglas Rowe voted against the closing because he felt he did not have enough information regarding picking up students and sports schedules to make a decision at that point in the process.<sup>14</sup> Additionally, he felt the process was flawed from the beginning and that the conversation regarding closing an attendance center should have been started much earlier than it was. Prior to the night of the vote Mr. Rowe requested that the issue be tabled to allow time for the new superintendent<sup>15</sup> to review the situation however, the Board did not table the vote.

The Appellants consulted with Deb Osborn, who is a CPA and was a co-chair of the long-range facility planning committee, regarding her conclusions about the district's financial information and the options brought to the Board. She outlined several concerns she felt were not contemplated in the Board's decision which included the following:

- The District had just switched to PMA software for determining financial projections. She believed the PMA software does not guarantee accurate results and that the projections between the PMA software and ISFIS software showed varying results.
- The budget projections were overstated and not accurate.
- The projections with regard to open enrollment numbers were not accurate because on the day of the vote the numbers of those who had filed paperwork was much higher than the assumption made by the board.
- The costs associated with maintaining a 28E agreement with the City of Gladbrook should the building close were not considered.
- The costs associated with disposal of the building were not considered.
- The details of implementation of the options were not considered.
- Over 40% of the district is from Gladbrook and they would be inconvenienced by closing the Gladbrook attendance center.
- The Superintendent was leaving to go to another district and the community was not aware of this at the time of the vote.

Ms. Osborn also thought the \$200,000.00 in budget cuts made by the board put the District on the right track with an unspent balance of \$752,504.00 in fiscal year 2016.<sup>16</sup> She

---

<sup>13</sup> Deposition of Matthew Wyatt, page 16-17.

<sup>14</sup> Deposition of Douglas W. Rowe, page 28-32.

<sup>15</sup> By the time of the board meeting Mr. Holloway had accepted a Superintendent position in Panora for the 2015-2016 school year.

<sup>16</sup> Exhibit 30, page 2.

thought the Board should have looked at other ways to save money, like sharing a superintendent, before closing a building. She voiced concerns about the process including the use and make-up of the long range planning committee. She felt the committee was restricted to only looking at two options and was troubled that they were only asked for a list of pros and cons and not a recommendation. In an email to the board on January 22, 2015, Ms. Osborn expressed her opinion that the fourth option was the best option even if it does not save them the most money because it allows both communities stability and the ability to grow.<sup>17</sup>

The District agreed that open enrollment numbers will fluctuate depending on the outcome of the vote. In one instance they ran numbers for twenty-five students to open enroll out under each of the scenarios but, Superintendent Holloway still considered this a wild card. The District was aware of the 28E Agreement and the need to handle that issue after the vote. The Board also planned to work out the details of implementation after the vote took place.

### CONCLUSIONS OF LAW

The Appellants are residents of the GRCSO, and are parents of students who attend in the district at the Gladbrook Elementary School. Furthermore, the parties have stipulated that the Appellants are aggrieved parties under Iowa Code section 290.1, thus, the Appellants have standing to bring this appeal.

The Appellants argue that "the Barker rules," which were formally codified as 281--IAC Chapter 19, are the standard to be applied in appeals of this nature. However, in 2009, the Iowa Supreme Court in *Wallace v. Iowa State Board of Education* invalidated "the Barker rules." 770 N.W.2d 344 (Iowa 2009). The Court in *Wallace* held that a District's decision to close an attendance center entailed discretion of the district and as such the proper standard of review by the State Board is for abuse of discretion. *Id.* at 349. Thus, we will apply that standard here.

The Iowa Supreme Court has stated that in applying the abuse of discretion standard we look only at whether a reasonable person could have found sufficient evidence to come to the same conclusion as the District. *Sioux City Community Sch. Dist. v. Iowa Dept. of Educ.*, 659 N.W.2d 563, 569 (2003); *see also* Iowa Code § 17A.19(10)(f)(1). If a decision was not based upon substantial evidence or was based on an erroneous application of law we will find the decision is unreasonable. *Id.* The abuse of discretion standard means that the State Board may not substitute its own judgment for that of the District absent a showing that the initial decision was "unreasonable and lacked rationality." *Id.* at 571. While we acknowledge that reasonable minds can differ, that does not justify overruling a decision that is based on sufficient evidence because some do not like the outcome. The local board must have erroneously applied relevant law or failed to base its decision upon substantial evidence before we will overturn it.

The abuse of discretion standard requires the State Board to give deference to local board decisions because the local board's expertise over local matters. *Berger v. Iowa Dept. of Transp.*, 679 NW 2d 636, 640 (Iowa 2004). Under Iowa law, local school boards have broad authority to "determine the number of schools to be taught, divide the corporation into such wards or other divisions for school purposes as may be proper, [and] determine the school in

---

<sup>17</sup> Exhibit 20, page 1-2

which each child shall attend." Iowa Code § 279.11. The local board also has broad discretion to establish and maintain attendance centers based on the needs of the school age pupils enrolled in the school district. *Id.* § 280.3(5).

The Appellants are required to show that the GRCSB Board abused its discretion when it decided to close the Gladbrook attendance center. However, no evidence has been offered to support this finding. Under the abuse of discretion standard, a reasonable person could find substantial evidence supporting GRCSB's decision in this case. The record here establishes the facts in this case are largely undisputed. We will not do an in depth analysis into the facts because the facts show sufficient evidence to come to the same conclusion as the District.

The Appellants argument centers on the District's reliance on financial projections they believe are based on inaccurate input. Both parties agree if you change a budget scenario in any way it creates a new budget projection. At best, budget projections are based on the best information the District has available to them at the time of the projection. Everyone understands these projections are just estimates that can change. One cannot determine with an absolute degree of certainty what the actual numbers will be in five years. However, these projections are the District's best estimate of what the District's financial position might be, and the Appellants failed to prove the methodology and assumptions employed were beyond the bounds of reason. The law does not require the Board and the District to employ the best possible methodology or assumptions; it merely requires that they not be an abuse of discretion. Here, the District could not ignore budget projections showing it would have a significant negative unspent balance if it did not make additional cuts. To ignore negative projections would be unreasonable.

The parties also agree that open enrollment numbers will also have an impact on these projections. However, the open enrollment statute gives districts very little control over timely filed open enrollments. Iowa Code § 282.18. As such, open enrollment numbers are hard to predict, especially in a situation where there is a vote pending on closing a school building because either option could result in open enrollments out of the District. The District considered this may be an issue but felt that the numbers may be a wash. Many times these budget projections are the only information districts have to inform policy decisions and we will not second guess those policy decisions once they pass the basic standard of reasonableness. There was no evidence presented by the appellants that showed the PMA software projections were untenable or that the District did not consider open enrollment numbers as an issue. Even, Ms. Osborn agreed with the positive projections made in the PMA software after the \$200,000.00 in budget cuts, which suggests she did not find the PMA software to be entirely inaccurate. Thus, we do not find the District's reliance on the budget projections from Mr. Sinclair to be unreasonable.

The Appellants also take issue with the methodology of the Board's decision making process but have not provided any evidence to show the choice of methodology is arbitrary. The standard is not which method is better but is it arbitrary. The Board chose to appoint a committee to review two options. It was within the discretion of the Board to limit the role of the committee to reviewing only two options. It was also within its discretion to ask for a list of pros and cons and not a final recommendation from the committee. In the end, the final decision rests with the Board. The evidence is clear the Board was aware of the 28E agreement

and the need to discuss further implementation of its plans after the final vote. It is clear that the Board considered the issues the Appellants presented in making its decision although it did not give those issues the same weight as the Appellants. Thus, the Appellants have not shown the actions of the Board to be an abuse of discretion.

The State Board's role here is not to determine which of the two options is the best option for the District. Nor is it our role to determine whether or not closing an attendance center was the best option for savings. The record shows substantial credible evidence existed to choose any one of the four options put before the Board. There may be options that the Appellants like better than the option the Board chose, but that is not a reason to overturn the local Board.

The abuse of discretion standard requires us to uphold the decision of the local Board if it is based on substantial credible evidence. It is irrelevant that the Appellants believe one option was better than another option. It is irrelevant that they believed the Board should have considered other costs saving options. Even in reviewing these facts in a light most favorable to the Appellants, we must conclude that a reasonable person could reach the same decision as the majority of the GRCSD Board. The facts in this case are not similar to situations in which the Supreme Court and the Iowa Court of Appeals have found an abuse of discretion. *See, e.g., In re Closing of Prairie Valley Elementary Bldg.*, 26 D.o.E. App. Dec. 10, 15-16 (2010) (citing *Auen v. Alcoholic Bev. Div. Iowa Dept. of Com.*, 679 N.W.2d 586 (Iowa 2004); *Cooper v. Maytag Co.*, 682 N.W.2d 82 (Iowa App. 2004); and *Schoenfeld v. FDL Foods, Inc.*, 560 N.W.2d 595 (Iowa 1997).

We understand this issue has been very emotional and divisive for the Gladbrook-Reinbeck Community. We understand the decision is not the outcome the Appellants would choose. However, there are no legal grounds to reverse the decision. We can find no abuse of discretion here. The GRCSD Board studied the issue at length and did not act in an arbitrary, unreasonable, irrational manner. Although, the Appellants disagree with the Board's decision it was the Board's decision to make.

#### DECISION

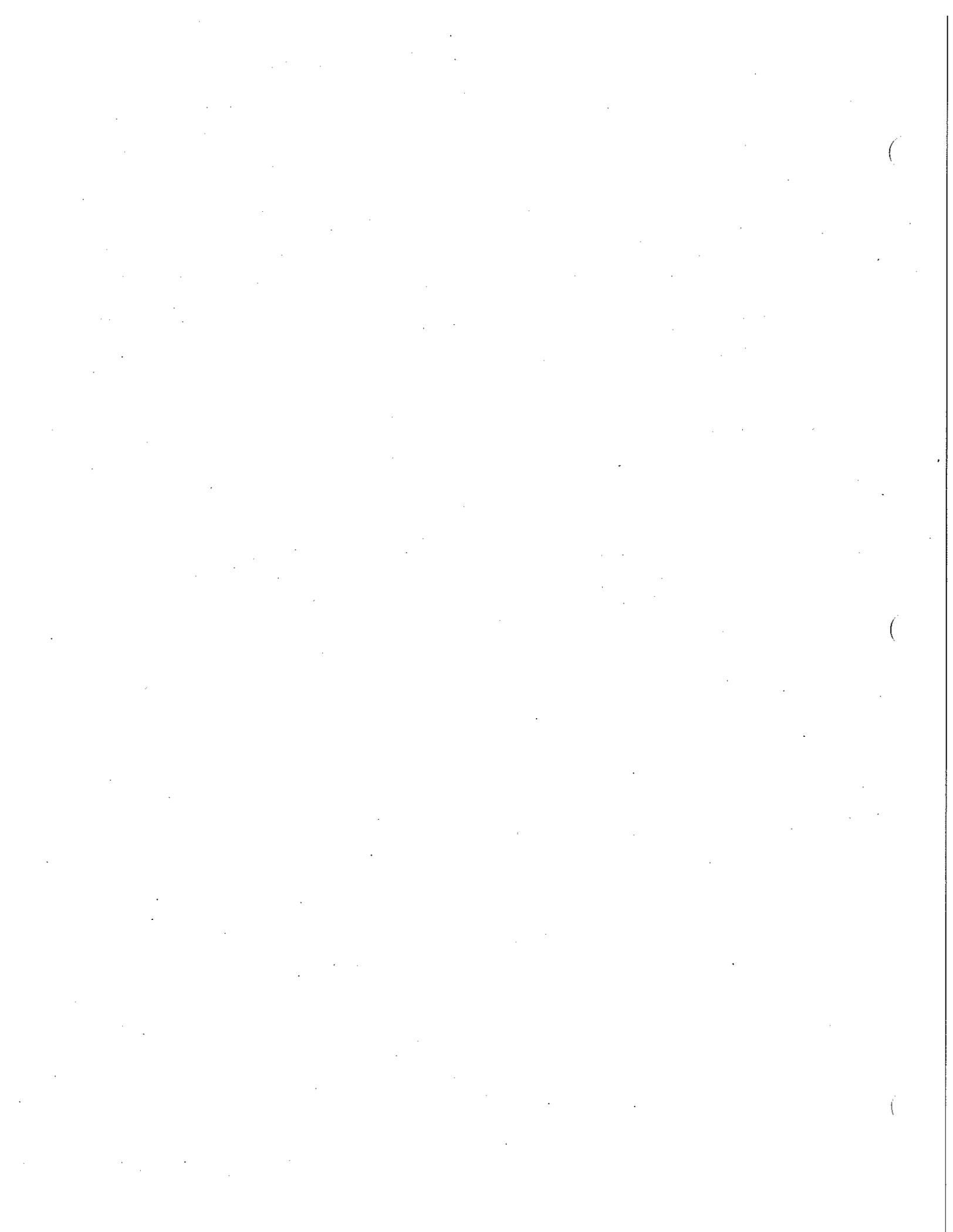
For the foregoing reasons, the decision of Gladbrook-Reinbeck Community School District Board made on February 25, 2015, to close the Gladbrook attendance center effective for the fall of 2015 is hereby AFFIRMED. There are no costs of this appeal to be assigned.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Nicole M. Proesch, J.D.  
Administrative Law Judge

\_\_\_\_\_  
Date

\_\_\_\_\_  
Charles C. Edwards Jr., Board President  
State Board of Education



BEFORE THE STATE BOARD OF THE  
IOWA DEPARTMENT OF EDUCATION

RECEIVED

SEP 01 2015

DEPARTMENT OF  
EDUCATION

*In re School Building Closing*

SCOTT AND JAMIE SCHMIDT,  
Appellants,

v.

GLADBROOK-REINBECK  
COMMUNITY SCHOOL DISTRICT,  
Appellee.

Admin. Doc. No. #5007

APPELLEE'S BRIEF IN SUPPORT OF  
AFFIRMING PROPOSED DECISION OF  
ADMINISTRATIVE LAW JUDGE

*In re School Building Closing*

CHAD AND KAREN MUSSIG,  
Appellants,

v.

GLADBROOK-REINBECK  
COMMUNITY SCHOOL DISTRICT,  
Appellee.

Admin. Doc. Nos. #5008

APPELLEE'S BRIEF IN SUPPORT OF  
AFFIRMING PROPOSED DECISION OF  
ADMINISTRATIVE LAW JUDGE

*In re School Building Closing*

SCOTT AND KATHY VAVROCH,  
Appellants,

v.

GLADBROOK-REINBECK  
COMMUNITY SCHOOL DISTRICT,  
Appellee.

Admin. Doc. Nos. #5009

APPELLEE'S BRIEF IN SUPPORT OF  
AFFIRMING PROPOSED DECISION OF  
ADMINISTRATIVE LAW JUDGE

COMES NOW Appellee Gladbrook-Reinbeck Community School District (the "District"), pursuant to 281 Iowa Administrative Code Section 6.17(6), and submits this brief in support of affirming the proposed decision of the Administrative Law Judge issued on August 6, 2015, in the above-referenced appeal.

### I. Factual Background

The exhibits and testimony presented at the appeal hearing held on June 9, 2015, revealed the following:

The District currently has three school buildings, consisting of Gladbrook-Reinbeck High School and Reinbeck Elementary School located in Reinbeck, Iowa, and Gladbrook Elementary/Middle School located in Gladbrook, Iowa. Approximately 58% of the District's students reside in or about the City of Reinbeck. (Aff. Holloway ¶ 2).

In January 2014, the District's Board of Directors (the "Board") and the District's administration (the "Administration") reviewed the present and future financial status of the District. It was specifically noted that the District's unspent balance was projected to be negative by fiscal year 2016. The Board and the Administration discussed the need to develop scenarios for reduced expenditures by the District. (Aff. Holloway ¶ 4 and Ex. A). One of the cost-savings scenarios that was developed and shared involved closing a school building. (Aff. Holloway ¶ 5 and Ex. B). Throughout the next several months, the Board took various actions to reduce expenditures for the 2014-2015 school year, including reducing staff and entering into sharing agreements with other school districts. (Aff. Holloway ¶ 6 and Ex. C).

In June 2014, the District contracted with RSP & Associates, LLC to conduct an enrollment analysis. (Aff. Holloway ¶ 7 and Ex. D). On September 3, 2014, the Board reviewed the results of the enrollment analysis. Information reviewed by the Board showed a steady

decrease in student enrollment over the past ten years. The enrollment analysis projected a continued decrease in student enrollment through at least 2019. (Aff. Holloway ¶ 8 and Ex. E). Also on September 3, the Board reviewed several financial summary documents containing historical and projected financial information of the District, such as expenditures, revenues, enrollments, financial solvency, and unspent balance, based on various assumptions in enrollment, allowable growth, and expenditures. (Aff. Holloway ¶ 9 and Ex. E).

A decrease in student enrollment in the District translates into a decrease in funding provided to the District from the State of Iowa. (Aff. Holloway ¶ 10). At its meeting on September 3, the Board had considerable discussion on future reductions and next steps for long-range success of the District, including future configurations of the District taking into consideration options for efficiency and facility use in the District. (Aff. Holloway ¶ 11 and Ex. E).

The Board asked the Administration to prepare two options for moving from three school buildings to two school buildings, and estimate the cost savings for each option. One option would close the Gladbrook Elementary/Middle School building, with projected cost savings of \$402,025. The other option would close the elementary school building in Reinbeck, with projected cost savings of \$296,880. The Board also authorized the Administration to contact superintendents at other school district who have been in similar situations to see if they would be willing to consult and facilitate future discussions on this topic. (Aff. Holloway ¶ 12 and Ex. E).

On September 18, 2014, the Board again reviewed documents concerning enrollment and financial information of the District, as well as the options and estimated cost savings for moving from three school buildings to two school buildings. (Aff. Holloway ¶ 13 and Ex. F).

On October 1, 2014, the Board held a work session at which two superintendents of other school districts shared their thoughts with the Board on facility reductions based on their experiences in this area. There was much discussion on the many things to take into consideration, including cost of facilities, cost of transportation, condition of facilities, location of facilities, and academic offerings, as well as make-up of committees and timeframe of committee meetings and decision. The two superintendents offered to serve as facilitators for committee meetings. (Aff. Holloway ¶ 14 and Ex. G).

On October 15, 2014, the Board voted to form a community committee (the "Committee") to recommend the best solution of the two options for closing a school building. The Committee was comprised of twenty people as follows: four teachers, four business leaders/city leaders, one mayor or city council member from Gladbrook, one mayor or city council member from Reinbeck, four District advisory members, and six parents. (Aff. Holloway ¶ 15 and Ex. H).

On November 4, 2014, the Board reviewed and discussed the information that would be presented to the Committee, including District enrollment history and projections, financial information, possible school schedules and classroom configurations, transportation costs/savings, building costs/savings, and staffing costs/savings. (Aff. Holloway ¶ 16 and Ex. I).

On November 5, 2014, the Committee met and set five meeting dates for the next several months (and two other meeting dates if needed). The Committee reviewed the District information packet. The Committee also toured the Gladbrook Elementary/Middle School building. (Aff. Holloway ¶ 17 and Ex. J).

On November 12, 2014, the Committee met with the two facilitators. The Committee compared various categories of importance and it was determined that three areas of focus would

be academic offerings, community impact, and factors that impact the general fund (enrollment, transportation, and finances). The Committee discussed the District information packet. The Committee also toured the Gladbrook-Reinbeck High School building. (Aff. Holloway ¶ 18 and Ex. K).

On November 23, 2014, the Committee discussed the District information packet and engaged in a question and answer session. The Committee focused on the area of academics. (Aff. Holloway ¶ 19 and Ex. M).

On December 3, 2014, the Committee toured the Reinbeck Elementary School building. The mayor from the City of Gladbrook and the mayor from the City of Reinbeck were given the opportunity to share highlights of their respective communities. (Aff. Holloway ¶ 20 and Ex. N).

On December 10, 2014, the Board held a question and answer session with the Committee. The Committee submitted questions to the Board prior to the meeting, and the Board and the Administration addressed the questions that were submitted. (Aff. Holloway ¶ 21 and Ex. O).

On December 18, 2014, the Board reviewed and discussed the Committee's work to date and further facilitation of the process. The Board set the dates for community input meetings. (Aff. Holloway ¶ 22 and Ex. P).

On January 7, 2015, the Committee discussion focused on the areas of community impact and finance. (Aff. Holloway ¶ 23 and Ex. Q).

On January 14, 2015, the Board held a work session at which it received a report summary from the Committee. The report set forth various rationales in support of choosing the option to close the Gladbrook Elementary/Middle School building, and various rationales in support of choosing the option to close the elementary school building in Reinbeck. There was

discussion about having the Committee present to the Board a listing of pros and cons for the two options, rather than a recommendation of one option over the other. (Aff. Holloway ¶ 24 and Ex. R).

Also on January 14, the Board asked the Administration to prepare two additional options for moving from three school buildings to two school buildings. These other options both involved keeping a school building open in the City of Gladbrook and projected cost savings of around \$250,000. (Aff. Holloway ¶ 25 and Ex. R).

On January 21, 2015 and again on January 28, 2015, the Board held a work session at which a summary of the work undertaken by the Board and the Committee regarding the school closure options in light of the need to improve the District's unspent balance was presented. The savings projections for the four different school closing scenarios requested by the Board were also presented. (Aff. Holloway ¶ 26 and Exs. S, T).

Also on January 21 and January 28, the Board received community input and feedback on the school closing scenarios. A survey was available for questions and comments to be submitted to the Board, and the Board addressed the questions from the survey. Persons in attendance were also allowed time to address the Board with their comments and questions. (Aff. Holloway ¶ 27 and Exs. S, T).

In addition to the community input meetings, members of the public were given the opportunity to share their thoughts regarding the school closure decision at various other Board meetings. (Aff. Holloway ¶ 28 and Exs. H, L, P).

On February 4, 2015, the Board received a written report from the Committee's facilitators. Copies of the report were available for those in attendance to review. The Board shared comments on the report. The Board discussed the four different scenarios regarding

school building closure, with each Board member giving his or her opinion on the pros and cons for each scenario. The Board also had general discussion and questions about the different building and grade realignment options. (Aff. Holloway ¶ 29 and Ex. V).

Also on February 4, the Board set the meeting date for discussion and action on the school building closure and invited comments from the public. (Aff. Holloway ¶ 30 and Ex. V).

On February 25, 2015, the Board discussed the school building closure and grade realignment proposals. Many members of the public attended the meeting and provided their comments. (Aff. Holloway ¶ 31 and Ex. W). On February 25, the Board voted 5-2 to close the Gladbrook Elementary/Middle School building for the 2015-2016 school year. (Aff. Holloway ¶ 32 and Ex. W). Rationales for the decision to close the Gladbrook Elementary/Middle School building include projected annual cost savings of \$402,025 and a majority of District students reside in or about the City of Reinbeck. (Aff. Holloway ¶ 33 and Exs. R, V).

## II. Procedural Background

Following the Board's decision to close the Gladbrook Elementary/Middle School building, the Appellants filed this appeal pursuant to Iowa Code Section 290.1. The Appellants alleged various points in support of their contention that the Board should not have chosen to close the Gladbrook Elementary/Middle School building over a school building in Reinbeck.

A hearing was held on June 9, 2015, before an Administrative Law Judge for the Iowa Department of Education. The Administrative Law Judge issued a proposed decision on August 6, 2015. The proposed decision affirms the decision made by the Board on February 25, 2015, regarding closure of the Gladbrook attendance center. The decision states:

The Appellants are required to show that the GRCSB Board abused its discretion when it decided to close the Gladbrook attendance center. However, no evidence has been offered to support this finding. Under the abuse of discretion standard, a reasonable person could find substantial evidence supporting GRCSB's decision

in this case. . . . There may be options that the Appellants like better than the option the Board chose, but that is not a reason to overturn the local Board.

There is ample evidence in the exhibits and testimony presented at the appeal hearing that supports the decision of the Administrative Law Judge.

However, not satisfied with the decision of the Board or the proposed decision of the Administrative Law Judge, the Appellants now seek another appeal of this matter to the State Board.<sup>1</sup>

### III. Standard of Review

Local school boards in Iowa school districts are granted broad express powers in school closing matters. The decision to close a school building clearly entails discretion. Therefore, the proper nature of review of a school district's decision in a school closure matter is for abuse of discretion. *Wallace v. Iowa State Bd. of Educ.*, 770 N.W.2d 344 (Iowa 2009). "Under the abuse of discretion standard, the question on review is not whether the local board made the best possible decision under the circumstances or whether the [reviewing body] would have made the same decision. Rather, the question is whether any rational person could have come to the same decision as the local board." *In re Closing of Emerson Hough Elementary Building*, 26 D.o.E. App. Dec. 21 (2010).

The Appellants contend that the Board's decision should be separately considered under the *Barker* guidelines, set out *In re Norman Barker*, 1 D.P.I. App. Dec. 145 (1977) and subsequently adopted as administrative rules for the regulation of school closing procedures, relative to the requirement that the decision of the Administrative Law Judge be in the best

---

<sup>1</sup> The District respectfully reminds the State Board that, during a telephone conference with the parties' attorneys on May 29, 2015, the Administrative Law Judge stated there is legally sufficient cause to determine disqualification is appropriate for State Board member Michael Bearden of Gladbrook, and further stated he shall withdraw from participation in the making of any decision this case. See generally 281 Iowa Admin. Code § 6.7.

interest of education, 281 Iowa Admin. Code § 6.17(2). This is plainly incorrect. In 2009, the Iowa Supreme Court invalidated the administrative rules that had been based on the *Barker* guidelines, and expressly stated that the proper nature of review of a school district's decision in a school closure matter is for abuse of discretion. *Wallace v. Iowa State Bd. of Educ.*, 770 N.W.2d 344 (Iowa 2009). The Administrative Law Judge's decision properly applies this standard. *See* 281 Iowa Admin. Code § 6.17(2) (stating that the decision of the Administrative Law Judge "shall be based on the laws of . . . the state of Iowa . . .").

Thus, the issue for determination on appeal is whether the Board's decision to close the Gladbrook Elementary/Middle School building was an abuse of discretion. The Board's decision is presumed valid. *See Bd. of Directors of Independent Sch. Dist. of Waterloo v. Green*, 147 N.W.2d 854 (Iowa 1967) (stating that "where a school board has acted pursuant to law, the action taken must be regarded at least as prima facie correct. It will be considered by our courts as lawful and valid until the contrary is shown."). As outlined below, and as determined in the proposed decision of the Administrative Law Judge, the Appellants have failed to meet their burden of proving that the Board's decision in this case was an abuse of discretion.

#### **IV. The Board's Decision to Close Gladbrook Elementary/Middle School Was Not an Abuse of Discretion**

Local school boards in Iowa school districts are granted broad express powers in school closing matters. This authority is derived from a multiple state statutes. These statutes include:

- Iowa Code Section 274.1 (stating each school district "shall have exclusive jurisdiction in all school matters");
- Iowa Code Section 279.11 (stating the board of directors "shall determine the number of schools to be taught, divide the corporation into such wards or other divisions for

school purposes as may be proper, determine the particular school which each child shall attend”);

- Iowa Code Section 280.3(5) (stating the board of directors “shall establish and maintain attendance centers based upon the needs of the school age pupils enrolled in the school district”); and
- Iowa Code Section 297.1 (stating the board of directors “may fix the site for each schoolhouse” and “[i]n fixing such site, the board shall take into consideration the number of scholars residing in the various portions of the school district and the geographical location and convenience of any proposed site”).

Such broad authority bestowed upon school districts means that the school boards in those districts are vested with discretion regarding school closures. *Wallace v. Iowa State Bd. of Educ.*, 770 N.W.2d 344 (Iowa 2009).

The Board is the exclusive and final decision maker on policy for the District. *See* Iowa Code § 274.7 (“The affairs of each school corporation shall be conducted by a board of directors . . . .”). The Board is comprised of elected representatives from the District it serves. The majority of those representatives believed that closing the Gladbrook Elementary/Middle School building was the best action for the District as a whole. The action to close this building was a legislative, policy decision made by the Board. It is precisely the sort of discretionary determination that the Board members are elected and authorized by law to make.

School closure decisions are some of the most difficult and complex that a school board must render. Certainly, there are a myriad of reasons that come into play in making the decision to close any school building. In this case, it can hardly be argued that the District did not carefully

consider the various issues raised as it exercised its discretion to determine whether it should close the Gladbrook Elementary/Middle School building.

**A. The Process Followed by the Board Was Reasonable**

As the evidence in this case demonstrates, the District engaged in a comprehensive process to determine whether a school building needed to be closed, and if so, which building would be closed. As early as January 2014, the Board considered the possibility of a school closure for budgetary and financial reasons, but was able to hold off on closing a school building at the time. At the beginning of the 2014-2015 school year, the Board continued to confront budgetary and financial issues, as well as problems of declining student enrollment. The Board, the Administration, and the Committee took steps to explore the various options for closing a school building. These steps included collection of relevant information and data, multiple open meetings and work sessions, public forums and surveys, and reports of findings and conclusions. The Board made the decision to close the Gladbrook Elementary/Middle School building at a meeting in open session after a public hearing. This process may not have been perfect in every single respect, but it was certainly reasonable.

The Board's proceedings were also in line with the "substance and spirit" of procedural guidelines recognized by the State Board in school closure cases. *See, e.g., Keeler v. Iowa St. Bd. of Public Instruction*, 331 N.W.2d 110 (Iowa 1983) (upholding school closure decision involving process during which the problems of declining enrollments, budgetary constraints, and the prospect of closing attendance centers were studied, discussed, and debated with all interested persons having an opportunity to present their views).

**B. The Decision Made by the Board Was Reasonable**

The Appellants contend that the Board should not have chosen to close the Gladbrook Elementary/Middle School building over a school building in Reinbeck. This claim misconstrues the nature of the inquiry before the State Board. This is because the issue is not whether the Board abused its discretion in closing Gladbrook Elementary/Middle School *over another school*, but rather whether the Board abused its discretion in closing Gladbrook Elementary/Middle School *in and of itself*.

The Board carefully considered the various options and issues raised as it exercised its discretion to make the school closing decision in this case. The February 25, 2015 meeting at which the school closing decision was made was the last event in a long process during which the pertinent information was studied, discussed, and debated by the Committee, the Board, and the public. The Board engaged in substantial discussion weighing the reasoning for and against the closure of the Gladbrook Elementary/Middle School building. Rationales for the decision to close this building included projected annual cost savings of \$402,025 and a majority of District students reside in or about the City of Reinbeck. The Board's decision was supported by more than sufficient evidence for it to be considered reasonable.

The Board's vote for closure of the Gladbrook Elementary/Middle School building was not unanimous. The District does not dispute this. Nor does the District dispute that the building closure was vigorously debated, with various rationales for and against closing the Gladbrook Elementary/Middle School building and various rationales for and against closing a school building in Reinbeck. This is a classic scenario in which "reasonable minds could differ" over a discretionary decision. Where there is evidence to support that a reasonable person could have come to the same conclusion as that reached by the Board, the decision cannot be disturbed on

appeal. *Sioux City Community School Dist. v. Iowa Dept. of Educ.*, 659 N.W.2d 563 (Iowa 2003); see also *In re Closing of Prairie Valley Elementary Building*, 26 D.o.E. App. Dec. 10 (2010) (“[J]ust because rational people can disagree about a decision, there is no authority to override the original decision and replace it with one that is more palatable. Indeed, the fact that rational people could reach differing decisions eliminates authority to reject the decision as an abuse of the decision-maker’s discretion.”); *In re Intra-district School Assignments*, 27 D.o.E. App. Dec. 568 (2014) (“[A] mere preference for a different outcome does not entitle the Appellants to relief.”).

#### V. The Wisdom of the District’s Decision is Not Subject to Review

It is apparent the Appellants continue to believe, mistakenly, that the wisdom of the District’s decision is subject to second-guessing on review by the State Board. However, when reviewing local legislative matters, a reviewing body may only consider legal questions and cannot substitute its judgment for that of the education authorities regarding the wisdom and practicability of the action. *Armstrong-Ringsted Community Sch. Dist. v. Lakeland Area Educ. Agency*, 597 N.W.2d 776 (Iowa 1999). It is not “within the province of our judiciary to weigh the wisdom of legislative action by school boards acting pursuant to proper statutory authority.” *In re Lone Tree Community Sch. Dist.*, 159 N.W.2d 522 (Iowa 1968). Indeed, courts are reluctant to act as “super school boards” where comparisons of the relative value of several alternatives available to a school district do not lend themselves well to any legal, mathematical, or scientific means of resolution. *Smith v. Bd. of Educ. of Mediapolis Sch. Dist.*, 334 N.W.2d 150 (Iowa 1983). “The task of the State Board in appeals of this nature cannot be to place the competing reasons on a scale and determine which option is ‘best.’” *In re Closing of Prairie Valley Elementary Building*, 26 D.o.E. App. Dec. 10.

“Iowa law leaves educational policy to school boards.” *Olds v. Bd. of Educ. of Nashua Community Sch. Dist.*, 334 N.W.2d 765 (Iowa App. 1983). While individuals outside the Board may personally believe that strong arguments exist contravening the Board’s policy choices, those individuals are not entitled to decide which is the wiser policy. *Id.* Clearly, the Appellants do not believe the Gladbrook Elementary/Middle School Building should have been closed. But, the Appellants are not charged with making school closure decisions – rather, this discretion rests solely with the Board. The wisdom of the Board’s decision is not subject to second-guessing on review.

The crux of the Appellants’ claims is that, because the school closing decision did not go their way, their concerns must not have been addressed and therefore they should be able to force the District to satisfy them by keeping the Gladbrook attendance center open. However, the District is not required to surrender to the personal positions of the Appellants:

“Appellant and her silent counterparts in the district believe the board owed them a greater ‘duty’ to consider their views than it exhibited in this case. Translation: We (300+persons signed a petition opposing the change of attendance centers) are many. We told you we didn’t want you to do this and you did it anyway. Therefore, you failed to give adequate consideration to public opinion.

On the contrary, no one was denied an opportunity to present his or her views on the subject. . . . Appellant misconstrues the weight put on the right of public input. It does not imply that the Board must agree . . . .”

*In re Gene Beary, et al.*, 17 D.o.E. App. Dec. 208 (1999) (citation omitted); *see also In re Closing of Moore Elementary, et al.*, 24 D.o.E. App. Dec. 21 (2006) (citation omitted) (stating that the real issue for consideration in appeals of school closing decisions “‘is not whether both sides actually listened to each other’s position. The real issue is whether they were given the *opportunity* to do so’”). The Appellants, along with other members of the public, had multiple opportunities to make their opinions known to the Board. They did just that. The Board is not required to

“acquiesce to the wishes of those who are most vocal at the public hearings.” *In re Closing of Moore Elementary*, 24 D.o.E. App. Dec. 21 (citation omitted).

In short, the Appellants do not get to substitute their own judgment for that of the Board. If the Appellants are dissatisfied with the Board’s decision, then their proper remedy is found at the ballot box at the time of school elections. “The voters hold the local directors responsible for what voters perceive to be unwise decisions or decisions with which voters disagree by changing the make-up of the local board through the election process.” *In re Closing of Prairie Valley Elementary Building*, 26 D.o.E. App. Dec. 10; *see also Clay v. Independent School Dist. of Cedar Falls*, 174 N.W. 47 (Iowa 1919) (“In the long run all disputes over questions of policy with reference to schools in any given district are solved at the polls.”); *Stream v. Gordy*, 716 N.W.2d 187 (Iowa 2006) (“This conclusion does not mean the [Board members’] actions are beyond the reach of the people they were elected to serve. The [members’] decisions are subject to review by the electorate at the next election. Under the separation-of-powers doctrine, ‘electoral control [is] an important restraint on legislative conduct.’” (citation omitted)).

## **VI. The Appellants Cannot Show Any Basis for Overturning the Board’s Decision**

Finally, the District wishes to address the Appellants’ assorted attempts to establish some basis for reversing the proposed decision of the Administrative Law Judge and overturning the Board’s decision to close the Gladbrook Elementary/Middle School building. These attempts are nothing more than reiterations of personal opinions, generalizations, and speculative assertions.

### **A. Appellants’ Claims Regarding Student Open Enrollment Are Without Merit**

The Appellants first claim that the Board “knew but chose to ignore” that the savings associated with closing the Gladbrook Elementary/Middle School building would not be as projected, because of the open enrollment of students residing in the City of Gladbrook out of the

District. To the contrary, the testimony given at the hearing clearly established that the issue of open enrollments was considered a “wild card,” as it simply could not be known whether and to what extent open enrollment would be affected by a decision to close the Gladbrook Elementary/Middle School building. Indeed, had the Board voted to close a school building in Reinbeck, there may have been an increase in open enrollments of students residing in the City of Reinbeck out of the District.

On this point, the State Board has previously recognized that open enrollments can be characterized as “a threat and a promise,” in that “[t]he open enrollment statute . . . deliberately gives school districts very little control over timely-filed open enrollments.” *See In re Closing of Prairie Valley Elementary Building*, 26 D.o.E. App. Dec. 10 (noting that only the parents of students who take advantage of open enrollment may terminate the same, at any time and for any reason). The State Board went on to state that it will not fault any district that declines to make decisions that are dependent on open enrollment. *See id.*

#### **B. Appellants’ Claims Regarding the 28E Agreements Are Without Merit**

Next, the Appellants claim that the Board voted after “willfully failing to learn or consider critical information” with respect to two 28E agreements between the District and the City of Gladbrook for the use of a fitness center and pool at the Gladbrook Elementary/Middle School building. The testimony given at the hearing clearly established that the Board’s decision to close the Gladbrook Elementary/Middle School building as a student attendance center has absolutely no effect on the status of the building under the 28E agreements. The projected cost savings to the District associated with the closure of the building as a student attendance center result from reductions in staff and the like, not just building operations.

Moreover, both 28E agreements expressly state that they can be terminated at any time upon the mutual agreement of the parties. The 28E agreements also contain other provisions that would allow for sale or modification of the building. (Appellants' Exhibits 4-5). As established at the hearing, to date no action has been taken by the Board with respect to termination of the 28E agreements or the sale, demolition, or other disposal of the building. The Appellants' claims regarding some breach of the 28E agreements are totally unfounded.

**C. Appellants' Claims Regarding Procedural Issues Are Without Merit**

Next, the Appellants claim that the Board's decision to close the Gladbrook Elementary/Middle School building "was a product of procedural bias and unfairness" for a myriad of alleged reasons. The Appellants begin with the "inexperience" of those involved in making the school closure decision, such as the Board President who has served on the Board for two years. However, the reality is that school board members in Iowa continually turn over and are not required to have any particular education or training, let alone some experience in school closure matters. *See* Iowa Code § 274.7 (stating that a school board member is chosen for a term of four years); Iowa Code § 277.27 (stating that the only qualification to be a school board member is to be an eligible elector of the school district, and further stating that members serve without compensation).

The Appellants next object to the software used by the District to generate the financial projections. However, the testimony given at the hearing clearly established that this software is not only commercially reasonable, it is widely used by other school districts in Iowa. The Appellants cite no evidence whatsoever for their insinuation that the figures inputted into the software were improperly skewed by the Superintendent or others. The District categorically rejects this notion.

The Appellants also complain that five of the Board members reside in or about the City of Reinbeck. However, the testimony given at the hearing clearly established that the method of election in the District is at large, with the Board members being elected at large from the entire District by the electors of the entire District. *See* Iowa Code § 275.12(2)(a). Under this method of election, it is perfectly acceptable for five of the Board members to reside in or about the City of Reinbeck. The Appellants may not have voted for these Board members – but others in the District obviously did! The very nature of the democratic process is that the people accept the outcome of lawfully conducted elections.

The Appellants go on to make much of the contention that the options for closure of a school building were developed only after the Board realized there would be enough votes to close a school building. The Appellants' concern here is unclear. School business is routinely conducted bearing in mind the actuality of the possible outcomes. It would be senseless to pursue school closure options that do not have the potential to be supported by a majority of the Board. The Appellants cite no evidence whatsoever for their allusion that some Board members sought to take advantage of the situation with the goal of closing the school building in Gladbrook. The District categorically rejects this notion.

The Appellants also criticize the composition and the function of the Committee. The Board voted to form the Committee comprised of twenty people as follows: four teachers, four business leaders/city leaders, one mayor or city council member from Gladbrook, one mayor or city council member from Reinbeck, four District advisory members, and six parents. In doing so, the Board made a determination that the various roles of the individuals selected from the District as a whole was the critical element for composition of the Committee.

However, the Appellants wanted the focus to be on where the Committee members are from in the District. They wanted more members who are from Gladbrook, no members who reside outside the District, more male members from Gladbrook, less members from Reinbeck who work at a bank, and less members who are teachers in Reinbeck. The District questions the logic behind many of the Appellants' criticisms in regard to the make-up of the Committee. At any rate, the structure of any committee appointed by the Board is the Board's choice to make, not the Appellants', and the make-up of the Committee in this case was amply fair.

Additionally, the Appellants wanted the Committee to be able to expand its function beyond that set by the Board. The Board voted to form the Committee to evaluate the best solution of the two options for closing a school building. It is the prerogative of the Board to set the charge of any committee that it appoints, and there is nothing unfair about this. There is also no evidence to support the Appellants' suggestion that the Committee facilitators were anything other than independent, third-party consultants.

Last, the Appellants insist that the public was not aware of the February 25, 2015 Board meeting at which the decision to close the Gladbrook Elementary/Middle School building was made. This is simply untrue. On February 4, 2015, at a work session open to the public, the Board considered the February 25 date as the meeting at which discussion and action on the school building closure would occur. The testimony given at the hearing clearly established that the notice and agenda for the February 25 meeting was posted in accordance with the usual procedures followed by the Board for its meetings, as prescribed by the Iowa Open Meetings Law, and that there was no delay or cancellation of the Board meeting due to inclement weather or otherwise. Most telling of all, the February 25 meeting was widely attended by the public,

with hundreds of people present to provide their comments in advance of the school building closure decision.

**D. Appellants' Position is Erroneously One-Sided**

The bottom line, according to the Appellants, is that "Gladbrook residents and families were not going to tolerate closure of their school." (Emphasis added). This position is erroneously one-sided. The Appellants fail to appreciate that the Board must take into consideration the educational needs of all of the District's students, not just those residing in Gladbrook. *See In re Closing of Prairie Valley Elementary Building*, 26 D.o.E. App. Dec. 10.

As the State Board has aptly stated:

The Appellant[s] [are] understandably disappointed by the [local] Board's decision to close [Gladbrook Elementary/Middle] School. [They] no doubt sincerely believe[] this was not the best decision for the District. But we may not substitute our judgment for that of the local board. "Any district board of directors faced with the possibility of closing an attendance center must take into account what it considers to be in the best interest of the entire district. Only that locally elected board of directors can best determine whether the best interest of the entire district dictates that the desires of a segment of the school community must yield to the interest of the whole."

*In re Closing of Emerson Hough Elementary Building*, 26 D.o.E. App. Dec. 21. The State Board will not disturb a local board decision absent a showing of abuse of discretion by that board. *Id.*

**VII. Conclusion**

The Board did not abuse its discretion in making the decision to close the Gladbrook Elementary/Middle School building. "This matter has been a very emotional and divisive one for the patrons of the [District]. We understand that the decision of the [Board] offends the Appellants. But there are no legal grounds for reversal by [the State Board]." *In re Closing of Prairie Valley Elementary Building*, 26 D.o.E. App. Dec. 10.

Correspondingly, the proposed decision of the Administrative Law Judge affirming the Board's decision to close the Gladbrook Elementary/Middle School building was "based on the laws of the United States, the state of Iowa and the regulations and policies of the department of education," and was "in the best interest of education." 281 Iowa Admin. Code § 6.17(2).

For the foregoing reasons, the District respectfully requests that the decision of the Board and the proposed decision of the Administrative Law Judge be AFFIRMED, without any further oral argument from the Appellants.

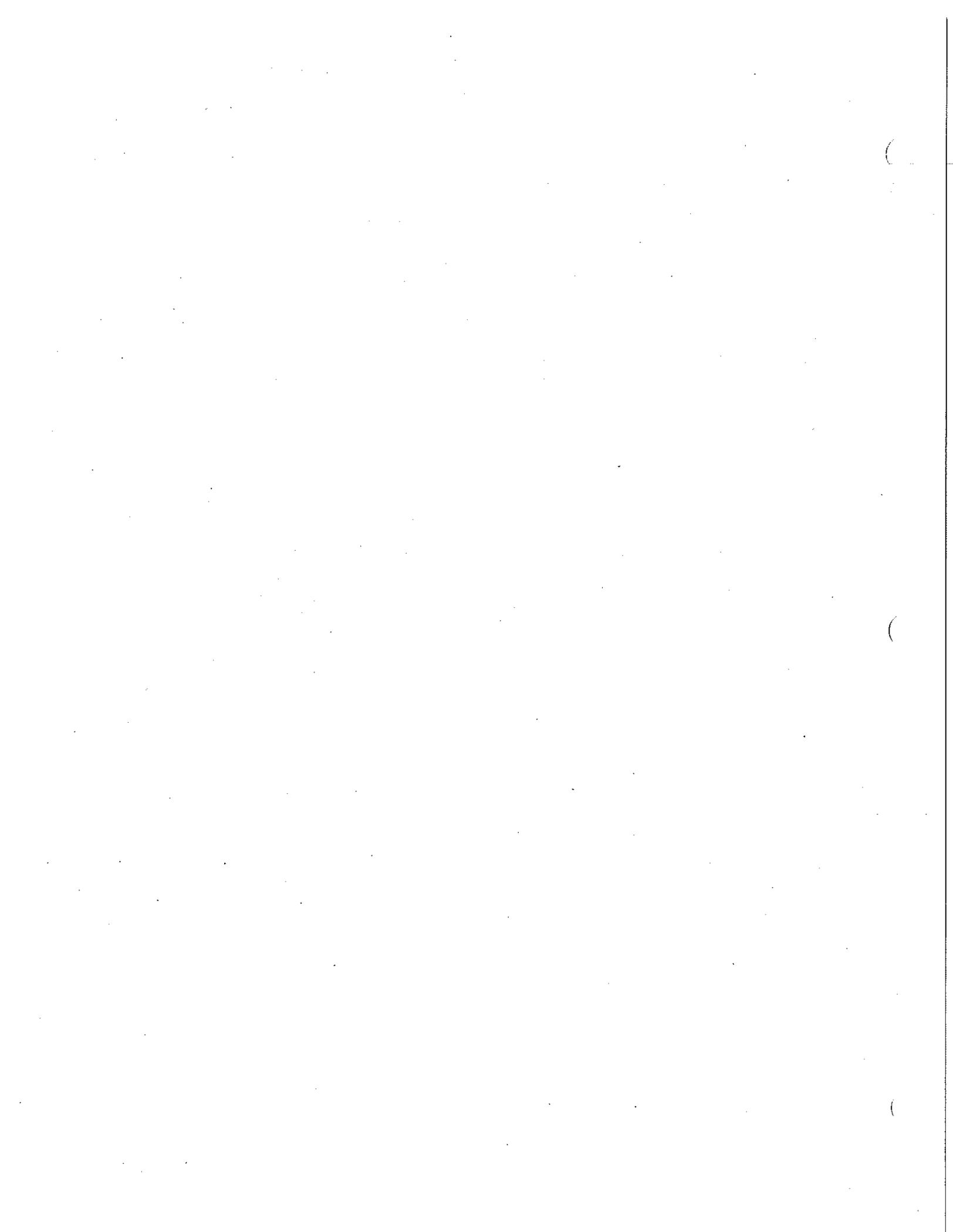
*Kristy M. Latta*

Kristy M. Latta (AT0004519)  
AHLERS & COONEY, P.C.  
100 Court Avenue, Suite 600  
Des Moines, Iowa 50309-2231  
Telephone: 515/243-7611  
Facsimile: 515/243-2149  
E-mail: [klatta@ahlerslaw.com](mailto:klatta@ahlerslaw.com)  
ATTORNEY FOR APPELLEE

Original filed.  
Copy to:

Darrell G. Meyer  
1608 West Main Street, Suite B  
Marshalltown, Iowa 50158  
ATTORNEY FOR APPELLANTS

CERTIFICATE OF SERVICE	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings, on <u>September 1, 2015</u>	
By	<input checked="" type="checkbox"/> U.S. Mail <span style="float: right;"><input type="checkbox"/> Fax</span>
	<input type="checkbox"/> Hand Delivery <span style="float: right;"><input type="checkbox"/> Overnight Carrier</span>
	<input type="checkbox"/> Electronically through CM-ECF <span style="float: right;"><input type="checkbox"/> E-mail</span>
	<input type="checkbox"/> Electronically through Efile
Signature	<u>/s/ Anne Stokely</u>



BEFORE THE STATE BOARD OF THE  
IOWA DEPARTMENT OF EDUCATION

---

*In re School Building Closing*

SCOTT AND JAIME SCHMIDT,  
Appellants (#5007).

Admin. Doc. No. 5007

CHAD AND KAREN MUSSIG,  
Appellants (#5008),

Admin. Doc. No. 5008

SCOTT AND KATHY VAVROCH,  
Appellants (#5009)

Admin. Doc. No. 5009

v.

GLADBROOK-REINBECK  
COMMUNITY SCHOOL DISTRICT,  
Appellee.

NOTICE OF APPEAL

COME NOW the Appellants, Scott and Jaime Schmidt, Chad and Karen Mussig, Scott and Kathy Vavroch, pursuant to Rule 281-6.17(4), and hereby appeal the proposed decision by the Honorable Administrative Law Judge, Nichole M. Proesch, issued on August 6, 2015, in the combined above-captioned matters.

EXCEPTIONS TO FINDINGS AND CONCLUSIONS

The Appellants take exception to the following material findings:

1. The school board's assumptions about revenues and enrollment projections if closing the Gladbrook building were supported by substantial evidence. Specifically, the board projected the loss of 10 students each year for the next five years. However, before the vote, between 50 and 60 students from the Gladbrook area open-enrolled out of the school district for 2015-16 in anticipation of the vote to close the

Gladbrook building. In contrast, new open enrollments out of the school district from the Reinbeck area was only 4. The projected savings in closing the Gladbrook building was \$402,000, assuming only a slow trickle of open-enrollments of 10 per year. At \$6,400 per student, the board knew the exodus of students from the Gladbrook area negated the projected savings of closing the Gladbrook building. There was no substantial evidence at the time of the vote in February 2015 to support enrollment assumptions created in August 2014. Board President Hemann testified that voting to close the Gladbrook building would not make sense if the projected savings were wiped out by open-enrollments. On page 8 of the proposed decision, the ALJ states, "To ignore negative projections would be unreasonable." Yet that is exactly what the board did.

2. The school board's assumptions about cost projections if closing the Gladbrook building were supported by substantial evidence. Specifically, there is record evidence that the school board did not even consider the district's obligations under two long-term 28E agreements with the City of Gladbrook relative to the Gladbrook building and its facilities. The 28E agreements with the City of Gladbrook oblige the school district to maintain certain facilities and services in the Gladbrook building for another 40 years. The school board's projected savings from closing the Gladbrook facility did not consider those ongoing costs. Committee member and Reinbeck businessman Chris Frischmeyer said it would be bad business practice to act on projections that failed to quantify the fiscal impact of the 28E agreements.

Both agreements oblige G-R and their successors to:

- a. Maintain ownership of the building, fixtures and swimming pool;

- b. Make no changes to the pool or pool building without agreement of the City;
  - c. Not cause the fitness center or pool to lose exempt status for real estate tax purposes;
  - d. Not adversely affect the value of the fitness center or pool;
  - e. Pay for lawn care, plowing of snow from parking, removal of ice, rubbish and obstructions;
  - f. Repair and maintain in good working order all plumbing, toilet facilities and other fixtures and equipment installed for general supply of hot and cold running water;
  - g. Keep the structural supports, roof and exterior of the building, including windows, doors, sidewalks, and parking areas in good order and repair
  - h. Repair or rebuild if damaged;
  - i. Insure the facilities for 100% of value;
  - j. Carry liability insurance.
3. The school board's assumption that a building had to be closed to remain fiscally viable. Specifically, spending cuts of a couple hundred thousand dollars in the spring of 2014, resulted in a million dollar reversal in the projected USB for 2016 (from \$260,000 in the red to over \$750,000 in the black), and projected a positive USB until 2019 without further cuts. In light of the superintendent leaving, and continued sharing with neighboring districts, there were many opportunities to extend the positive USB beyond 2019 without the risk of alienating over 40% of the district's student body and 50% of the land tax base of the district.

The Appellants take exception to following material conclusions:

1. The ALJ concluded Appellants urged the case under *Barker* only. The Appellant's trial brief argued the *Wallace* abuse-of-discretion standard. It also argued for application of *Barker* relative to the requirement that the board action be in the best interest of education (281-6.17(2)). For purposes of this appeal, Appellants take the position that *Wallace* (abuse of discretion) does not always mean board action satisfied 6.17(2), which states that the ALJ's decision "shall be in the best interest of education." In the present case, the closure of the Gladbrook building does violence to "the best interest of education". A community of over 950 residents that supplies over 40% of the district's students and over 50% of the land tax base, has lost its school campus. The board decision has already resulted in the exodus of nearly 60 students out of the Gladbrook area this year alone, draining nearly \$400,000 in revenues from the district. This outcome was a foregone conclusion at the time of the vote, but the board disregarded substantial evidence. Substantial evidence shows the board's vote to close the Gladbrook building was nothing short of suicide and thus an abuse of discretion. Likewise, affirming the board's decision cannot be said to be in the best interest of education. Gaining nothing financially, creating disaffection between two communities, alienating nearly half the district student population and virtually forcing the dissolution of the district is hardly in the best interest of education. The decision-making process described in *Barker* was intended to avoid this very result. This, it must be said that *Barker* has an application under 6.17(2). In this case, neither *Barker* nor an equivalent analysis to satisfy 6.17(2) was applied or provided. The proposed decision only addresses the question of discretion, not best

interest of education. These requirements can be incongruent. This case demonstrates that.

#### RELIEF SOUGHT

The Appellants request rejection of the proposed decision, oral argument, reversal of the district vote to close the Gladbrook building.

#### GROUND FOR RELIEF

1. The board's decision was unreasonable, not supported by substantial evidence existing at the time of the vote, and therefore an abuse of discretion.
2. The board's decision is not in the best interest of education. 281-6.17(2).

The Iowa Supreme Court has rejected claims by schools that the exercise of their powers is beyond review. *Armstrong-Ringsted Community Sch. Dist. v. Lakeland Area Educ. Agency*, 597 N.W.2d 776, 778 (Iowa ); *Wallace v. Iowa State Bd. Of Educ.*, 770 N.W.2d 344, 349 (Iowa 2009). Consequently, a local school board decision will be overturned if it is "unreasonable and contrary to the best interest of education". *In re Jesse Bachmann*, 13 D.o.E. App. Dec. 363, 369 (1996). This standard is more narrow than "ill-advised, unwise and inexpedient", but broader than "arbitrary, capricious or an abuse of discretion". *Id.* When reviewing board action for reasonableness, courts look at whether a reasonable person could have found sufficient evidence to come to the same conclusion as the board. *Sioux City Comm. Sch. Dist. v. Iowa Dep't of Educ.*, 659 N.W.2d 563, 569 (Iowa 2003). Put another way, a

decision is unreasonable “if it was not based on substantial evidence or was based upon an erroneous application of the law.” *Id.* at 569.

When applying the appropriate standard, the question is whether or not the decision to close the Gladbrook building was “unreasonable and contrary to the best interest of education” under the facts and circumstances of this case. The board decision fails this test for three reasons: (1) what it knew but chose to ignore; (2) what it chose not to know; and (3) procedural unfairness.

1. The Board knew but chose to ignore that projected savings would be 1/10 of projected savings.

Gladbrook supplied the district with over 40% of its students and 50% of its property tax base. Gladbrook residents and families were not going to tolerate closure of their school. The issue of open enrollments came up throughout this process. Evidence shows the board had knowledge of enough open enrollments out from Gladbrook to reduce the board’s projected savings from \$400,000 to a mere \$40,000. At \$6,330 per student, 57 open enrollments meant \$360,000 was leaving the district. The sole reason for closing a building was financial. Board President Josh Hemann said it would not make sense to close Gladbrook to save \$40,000. Subsequent to the vote a petition for dissolution of the district has been filed pursuant to Iowa Code Section 275.51 et. seq.

Voting to close the Gladbrook building was patently unreasonable under these facts. The decision was not based on substantial evidence. In light of the known open enrollments, the projected savings were no longer valid. They were no longer supported by substantial evidence. Likewise, such a decision is contrary to the best interests of education. It is not in the best interest of education to allow a board to disenfranchise a community that supplies almost as

many of the district's students and financial base as the other community, merely because of an imbalance in representation on the board, and for a poultry savings of \$40,000. Nor is it good for education in this instance given the geography of the district. These communities are 16 miles apart. This many students, with that far to go, will negatively impact participation in activities. It will result in student enrollments out, with the attendant disruption in academic and social stability.

2. The board voted after willfully failing to learn or consider critical information.

A hallmark of sound decision making is fulfilling the duty of care. That requires performing due diligence in investigation of a matter. The board projected cost savings of \$400,000 per year by closing the Gladbrook building. Yet it admits it failed to factor in substantial costs and obstacles, not the least of which are the two 28E agreements. These 28E agreements oblige the school for decades. The burden of fulfilling these obligations, entered under board approval, easily serves as a significant impediment to closure. Nevertheless, the board failed to perform its due diligence before voting. Thus, any plan to demolish or transfer ownership in the building is seriously in jeopardy. The agreements require the existence of at least a portion of the building along with services. It requires the district to do nothing that would jeopardize the property's tax exempt status. Presumably that means the building's use is limited. Breach of these agreements would mean untold damages. Such negligence in performance by a board is unreasonable. The exposure to liability will siphon money from educational programs, while maintenance of a building no longer serving students is a waste of scarce education resources.

3. The decision was a product of procedural bias and unfairness.

The process undertaken to achieve this vote smacks of unfairness and undermines the public confidence in the educational system. Whether or not the guidelines outlined in *In re Norman Barker*, 1 D.P.I. App. Dec 145 (1977) are the law, their application can still serve to demonstrate whether a decision is unreasonable and contrary to the best interest of education.

For example, in *Barker* the board considered closing a school to save money. But in that case, as in the case of G-R, there was evidence that the school had not conducted sufficient study to make a sound decision. Specifically, the facts showed:

1. Some involved in the decision suggested more time was needed to study the matter;
2. The board did not utilize resources such as the AEA;
3. There were facilities concerns and uncertain implementation plans;
4. The board had not formally discussed alternatives to closing a building;
5. The administration did not present the board with information requested or needed;
6. The board did not consider fully the transportation ramifications of the closure;
7. The board's stated reasons for the closure had the appearance of justification after the fact rather than forethought.

In *Barker*, these facts led to overruling the building closure. These facts, and more, echo loudly in the instant case.

First, the inexperience of both the superintendent and board president should raise concerns. Clearly, neither had an historical frame of reference or appreciation of the district's dynamics and how divisive the issue would be. Moreover, the financial projections from the "new" software depend entirely on inputs and assumptions chosen by the superintendent and/or board. This could not be more significant than when inputting enrollment projections, for

example. Since enrollment drives public school budgets, skewing enrollment one way or the other means the difference between projecting financial stability or instability. In this case, the district hired professional consultants to project future enrollment totals. One projection showed stable, if not improved, enrollments. Another showed a loss of about 5 students per year for 5 years. Nevertheless, the district decided to project the loss of 10 more students each year for 5 years. This allowed the district to perpetuate the narrative that the school was in dire straits, when in fact the cuts made the prior spring ensured the district could meet its financial goal for several years to come.

It is significant that the aforementioned enrollment assumptions were made by a board with 5 out of 7 members coming from Reinbeck. It also came during the board retreat on September 3, 2014, when the board realized it had enough support (votes) on the board to close a building. The record shows that at that point the superintendent set out to supply information to that end. And the board did not show interest in anything else.

Soon thereafter, the board created a committee to recommend between two building-closure options. The ultimate structure of the committee shouts unfairness. The committee did not contain middle school teachers, even though both options would eviscerate the district's middle school concept. The committee was divided along old district lines (the Reinbeck faction and the Gladbrook faction). Yet the committee had more "Reinbeck" members than Gladbrook. And it even had a member from outside the district. The Reinbeck members were male (7 of 10), while Gladbrook was female. The lion's share of Reinbeck members were either employees of Lincoln Savings Bank of Reinbeck or school teachers teaching at Reinbeck. The committee was not assisted by AEA or another neutral professional or past superintendent that knew the situation, but by "facilitators" acquainted only with Superintendent Holloway.

The unreasonableness of the process is further evident by the board's rejections of committee requests for more information and requests to expand its ability to consider other options. It is also evident in the manner in which the issue came up for a vote. The public had been kept in the dark as if/when a vote of any sort would be on the agenda. The vote took place during a snow storm, after school had been dismissed early due to weather. The "decision" to put the item on an agenda for a vote was made as a work session. It took place at a meeting, the date of which had been changed twice in a 1-week period.

Another closure was overruled under *In re Daniel Menke*, 4 D.P.I. App. Dec 40. In that case, as here, there were three centers in the district: two in one town and one in the other town. Again, declining enrollment was the driving factor. That school had gone from 670 students to 370 following consolidation. In *Menke*, the board created numerous advisory committees to study the situation from 1979 to 1984. The superintendent was inexperienced. There was some lack of communication regarding the meeting for the vote, but the board voted to close a center. *Id.*, at 41-42. This decision was overturned. The court was concerned with the board's research, planning and community involvement. Each of these facts is relevant to whether a decision is unreasonable and contrary to the best interest of education. The court noted the lack of advance notice to the public, even though it has been discussed for some time. The court noted that there was no emergency involved, nor did the committee fully consider alternatives. Thus, the court in *Menke* found the board acted in haste, with insufficient research, study and planning, and acted without meaningful public involvement. In *In re Janiene Nusbaum and Jay Jay Krutsinger* (Book 12, Dec. 378 (Oct. 1995)), the court overruled a closure because there was not an advance time line for a vote, and the study committee did not represent all segments of the community.

In spirit and substance, these cases, *Barker, Menke* and *Krutsinger* still stand for what constitutes an unreasonable decision contrary to the best interest of public education: failing to research, study and plan, failing to consider alternatives, failing to give public notice and failing to involve the community. Applied to the present decision, it is clear this board chose to ignore highly relevant information, it chose not to investigate and consider long-term obligations under 28E agreements, it chose not to study alternatives, it chose to make a decision even though information it requested was not provided, and it made a decision without fully understanding the ramifications. The decision of the board to close the Gladbrook building should be overruled as unreasonable and contrary to the best interests of public education.

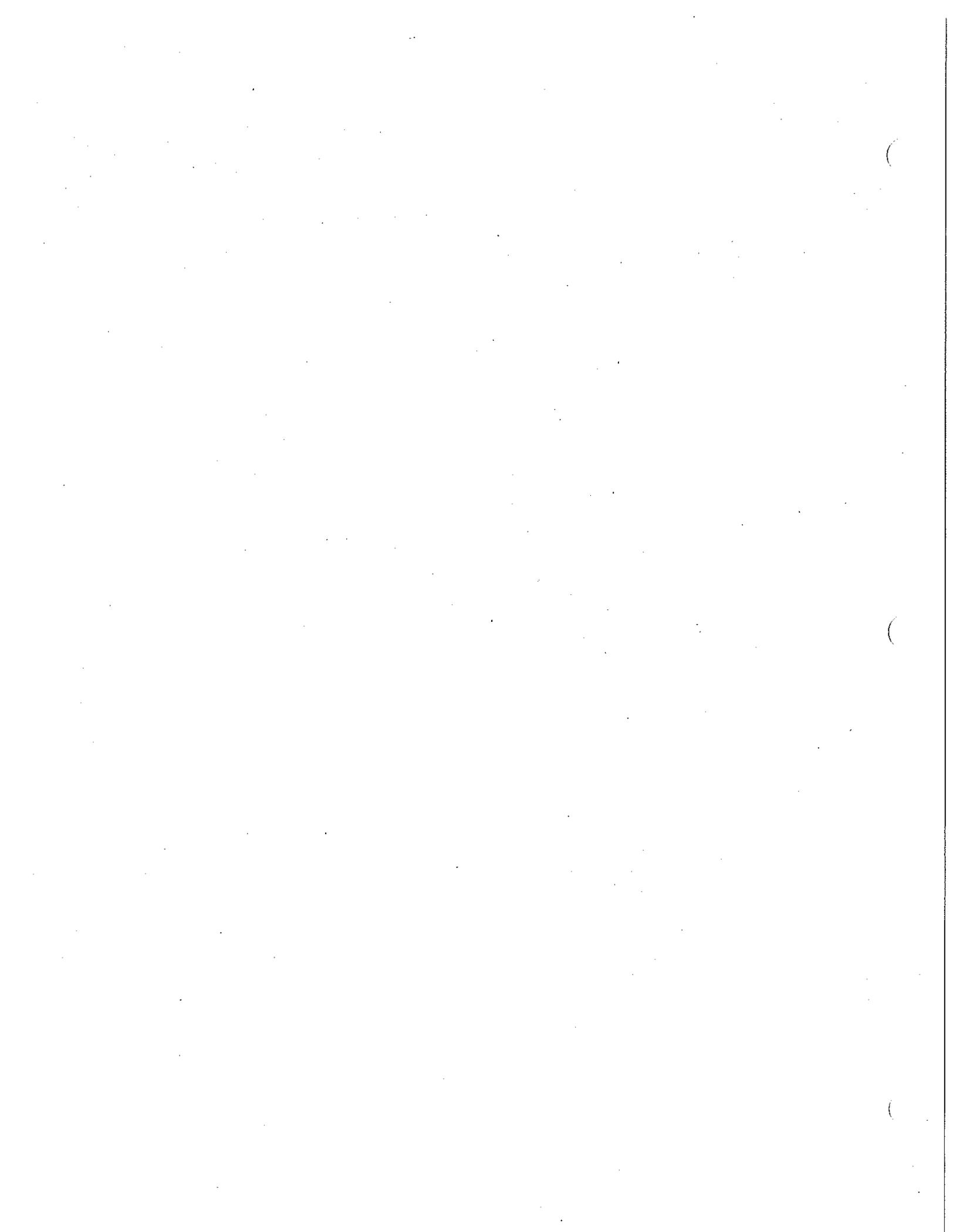
Respectfully submitted,

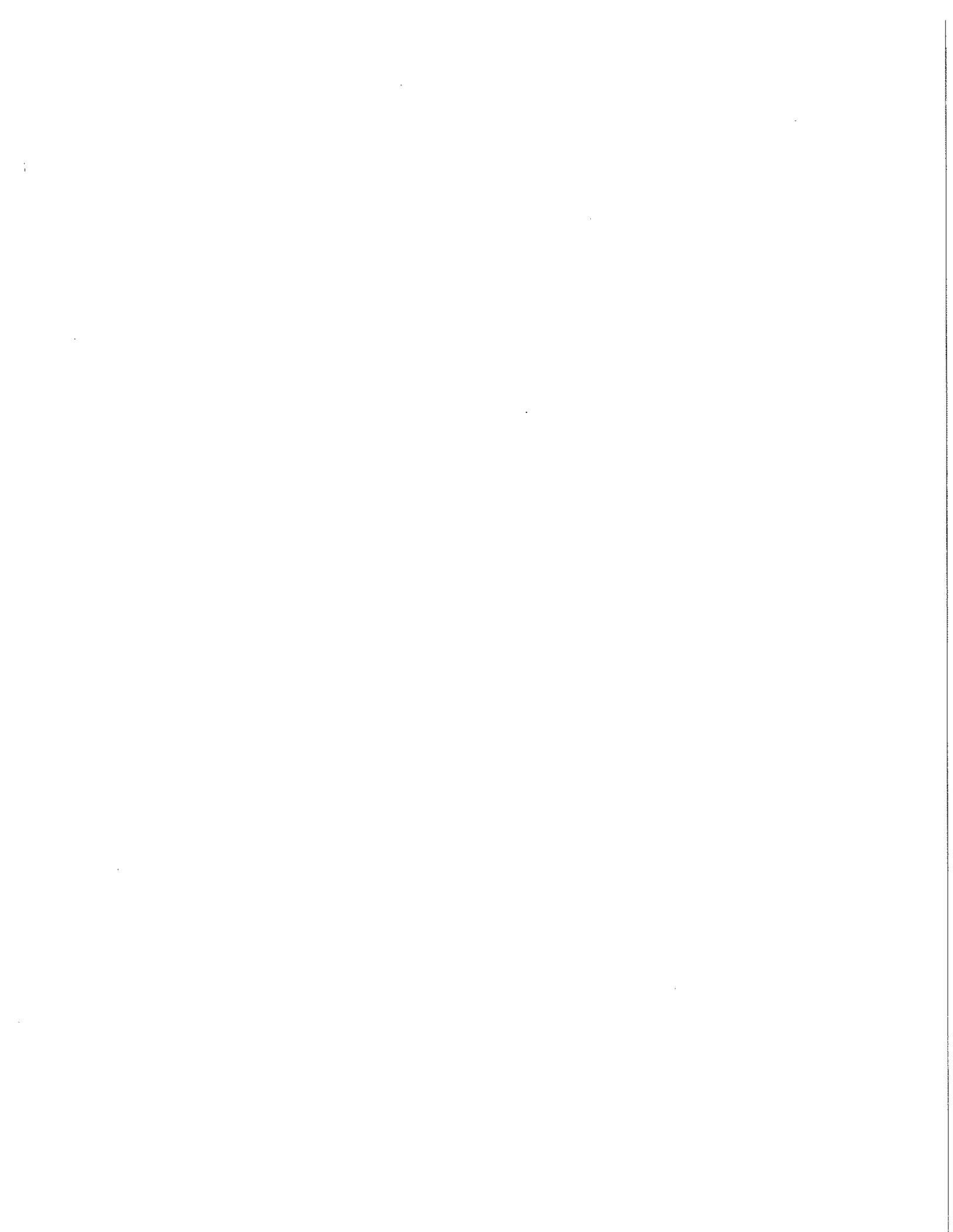
/s/ Darrell G. Meyer AT00005273  
8 N. 1<sup>st</sup> Avenue, Suite 1  
Marshalltown, Iowa 50158  
641-753-4190  
641-328-1444 fax  
attymeyer@mediacombb.net

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served on the Appellee by emailing and mailing a copy to counsel of record on the 25<sup>th</sup> of August, 2015.

/s/ Darrell G. Meyer



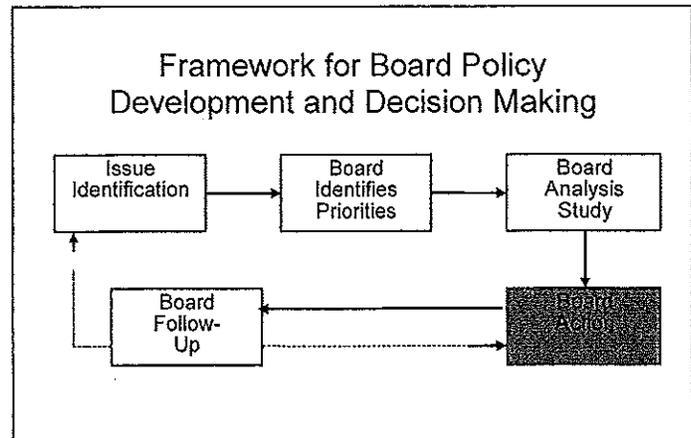




# Iowa State Board of Education

## Executive Summary

November 18, 2015



**Agenda Item:** *In re Expulsion of M.K. (West Des Moines Community School District)*

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

**State Board Role/Authority:** Under Iowa Code section 290.1 the State Board of Education has authority to hear appeals from local school board decisions.

**Presenter:** Nicole Proesch, Administrative Law Judge

**Attachments:** 1

**Recommendation:** It is recommended that the State Board approve the proposed decision dismissing the appeal, denying the Appellants Motion for Summary Judgment, granting the Appellees Motion for Summary Judgment and denying all other motions as moot.

**Background:** M.K. was a freshman at Valley Southwoods which is in the West Des Moines Community School District (WDCSD) during the 2014-2015 school year. In April of 2015, M.K. was identified by several other students as an individual who was selling Adderall at school. One of the students provided an exchange of text messages between herself and M.K. where M.K. agreed to bring "addy" to the other student. M.K. admitted to sending the text messages, but indicated he only said this to be nice. After speaking with M.K. about the accusations, administrators suspended M.K. for the remainder of the school year and brought before the WDCSD board for an expulsion hearing.

At the hearing, the board heard evidence, testimony, and the recommendation from the administration. The local board voted to suspend M.K for the remainder of the 2014-2015 school year, to expel M.K. for the first semester of the 2015-2016 school year, and to suspend him for the first quarter of the second semester of the 2015-2016 school year. Thereafter, M.K. was to be placed in an alternative educational setting.

M.K. and his parents appealed. WDCSD Board filed a motion to dismiss the appeal alleging the appeal was improperly filed and the Appellants resisted. The Appellants filed a Motion for Summary Judgment and the Appellees filed a Cross-Motion for Summary Judgment. The Appellants moved to Strike the Appellees motion as untimely.

Under Iowa Code section 290.1, in order for a claim to be properly under the jurisdiction of the State Board, the Appellants must file an Affidavit of Appeal. The documents filed by the Appellants contained no statement by the Appellants that the statements were made under oath, nor were they signed by the Appellants, or notarized by a notary. Thus, under the statute, the State Board has no jurisdiction to hear the appeal. Even if the State Board were to broadly construe these documents as a properly filed appeal, the Appellants lose on the Motions for Summary Judgment because the findings and actions of the WDCSD Board were reasonable. The decision of a local board to suspend or expel a student is clearly an issue of discretion, thus we review it for reasonableness.

Thus, it is recommended that the State Board approve the proposed decision.

IOWA DEPARTMENT OF EDUCATION

---

<i>In re Expulsion of M.K.</i>	)	
	)	
R.K.,	)	
	)	
Appellant,	)	PROPOSED DECISION
	)	
v.	)	
	)	
West Des Moines Community	)	Admin. Doc. No. 5015
School District,	)	
	)	
Appellee.	)	

---

On June 26, 2015, the Appellants filed an the appeal of the West Des Moines Community School District ("WDCSD" or "District") Board of Directors' ("WDCSD Board" or "Board") decision rendered on May 27, 2015, to suspend M.K for the remainder of the 2014-2015 school year, to expel M.K. for the first semester of the 2015-2016 school year, and to suspend him for the first quarter of the second semester of the 2015-2016 school year. Thereafter M.K. was to be placed in an alternative educational setting.

Appellee filed a Motion to Dismiss on July 7, 2015. Appellant's filed a Resistance to the Motion to Dismiss on July 17, 2015 and Appellee filed a reply on July 22, 2015. Appellants also filed a Motion for Summary Judgment on August 7, 2015. On August 24, 2015, the Appellee's filed a Resistance to the Motion for Summary Judgment and a Cross-Motion for Summary Judgment. Appellants filed a Motion to Strike Appellee's Untimely Cross Motion for Summary Judgment on September 3, 2015. After reviewing the parties' motions the undersigned makes the following findings and conclusions.

**MOTION TO DISMISS**

It is clear under Iowa Code section 290.1, that an appeal "shall be an affidavit filed with the State Board by the party aggrieved within the time for taking the appeal." Iowa Code § 290.1; *see also* 281 IAC § 6.1(1). "An affidavit is a written declaration made under oath, without notice to the adverse party, before any person authorized to administer oaths within or without the state." Iowa Code § 622.85. The Appellees argue in the Motion to Dismiss that the appeal letter is not an "affidavit" as required under Iowa Code section 290.1 because it was not notarized and did not contain any other indication that the declarations of the Appellant were sworn to and made under oath. The letter of appeal contains the signature of the Appellant and his Attorney, who is a notary, but it is void of a notary stamp or a statement that the appeal was

made under oath. See Iowa Code § 622.1 (allowing certification under the penalty of perjury). While we recognize that the appeal letter contains a footnote that states “this letter and its attachments are referred in this document as the appeal of [M.K.], but despite the nomenclature attached hereto, should be construed as M.K.’s ‘Affidavit’ needed to appeal the Board’s decision as required by Iowa Code §.290.1,” this statement does not make the letter an affidavit for purposes of the State Board’s jurisdiction over the appeal. The State Board has found that lack of compliance with statutory requirements will result in no jurisdiction. *In re Intra District Transfers*, 27 D.o.E. App. Dec. 568 (2015).

Additionally, the Appellant cannot cure this defect by attempting to file an affidavit after the time for filing the appeal has run. 281 --- Iowa Administrative Code rule 6.3(6) only allows a substantive amendment to an affidavit already on file, it does not allow for an extension of the filing deadline. As such, the State Board lacks jurisdiction to hear the appeal.

However, given that this is a very time sensitive issue involving a student’s suspension and expulsion we will review the merits of the parties’ motions for Summary Judgment below and attempt to resolve those issues for purposes of further review. Even if we broadly construe the letter of appeal as a properly filed affidavit, we find that the Appellees would not be entitled to relief for the reasons stated below.

## MOTION FOR SUMMARY JUDGMENT

### A. Undisputed Facts

The pleadings and exhibits reveal the following undisputed facts:

M.K. was a fifteen year old freshman at Valley Southwoods (“Valley”) during the 2014-2015 school year. M.K. has a diagnosis of ADHD and as a result is prescribed to take Adderall. Despite this diagnosis M.K. has a 3.69 GPA. On April 30, 2015, Valley Administration was contacted by a concerned parent and informed that several Valley students were selling or using Adderall. During an investigation into the allegations Student A and Student D identified M.K. as a person that was selling or possessed Adderall. Administration interviewed M.K. regarding the allegations, which M.K. denied. A search of M.K. and M.K.’s locker found nothing.

On May 8, 2015, Student B submitted a revised statement to administration identifying M.K. as a person Student B purchased Adderall from. In Student B’s initial interview she had not identified M.K. as the source of Adderall because she did not want to get a friend in trouble. In the revised statement Student B admitted to purchasing the Adderall from M.K. for her own use and not for redistribution to another student, thereby eliminating her risk of expulsion for distribution. On May 12, 2015, administration was provided screen shots from Student B’s cell

phone showing the following conversation with Student B and M.K. between April 25, 2015 and April 28, 2015:

*Sunday, April 25, 2015*

Student B: can u bring me addy tomorrow :-).

M.K.: Sorry I'm all out rn. I'm buying some more soon though

Student B: [expletive deleted] me ok  
thx tho

M.K.: Lol, I'll have some more Wednesday

Student B: ok ok

*Tuesday, April 28, 2015*

Student B: can you bring me some tomorrow :-)

M.K.: How much

Student B: can u bring me 2 20s and a 30 me for 7\$

M.K.: Ya

On May 15, 2015, Valley administration interviewed M.K. regarding the allegations. M.K. requested the presence of his father and the interview was stopped. The parties both agree the interview did not continue after M.K.'s father arrived but they dispute who stopped the interview from continuing. M.K. was immediately suspended for the remainder of the 2014-2015 school year. On May 22, 2015, Valley provided written notice to M.K. that it was seeking a one semester expulsion for M.K. and referred the matter to the West Des Moines School District Board.

A hearing was held on May 27, 2015. At the hearing Valley administration a packet to the Board which contained the written statements of the Students A, D, and B, and screenshots from Student B's phone with the text messages. No oral testimony of the Students was presented. Student B's mother testified as did administration. There was testimony presented regarding the color of the pills Student B received and whether or not it matched the color Adderall comes in. Despite Student B's statement and the text messages, M.K. admitted he sent the text messages but stated that he never delivered Adderall to Student B. M.K. claimed he was just being nice to a friend by saying he would help her out. M.K. testified that he did not possess or sell a controlled substance, except for properly consuming a prescription in the nurse's office. The WDCSD Board found M.K. violated board policies 503.1, 502.7B and 502.8, for possessing and distributing a controlled substance at Valley.

Board policy 503.1 prohibits the:

Possession of a controlled substance or a controlled substance lookalike . . . While on school premises, while on school owned and or operated school or chartered buses,

while attending or engaged in school sponsored activities, while away from school grounds if misconduct will directly affect the good order, efficiency, management and welfare of the school.

Board policy 502.7B 1 provides that a student may be discipline for:

Possessing, using or being under the influence of any controlled substance . . . and manufacturing, possessing, or selling drug paraphernalia are strictly prohibited while a student is on any school property or under school supervision.<sup>1</sup>

Board Policy 502.8 provides that:

[S]ale or distribution, attempted sale or distribution and or purchase or acquisition with the intent to sell or distribute by a student of any prohibited substance.... Is strictly prohibited while the student is on any school property or under school supervision. This includes attendance at school or a school sponsored event.

After considering the evidence, testimony, and arguments of the parties the WDCSD Board found M.K. violated the above board policies and voted to suspend M.K for the remainder of the 2014-2015 school year, to expel M.K. for the first semester of the 2015-2016 school year, and to suspend him for the first quarter of the second semester of the 2015-2016 school year. Thereafter M.K. was to be placed in an alternative educational setting. In the Board's written decision the Board noted:

[M.K.] has denied the allegations that he possessed or sold a controlled substance except by properly consuming his medication either at home or at the school nurses office. However, the text messages, taken in conjunction with the statements of the students, indicate intent to distribute and actual distribution of a prohibited substance. The standard in a discipline case is a preponderance of the evidence, not proof beyond a reasonable doubt. [M.K.'s] explanation of the text messages was not credible, and the statements of the three others are persuasive. Student A's reports regarding other students have proved accurate to the degree that others she has named have admitted to their participation in the conduct.

The Appellants filed a timely notice of appeal.

---

<sup>1</sup> An exception to this policy is possession of a medication prescribed by the individual student's licensed health care provider and which is taken in accordance with the licensed health care provider instructions.

## B. Conclusions of Law

Both parties have submitted Motions for Summary Judgment. Summary Judgment is appropriate if in viewing the evidence in the light most favorable to the nonmoving party, "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Iowa R. Civ. Pro 1.981(3); *Weddum v. Davenport Comm. Sch. Dist.*, 750 N.W.2d 114, 117 (Iowa 2008). For summary judgment purposes an issue of fact is material only if the dispute is over facts that might affect the outcome. *Weddum*, 750 N.W.2d at 117 (internal citations omitted). "When the only controversy concerns the legal consequences flowing from undisputed facts, summary judgment is the proper remedy." *Id.* In the present case the parties do not dispute the facts. The issue is whether or not the Appellants or the Appellees are entitled to judgment as a matter of law.

The review of a local school board's decision is for abuse of discretion. See *Sioux City Comm. Sch. Dist. v. Iowa Dep't of Educ.*, 659 N.W.2d 563, 569 (Iowa 2003). In applying abuse of discretion we look at whether a reasonable person could have found sufficient evidence to come to the same conclusion. *Id.* "[W]e will find a decision was unreasonable if it was not based on substantial evidence or was based upon an erroneous application of the law." [Citations Omitted] *Id.* at 569. The State Board will not disturb a local decisions in school discipline issues unless they are "unreasonable and contrary to the best interest of education." *In re Jesse Bachmann*, 13 D.o.E. App. Dec. 363, 369 (1996). The decision of a local board to suspend or expel a student is clearly an issue of discretion. The question here is whether or not the decision of the WDCSD Board to suspend and expel M.K. was reasonable under the facts and circumstances. If the decision was reasonable we must find in favor of the local board as a matter of law. If not we must find in favor of the Appellants.

The Iowa Legislature has conferred broad authority to local school boards to adopt and enforce its own rules and disciplinary policies. See Iowa Code §§ 279.8 & 282.4. Under 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. Additionally, under Iowa Code section 279.9 a board "shall prohibit . . . the use or possession of . . . any controlled substance . . . by any student of the schools and the board may suspend or expel a student for a violation of this rule under this section." Iowa Code § 279.9. Thus, school districts have broad discretion to punish students who break the rules as long as the district follows appropriate due process requirements. *In re Suspension of A.W.*, 27 D.o.E. App. Dec. 587 (2015).

The Appellants argue there was not substantial evidence to support a finding that M.K. violated board policies. Specifically, they argue there was no evidence this violation occurred

on school grounds. However, Board Policy 503.1 provides that it is also a violation to possess a controlled substance "while away from school grounds if misconduct will directly affect the good order, efficiency, management and welfare of the school." Under the circumstances here three students came forward and identified M.K. as an individual who sells Adderall. These students all attend Valley. Thus, it is a reasonable interpretation of the rule that this type of behavior directly affected the good order and welfare of the school. Additionally, there was no evidence presented that the transactions did not occur on school grounds. One could infer from the text messages that were sent on a Tuesday night, a school night, from M.K. to Student B that M.K. planned to provide the Adderall the next day at school. Additionally, several of the witness statements indicated that some of the drug transactions occurred at school or afterschool, although M.K. was not specifically indicated in those transactions. "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).

The WDCSD Board found by a preponderance of the evidence that M.K. violated the board's policies. "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." *In re Shinn*, 14 D.o.E. App. Dec. 185 (1996). Specifically, the WDCSD Board noted in its findings that it did not find M.K.'s testimony at the hearing to be credible given the other evidence from other students and the text messages from M.K.'s phone. We will not substitute our judgment regarding witness credibility for that of the local board. 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). Even if Student B was not forthcoming in her first statement to administration, the text messages given to administration provided support to the truth of her amended statement. Based on the evidence presented at the hearing we find the Board's determination that M.K. violated board policies was reasonable.

We now review the imposition of discipline for reasonableness. The State Board has found that imposing an expulsion for possession and/or distribution of drugs is reasonable and not contrary to the best interest of education. *See In re Colton L.*, 24 D.o.E. App. Dec. 177 (2007); *see also In re Hodges*, 22 D.o.E. App. Dec. 279 (2004). In fact, Iowa Code section 279.9 provides that it is a permissible punishment. *See Iowa Code § 279.9*. Thus, we also find that the sanction imposed on M.K. in this case was reasonable under the circumstances and not contrary to the best interest of education. Although the Appellants also argue that M.K. was denied due process, we find no evidence that M.K. was denied due process.

The record conclusively establishes that the WDCSD Board's decision was within the zone of reasonableness. Thus, in viewing the evidence in the light most favorable to the

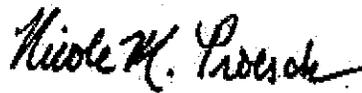
Appellants the pleadings and exhibits offered in this case show that there is no genuine issue as to any material fact and that the Appellees are entitled to judgment as a matter of law.

DECISION

For the forgoing reasons, the Appellee's Motion to Dismiss is GRANTED, the Appellant's Motion for Summary Judgment is DENIED, and the Appellee's Motion for Summary Judgment is GRANTED in favor of the West Des Moines Community School District Board. All other motions currently pending are moot and are therefore DENIED.

9/4/2015

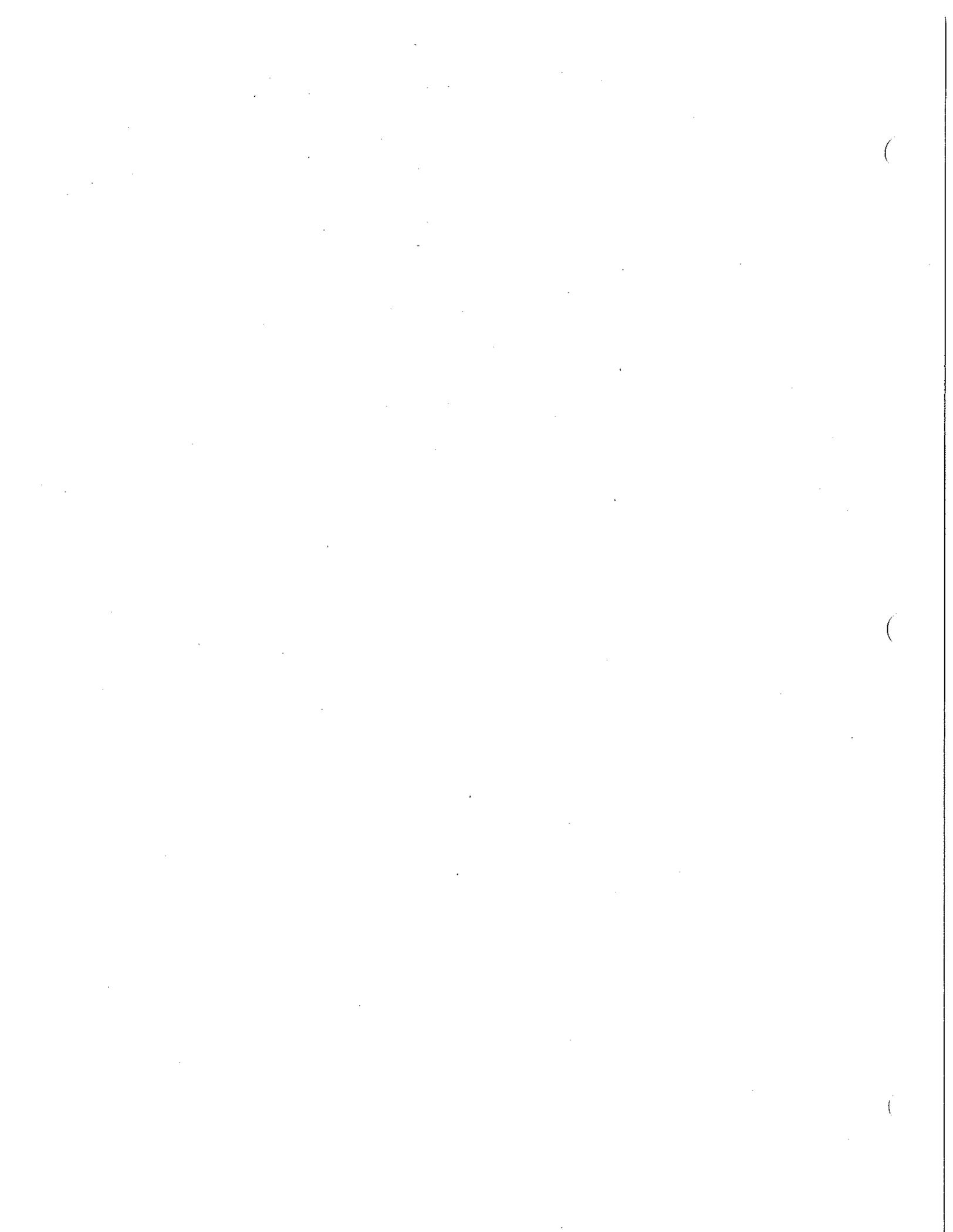
Date



\_\_\_\_\_  
Nicole M. Proesch, J.D.  
Administrative Law Judge

\_\_\_\_\_  
Date

\_\_\_\_\_  
Charles C. Edwards Jr., Board President  
State Board of Education



**RECEIVED**

SEP 22 2015

IOWA DEPARTMENT OF EDUCATION

DEPARTMENT OF  
EDUCATION

In re Expulsion of MK	)	
R.K.,	)	
Appellant,	)	
v.	)	NOTICE OF APPEAL OF PROPOSED
West Des Moines Community	)	DECISION
School District,	)	
Appellee	)	

COMES NOW Appellant, R.K., and for its Notice of Appeal of a Proposed Decision pursuant to Iowa Administrative Code section 281-6.17(5), states as follows:

1. R.K., on behalf of the minor and as next of friend of M.K., 3801 Thornwood Circle, West Des Moines, IA, hereby initiates the instant appeal of the Proposed Decision entered by Administrative Law Judge Nicole M. Proesch on or about September 4, 2015.

2. Appellant specifically takes exception to the following findings or conclusions of the September 4, 2015 Proposed Decision entered by Judge Proesch:

- a. Dismissal of Appellant's Appeal;
- b. Grant of Appellee's Motion for Summary Judgment;
- c. Denial of Appellant's Motion for Summary Judgment; and
- d. Upholding the decision of the West Des Moines Community School Board finding that M.K. violated Policies 503.1, 502.7B and 502.8 and finding the discipline imposed by the board was reasonable.

3. Appellant requests that the State Board of Education reverse the Dismissal of Appellant's Appeal on the following grounds: (a) the Judge erred in finding that Appellant's original appeal did not constitute an affidavit as required by Iowa Code 290.1 and more specifically Iowa Administrative Code § 281-6.3(1); (b) the Judge erred in finding Appellant's appeal did not substantially comply with the requirements of Iowa law and Appellee was not prejudiced by any defect and that substantial compliance was not sufficient; (c) the Judge erred in not allowing Appellant to amend his appeal to correct any perceived deficiencies pursuant to Iowa

Administrative Code § 281-6.3(6); and (d) the Judge erred in finding that the alleged deficiency in the appeal impacted the Iowa State Board of Education's jurisdiction over the appeal.

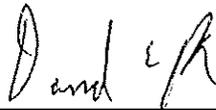
4. Appellant requests that the State Board of Education reverse the Grant of Appellee's Motion for Summary Judgment on the following grounds: (a) the Judge erred in not addressing the issue of whether Appellee's Motion for Summary Judgment was timely filed; (b) the Judge erred in granting Appellee's Motion for Summary Judgment despite the fact that it was not timely filed; (c) the Judge erred by granting the School Board's Motion for Summary Judgment once/after the Appeal had been dismissed; (d) the Judge erred in finding that there was substantial evidence supporting the West Des Moines Community School Board's finding, by a preponderance of the evidence, that M.K. violated Policies 503.1, 502.7B, and 502.8 and that such finding by the Board was reasonable; and (e) the Judge erred in finding that there was substantial evidence to support a finding that the discipline imposed by the West Des Moines Community School Board was reasonable.

5. Appellant requests that the State Board of Education reverse the Denial of Appellant's Motion for Summary Judgment on the following grounds: (a) The Judge erred in finding that there was substantial evidence supporting the West Des Moines Community School Board's finding, by a preponderance of the evidence, that M.K. violated Policies 503.1, 502.7B, and 502.8 and that such finding by the Board was reasonable; (b) the Judge erred in finding that there was not substantial evidence to support a finding that the discipline imposed by the West Des Moines Community School Board was reasonable; and (c) the Judge erred in not addressing or making a finding as to whether M.K.'s due process rights were violated.

6. Appellant requests that the State Board of Education reverse the decision to suspend M.K. for the remainder of the 2014-2015 school year, expel M.K. for the first semester of the

2015-2016 school year, and suspend him for the first quarter of the second semester of the 2015-2016 school year and place M.K., thereafter, in an alternative educational setting on the following grounds: (a) The Judge erred in finding that there was substantial evidence supporting the West Des Moines Community School Board's finding, by a preponderance of the evidence, that M.K. violated Policies 503.1, 502.7B, and 502.8 and that such finding by the Board was reasonable; (b) the Judge erred in finding that there was not substantial evidence to support a finding that the discipline imposed by the West Des Moines Community School Board was reasonable; (c) the Judge erred in not addressing or making a finding as to whether M.K.'s due process rights were violated.

Respectfully Submitted by,  
BRICK GENTRY P.C.



---

David E. Brick (AT0001085)  
6701 Westown Parkway, Suite 100  
West Des Moines, Iowa 50266  
Telephone: (515) 274-1450  
Facsimile: (515) 274-1488  
Email: [dave.brick@brickgentrylaw.com](mailto:dave.brick@brickgentrylaw.com)  
ATTORNEY FOR THE APPELLANT

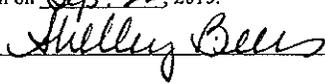
Original Filed with the  
Office of the Director  
Department of Education  
Grimes State Office Building  
400 E 14th St  
Des Moines, IA 50319-0146

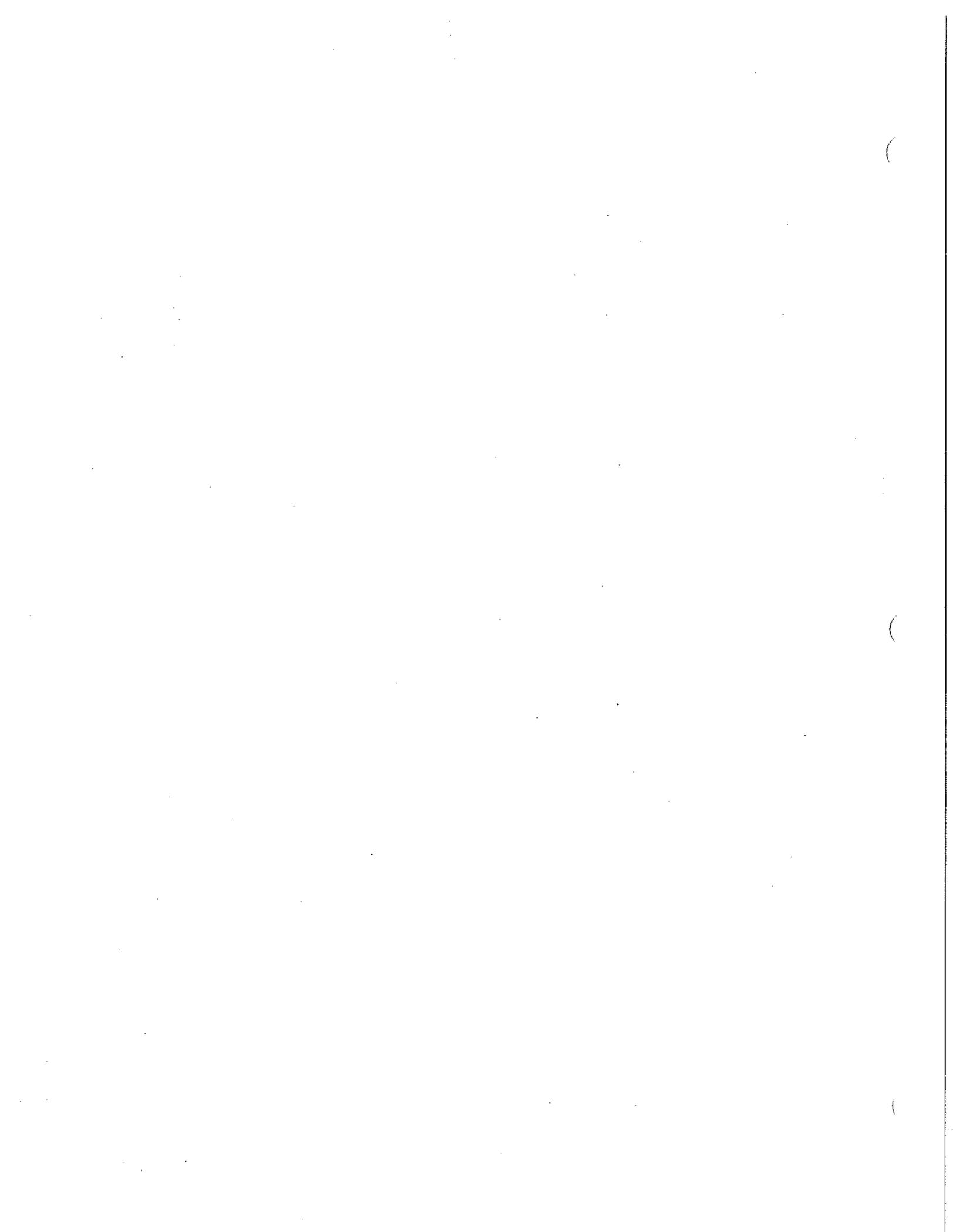
Copy to:

Kristy M. Latta  
AHLERS & COONEY, P.C.  
100 Court Avenue, Suite 600  
Des Moines, Iowa 50309-2231  
ATTORNEY FOR APPELLEE

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings by U.S. Mail on Sep. 22 2015.

By: 



BEFORE THE STATE BOARD OF THE  
IOWA DEPARTMENT OF EDUCATION

<i>In re Expulsion of M.K.</i>	Admin. Doc. No. 5015
R.K., Appellant,	DEPARTMENT OF EDUCATION OCT 05 2015
v.	RECEIVED
WEST DES MOINES COMMUNITY SCHOOL DISTRICT, Appellee.	APPELLEE WEST DES MOINES COMMUNITY SCHOOL DISTRICT'S BRIEF IN SUPPORT OF AFFIRMING PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE

COMES NOW Appellee West Des Moines Community School District (the "District"), pursuant to 281 Iowa Administrative Code Section 6.17(6), and submits this brief in support of affirming the proposed decision of the Administrative Law Judge issued on September 4, 2015, in the above-referenced appeal.

**I. Factual Background**

The exhibits and testimony presented at the hearing before the local Board of Directors (the "Board") established the following facts:

M.K. was a ninth-grade student at Valley Southwoods Freshman High School for the 2014-2015 school year. *See* Appellee's Appendix, Exhibit 4.<sup>1</sup>

On April 30, 2015, the Valley Southwoods administration received a report from a parent of a student at the school that students were selling or using the prescription drug Adderall at school. Based upon the information provided, the administration, including Principal Mitchell Kuhnert, Assistant Principal Bryan Stearns, and Assistant Principal Barbara Goetschel, began

<sup>1</sup> The Exhibits cited herein are contained in the District's Appendix in Support of Its Resistance to Appellant's Motion for Summary Judgment and Its Cross-Motion for Summary Judgment, previously filed with the Iowa Department of Education.

interviewing students. In the course of these interviews, M.K. was identified by two students (“Student A” and “Student D”) as someone who had possessed or sold Adderall pills. M.K. was questioned on April 30 but he denied selling or possessing pills. M.K.’s locker and person were searched by the administration but no contraband was found. *See Appellee’s Appendix, Exhibits 3-4.*

On May 8, 2015, a third student involved in the investigation (“Student B”) submitted a revised statement to the administration specifically identifying M.K. as a person who sold Adderall pills to her. Student B’s statement included a description of the yellow and blue colors of the pills she had been sold. In Student B’s initial interview on April 30, she had not identified M.K. as the source of pills. Student B stated that she had omitted M.K.’s actions from her earlier statement because she did not want to get a friend in trouble. *See Appellee’s Appendix, Exhibits 3-4.*

On May 12, 2015, the administration received copies of “screen shots” from Student B’s cell phone which appeared to show text messages from M.K. to Student B. In those text messages, M.K. agreed to sell Student B three pills. M.K. stated in the messages that when he received the request from Student B he was currently “all out,” but he was “buying some more soon though” and promised to bring Student B “2 20’s and a 30” the next day. The next day was a school day. *See Appellee’s Appendix, Exhibits 3-4.*

On May 15, 2015, Principal Kuhnert sought to interview M.K. again. M.K. asked for his parents, so the interview was halted and M.K.’s parents were called. M.K.’s father came to the school and spoke to Principal Kuhnert. M.K.’s father claimed that the color described by Student B for the yellow pills was wrong, but acknowledged that the blue pill description was correct. M.K.’s father also asserted that the screen shots could have been faked. Principal

Kuhnert asked to talk to M.K., but M.K.'s father refused. *See Appellee's Appendix, Exhibits 3-4.*

After further consultation among the administrative team and with legal counsel, the District decided to move forward with discipline regarding the allegations concerning M.K. On May 21, 2015, the administration suspended M.K. from school for the nine days of school remaining in the school year, and the administration orally notified M.K.'s parents that the Board of Directors of the District (the "Board") would hold a hearing on May 27, 2015 to expulsion of M.K. from school. The administration delivered a packet of materials, including written notice of the charges against M.K. and the Board hearing as well as a witness list and copies of the documents to be presented at the hearing, to M.K.'s parents on May 22, 2015. *See Appellee's Appendix, Exhibits 3-4.*

On May 27, 2015, the Board held a hearing to decide whether to expel M.K. from school. M.K. appeared at the hearing together with his parents. M.K. was also represented by attorney David Brick. *See Appellee's Appendix, Exhibits 2-3.*

At the hearing, the administration presented the documents included in the packet of materials that had been delivered to M.K.'s parents, including the statements of Student A, Student D, and Student B and the screen shots from Student B's phone. In addition, the administration presented the testimony of several witnesses, including Principal Kuhnert. Student B's mother also testified at the hearing in support of the reliability of Student B's revised statement and the screen shots from Student B's phone. *See Appellee's Appendix, Exhibits 2-4.*

At the hearing, M.K. admitted that he was the person who had sent the text messages appearing on Student B's phone. However, M.K. stated that he did not actually deliver Adderall pills to Student B as he stated in the text messages. M.K. claimed that he was just being nice to a

friend by saying he would help her out. M.K.'s attorney also presented some color photo documentation regarding the various capsule forms that Adderall comes in, contending that none of those forms align with the yellow color description given in Student B's statement. However, one of the photos described as orange appeared very close to a yellow color. M.K. denied allegations that he possessed or sold a controlled substance, except by properly consuming Adderall either at home or at the school nurse's office. *See* Appellee's Appendix, Exhibits 2-3, 5.

The Board found that M.K. violated Board policies 502.7B and 502.8 for unauthorized possession of Adderall and distribution of Adderall to other students. The Board imposed discipline against M.K. in accordance with those policies, deciding that M.K. should be suspended for the remainder of the 2014-2015 school year to obtain credit for the current semester's work, expelled for the first semester of the 2015-2016 school year, and then suspended for the first quarter of the second semester and placed in an alternate educational setting. *See* Appellee's Appendix, Exhibits 1, 6.

## II. Procedural Background

Following the Board's decision to impose discipline on M.K., the Appellant sought to appeal the decision pursuant to Iowa Code Section 290.1.

However, the Appellant in this case failed to comply with the requirements for filing an appeal because he did not file an "affidavit" of appeal as expressly required by Iowa Code Section 290.1. The District filed a motion to dismiss the appeal for lack of jurisdiction.

The Appellant then filed a motion for summary judgment on the merits of the appeal. The District filed a resistance to the Appellant's motion as well as a cross-motion for summary judgment on the merits of the appeal.<sup>2</sup>

The Administrative Law Judge issued a proposed decision on September 4, 2015. The proposed decision granted the District's motion to dismiss the appeal for lack of jurisdiction.

The decision states:

While we recognize that the appeal letter contains a footnote that states "this letter and its attachments are referred in this document as the appeal of [M.K.], but despite the nomenclature attached hereto, should be construed as M.K.'s 'Affidavit' needed to appeal the Board's decision as required by Iowa Code § 290.1," this statement does not make the letter an affidavit for purposes of the State Board's jurisdiction over the appeal. The State Board has found that lack of compliance with statutory requirements will result in no jurisdiction.

Additionally, the Appellant cannot cure this defect by attempting to file an affidavit after the time for filing the appeal has run. 281 --- Iowa Administrative Code rule 6.3(6) only allows a substantive amendment to an affidavit already on file, it does not allow for an extension of the filing deadline. As such, the State Board lacks jurisdiction to hear the appeal.

The Administrative Law Judge further ruled that, even if the appeal was properly filed, the Appellant would not be entitled to relief on the merits of the appeal and denied the Appellant's motion for summary judgment and granted the District's cross-motion for summary judgment.

The decision states:

Based on the evidence presented at the hearing [and the inferences and credibility determinations drawn therefrom] we find the Board's determination that M.K. violated board policies was reasonable.

\* \* \* \*

Thus, we also find that the sanction imposed on M.K. in this case was reasonable under the circumstances and not contrary to the best interest of education.

---

<sup>2</sup> The Appellant argues the District's cross-motion for summary judgment should not be granted because it was filed after the time for such motions had passed. However, the District's cross-motion for summary judgment was filed in response to the Appellant's pending motion for summary judgment on nearly identical grounds. In such circumstances, both motions may be addressed in the interest of judicial economy. *See From v. Baldwin*, Case No. LACL121321 (Polk County, Iowa 2011).

Although the Appellants also argue that M.K. was denied due process, we find no evidence that M.K. was denied due process.

The record conclusively establishes that the WDCSD Board's decision was within the zone of reasonableness. Thus, in viewing the evidence in the light most favorable to the Appellants the pleadings and exhibits offered in this case show that there is no genuine issue as to any material fact and that the Appellees are entitled to judgment as a matter of law.

(Citations omitted.)

There is ample evidence in the exhibits and testimony presented at the hearing before the Board that supports the decision of the Administrative Law Judge. However, not satisfied with the decision of the Board or the proposed decision of the Administrative Law Judge, the Appellant now seeks another appeal of this matter to the State Board of Education.

### III. Issues on Appeal

The issues for determination on this appeal to the State Board are (i) whether the Administrative Law Judge correctly found that the Appellant failed to comply with the requirements set by Iowa Code Section 290.1 for filing an appeal and, therefore, appropriately dismissed the appeal for lack of jurisdiction; and (ii) even if the appeal was properly filed, whether the Administrative Law Judge correctly found that the undisputed material facts show the District acted lawfully in imposing discipline on M.K.

### IV. Standard of Review

The Iowa Department of Education's administrative rules require the proposed decision of the Administrative Law Judge to be "based on the laws of the United States, the state of Iowa and the regulations and policies of the department of education and shall be in the best interest of education." 281 Iowa Admin. Code § 6.17(2). As outlined below, it is clear that the Administrative Law Judge's decision in this case was made in accordance with this standard.

**V. The Appellant's Failure to Comply with the Requirements Set by Iowa Code Section 290.1 Require the Appeal be Dismissed for Lack of Jurisdiction**

Iowa Code Section 290.1 expressly requires that an appeal of a decision of the District to the State Board be in the form of an "affidavit." The Department's administrative rules likewise specify that an affidavit is required "unless an affidavit is not required by the statute establishing the right of appeal . . . ." 281 Iowa Admin. Code § 6.3(1).

By definition, an "affidavit" is a written declaration made under oath. Iowa Code § 622.85. The reason for the requirement of an affidavit is not insignificant. It is to show that the appealing party was sworn under oath or otherwise certified the truth of the statements being made. *See Dalbey Bros. Lumber Co. v. Crispin*, 12 N.W.2d 277, 279-80 (Iowa 1943) ("The purpose of an oath [under which an affidavit is made] is to secure the truth. . . . While a large liberty is given to the form of the oath, some form remains essential. Something must be present to distinguish between the oath and the bare assertion. An act must be done and clothed in such form as to characterize and evidence it. This is so for the double reason that only by some unequivocal form could the sworn be distinguished from the unsworn averment . . .").

In this case, the Appellant did not file an affidavit of appeal as expressly required by Iowa Code Section 290.1. Instead, he filed a letter with attachments. The letter and attachments are deficient because they are merely bare assertions insufficient to be considered an "affidavit." *Farmers State Sav. Bank v. J.B.H. Enterprises*, 561 N.W.2d 836, 838 (Iowa App. 1997). By his footnote in the letter and attachments, the Appellant admittedly knew that an affidavit was required. Yet, rather than complying with this clear requirement, the Appellant chose to direct the State Board to "construe[]" the letter and attachments as his affidavit.

However, the State Board is not able to acquiesce to the Appellant's directive, because the State Board "cannot minimize the strict requirements of [Iowa Code Section 290.1],

requiring an affidavit.” *See id.* (“As the affidavit . . . was insufficient, the requirements of [the applicable statute] were not satisfied, [and the rights in relation to the applicable statute were not affected]”). The Iowa Supreme Court long ago determined that the affidavit is “[t]he basis of the appeal” and is how the State Board “obtain[s] jurisdiction” under Section 290.1. *Sanderson v. Board of School Directors of Lincoln Tp., Winneshiek County*, 234 N.W. 216, 218-19 (Iowa 1931).

As a jurisdictional prerequisite, the requirement of an affidavit may not be waived by the State Board. *See Brown v. Public Employment Relations Bd.*, 345 N.W.2d 88, 94 (Iowa 1984) (“An administrative agency may not enlarge its powers by waiving a time requirement which is jurisdictional or a prerequisite to the action taken.”). The State Board is without authority to excuse the Appellant’s failure to comply with the statutory requirements for initiating an appeal. *Rosa v. West Des Moines Community School District*, Case No. CV 6862 (Polk County, Iowa 2008). “The judicial system could not function if everyone was not required to follow proper procedure. The courts and agencies are bound by statutory requirements, and special exceptions cannot be made.” *Id.*

Because the State Board is without jurisdiction to entertain this appeal, it must be dismissed. The proposed decision of the Administrative Law Judge should be affirmed on this point.

#### **VI. The District Acted Lawfully in Imposing Discipline on M.K.**

The Board’s legal authority to adopt rules for its students and enforce disciplinary policies, including suspending and expelling students for violations of said policies, is derived from state statutes. These statutes include:

- Iowa Code Section 279.8 (stating that the board “shall make rules for its own government and that of the . . . pupils, . . . and shall aid in enforcement of the rules . . .”)
- Iowa Code Section 282.4 (stating that 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,” and 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”)

In addition, specifically with regard to controlled substances, Iowa Code Section 279.9 states that the board’s rules “shall prohibit . . . the use or possession of . . . any controlled substance . . . by any student of the schools and the board may suspend or expel a student for a violation of a rule under this section.”

It is a longstanding principle that the State Board does not act as a “super school board,” substituting its own judgment for that of the local school board. *Cf. In re Jerry Eaton*, 7 D.o.E. App. Dec. 137 (1987). In student discipline matters, a school district need only establish that it was reasonable for the local board to impose the discipline. *See In re Jesse Bachman*, 13 D.o.E. App. Dec. 363 (1996).

The Board’s decision to discipline M.K. pursuant to its authority regarding suspension and expulsion of students who possess or distribute controlled substances was entirely reasonable. The proposed decision of the Administrative Law Judge should be affirmed on this point.

**a. There is Sufficient Evidence to Support a Finding of Misconduct by M.K.**

The first inquiry in this appeal is whether there is sufficient evidence to support a finding of misconduct by M.K. The record presented to the Board clearly establishes that the actions of M.K. violated school policies.

The finding that M.K. engaged in misconduct must only be supported by a preponderance of the evidence. 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.'" *In re Shim*, 14 D.o.E. App. Dec. 185 (1996). That is, "[t]he evidence does not settle the fact question, but merely preponderates in favor of that side whereon the doubts have less weight." *In re Ian G.*, 26 D.o.E. App. Dec. 71 (2011). 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. *Id.*

There are three Board policies applicable in this case. First, Board policy 503.1 prohibits the possession of a controlled substance as part of the general student conduct policy. Second, Board policy 502.7B specifically prohibits the possession of a controlled substance and identifies sanctions imposed for a violation of the policy. Third, Board policy 502.8 prohibits the sale, attempted sale, and/or purchase or acquisition with the intent to sell or distribute any prohibited substance, including a controlled substance such as Adderall. The policy states that "a student may be considered to have an intent to sell or distribute a prohibited substance if evidence or testimony is obtained . . . that a student intended to sell or distribute a prohibited substance." The policy also identifies sanctions imposed for a violation of the policy. *See* Appellee's Appendix, Exhibit 4.

The Board found that M.K. had an intent to distribute and actually did distribute Adderall to other students, in violation of the above-referenced policies. The record contains sufficient evidence to support the Board's finding. The text messages on Student B's cell phone, which M.K. himself admitted to sending, showed that M.K. agreed to distribute pills to Student B. Additionally, the statements of Student B, Student A, and Student D, pointed to M.K. as a person who provided Adderall to students. Taken together, these items are more than enough to establish an adequate factual basis for upholding the Board's decision. *See, e.g., In re Hodges,*

22 D.o.E. App. Dec. 279 (2004) (upholding the local board's expulsion of a student for possession of controlled substance at school when the only direct evidence was the statement of a fellow student).

**b. The Discipline Imposed Against M.K. for His Misconduct Was Reasonable**

The second inquiry in this appeal is whether the discipline imposed against M.K. for his misconduct was reasonable. The record presented to the Board clearly establishes that the disciplinary actions taken by the District against M.K. were reasonable.

Board policy 503.1 grants the school principal or designee the authority to temporarily suspend a student who possesses a controlled substance for up to ten school days. Board policy 502.7B specifies that, for a first offense, students who possess any controlled substance other than medication properly prescribed to them are to be recommended for removal from the school and placement in an alternate setting for 45 school days. Board policy 502.8 specifies that students who distribute any prohibited substance are to be placed on an out-of-school suspension and will be recommended for expulsion to the Board. *See* Appellee's Appendix, Exhibit 4.

The District administration suspended M.K. for nine school days and recommended him for expulsion to the Board. The Board, following the hearing on the recommendation to expel, suspended M.K. for the remainder of the 2014-2015 school year to obtain credit for the current semester's work, expelled M.K. for the first semester of the 2015-2016 school year, and suspended M.K. for the first quarter of the second semester with placement in an alternate educational setting. These actions were, indisputably, in accordance with the consequences stated in the above-referenced policies.

## VII. The Appellant Cannot Show Any Basis for Overturning the Proposed Decision of the Administrative Law Judge

The Appellant contends the Administrative Law Judge erred in finding there is sufficient evidence to support the Board's decision. The Appellant also contends the Administrative Law Judge erred in not addressing whether procedures followed by the District with respect to the disciplinary actions taken against M.K. violated M.K.'s right to due process. However, the proposed decision of the Administrative Law Judge specifically refutes the Appellant's arguments and should be affirmed on these points.

### A. There is Sufficient Evidence to Support a Finding of Misconduct by M.K.

The Appellant has contended that the evidence presented at the hearing was silent as to the location of M.K.'s violation of Board policies.

However, the records and testimony presented at the hearing amply provided a factual basis on which to find that M.K. engaged in misconduct at school. First, it is clear that the District administration was investigating a report that students were selling or using Adderall at school. Additionally, in the text messages sent from M.K. to Student B, M.K. agreed to sell Student B three pills and bring them to Student B the next day. Based on the date of the text messages, the next day was Wednesday, April 29, 2015 – a school day. Further, this timeline corroborates Student B's statement in which she states that the last time she bought Adderall was from M.K. on April 29. Finally, both of the statements given by Student A and Student D, which identify M.K. as someone who had possessed or sold Adderall pills, state that the sale and purchase of the pills occurred at school. See Appellee's Appendix, Exhibits 2-4.

Thus, the evidence is more than sufficient on this point. See *In re Hodges*, 22 D.o.E. App. Dec. 279 (2004) (upholding the local board's expulsion of a student for possession of controlled substance at school when the only direct evidence was the statement of a fellow

student). "The evidence may be circumstantial; it may consist solely of hearsay. But, as long as a preponderance of the evidence points to the culpability of a student, he may be punished." *In re Perry*, 22 D.o.E. App. Dec. 175 (2003).

It may be the case that M.K. denied selling or possessing pills at school. However, it is the Board as factfinder that weighs credibility of the evidence presented. *See In re Ian G.*, 26 D.o.E. App. Dec. 71 (2011). The Board found that M.K.'s explanation of the text messages was not credible. The Board also found that the statements of Student B, Student A, and Student D were persuasive, and noted that Student A's reports regarding other students have proved accurate to the degree that others she has named have admitted their participation in this situation. "It is entirely reasonable to give credibility to the students who admitted their own guilt and implicated [M.K.]." *See In re Perry*, 22 D.o.E. App. Dec. 175 (2003).

#### **B. There Was No Due Process Violation Regarding M.K.'s Suspension**

The Appellant has alleged that the District administration did not give M.K. adequate due process in suspending him from school for nine school days for possessing and distributing Adderall in violation of school policies.

However, the record clearly shows that the administration questioned M.K. as someone who had been identified as possessing or selling Adderall pills on April 30. The administration sought to interview M.K. again on May 15, after the administration received Student B's revised statement and the screen shots of the text messages. M.K. asked for his parents, so the administration notified M.K.'s father of the situation, including the statement and the screen shots. M.K.'s father was provided the opportunity to speak on M.K.'s behalf, which he did. Principal Kuhnert asked to talk to M.K., but M.K.'s father refused. *See Appellee's Appendix, Exhibits 2-4.*

Thus, the administration absolutely did give M.K. adequate notice of the charges against him and an opportunity to tell his side of the story, on two separate occasions. This is all that is required to satisfy due process requirements for a nine-day suspension. *Goss v. Lopez*, 419 U.S. 565 (1975) (holding, for students subject to suspensions of ten school days or less, the only “rudimentary” process due is that the student be told what he is accused of doing and what the basis of the accusation is and be given an opportunity to explain his version of the facts).

### C. There Was No Due Process Violation Regarding M.K.’s Expulsion

The Appellant has also alleged that the Board did not give M.K. adequate due process in connection with his expulsion from school for possessing and distributing Adderall in violation of school policies.

In the case of expulsions, due process requires “more formal” procedures than is required for suspensions of ten school days or less. *Goss v. Lopez*, 419 U.S. 565 (1975). The State Board has provided a framework to guide the inquiry into whether adequate due process was given before a student is expelled from school. *See In re Don A. Shinn*, 14 D.o.E. App. Dec. 185 (1997). However, the State Board has also recognized that its framework is not an absolute requirement to be followed in every case. *In re Isaiah Rice*, 13 D.o.E. App. Dec. 13 (1996). The fundamental requirement is the opportunity to be heard at a meaningful time and in a meaningful manner. *Id.*

The contention that the Appellant makes here pertains to cross-examination of witnesses at the hearing. The Appellant argues that M.K. was deprived of the right to confront the witnesses against him, because the District administration presented the written statements of Student B, Student A, and Student D but did not make those students available at the hearing.

Essentially, the Appellant is claiming that the administration had an obligation to present its evidence through the live testimony of witnesses rather than by written documents. This is

erroneous. It is a fundamental notion that evidence can be presented at a student expulsion hearing in the form of live testimony or by written statement. *See In re Demetricia Powell*, 15 D.o.E. App. Dec. 135 (1998) (“Formal legal procedures followed in district court are not required in local board hearings.”). The administration has the prerogative to present its case in whatever manner it likes, including through the written statements of student witnesses as was done in this case. *See id.* (explaining that it was “constitutionally adequate” for a school district to present its case in primarily written form through documents). “The evidence may be circumstantial; it may consist solely of hearsay. But, as long as a preponderance of the evidence points to the culpability of a student, he may be punished.” *See In re Perry*, 22 D.o.E. App. Dec. 175 (2003).

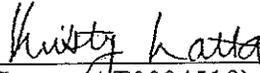
The circumstances in this case underscore that M.K. received a fair hearing. On May 21, the District administration orally notified M.K.’s parents that the Board would hold an expulsion hearing on May 27. The administration delivered a packet of materials, including written notice of the charges against M.K. and the Board hearing as well as a witness list and copies of the documents to be presented at the hearing, to M.K.’s parents on May 22. The notice expressly stated that the purpose of the hearing was to allow M.K. and his parents to present a response to the allegations, and further stated that they had the right to present evidence, question witnesses, and to have legal counsel present at the hearing. *See Appellee’s Appendix, Exhibits 2-4.*

At the hearing, the Appellant exercised all of those rights. M.K. was represented by an attorney, who presented documentary evidence and witness testimony on his behalf. M.K.’s attorney cross-examined the administration’s witnesses, including Principal Kuhnert and Student B’s mother. *See Appellee’s Appendix, Exhibits 2-4.* In short, M.K. was able to prepare a meaningful defense. *See In re Isaiah Rice*, 13 D.o.E. App. Dec. 13 (1996).

Therefore, M.K. was plainly afforded the requisite procedures in this case, consistent with the due process clause as interpreted by previous State Board decisions. *See, e.g., In re Don A. Shinn*, 14 D.o.E. App. Dec. 185 (1997).

### VIII. Conclusion

For the foregoing reasons, the District respectfully requests that the decision of the Board and the proposed decision of the Administrative Law Judge in favor of the District be AFFIRMED.

  
\_\_\_\_\_  
Kristy M. Latta (AT0004519)  
AHLERS & COONEY, P.C.  
100 Court Avenue, Suite 600  
Des Moines, Iowa 50309-2231  
Telephone: 515/243-7611  
Facsimile: 515/243-2149  
E-mail: [klatta@ahlerslaw.com](mailto:klatta@ahlerslaw.com)  
ATTORNEY FOR APPELLEE  
WEST DES MOINES COMMUNITY  
SCHOOL DISTRICT

Original filed.

Copy to:

David E. Brick  
Brick Gentry, P.C.  
6701 Westown Parkway, Suite 100  
West Des Moines, Iowa 50266  
ATTORNEY FOR APPELLANT

#### CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings, on

October 5, 2015

By  U.S. Mail  Fax  
 Hand Delivery  Private Carrier  
 Electronically through CM-ECF

Signature Anne Stokes

01158646-1\11332-121\

RECEIVED

OCT 07 2015

BEFORE THE STATE BOARD OF THE  
IOWA DEPARTMENT OF EDUCATION

DEPARTMENT OF  
EDUCATION

In re Expulsion of M.K.,  R.K.,  Appellant,  vs.  WEST DES MOINES COMMUNITY SCHOOL DISTRICT,  Appellee.	Admin. Doc. No. #5015  APPELLANT'S BRIEF IN SUPPORT OF APPEAL
--	--

COMES NOW Appellant, and for its Brief in Support of Appeal pursuant to Iowa Administrative Code section 281-6.17 states as follows:

**STANDARD OF REVIEW**

Local school boards in Iowa's school districts are granted broad powers in school matters. See, e.g., Iowa Code § 274.7. But it is still true that the school district bears the burden of proving by a preponderance of evidence that the student committed the offense; the student does not bear the burden of establishing his or her innocence. *H.A. v. Bd. Of Educ. Of Warren Holls Reg's Sch. Dist.*, 1976 S.L.D. 336,340. In this case the local school board did not prove by a preponderance of evidence that M.K. had violated the school policies and its findings were unreasonable and contrary to the best interest of education and the decision of the local school board and the Administrative Law Judge are in error and should be reversed.

**FACTUAL AND PROCEDURAL BACKGROUND**

M.K. is a fifteen year old freshman at Valley Southwoods ("Valley"). He has a known diagnosis of ADHD and, as result of this diagnosis, takes the prescription drug commonly known as Adderall. Despite his attention deficit disorder, M.K. has excelled academically and

behaviorally. Prior to the incident that is the subject of this proceeding, M.K. maintained a grade point average of 3.69 and had no prior disciplinary record. *See* Aff. of Appeal, page 1; Exhibit A, page 6.

The incidents that form the subject of this proceeding can be traced to a report from a concerned parent on April 30, 2015 to Valley Administration. On April 30, 2015, the parent of a student – who has, to-date, remained anonymous – informed Valley Administration that several students were selling or using Adderall.

Valley Administration conducted an investigation into the matter the same day of the report and, during the course of this investigation, identified several students as the possible source of the parent's complaint. *See* Aff. of Appeal, page 1; Exhibit A, page 7. In total, Valley Administration identified and interviewed at least 10 students: Students A, B, C, D, E, F, G, H, I, and J. *See* Exhibit A, page 7. During their interviews, these students were asked to identify other individuals they believed to also have sold or purchased Adderall. *See* Exhibit A, pages 9-12.

Initially, only two of the ten students interviewed – Students A and D – named M.K. as one such person. *See* Exhibit A, pages 7-12; Exhibit B, page 1. Their statements are essential to the analysis in this case and for that reason are set forth in full below.

Student A: "I know other people who sell [Adderall][,] M.K. and Student H."

This was the extent of Student A's statement as it related to M.K. *See* Exhibit A, page 10.

Student D: "I only knew of three other people which are M.K., Student F, and Student B. M.K. has given it to Student F and Student B."

This was the extent of Student D's statement as it related to M.K. *See* Exhibit A, page 11.

Student F has maintained throughout that she never purchased or received Adderall from M.K. Valley Administration admitted at the May 27, 2015 hearing that they understood Student A to be emotionally unstable. Based on the statements of Students A and D, Valley Administration

searched M.K.'s person and locker. No contraband was found. *See Exhibit A, page 7; Exhibit B, page 1.* The search of M.K.'s person and locker occurred on April 30, 2015 and after the search, Valley Administration informed M.K. and M.K.'s parents that the investigation was concluded; that is, until Student B later submitted a new and revised statement to Valley Administration naming M.K. as a source of Adderall. *See Exhibit A, page 7; Exhibit B, page 1.*

On or about May 6, 2015, Student B received notice that Valley Administration would be taking action against her because, based on her statement, they believed that she was guilty of possessing and distributing Adderall. *See Aff. of Appeal, page 2.* A mere, two days later "[o]n May 8, 2015, Student B submitted a revised statement to administration naming M.K. as a person who sold pills to her...Her revised statement [] eliminated Student B as distributor of the pills and thereby eliminated her risk of expulsion." Exhibit B, pages 1-2.

Subsequently, Student B provided Valley Administration with screenshots of text message conversations between M.K. and Student B, wherein M.K. allegedly agreed to sell "2 20s and a 30" of Adderall to Student B. *See Exhibit A, pages 14-17.*

Thereafter, on May 15, 2015, Valley Administration called M.K. in to the office regarding these allegations. *See Exhibit B, page 2.* M.K. requested the presence of his father prior to being interviewed. Valley Administration paused the commencement of the interview at that time to allow M.K.'s father to be present for said interview. However, once M.K.'s father arrived to commence the interview, Valley Administration declined to resume the interview and to allow M.K. to explain his side of the story. *See Aff. of Appeal, page 6.* Despite not permitting M.K. to tell his side of the story or respond to the most recent narrative of Student B, Valley Administration moved forward with disciplinary action against M.K. based on the information it received from Students A, B, and D, as set forth above. It suspended M.K. for the remainder of the 2014-2015

academic school year, and sought to expel M.K. by referring the matter to the WDCSD Board for hearing.

Valley Administration first provided written notice of this hearing to M.K. on May 22, 2015 at 3:00 p.m. *See* Aff. of Appeal, page 2; Exhibit A, page 21. That notice stated that the hearing was scheduled for May 27, 2015. May 25, 2015 was a legal holiday. At the May 27, 2015 hearing, Valley Administration presented as evidence a Suspension/Expulsion packet, which packet is attached hereto as Exhibit A. The packet contained the written statements of Students A, B, and D as discussed in detail above. *See* Aff. of Appeal, page 2; Exhibit B, page 2. No oral testimony was provided by these students at the May 27, 2015 hearing and, as a result, M.K. was not given any opportunity to cross examine Students A, B, or D. *See* Aff. of Appeal, page 2; *see generally*, Exhibit B. Despite Valley Administration's decision to not have Students A, B, or D testify at the hearing, the Administration did present live testimony from Student B's mother.

Apparently, based on the written statements of Students A, B, and D, and the text messages provided by Student B, the WDCSD Board found that M.K. had violated Board Policies 503.1, 502.7B, and 502.8. *See* Aff. of Appeal; Exhibit B. As a result of such finding, the WDCSD Board voted to place M.K. on a long-term suspension for the remainder of the 2014-2015 school year, to expel him for the first semester of the 2015-2016 school year, and to suspend him for the first quarter of the second semester of the 2015-2016 school year. Thereafter, the WDCSD Board ordered that M.K. be placed in an alternate educational setting. *See* Aff. of Appeal, page 1; Exhibit B, page 3. The Board, immediately following the May 27, 2015 hearing, stated that they would be issuing a detailed written decision regarding their findings and outlining the punishment for M.K. The WDCSD Board issued its findings of fact and conclusions of law in its Decision of the Board of Directors that was mailed to the parents of M.K. on or about June 9, 2015.

On or about June 29, 2015, M.K. timely filed an affidavit of appeal seeking reconsideration of the WDCSD Board's decision. *See generally*, Aff. of Appeal. On July 7, 2015, Appellee filed a Motion to Dismiss the Appeal claiming that the appeal was not properly submitted because it lacked a notary stamp and certification under penalty of perjury. Appellant filed a resistance to the Motion to Dismiss on July 17, 2015 and filed a Motion for Summary Judgment on J August 7, 2015. Appellee filed an untimely Motion for Summary Judgment on or about August 24, 2015. Appellant filed a Motion to Strike the Appellant's untimely Motion for Summary Judgment on or about September 3, 2015.

Administrative Law Judge Nicole M. Proesch entered an Amended Proposed Decision on or about September 4, 2015, dismissing Appellant's appeal, granting Appellee's Motion for Summary Judgment, and denying Appellant's Motion for Summary Judgment. Appellant filed a timely Notice of Appeal pursuant to Rule 281-6.17(5) with the State Board of the Iowa Department of Education.

### ARGUMENT

I. Appellant Requests that the State Board of Education Reverse the Dismissal of Appellant's Appeal.

A. Administrative Law Judge Nicole M. Proesch erred in finding that Appellant's original appeal did not constitute an affidavit as required by Iowa Code § 290.1 and more specifically Iowa Administrative Code § 281-6.3(1) and/or that it did not substantially comply with the requirements in Iowa Code 290.1 and Iowa Administrative Code § 281-6.3(1).

In the September 4, 2015, Proposed Decision, ALJ Proesch found that the Appellant's original appeal filing did not constitute an affidavit as required by Iowa Code 290.1 and Iowa Administrative Code § 281-6.3(1) because it is void of a notary stamp or statement that the appeal was made under oath. Proposed Decision pp. 1-2. Such ruling is contrary to law and the facts of this case.

Iowa Code section 290.1 provides:

An affected pupil, or the parent or guardian of an affected pupil who is a minor, who is aggrieved by a decision or order of the board of directors of a school corporation in a matter of law or fact, or a decision or order of a board of directors under section 282.18, subsection 5, may, within thirty days after the rendition of the decision or the making of the order, appeal the decision or order to the state board of education; the basis of the proceedings shall be an affidavit filed with the state board by the party aggrieved within the time for taking the appeal, which affidavit shall set forth any error complained of in a plain and concise manner.

Iowa Code § 290.1 (2015). In pertinent part, section 281--Iowa Administrative Code 6.3(1), states that “[a]n appeal shall be made in the form of an affidavit...which shall **set forth the facts, any error complained of, or the reasons for the appeal in a plain and concise manner, and which shall be signed by the appellant...**” Noticeably absent is the requirement for a “notarized signature.” Appellant is merely required to “sign” the appeal. “ ‘Sign’ means, with present intent to authenticate or adopt a record, to execute or adopt a tangible symbol.” Iowa Code § 9B.2(12).

In this case, Appellant executed a tangible symbol with the intent to authenticate and adopt the document submitted for his appeal. As such, Appellant “signed” the appeal and, in doing so, satisfied all requirements needed to perfect it. Appellant even stated in his appeal that, “[t]his letter and its attachment...should be construed as Michael’s “Affidavit” needed to appeal the Board’s decision as required by Iowa Code 290.1.” Accordingly, Appellant’s appeal filing met the requirements of Iowa Code section 290.1 and Iowa Administrative Code section 281-6.3(1) and ALJ Proesch’s Decision dismissing the appeal was in error.

Appellant’s appeal filing was signed by Appellant’s counsel. In signing the appeal, Appellant not only intended to adopt the record, he intended to swear to the accuracy of facts averred therein. See Iowa Rule of Civil Procedure R. 1.413 (stating that “Counsel’s signature to every motion, pleading, or other paper shall be deemed a certificate that: counsel has read the motion, pleading, or other paper; that to the best of counsel’s knowledge, information, and belief,

formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law.”) Also, in signing the appeal, Appellant’s counsel’s signature qualifies as a notarial act in his capacity as a notary public and an officer of the courts. *See* Iowa Code § 9B.2 (Iowa Code Chapter 9B governs notarial acts). While appellant’s signature was not accompanied by a certification or notary stamp, a notarial act is not invalid simply because it is not accompanied those items. *See* Iowa Code § 9B.26 (stating that “the failure of a notarial officer to...meet a requirement specified in this chapter does not invalidate a notarial act performed by the notarial officer.”). As such, and because the Appellee’s alleged deficiency does not invalidate the notarial act, Appellant’s appeal was properly submitted, even if deficient, and the appeal filing substantially complied with the requirements of Iowa Code § 290.1 and Iowa Administrative Code § 281-6.3 as set forth above. For this reason, ALJ’s decision to dismiss the appeal was in error.

**B. Administrative Law Judge Nicole M. Proesch erred in finding that the alleged deficiency in the appeal impacted the Iowa State Board of Education’s jurisdiction over the appeal.**

Finally, the absence of notarization is merely a procedural issue that would not strip the Iowa State Board of Education of jurisdiction to hear this appeal. Iowa courts have made clear that they will not “deem statutory procedural requirements as jurisdictional in the absence of explicit statutory guidance otherwise.” *Allen v. Dallas County Bd. of Review*, 843 N.W.2d 89, 94 (Iowa 2014). In this case, “the statutory provision enumerating the powers of the [Iowa State Board of Education]; entitled “Appeal to State Board”, makes no reference to when the [State Board] may or may not assume jurisdiction over a case or generally perform its enumerated duties.” *Id.* As a result, the issue of whether a notarized signature or other certification is required is not a jurisdictional issue. It is a procedural one.

Appellant has actually complied with the procedural requirements needed to appeal the decision of the Board of Directors of the West Des Moines Community School District (the "Board"). On June 29, 2015, Appellant timely filed his appeal with the Iowa State Board of Education. In his appeal, Appellant set forth the background facts, the errors complained of and reasons for the appeal, and further signed the appeal. These were the only items required by 281-Iowa Administrative Code section 6.3(1) to appeal the decision of the Board. Appellant fully complied with each of the aforementioned requirements. In addition, Appellant further indicated in his appeal that despite the nomenclature attached thereto, that his appeal was to be construed as the "Affidavit" required by Iowa Code section 290.1. On July 2, 2015, the Iowa Department of Education provided notice to all parties that Appellant filed an "affidavit of appeal," and mailed copies of the same to Appellee. Appellee admittedly received the appeal and is aware that the corresponding documents were to be construed as the affidavit of appeal required by Iowa Code § 290.1.

Iowa courts have long recognized that the policy of the law is to favor the merits over rigid technicalities. *See Cooksey v. Cargill Meat Solutions Corp.*, 831 N.W.2d 94, 103-104 (Iowa 2013). In light of that policy, courts have declined to dismiss a case because of a procedural defect that worked no prejudice on the other parties. *See e.g., id.* (declining to dismiss an appeal of an agency action where the Appellant failed to list Appellee as Respondent in the petition, despite a statutory requirement that he do so, when all parties and the court clearly knew who the Respondent was.").

Despite the status of the law in Iowa, ALJ Proesch found, based on one administrative opinion that did not involve the issue of a notary stamp, conveniently also decided by ALJ Proesch, that the filed appeal's failure to have the notary block and certification, that the agency lacked

jurisdiction. Proposed Decision p. 2. Such a finding is contrary to law. Appellant substantially complied with the requirements to appeal the decision of the Board, and because the Appellee has in no way been prejudiced by the alleged defect, the dismissal of this appeal on such grounds would run contrary to the established policy of the law to favor the merits over the technicalities. *See id.* (stating that “the law in Iowa for decades traditionally has sought to avoid highly technical requirements that might serve no useful purpose and yet deprive parties of their day in court.”).

**II. Appellant Requests that the State Board of Education Reverse the Grant of Appellee’s Motion for Summary Judgment.**

**A. Administrative Law Judge Nicole M. Proesch erred in not addressing the issue of whether Appellee’s Motion for Summary Judgment was timely filed and granting Appellee’s Motion for Summary Judgment despite the fact that it was not timely filed.**

Despite Appellant filing a Motion to Strike Appellee’s Motion for Summary Judgment as untimely and setting forth the same argument in its Resistance to Appellee’s Motion for Summary Judgment, nowhere in ALJ Proesch’s Proposed Order does she discuss, evaluate or rule on Appellant’s Motion to Strike or the same argument in the Resistance. Such failure to address Appellant’s argument is error.

Further, Appellee’s Motion for Summary Judgment should be struck or denied based on the fact that it was not timely filed. The Appellee failed to comply with the requirements set by Iowa Administrative Code section 281-6.6(5), all motions for summary judgment must be served at least 45 days prior to the scheduled hearing date unless the presiding officer established another time period. Pursuant to the Notice of Hearing dated July 28, 2015 the Appellant’s appeal hearing was scheduled for September 24, 2015 and the Appellee filed its untimely Cross Motion for Summary Judgment on August 24, 2015. This was only thirty (30) days prior to the scheduled hearing and; therefore, fifteen (15) days beyond the permitted time period within which a party

could file such a motion. As the default period within which a party could file a motion for summary judgment had not been amended, Appellee's cross motion and related documents were significantly untimely.

**B. Administrative Law Judge Nicole M. Proesch erred by granting the School Board's Motion for Summary Judgment once/after the Appeal had been dismissed.**

Despite finding that the State Board lacked jurisdiction to hear the appeal, ALJ Proesch went on to grant the School Board's Motion for Summary Judgment and deny M.K.'s Motion for summary judgment. Generally, a district court's jurisdiction ends with dismissal of the pending case. *Reis v. Iowa Dist. Court for Polk County*, 787 N.W.2d 61, 66 (Iowa 2010). Once ALJ Proesch ruled that Appellant's appeal was dismissed due to lack of jurisdiction, the State Board/ALJ lacked jurisdiction to rule on either party's Motions for Summary Judgment. The portions of her Order denying Appellant's Motion for Summary Judgment and granting Appellee's Motion for Summary Judgment by finding that the WDCSD Board's findings, that M.K. violated Policies 503.1, 502.7B and 502.8 and the discipline imposed were supported by substantial evidence, were improperly made as she lacked jurisdiction to make such a ruling. *See id.* (courts only retain jurisdiction after dismissal to enforce orders already in place).

**C. Administrative Law Judge Nicole M. Proesch erred in finding that there was substantial evidence supporting the West Des Moines Community School Board's finding, by a preponderance of the evidence, that M.K. violated Policies 503.1, 502.7B, and 502.8 and that such finding by the Board was reasonable; and the Judge erred in finding that there was substantial evidence to support a finding that the discipline imposed by the West Des Moines Community School Board was reasonable.**

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter

of law". Iowa R. Civ. P. 1.981(3). The party moving for summary judgment bears the burden of proof establishing the non-existence of any genuine and material fact issue, and that it is entitled to judgment as a matter of law. *Farm Bureau Mut. Ins. Co. v. Milney*, 424 N.W. 2d 422, 423 (Iowa 1988); *Drainage Dist. #119, Clay County v. Incorporate City of Spencer*, 268 N.W.2d 493,499 (Iowa 1978). On a motion for summary judgment, the court must: "(1) view the facts in a light most favorable to the nonmoving party, and (2) consider on behalf of the nonmoving party every legitimate inference reasonably deduced from the record." *Von Fossen v. MidAmerican Energy Co.*, 777 N.W.2d 689,692 (Iowa 2009). "A proper grant of summary judgment depends on the legal consequences flowing from the undisputed facts or from the facts viewed most favorably toward the resisting party." *Boles v. State Farm Fire & Casualty Co.*, 494 N.W.2d 656,657 (Iowa 1992) (citations omitted). For the reasons set forth in Part III, below, as well as herein, ALJ Proesch erred in finding there was substantial evidence to support a finding that it was reasonable for the WDCSD Board to find that M.K. violated policy 503.1, 502.7B, or 502.8 by a preponderance of the evidence. Accordingly, ALJ's grant of the School District's Motion for Summary Judgment was in error.

Policy 503.1 prohibits the possession of a controlled substance or controlled substance look-alike *while on school premises, while on school owned and/or operate school or chartered busses, while attending or engaged in school sponsored activities* or while away from school grounds if misconduct will directly affect the good order, efficiency, management and welfare of the school. Policy § 503.1 (emphasis added). Policy 502.7B provides that a student may not possess, use, or be under the influence of any controlled substance, look-alike, substitute, or any substances represented to be a controlled substance (other than prescribed medication which is taken in accordance with a doctor's directions) and a student may not manufacture, possess or sell

drug paraphernalia *while on any school property or under school supervision*. Policy § 502.7B (emphasis added). Policy 502.8 states that a student shall not sell, distribute, attempt to sell or distribute, and/or purchase or acquire with the intent to sell or distribute any prohibited substance *while on any school property or under school supervision*. Policy § 502.8 (emphasis added). “Possessing” or “Possession” is defined as (1) having actual physical control of the prohibited substance because it is on the student’s body, in a locker individually assigned to the student, or in an item of personal property belonging to the student or (2) knowing that a prohibited substance is located within a vehicle or a place where the student is present and that the student can exercise physical control over the prohibited substance.

The school performed a search of M.K.’s locker, backpack, pencil bag and person for Adderall pills but no prohibited substances were found. None of the written witness statements in this case indicated that M.K. was in possession of or sold Adderall pills (or other prohibited substances) at school, on school property, under school supervision, at a school function, or at a school sponsored event. There was no testimony, written or oral, at the hearing that M.K. was in possession of or sold Adderall pills (or other prohibited substances) at school, on school property, under school supervision, at a school function or at a school sponsored event.

The School District, in its Resistance to Appellant’s Motion for Summary Judgment and its own untimely Motion for Summary Judgment, made several arguments the purport constitute evidence by which the Board/ALJ could infer that the Adderall was in M.K.’s possession or was sold by M.K. at school or on school grounds; however, all are without merit. First, the School District argued that it was clear the District Administration was investigating a report that students/M.K. were/WAS selling or using Adderall at school. However, the evidence establishes that the investigation was initiated because a parent provided a screen shot from Student B’s

“secret Twitter” account stating “Who is selling the Addy this week?” Such post was not made during school hours and did not ask to buy/receive the Adderall at school, on school property or at an event under school supervision. Nothing in the reported tweet suggests M.K. was in or would be in possession of Adderall at school, on school property, or an event under school supervision.

Second, the School District argued, post hearing, that M.K.’s texts to Student B constituted M.K.’s agreement to sell three pills to Student B and bring them to school the next day (a Wednesday). Nothing in M.K.’s texts make any such admission. The text message between Student B and M.K. was at 10:15 p.m. and all M.K. texted was “Ya”. M.K. indicated in his testimony that because he did not know what to say to Student B, he simply responded “Ya” in order to stall Student B. M.K. testified that the next day at school he told Student B he could not get any Adderall. Student B did not testify to the contrary. Further, there was no testimony or evidence provided at Appellant’s hearing that the day after the aforementioned texts took place happened to occur on a weekday. In fact, the issue was completely ignored by the school board at Appellants hearing and was not addressed whatsoever. The school board should not be able to argue post hearing that just because the next day after the texts was a school day that they have met their burden in preponderance of the evidence that an illegal drug transaction took place on school ground or under school supervision. This is true especially in light of the fact that the school board is allowed to only consider evidence that is submitted at the hearing.

Third, the School District argues that Student B’s written statement provided that she purchased Adderall from M.K. on April 29 and that such statement corroborates the timeline that the Adderall was sold during school on school grounds. However, M.K. denies any such sale and Student B did not testify at the hearing to the contrary. Even if Student B’s statement is taken as true, nothing in the written statement suggests he/she obtained Adderall from M.K. during school

hours, at school, on school property, or at an event under school supervision. Student B's statement is wholly silent as to where the alleged sale took place.

Finally, contrary to the School District's argument, there are no other written student statements indicating that M.K. sold or was in possession of Adderall at school, on school property, or at an event under school supervision. Students A and D's statements only indicate that they knew of other people, including M.K., that had sold or distributed Adderall – they say nothing about where such Adderall was possessed, sold or distributed. While there are other student statements that allege or point to specific Adderall sales at the school during school hours, none of those written student statements mention or involve M.K. Further, Student D's statements as to M.K.'s distribution are questionable at best as Student F, one of the students who supposedly received Adderall from M.K. according to Student D's statement, at all times denied that M.K. sold or provided her Adderall as suggested by Student D's statement (again, noting that student D's statement speaks to where the alleged distribution occurred). The testimony of Principal Kuhnert substantiates that neither Student A nor Student D ever saw M.K. sell, purchase or be in possession of Adderall.

Importantly, Student B's revised statement is full of inconsistencies and was issued only when Student B was faced with possible expulsion. For example, in the test Student B requested 2-20mg and 1-30mg pills; yet in the revised statement (wherein Student B, for the first time, states M.K. actually sold her Adderall), Student B says the pills she received from M.K. were yellow and blue –yellow Adderall pills do not exist and are not manufactured and blue Adderall pills only come in a 10 mg dose and not in 20 or 30 mg doses (*see Adderall database exhibit submitted at M.K. hearing in front of West Des Moines School Board*) and certainly none within the possession of M.K. Student B knew M.K. had an ADHD diagnosis and a prescription for Adderall as he was

required to go to the nurse's office each day to take his medication. This made M.K. an easy fall guy so that Student B could save herself from expulsion.

The records, written statements, and testimony presented at the hearing do not provide any factual basis on which to find that M.K. possessed or sold Adderall at school, on school property, or at a school supervised function. As the State Board has held, when school officials deviate from the terms of the District's policy, the circumstances are ripe for a charge of arbitrariness and capricious action: [b]oard policies and the regulations adopted to implement the policies are the 'laws' of the school district. The policy manual serves both as notice to a district's students, parents, and employees of the school board's position on various subjects and as a guide for its own governance so that decisions are not made...on an ad hoc basis." *In re Jed and Tessa Thompson*, 10 D.o.E. App. Dec. 195, 201 (1993).

For these reasons and for the reasons set forth in Section III, below, WDCSD Board's decision was not reasonable and was not supported by substantial evidence. Because of this, the discipline instituted by the Board was not reasonable – M.K. should not have been expelled and suspended on allegations of policy violations that could not be substantiated or proven. For these reasons, ALJ Proesch erred in finding the decision of the Board was reasonable.

**III. Appellant Requests that the State Board of Education Reverse the Denial of Appellant's Motion for Summary Judgment.**

**A. Administrative Law Judge Nicole M. Proesch erred in finding that there was substantial evidence supporting the West Des Moines Community School Board's finding, by a preponderance of the evidence, that M.K. violated Policies 503.1, 502.7B, and 502.8 and that such finding by the Board was reasonable.**

ALJ Proesch found that there was substantial evidence supporting the West Des Moines Community School Board's ("WDCSD Board") finding, by a preponderance of the evidence, that

M.K. violated Policies 503.1, 502.7B and 502.8. However, a review of the background and facts of this matter show that there was not substantial evidence to show that M.K. violated said policies.

Pursuant to Iowa Code § 282.4, “[t]he board may, by a majority vote, expel any student from school for a violation of the regulations or rules established by the board...” Iowa Code § 282.4. WDCSD Board Policy § Section 503.1 provides that students may be disciplined for, among other things, “possession of a controlled substance or controlled substance lookalike or associated paraphernalia.” Exhibit A, page 24. Importantly, however, Policy 503.1 only governs students “*while on school premises, while on school owned and or operated school or chartered buses, while attending or engaged in school sponsored activities, while away from school grounds if misconduct will directly affect the good order, efficiency, management and welfare of the school.*” See Exhibit A, pages 23-26.

Based on the express language of the policy, to violate § 503.1 a student must not only possess a controlled substance, he or she must also possess a controlled substance “while on school premises, while on school owned and or operated school or chartered buses, while attending or engaged in school sponsored activities, while away from school grounds if misconduct will directly affect the good order, efficiency, management and welfare of the school.” In this case, it is undisputed that there was no allegation made, no evidence presented, and no finding of fact that M.K. possessed a controlled substance while on school premises, while on a school owned or operated charter bus, or while attending or engaged in school sponsored activities. As indicated in its June 9, 2015 Decision, the only evidence relied on by the WDCSD Board in this case were the statements of Students A, B, and D, and the text messages provided by Student B, and each are entirely silent as to the location of the alleged conduct.

Because the undisputed facts indicate there were no allegations made, no evidence presented, and no findings of fact that M.K. possessed controlled substances “while on school premises, while on school owned and or operated school or chartered buses, while attending or engaged in school sponsored activities,” the only possible way the WDCSD Board could find that M.K. violated WDCSD Board Policy § 503.1 is if M.K. possessed the controlled substance “while away from school grounds *if [the possession] directly affect[ed] the good order, efficiency, management and welfare of the school.*” (emphasis added). But just as was the case for the location of the possession, it is undisputed that there was no allegation made, no evidence presented, and no finding of fact that M.K. improperly possessed Adderall while away from school, and that his improper possession “affected the good order, efficiency, management and welfare of school.”

Applicable State Board cases have made clear that a student facing expulsion is entitled to have his or her case decided only on the basis of the evidence presented. *See In re John Lawler*, 18 D.o.E App. Dec. 61, 72 (1999). State Board cases have further made clear that there must be an adequate factual basis for a local school board’s decision. *Id.* at 73. For the evidence presented to provide an adequate factual basis for a local school board’s decision, it must preponderate in favor of that board’s decision. *In re Ian G*, 26 D.o.E App. Dec. 71, 72 (2010). That is, the board’s decision must be supported by a preponderance of the evidence. *Id.* In this case, not only was the WDCSD Board’s decision not supported by a preponderance of the evidence, it was completely lacking in evidentiary support in various material respects as noted above. Because it is undisputed that no evidence whatsoever was presented indicating M.K.’s alleged conduct violated WDCSD Board Policy § 503.1 for the reasons stated above, the WDCSD Board’s decision could not have possibly been supported by a preponderance of the evidence.<sup>1</sup> Accordingly, ALJ Proesch erred in

---

<sup>1</sup> It is important to note that the Superintendent, while announcing her recommendation to the School Board for M.K.’s punishment, admitted that it gave the administration pause to bring M.K.’s case to the WDCSD Board, due to the lack of actual evidence.

finding there was substantial evidence to support the Board's decision and erred in upholding the decision of the WDCSD Board.

WDCSD Board Policy 502.7B provides that "possessing, using or being under the influence of any[] controlled substance...and manufacturing, possessing, or selling drug paraphernalia are strictly prohibited while a student is on any school property or under school supervision. This [prohibition] includes attendance in school or at a school sponsored function." See Exhibit A, pages 27-28. Importantly, this section does not apply to "medication prescribed by the individual student's licensed health care provider and which is taken in accordance with the licensed health care provider instructions." See Exhibit A, page 27.

Based on the express language of the policy, to violate WDCSD Board Policy § 502.7B, a student must lack a valid prescription for controlled substances in his possession or must consume the medication in a manner contrary to his health care provider's instructions. In both instances, however, the student must be at school or at a school sponsored function.

In this case, it is undisputed that M.K. has a diagnosis of Attention Deficit Hyperactivity Disorder. As part of his treatment for his attention deficit disorder, M.K.'s licensed practitioner prescribes the drug commonly known as Adderall. Because M.K. has a valid prescription for the only controlled substance at issue in this case, the only possible way that he could violate Board Policy 502.7B is to take, i.e., consume, the drug contrary to his health care provider's instructions while at school or at a school sponsored function.

---

However, she stated she ultimately decided to do so because "she knew M.K. was lying". She did not indicate how she knew he was lying, or what outside sources she may have relied on to come to that conclusion. Based on her "knowledge" she decided to request that M.K. be removed from school for one year, rather than the one semester that the administration had recommended in its May 21, 2015 letter to M.K. (contained in Exhibit A). To the extent that the WDCSD Board relied on the Superintendent's statement in concluding that M.K. violated WDCSD Policy § 503.1, rather than on the actual evidence in deciding the case, the WDCSD Board erred in doing so. See *In re John Lawler*, 18 D.o.E App. Dec 61 (stating that "[t]he student has a right to a decision solely on the basis of the evidence presented" and that "[t]here must be an adequate factual basis for the decision.").

Here, it is undisputed that there was no allegation made, no evidence presented, and no finding of fact that M.K. consumed his prescribed medication other than as instructed by his doctor. Even if there was an allegation or sufficient evidence presented to that effect, it is undisputed that there was no allegation made, no evidence presented, and no finding of fact that M.K. impermissibly possessed a controlled substance while at school or a school sponsored activity. As indicated in its June 9, 2015 Decision, the only evidence relied on by the WDCSD Board in this case were the statements of Students A, B, and D, and the text messages provided by Student B, and each are entirely silent as to the location of the alleged conduct.

Applicable State Board cases have made clear that a student facing expulsion is entitled to have his or her case decided only on the basis of the evidence presented. *See In re John Lawler*, 18 D.o.E App. Dec. 61, 72 (1999). These cases have further made clear that there must be an adequate factual basis for a local board's decision. *Id.* at 73. For the evidence presented to provide an adequate factual basis for a board's decision, it must preponderate in favor of that board's decision. *In re Ian G*, 26 D.o.E App. Dec. 71, 72 (2010). That is, a board's decision must be supported by a preponderance of the evidence. *Id.*

In this case, not only was the WDCSD Board's decision not supported by a preponderance of the evidence or substantial evidence, it was completely lacking in evidentiary support in various material respects as discussed above. Because it is undisputed that no evidence whatsoever was presented indicating M.K.'s alleged conduct violated WDCSD Board Policy § 502.7B for the reasons stated above, the WDCSD Board's decision could not have possibly been supported by a preponderance of the evidence. Accordingly, ALJ Proesch erred in finding there was substantial evidence to support the Board's decision and erred in upholding the decision of the WDCSD Board.

WDCSD Board Policy § 502.8 provides that the “sale or distribution, attempted sale or distribution and/or purchase or acquisition with the intent to sell or distribute by a student of any prohibited substance...is strictly prohibited while the student is on any school property or under school supervision. This includes attendance in school or at a school sponsored function...” Exhibit A, page 29. Based on the express language of the policy, to violate Board Policy § 502.8, a student must engage in the prohibited activity while “on any school property or under school supervision.” See Exhibit A, page 29. Again, it is undisputed that there was no allegation made, no evidence presented, and no finding of fact that M.K. sold or attempted to sell a prohibited substance while on school property or under school supervision. As indicated in its June 9, 2015 Decision, the only evidence relied on by the WDCSD Board in this case were the statements of Students A, B, and D, and the text messages provided by Student B, and each are entirely silent as to the location of the alleged conduct.

Because it is undisputed that no evidence whatsoever was presented indicating M.K.’s alleged conduct violated WDCSD Board Policy § 502.8 for the reasons stated above, the WDCSD Board’s decision could not have possibly been supported by a preponderance of the evidence. See *In re John Lawler*, 18 D.o.E App. Dec. 61, 72 (must be adequate factual basis for finding of violation). Accordingly, ALJ Proesch erred in finding there was substantial evidence to support the Board’s decision and erred in upholding the decision of the WDCSD Board.

**B. Administrative Law Judge Nicole M. Proesch erred in finding that there was substantial evidence to support a finding that the discipline imposed by the West Des Moines Community School Board was reasonable.**

Because there was not substantial evidence to support WDCSD Board’s findings that M.K. violated any Policies, imposition of discipline, especially the drastic discipline of expulsion and suspension and movement to an alternative school, was not reasonable.

**C. Administrative Law Judge Nicole M. Proesch erred in not addressing or making a finding as to whether M.K.'s due process rights were violated.**

Appellant raised the issue of the violation of his due process rights in his appeal and his Motion for Summary Judgment, yet ALJ Proesch did not address or make a finding as to whether his due process rights were violated. Such failure to address and failure to find that his due process rights were violated is in error.

*In re: Suspension of A.W.*, the Iowa State Board of Education reiterated that “[s]chool districts have broad discretion to punish students who break the rules” but made clear that the Board’s exercise of that discretion must comport with due process requirements. *In re: Suspension of A.W.*, 27 D.o.E App. Dec. 587 (2015). In *Goss v. Lopez*, the U.S. Supreme Court examined the precise contours of these due process requirements, and made clear that due process protections extend to even those students facing suspension. *Goss v. Lopez*, 419 U.S. 565, 576 (U.S. 1975). In this context, the *Goss* Court clarified that:

due process requires, in connection with a suspension of 10 days or less, that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story.

*Id.* at 581. These steps are required, the Court noted, to protect “against unfair or mistaken findings of misconduct and arbitrary exclusion from school.” *Id.*

In this case, it is undisputed that Valley Southwoods Administration (hereinafter “Administration”) suspended M.K. for nine days without affording him an opportunity to present his side of the story prior to suspending him for the remainder of the 2014-2015 school year. On May 15, 2015, following the revised statement of Student B, the Administration called M.K. to the school office to discuss the new allegations. *See* Exhibit B, page 2. M.K. requested the presence of his father prior to being interviewed. The Administration ceased commencing the interview at

that time to allow for M.K.'s father to be present. However, once M.K.'s father arrived to continue the interview, the Administration declined to resume the interview and to allow M.K. to further explain his side of the story. *See* Aff. of Appeal, page 6. Despite not allowing M.K. an opportunity to present his side of the story, the Administration proceeded with disciplinary action and suspended M.K. for the remainder of the 2014-2015 academic school year.

Since it is undisputed that M.K. was not given an opportunity to present his side of the story prior to the Administration suspending him, and since due process requires, at a minimum, that a student facing suspension of 10 days or less be given such an opportunity, the Administration erred in failing to provide M.K. with an opportunity to present his side of the story. Accordingly, the decision of the WDCSD Board and the Proposed Decision of the ALJ should be reversed.

Further, M.K.'s due process rights were violated at the formal hearing. First, he was not provided a sufficient number of days to prepare prior to the hearing. In *In re Don Shinn*, 14 D.o.E. App. Dec. 185, 190-92 (1996), the Department found that a minimum of three working day notice was necessary prior to having the hearing. The Administration did not provide the Appellant with written notice three to ten working days before the hearing. Written Notice was provided on Friday, May 22<sup>nd</sup> at approximately 3:00 p.m. and the hearing was held on Wednesday, May 27<sup>th</sup> at approximately 7:15 p.m. Monday, May 25<sup>th</sup> was a Federal Holiday and not considered a working day for the Appellant to prepare their case. This violates the requirements set forth in *In re Don Shinn. Id.* Further, Shinn provides that the student shall receive a summary of the charges against the student written with sufficient specificity to enable the student to prepare a defense. *Id.* The Administration provided the packet that included the charges against M.K. and the board policies that he had violated. In this packet the letter from the Administration recommended to the Board that M.K. be expelled for the first semester of the 2015-2016 school year (Exhibit J).

At the hearing, Superintendent Dr. Lisa Remy verbally changed the recommendation to expel M.K. for the entire 2015-2016 school year. In *Shinn* it clearly explains that the Appellant is to be given copies of documents which will be introduced by the administration. *In re Don Shinn*, 14 D.o.E. App. Dec. 185, 190-92. Appellant was provided with no notice that an expulsion of a year rather than a semester would be sought by the Administration. Appellant was not given any time to prepare a defense to a full year expulsion. The Administration and WDCSD Board did not provide Appellant with sufficient time or information necessary to prepare a defense and violated M.K.'s due process rights.

M.K.'s due process rights were also violated when he was not allowed to cross examine his accusers. In *In re John Lawler*, the Iowa State Department of Education clarified the due process requirements for students facing expulsion. Specifically, the State Board stated that "[i]n the case of expulsions as opposed to suspensions, [], due process and State Board Cases require more elaborate procedures before a student is expelled." *In re John Lawler*, 18 D.o.E App. Dec 61. In pertinent part, these more elaborate procedures required in expulsion cases include the following:

#### A. Hearing Procedures

1. The student will have all of the rights announced in the notice, and may give an opening and closing statement in addition to calling witnesses and cross-examining adverse witnesses. (This is "a full and fair opportunity to be heard.")
2. The decision making body (school board) must be impartial. (No prior involvement in the situation; no stake in the outcome; no personal bias or prejudice.)
3. The student has a right to a decision solely on the basis of the evidence presented.
4. There must be an adequate factual basis for the decision. This assumes that the evidence admitted is reasonably reliable. A "preponderance of

the evidence” standard is sufficient to find the student violated the rule or policy at issue.

5.

*In re John Lawler*, 18 D.o.E App. Dec 61; *see also In re Don Shinn*, 14 D.o.E. App. Dec. 185, 190-92 (student has the right to cross-examine adverse witnesses).

In this case, it is undisputed that neither the Administration nor the WDCSD Board made any of the essential adverse witnesses available to Appellant. The adverse witnesses include Students A, B, and D. Each of these students wrote a statement that in some way implicated M.K. as a person who may have sold or distributed Adderall. The statements of these students formed the basis of Valley Administration’s and the WDCSD Board’s decision to expel M.K. for an extended period of time. *See e.g.*, Exhibit A, Exhibit B. Nevertheless, none of the students were made available for M.K. to cross examine at the hearing. As Students A, B, and D were not made available for M.K. to cross examine, M.K. lacked the ability to challenge the reliability of the statements and to adequately defend himself against the instant allegations. Accordingly, the WDCSD Board violated M.K.’s due process rights when it failed to make the adverse witnesses available to him and when, by extension, it relied on unreliable hearsay evidence from Students A, B, and D to expel M.K. for an extended period of time.

For the reasons set forth above, M.K.’s due process rights were violated repeatedly by the Administration and WDCSD and, accordingly, the decision of the WDCSD Board and the Proposed Decision of ALJ Proesch should be reversed.

IV. Appellant requests that the State Board of Education Reverse the Decision to Suspend M.K. for the Remainder of the 2014-2015 School Year, Expel M.K. for the First Semester of the 2015-2016 School Year, and Suspend Him for the First Quarter of the Second Semester of the 2015-2016 School Year and Place M.K., Thereafter, in an Alternative Educational Setting.

A. Administrative Law Judge Nicole M. Proesch erred in finding that there was substantial evidence supporting the West Des Moines Community School Board’s finding, by a preponderance of the evidence, that M.K.

violated Policies 503.1, 502.7B, and 502.8 and that such finding by the Board was reasonable.

Appellant refers the Department of Education to Brief Point III.A for full argument.

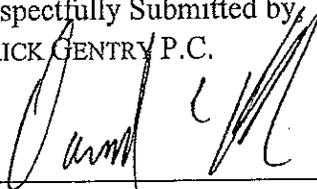
**B. Administrative Law Judge Nicole M. Proesch erred in finding that there was not substantial evidence to support a finding that the discipline imposed by the West Des Moines Community School Board was reasonable.**

Appellant refers the Department of Education to Brief Point III.C for full argument.

**C. Administrative Law Judge Nicole M. Proesch erred in not addressing or making a finding as to whether M.K.'s due process rights were violated.**

Appellant refers the Department of Education to Brief Point III.C for full argument.

Respectfully Submitted by,  
BRICK GENTRY P.C.



David E. Brick (AT0001085)  
6701 Westown Parkway, Suite 100  
West Des Moines, Iowa 50266  
Telephone: (515) 274-1450  
Facsimile: (515) 274-1488  
Email: [dave.brick@brickgentrylaw.com](mailto:dave.brick@brickgentrylaw.com)  
ATTORNEY FOR THE APPELLANT

Original Filed with the  
Office of the Director  
Department of Education  
Grimes State Office Building  
400 E 14th St  
Des Moines, IA 50319-0146

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings by U.S. Mail on Oct 7, 2015.

By: Shelley Beus

Copy to:

Kristy M. Latta  
AHLERS & COONEY, P.C.  
100 Court Avenue, Suite 600  
Des Moines, Iowa 50309-2231  
ATTORNEY FOR APPELLEE



BRICK GENTRY P.C.  
ATTORNEYS & COUNSELORS AT LAW

June 24, 2015

Iowa State Board of Education  
400 E. 14th Street  
Des Moines, IA 50319-0146

RE: In Re the Expulsion of M K

To Whom It May Concern:

A hearing in the above captioned matter was held on May 27, 2015. Following this hearing, the Board of Directors of the West Des Moines Community School District (the "Board") voted to place M K on a long-term suspension for the remainder of the 2014-2015 school year, to expel him for the first semester of the 2015-2016 school year, and to suspend him for the first quarter of the second semester of the 2015-2016 school year. Thereafter, the Board ordered that M be placed in an alternate educational setting. This letter and its attachments are the appeal of M K from the decision of the Board.<sup>1</sup> For the reasons discussed below, the Board erred in taking such action against M

### BACKGROUND FACTS

M K is a fifteen year old freshman at Valley Southwoods ("Valley"). He has a known diagnosis of ADHD and, as result of this diagnosis, takes the prescription drug commonly known as Adderall. Despite his attention deficit disorder, M has excelled academically and behaviorally. Prior to the incident that is the subject of this proceeding, M maintained a grade point average of 3.69 and had no prior disciplinary record.

The incidents that form the subject of this proceeding can be traced to a report from a concerned parent on April 30, 2015 to Valley Administration. On April 30, 2015, the parent of a student - who has to date remained anonymous - informed Valley Administration that several students were selling or using Adderall.

Valley Administration apparently conducted a preliminary investigation into the matter, and in doing so, identified several students as the possible source the parent's complaint. Two of the students who were identified - Students A and D - named M as a person who they believed to have also previously sold Adderall. Neither student A or D clarified the basis for their knowledge that M sold Adderall, and neither elaborated on the circumstances of any

<sup>1</sup> This letter and its attachment are referred in this document as the appeal of M K, but despite the nomenclature attached thereto, should be construed as M's "Affidavit" needed to appeal the Board's decision as required by Iowa Code 290.1.

transaction in which M allegedly sold Adderall. The report of both students simply stated that they knew M had sold Adderall, without including any factual basis for such knowledge.

As a result of being named by Students A and D, Valley Administration began to investigate M. They interviewed him and searched his locker. During the interview, M denied the allegation that he had sold Adderall. As for the search, neither the search of his person nor the search of his locker revealed any contraband. The interview and search concluded the investigation into M until May 8, 2015.

On May 8, 2015, a classmate of M – Student B – provided a revised statement to the Administration specifically identifying M as a person who sold her pills. Sometime thereafter, Student B provided the Administration with screenshots of text message conversations between M and Student B, wherein M allegedly agreed to sell “2 20s and a 30” of Adderall to Student B.

Neither Student B’s revised statement to Administration nor the screen shots she provided included any information relating to circumstances of the alleged transaction, including whether it took place during school or at a school sponsored activity.

Importantly, Student B was also under investigation as a possible source of the Adderall and her initial statement taken by the school, dated April 30, 2015 contained zero mention of M. She received notice on or about May 6, 2015 that the school would be taking action against her because, based on her statement, they believed that she was guilty of possessing and distributing Adderall. Conveniently, on or about May 8, 2015, she revised her statement directing the blame to M and at the same time “eliminated herself as a distributor of the pills and thereby eliminated her risk of expulsion.” It was not clear at the hearing which Valley administrator or employee, if any, advised Student B or Student B’s mother of her right to submit a new statement.

Subsequent to this evidence obtained from Student B, Valley Administration suspended M for the remainder of the 2014-2015 School year. The suspension period was from May 22, 2015 – June 3, 2015.

On May 22, 2015 Valley Administration first provided written notice to M and his Father, that Valley Administration would be seeking a one semester expulsion for M and had referred the matter to the Board for hearing. The hearing was held as scheduled on May 27, 2015. Valley Administration presented as evidence a Suspension/Expulsion packet, which packet is attached hereto as Exhibit A and by this reference made a part hereof. The expulsion Packet contained the written statements of Students A, B, and D discussed above. No oral testimony was provided by these students at hearing and, as a result, M was not given any opportunity to cross examine them.

Based on the written statements, the Board found that M had violated Board Policies 503.1, 502.7B, 502.8. As a result of such finding, the Board voted to place M K on a long-term suspension for the remainder of the 2014-2015 school year, to expel him for the first

semester of the 2015-2016 school year, and to suspend him for the first quarter of the second semester of the 2015-2016 school year. Thereafter, the Board ordered that M be placed in an alternate educational setting.

The Board erred in taking such action against M as there was no evidence presented whatsoever to support the conclusion that M violated Board Policies 503.1, 502.7B, or 502.8. In addition, the Board erred in taking such action against M as the evidence presented would not allow a reasonable fact finder, by a preponderance of the evidence, to find that M was guilty of possessing or distributing illegal drugs.

## ERRORS OF BOARD OF DIRECTORS

### I. THE BOARD ERRED IN EXPELLING M WHEN NO EVIDENCE INDICATED THAT M'S ALLEGED MISCONDUCT VIOLATED BOARD POLICIES 503.1, 502.7B, OR 502.8.

Pursuant to Iowa Code § 282.4, "[t]he board may, by a majority vote, expel any student from school for a violation of the regulations or rules established by the board..." Iowa Code § 282.4. Thus, to determine whether the Board could expel a student pursuant to 282.4, we must first determine if that student violated the rules established by the Board. In this case, the Board concluded that M violated Board Policies 503.1, 502.7B, and 502.8. As to each of these Policies, the Board erred in finding that M violated it for the reasons set forth below.

#### a. The Board Erred in Finding that M Violated Board Policy 503.1

The board alleges that M violated 503.1. Board Policy Section 503.1 provides that students may be disciplined for conduct, acts or behaviors which disrupt the orderly and efficient operation of the school or school activity, conduct which disrupts the rights of other students to obtain their education or participate, or conduct which interrupts the maintenance of a scholarly, disciplined atmosphere." Importantly, this Policy is limited in scope. The code specifically provides that "[t]his discipline policy will govern students *while on school premises, while on school owned and or operated school or chartered buses, while attending or engaged in school sponsored activities, while away from school grounds if misconduct will directly affect the good order, efficiency, management and welfare of the school.*" Thus, to violate this provision, a student must not only engage in the prohibited activity, he or she must also engage in the prohibited activity at a prohibited time.

In this case, there is no evidence or specific allegation that M engaged in the alleged misconduct while on school premises, while on a school owned or operated charter bus, or while attending or engaged in school sponsored activities. The only evidence relied on by the school board in this case are the statements of Students A, B, and D, and each are entirely silent as to the location of the alleged sale(s).

Indeed, theoretically a suspension could result under this provision for misconduct that occurs while away from school grounds, but that misconduct must *directly affect the good order, efficiency, management and welfare of the school.* There is no allegation that M in anyway

affected the good order, efficiency, management and welfare of the school. More importantly, Administration presented no evidence that the underlying conduct which gave rise to the allegations against M affected the good order, efficiency, management and welfare of the school. As there is a complete absence of any evidence that M engaged in misconduct during the prohibited times, the Board erred in finding that M violated section 503.1

**b. The Board Erred in Finding that M Violated Board Policy 502.7B**

Board Policy 502.7B provides that "possessing, using or being under the influence of any[] controlled substance.....and manufacturing, possessing, or selling drug paraphernalia are strictly prohibited while a student is on any school property or under school supervision. This [prohibition] includes attendance in school or at a school sponsored function." Importantly, this section does not apply to "medication prescribed by the individual student's licensed health care provider and which is taken in accordance with the licensed health care provider instructions."

In this case, it is undisputed that M has a diagnosis of Attention Deficit Hyperactivity Disorder. As part of his treatment for his attention deficit disorder, M's licensed practitioner prescribes the drug commonly known as Adderall. While we do not dispute that this drug is a controlled substance under the relevant policy provisions, it is unclear how M possession and use of a drug which he is concededly prescribed would amount to a violation of 502.7B absent an allegation that he "took" the drugs contrary to his doctor's orders.

As described above, under Section 502.7B, a student may not use or possess a controlled substance while on school property or under school supervision. But this broad prohibition is specifically limited to substances for which a given student lacks a valid prescription. Where, as here, the student has a valid prescription for the only controlled substance at issue, the only way that individual can violate this provision is for that individual to "take," i.e., consume, the prescription drug other than as prescribed by his doctor.

Clearly, M has a valid prescription for Adderall and, as such, he can only violate 502.7B if he consumed more than prescribed or possessed it for an improper purpose. In this case, there is no evidence that M deviated from his Doctor's instructions and took more medicine than prescribed. As there is no evidence whatsoever that M deviated from his doctor's instructions in this regard, the Board erred in finding that M violated section 502.7b.<sup>2</sup>

**c. The Board Erred in Finding that M Violated Board Policy 502.8**

Board Policy Section 502.8 provides that the sale or distribution, attempted sale or distribution and/or purchase or acquisition with the intent to sell or distribute by a student of any prohibited substance is strictly prohibited..." Importantly, Board policy 502.8 is only violated by a student when he or she engages in such prohibited activities while "on any school property or under

<sup>2</sup> While there is an allegation that M distributed some of his prescribed medication to other students, distribution of a controlled substance is not addressed by this section. Though it does prohibit distribution of drug paraphernalia, this section only relates to the possession and use of controlled substances. Distribution of controlled substances is dealt with in Section 502.8.

school supervision." Being on school property or under school supervision, "includes attendance in school or at a school sponsored function[s]."

In this case, the Board made no finding that the alleged activities occurred while on any school property or under school supervision. Nor could it have. There is not a scintilla of evidence that M's alleged activities occurred during such times. The only evidence presented to and relied on by the Board are the statements of Students A, B, and D, and D's accompanying screen shots of alleged text messages with M. Not one of these pieces of evidence taken alone or together indicates that engaged in the alleged activities on school property or under school supervision. In the absence of any such evidence, the Board erred in finding that M violated Section 502.8.

In fact, in the West Des Moines Community School "Decision of the Directors", the Decision indicated that the text messages that were initiated by Student B and responded to by M were clear evidence that M sold Student B "2 20s and a 30" of Adderall. Student B, later in her affidavit stated she received "yellow/clear" capsules from M and a 10 mg Blue capsule. As referenced at the hearing, there is no such thing as a yellow Adderall pill. Furthermore, the administration is more than happy to say the text messages should be accepted as specific evidence of a drug deal, but at the same time ignore the fact that the alleged "drug order" placed by M was in fact not the drugs she received. M and his father further testified that M takes Adderall that is 20 mg (also supported by the school nurse records). So, in order for the School Board's version of events to be believed, M somehow purchased or received a 10 mg pill from another person to then sell to Student B for a few dollars. It seems like an awful lot of work for M to "score" a 10 mg Adderall pill, when he already had a prescription for 20 mgs. In short, Student B changing her story, at the advice of whomever, to avoid expulsion is extremely fishy. The School Board is very inclined to believe the affidavits of Students A, B, and D and text messages as accurate when it suits their version of events, but is quick to disregard portions of their own evidence that are not consistent with their narrative.

#### d. Summary

In all of the above instances, the Board found that M violated certain provisions of Board Policy. Specifically, the Board found that M engaged in certain activities that violated Section 503.1, 502.7B, and 502.8. As to each alleged violation of Board Policy, an essential element of the claim was entirely missing from the Board's findings of fact, conclusions of law, and/or from the evidentiary record. Despite these deficiencies, the Board nevertheless found that M violated each of the alleged provisions.

It is inapposite for the Board to rely on a code section to allege that M violated a certain Board policy, and then simultaneously disregard the necessary elements of proof set forth in that very code section. Unfortunately, that is exactly what the Board did in this case, as described more fully above, and why the Board erred in finding that M violated any code provision as alleged. Particularly when a student is facing a sanction as extreme as the one in this case, the Board should be held to comply with the very provisions it adopted and imposes on others.

## II. THE ADMINISTRATION VIOLATED M DUE PROCESS PROTECTIONS

### a. Administration Failed to Give M an Opportunity to Tell His Side of the Story Before Suspending Him

In *Goss v. Lopez*, the U.S. Supreme Court made clear that students facing suspension are entitled to due process protections. *Goss v. Lopez*, 419 U.S. 565, 576 (U.S. 1975). The Court further clarified that "due process requires, in connection with a suspension of 10 days or less, that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story." *Id.* at 581. These steps are required to protect "against unfair or mistaken findings of misconduct and arbitrary exclusion from school." *Id.*

In this case, Valley Administration suspended M for nine days without complying with his due process protections. While they notified him of charges against him, they failed to provide M with an opportunity to present his side of the story prior to suspending him.

During M's interview with Valley Administration, he asked for his parents to be present. Valley Administration ceased the interview at the time of the request and called M's parents. Once M's parents arrived to continue the interview, Valley Administration declined to resume the interview and to allow M to further explain his side of the story. Despite not allowing M to present his side of the story, Valley Administration nonetheless suspended M for a period of nine days. As Valley failed to provide M with an opportunity to present his side of the story as due process requires, the Board erred in suspending M for the nine day period from May 22, 2015- June 3, 2015.

### b. The Board Failed to Make Essential Adverse Witnesses Available for Cross Examination

In *In re John Lawler*, the Iowa State Department of Education clarified the due process requirements for students facing expulsion. Specifically, it stated that "[i]n the case of expulsions as opposed to suspensions, [], due process and State Board Cases require more elaborate procedures before a student is expelled." *In re John Lawler*, 18 D.o.E App. Dec 61. In pertinent part, these more elaborate procedures required in expulsion cases include the following:

#### A. Hearing Procedures

1. The student will have all of the rights announced in the notice, and may give an opening and closing statement in addition to calling witnesses and cross-examining adverse witnesses. (This is "a full and fair opportunity to be heard.")
2. The decision making body (school board) must be impartial. (No prior involvement in the situation; no stake in the outcome; no personal bias or prejudice.)

3. The student has a right to a decision solely on the basis of the evidence presented.
4. There must be an adequate factual basis for the decision. This assumes that the evidence admitted is reasonably reliable. A "preponderance of the evidence" standard is sufficient to find the student violated the rule or policy at issue.

*In re John Lawler*, 18 D.o.E App. Dec 61.

Regarding the hearing procedures, the Board violated M due process protections by failing to make the essential adverse witnesses available at the expulsion hearing. As discussed above, due process requires that a student facing expulsion be given an opportunity to cross examine adverse witnesses.

In this case, neither the Administration nor the Board made any of the essential adverse witnesses available. The adverse witnesses include Students A, B, and D. Each of these students wrote a statement that in some way implicated M as a person who may have sold Adderall. The statements of these students formed the basis of Valley Administration's and the Board's decision to expel M or an extended period of time. Nevertheless, none of the Students were made available for M to cross examine at the hearing.

As Students A, B, and D were not made available for M to cross examine, M lacked the ability challenge the reliability of the statements and to adequately defend himself against the instant allegations. Accordingly, the Board violated M's due process rights when it failed to make the adverse witnesses available to him and when, by extension, it relied on unreliable hearsay evidence from Students A, B, and D to expel M for an extended period of time.

Furthermore, the Superintendent, while announcing her recommendation to the School Board for M's punishment, admitted that it gave the administration pause to bring M's case to the Board, due to the lack of actual evidence. However, she stated she ultimately decided to do so because "she knew M was lying". She did not indicate how she knew he was lying, or what outside sources she may have relied on to come to that conclusion. Based on her "knowledge" she decided to request that M be suspended for one year, rather than the one semester that the administration had recommended in its May 21, 2015 letter to M (contained in Exhibit A).

### CONCLUSION

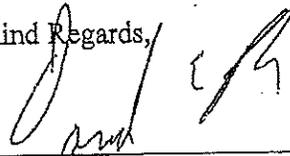
The Board erred in finding that M violated Board Policies 503.1, 502.7B, and 502.8 when the record lacked any evidence that M's alleged misconduct, even if true, occurred under prohibited circumstances such as during school or at a school sponsored activity. In addition, the Board erred in expelling M without affording him due process protections required by law. As M faced a serious expulsion, due process entitled M to sufficient notice to prepare a defense and to cross examine the adverse witnesses. Valley Administration and the Board failed to provide sufficient notice for M to prepare a defense and failed to make the

essential adverse witnesses available, instead relying on unreliable hearsay to form the basis for its decision.

Based on the aforementioned facts and information, M [redacted] respectfully requests that the Iowa State Board of Education reverse the decision of the Board that resulted in M [redacted]'s extended expulsion from Valley.

Thank you in advance for your careful consideration of this appeal.

Kind Regards,



---

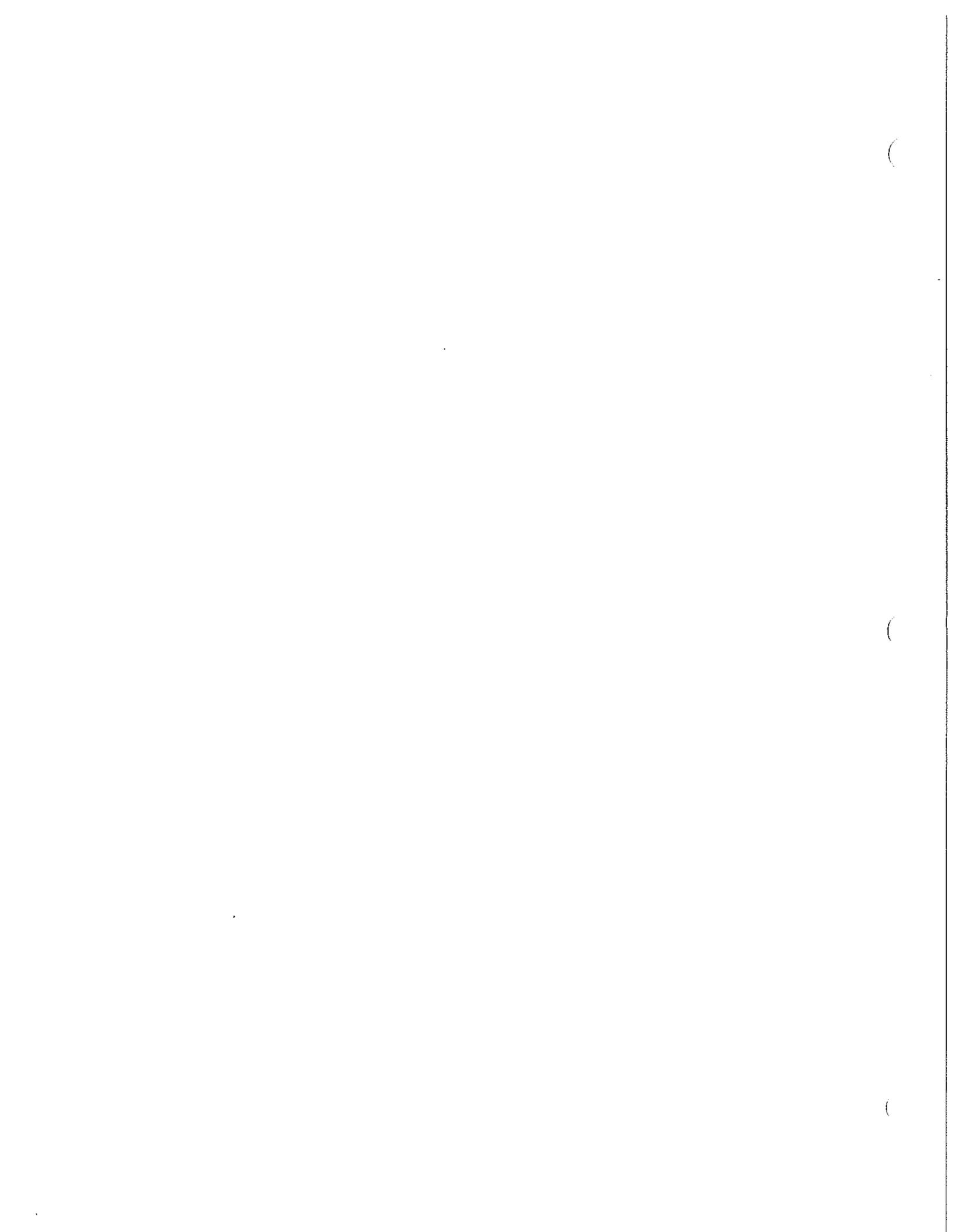
by David E. Brick (AT0001085)  
Brick Gentry, P.C.  
6701 Westown Parkway, Suite 100  
West Des Moines, IA 50266  
Telephone: (515) 274-1450  
Facsimile: (515) 274-1488  
[dave.brick@brickgentrylaw.com](mailto:dave.brick@brickgentrylaw.com)

ATTORNEY FOR APPELLANT

---

ian of Appellant



# **Expulsion/Long Term Suspension Documentation**

**Valley Southwoods Freshman High School**

  
**Mitchell Kuhnert, Principal**

**Barbara Goetschel, Associate Principal**

**May 21, 2015**

**EXHIBIT A**

# Table of Contents

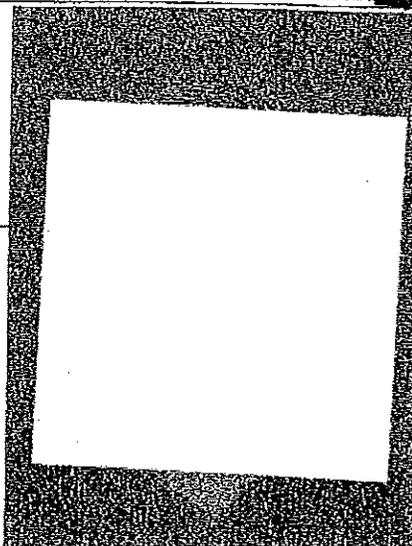
- **Student Summary Report**
- **Incident Report**
- **Suspension Letter to Parents**
- **Notice of Hearing/Board Action to Parents**
- **Board Policy Violated**
  - **including Search and Seizure if appropriate**
- **Student Schedule**
- **Current Grades**
- **Official Transcript**
- **Supports Provided**
- **Attendance Report**
- **Behavior Detail Report**
- **Attendance and Behavior Codes**
- **Detailed Extenuating Circumstances**
  - **including Police Report and Documentation**

# **Student Summary Report**

# Person Summary Report

Person ID: 121

Gender: M  
Birth Date: 03/17  
Staff Number:  
Person GUID: 619F0F520B0B  
Student Number: 1874  
Student State ID: 753  
Staff State ID:



## Contact Information:

Other Phone:  
Work Phone:  
Cell Phone:  
Pager:  
Email:  
Preferred Language: en\_US

## Primary Household: K

Household Phone:  
Address(es):

Brothers  
Brothers  
Mother/Son  
  
Father/Son  
Brother/Sister

Cell:  
Email:  
Cell:

## Non-Household Relationships

## Race/Ethnicity Information

State Race/Ethnicity: W:White  
Federal Race/Ethnicity Designation: 6:White  
Race(s): White  
Hispanic/Latino: N:No  
Race/Ethnicity Determination: 01:Parent Identified

Date Entered US:  
Date Entered US School:

## Person Comments:

KA-Hallman

## Contact Information Comments:

<b>14-15</b> <b>Valley Southwoods Freshman High School</b> 625 South 35th Street, West Des Moines IA 50265 Generated on 05/21/2015 11:45:52 AM Page 1 of 1	<b>Enrollment History</b> Date: 05/21/2015
---	---

**Enrollment History**

Grade	Type	Calendar (Schedule Name)	Start Date	End Date
10	P	15-16 VA	08/24/2015	
Start Status: 1 Enrolled				
End Status:				
09	P	14-15 VS	08/20/2014	
Start Status: 1 Enrolled				
End Status:				
08	P	13-14 ST	08/20/2013	06/04/2014
Start Status: 1 Enrolled				
End Status:				
07	P	12-13 ST	08/21/2012	06/06/2013
Start Status: 1 Enrolled				
End Status:				
06	P	11-12 JC	08/24/2011	06/01/2012
Start Status: 1 Enrolled				
End Status:				
05	P	10-11 JC	08/25/2010	06/06/2011
Start Status: 1 Enrolled				
End Status:				
04	P	09-10 JC	08/26/2009	06/08/2010
Start Status: 1 Enrolled				
End Status:				
03	P	08-09 JC	08/20/2008	06/04/2009
Start Status: 1 Enrolled				
End Status:				
02	P	07-08 JC	08/22/2007	06/03/2008
Start Status: 1 Enrolled				
End Status:				
01	P	06-07 JC	08/23/2006	06/04/2007
Start Status: 1 Enrolled				
End Status:				
K	P	05-06 JC	08/24/2005	06/02/2006
Start Status: 1 Enrolled ENROLLED-KA Hallman				
End Status:				

# Incident Report

Incident and Student Summary:

Name of Student: \_\_\_\_\_

Age: 15

Grade in School: 9th

# of years in the district: Enrolled since Kindergarten

Name of Parents: \_\_\_\_\_

Prior Disciplinary Action: 0 events prior to this situation

Section of Policy Violated: 503.1, 502.8 Distributing

Police Involvement: no

Extra-Curricular Involvement: Cross Country and Soccer

Reaction of student: Student has stated that they did not do this.

Parent Reaction: Dad has come into school each time when asked. He too stated that all their pills have been accounted for and that / \_\_\_\_\_ has not sold to other students.

Special Circumstances: None

## Incident Report

Student: F \_\_\_\_\_

On Thursday, April 30<sup>th</sup>, administration was given information that several students were involved in either selling or using Adderall at Valley Southwoods. Information came from parents of a student currently attending VSW who wants to remain anonymous.

\_\_\_\_\_ was identified as someone who has been selling Adderall to other students as identified by two other students that day. ( \_\_\_\_\_ was questioned that day and stated verbally that he had not done that. His person and locker were searched by administration but nothing was found.

On May 8<sup>th</sup>, 2015 an amended statement from a third student was given to administration. That statement clearly stated that ( \_\_\_\_\_ had sold prescription medication to the student that wrote the statement. The family of the student that wrote the amended statement also informed administration that screen shots of text messages were given to the West Des Moines Police.

May 12<sup>th</sup>, 2015 SRO gave copies of the shared screen shots to administration. Information was then shared with Superintendency.

May 15<sup>th</sup> Called \_\_\_\_\_ to the office to question. He asked for his parents and the interview stopped at that moment. \_\_\_\_\_ went back to class and I contact parents. Dad did come in to speak to me and I shared all the statements that students gave and let him see the screen shot images. Dad at that time shared that the color given in the statement about the pills was wrong or not the pills they had. He did say one description listed was correct. He said the text message screen shots could be faked. I then stated this information would be moved on to the Superintendent for next steps. He understood from me there could be more steps coming. He stated he had already talked to counsel about the situation.

May 21<sup>st</sup> Called Dad to place \_\_\_\_\_ on a 9 day suspension and let him know that the school was still going to take this situation to a hearing. Administration let him know that we would be looking at a hearing next Wednesday and that he could pick up a packet on Friday, May 22, 2015 after 3pm.

### Administrator notes:

(Student A) admitted selling 10 Adderall tablets to (Student C) for \$30. The transaction took place in the Team 2 locker area before school on Thursday, April 30. Witnesses to the transaction included (Student E) and (Student I). When interviewed, (Student C) acknowledged that she purchased the pills from (Student A) for \$30. She indicated she asked (Student C) indicated that she was purchasing the pills for her older sister. (Student C) indicated (Student E), (Student B) and (Student F) have purchased from (Student A) as well. (Student A) indicated there are other students in our building who sell their medication as well. She identified the

T.M.I. - 15 NOV 2014

following individuals: ( ) and (Student H). When asked if she had other pills, (Student A) indicated she had some anti-depressants in her pencil bag. She surrendered those pills to Mr. Kuhnert. When asked if she had sold to other individuals, she identified (Student D) and (Student B). (Student D) buys two pills usually and keeps one in her contact lens holder. She said she sold to (Student F) last week, before her trip to Mexico. (Student F) bought two on that day and give one of them to (Student B). (Student J) asked (Student A) for "1,000 pills." When interviewed, (Student B) acknowledged that she had purchased pills from (Student A) in the past. She indicated that she purchased and delivered the pills for other students. She indicated that she had taken the pills herself, but that was during the summer months of 2014.

OFFICE REFERRAL, PART 2  
STUDENT DESCRIPTION OF EVENT(S)

Valley Southwoods Freshman High School

Student: (Student A)

Date: 4-30-15

- What happened? Please write a detailed description, in chronological order, of the circumstances, interactions, and/or events that preceded your office referral today.
- When you are finished, sign and date the form at the bottom of the page, and return the form to a secretary. An administrator will meet with you as soon as possible. Thank you.

Mr. Sterns and Mr. Kuhnert pulled me out of class because I said some Add. I didn't mean for it to get so bad. I'm sorry for selling Add to students and getting money for it. Mr. S + Mr. K asked who I've sold it to and if anyone else sold it. I didn't want to get any of my friends in trouble. But I know I had to in order to get this resolved so I did and I'm sorry for them. I also had some anti-depressants in a camp stick bottle and sold it to one person I don't take them in the morning sometimes so then I can sell them. I sell it in the bathrooms. I'm so sorry for what I have done. I've made some awful decisions this year. I had some help on what to do. Selling makes me feel like everyone knows who I am. I love when people know who I am. I wish I shouldn't have done it. The way I did it.

Student Signature: (Student A)

Date: 4-30-15

KNOW OTHER PEOPLE WHO SELL IT

4. K.  
(Student H)

EVERY SOLD TO:

(Student F) (Student C)  
(Student B)  
(Student D)

Student J wanted 1000

AND (Student K) wanted 30

# OFFICE REFERRAL, PART 2

## STUDENT DESCRIPTION OF EVENT(S)



Valley Southwoods Freshman High School

Student: (Student D) Date: 4-30-15

- What happened? Please write a detailed description, in chronological order, of the circumstances, interactions, and/or events that preceded your office referral today.
- When you are finished, sign and date the form at the bottom of the page, and return the form to a secretary. An administrator will meet with you as soon as possible. Thank you.

A COUPLE MONTHS AGO, I WAS GIVEN AN OBJECT FROM (Student A). THIS WAS HAPPENING A TOTAL OF THREE TIMES. IVE ONLY TAKEN IT ONCE THOUGH. IVE SAID IVE TAKEN IT ALL THREE. I WAS TOLD NOT TO TAKE IT TO HELP FEEL SOMEONE DIDNT SEE HIS ABILITY. SHE GAVE IT TO ME FOR FREE. AT ONE POINT, SHE OFFERED ME AN ANTI-DEPRESSANT, BUT I DONT WANT IT SO I DONT TAKE IT. SHE GAVE IT TO ME AT SCHOOL. I CAN REMEMBER THREE OTHER PEOPLE WHOSE NAMES I CANT REMEMBER (Student F) AND (Student B) GIVE IT TO (Student F) AND (Student B) (Student A) KEEPS HER HANDS IN HER POCKETS AND...

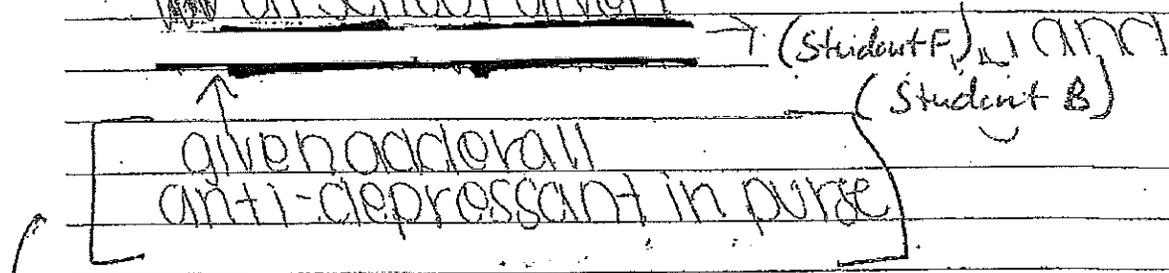
Student Signature: (Student D) Date: 4-30-15

OFFICE REFERRAL, PART 2  
STUDENT DESCRIPTION OF EVENT(S)  
Valley Southwoods Freshman High School

Student: (Student D) Date: 4-30-15

- What happened? Please write a detailed description, in chronological order, of the circumstances, interactions, and/or events that preceded your office referral today.
- When you are finished, sign and date the form at the bottom of the page, and return the form to a secretary. An administrator will meet with you as soon as possible. Thank you.

A couple weeks ago  
From (Student A)  
Given it a couple times  
Adderall and anti-depressant  
taken ~~at school~~ one time - ~~at school~~ after school  
~~at school~~ given



Student Signature (Student D) Date 4-30-15

Dropped off May 8, 2015 3:00PM

After I went to the reading of the ADHD testing results, I took it upon myself to fix my problem. My dad said he didn't want me to be on any medications and that he doesn't believe in the disorder. The following weeks after getting the results, I tried focusing and getting rid of any stress in my life to try and get my grades up, but I couldn't focus or be motivated to do my homework. I heard some friends talking about how their prescription Adderall helped them focus and understand their schoolwork and offered to sell me a few to try it out. I bought two 20 mg pills, for 4\$, from (Student A) and took one and the second pill a day after the first. I later asked (Student A) if she could sell me another, because it helped me focus and do assignments, but she said she didn't have any to give to me. (Student A)'s pills were a solid pill with a pale yellow color. I also heard that \_\_\_\_\_ had them, so I asked him to sell me some. The following day, I got one 20mg pill and two 10mg pills. I took them spread out in the following week, only on school days. The last time I bought Adderall was from M \_\_\_\_\_ or Wednesday, April 29th\*) I never gave any pills to (Student E). When Mr. Kuhnert and Sternis brought me into the room to interview me, I panicked and told them "I bought it for a friend" because I

\*. \_\_\_\_\_ pills were yellow/clear capsules w/ little yellow balls inside, the 10 mg were the exact same, but the color blue

Knew they would tell my parents about it, and I didn't want them to find out I was taking Adderall when my dad said I shouldn't be on medications. I apologize for lying about giving it to (Student F) and withholding that I bought it from \_\_\_\_\_ I don't want (Student E) to get in more trouble for my story being inaccurate, and I wanted to protect \_\_\_\_\_ because he is a good friend of mine. I never thought I would be punished for distributing because I didn't realize what my lie could end up as in the moment I said it. I did not take part in selling or distributing any pills, every pill I bought I took for myself. I never bought or consumed any Anti-Depressant pills. The people I know who (Student A), sold to are: (Student D). (never said (Student H), she just gave them to her), (Student E), and (Student C) I don't know who \_\_\_\_\_ sold to other than me. I know I should've stated all this in the first statement, but this is all I know.

(Student B)

Details

Info



Phone

(513) 8035



FaceTime



Send Message

Share Contact

Add to Favorites

Call

1/11

[Redacted]

Details

[Redacted]

The Contact Center

Location

Send My Current Location

Share My Location

Do Not Disturb

More information on this page

Sorry that all of our living  
is more soon though

Let's all have some more  
Wednesday

Wednesday, April 24, 1974

Can you bring me some  
of the...

Can you bring me 20... and a 10...

and  
 Messages [redacted] Details  
 some more soon though  
 Let's have some more  
 Wednesday  
 How much  
 can I bring in 20 and a 30 me  
 How much  
 How much



**Letter to Parent  
(re: Suspension and Possible Expulsion)**



Date: May 21, 2015

Mr. and Mrs.

[Redacted], IA 50

Dear Mr. and Mrs.:

Your son, [Redacted] was placed on a 9 day out-of-school suspension from May 22, 2015 for periods 1-8 through June 3, 2015 for periods 1-8. This action was because of an allegation of possessing and distributing a controlled substance at Valley Southwoods Freshman High School. Given the significance of [Redacted] actions, a recommendation for further action outlined by School Board Policy will be forwarded to Dr. Lisa Remy, Superintendent of Schools, for her consideration.

Homework assigned during the suspension is graded and credited.

During this suspension period, your student is not allowed to participate in or attend activities in the West Des Moines Community School District.

The suspension was given in reference to Board of Education Policy Code 503.1 Discipline, which states:

*The principal or designee(s) shall have the authority to suspend students temporarily. Such suspension may be for a period not to exceed ten (10) school days. A suspended student shall be given opportunity to make up work and receive credit on the same basis as other absentees. A day of suspension shall be counted as an absence. The initiative to make up work must be made by the student.*

*The principal or designee(s) may impose a range of penalties based upon their professional judgment and the facts and circumstances of each situation. Consequences may range from warning, counseling, reprimand, detention, in-school suspension, loss of privileges, suspension from school, suspension from participation in activities, or recommendation for expulsion.*

*The Board of Directors, upon the recommendation of the building principal or designee, may expel a student from school for violation of the policies, rules or regulations of the school district or for documented cases of misconduct detrimental to the best interest of the school district. Any student who possesses weapon or dangerous object while on school property will be suspended and recommended for expulsion the Board of Education. The Board may expel an incorrigible child or any child whose presence in school may be injurious to the health or morals of other students or to the welfare of the school."*

If you have questions, please feel free to contact the school at 633-4500.

Sincerely,

Barbara Goetschel  
Associate Principal

Mitchell Kuhnert  
Principal

cc:  
Mr. David J. Brown, Board President  
Dr. Lisa Remy, Superintendent

Valley Southwoods  
Freshman High School  
825 South 35th Street  
West Des Moines, IA 50265

Phone (515) 633-4500  
Fax (515) 633-4599  
www.wdmcs.org

Mitch Kuhnert  
Principal

Barbara Goetschel  
Associate Principal

Bryan Stearns  
Associate Principal

The West Des Moines  
Community School District  
will be a caring community  
of learners that knows  
and lifts every child.  
We will inspire joy in learning.  
Our schools will excel  
at preparing each student  
for his or her life journey.



WEST DES MOINES  
COMMUNITY  
SCHOOLS

Valley Southwoods  
Freshman High School  
828 South 35th Street  
West Des Moines, IA 50265

Phone [515] 633-4500  
Fax [515] 633-4588  
www.wdmcs.org

Mitch Kuhnert  
Principal

Barbara Goetschel  
Associate Principal

Bryan Stearns  
Associate Principal

Date: May 21, 2015

Mr. and Mrs. [Redacted]

West Des Moines, IA 50265



Dear Mr. and Mrs. [Redacted]

Your son, [Redacted], was placed on a 9 day out-of-school suspension from May 22, 2015 for periods 1-8 through June 3, 2015 for periods 1-8. This action was taken as a result of possessing and distributing a controlled substance at Valley Southwoods Freshman High School. Given the significance of [Redacted]'s actions, a recommendation for further action outlined by School Board Policy will be forwarded to Dr. Lisa Remy, Superintendent of Schools, for her consideration.

Homework assigned during the suspension is graded and credited.

During this suspension period, your student is not allowed to participate in or attend activities in the West Des Moines Community School District.

The suspension was given in reference to Board of Education Policy Code 503.1 Discipline, which states:

*The principal or designee(s) shall have the authority to suspend students temporarily. Such suspension may be for a period not to exceed ten (10) school days. A suspended student shall be given opportunity to make up work and receive credit on the same basis as other absentees. A day of suspension shall be counted as an absence. The initiative to make up work must be made by the student.*

*The principal or designee(s) may impose a range of penalties based upon their professional judgment and the facts and circumstances of each situation. Consequences may range from warning, counseling, reprimand, detention, in-school suspension, loss of privileges, suspension from school, suspension from participation in activities, or recommendation for expulsion.*

*The Board of Directors, upon the recommendation of the building principal or designee, may expel a student from school for violation of the policies, rules or regulations of the school district or for documented cases of misconduct detrimental to the best interest of the school district. Any student who possesses weapon or dangerous object while on school property will be suspended and recommended for expulsion to the Board of Education. The Board may expel an incorrigible child or any child whose presence in school may be injurious to the health or morals of other students or to the welfare of the school."*

If you have questions, please feel free to contact the school at 633-4500.

Sincerely,

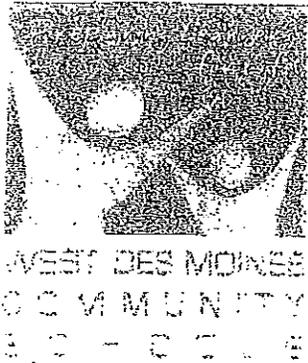
[Signature]  
Barbara Goetschel  
Associate Principal

[Signature]  
Mitchell Kuhnert  
Principal

cc:  
Mr. David J. Brown, Board President  
Dr. Lisa Remy, Superintendent

The West Des Moines  
Community School District  
will be a caring community  
of learners that knows  
and lifts every child.  
We will inspire joy in learning.  
Our schools will excel  
at preparing each student  
for his or her life journey.

**Letter to Parent  
(re: Expulsion/Long Term Suspension  
Hearing/Action by Board Date)**



WEST DES MOINES  
COMMUNITY  
SCHOOL DISTRICT

Valley Southwoods  
Freshman High School  
625 South 35th Street  
West Des Moines, IA 50265

Phone (515) 633-4500  
Fax (515) 633-4599  
www.wdmcs.org

Mitch Kuhnert  
Principal

Barbara Goetschel  
Associate Principal

Bryan Stearns  
Associate Principal

The West Des Moines  
Community School District  
will be a caring community  
of learners that knows  
and lifts every child.  
We will inspire joy in learning.  
Our schools will excel  
at preparing each student  
for his or her life journey.

May 22, 2015

Mr. and Mrs

West Des Moines, IA 50265

Dear Mr. and Mrs.:

On Thursday, April 30, 2015, your son, \_\_\_\_\_ was identified as violating West Des Moines School Board Policies, 503.1 Discipline and 502.7B Controlled Substance Possessing, Using, or Being Under the Influence of Controlled Substance and 502.8 Controlled Substance Selling or Distributing, in connection with possessing and distributing a controlled substance at Valley Southwoods Freshman High School.

On May 21, 2015, you were notified that \_\_\_\_\_ was placed on an out-of-school suspension because of the misconduct stated above and that the administration would recommend to the Superintendent and Board of Education that \_\_\_\_\_ be expelled from Valley Southwoods Freshman High School/Valley High School through the first semester of the 2015-2016 school year.

In accordance with Iowa Code Section 282.4, the School Board may suspend or 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. A hearing will be held by the Board of Education at the Learning Resource Center, 3550 Mills Civic Parkway on Wednesday, May 27, 2015. The hearing will begin at 7:15 pm. At the hearing, the District administration will present a summary of the events that occurred and will present evidence on behalf of the District to support the recommendation for expulsion.

You have the right to request that the hearing be open to the public; however, unless we are notified, the hearing will be conducted in a closed session. You can expect that persons in attendance, whether you choose open or closed, will be members of the Board of Education, the Superintendent of schools, Board Secretary, Board legal counsel, Associate Superintendent, Principal Kuhnert, Administration legal counsel and possibly a WDM police officer.

The purpose of this letter is to inform you of the hearing and to request your presence and the presence of \_\_\_\_\_ at the hearing. Enclosed with this letter is a copy of information that will be presented to the Board at the hearing. The administration may call the following witnesses at the hearing: Mitchell Kuhnert, Bryan Stearns, Barbara Goetschel, WDM Police Officer, Karinne Miller.

The purpose of this hearing is to provide an opportunity to hear the allegations regarding \_\_\_\_\_'s alleged violation of school policy:

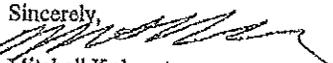
503.1 Discipline and 502.7B Controlled Substance Possessing, Using, or Being Under the Influence of Controlled Substance and 502.8 Controlled Substance Selling or Distributing.

In addition, the purpose of this hearing is to allow you and \_\_\_\_\_ to present a response to the allegations. You have the right to present evidence, question witnesses and to have legal counsel present at this hearing at your own expense.

The hearing will be administrative in nature, and will not be governed by formal rules of evidence or procedure. At the conclusion of the hearing, the Board will consider all relevant evidence introduced at the hearing and make its decision in open session. Following the Board's decision at the end of the hearing you, \_\_\_\_\_ and I will discuss the outcome.

If you have any questions, please feel free to contact me. Please contact my office if you are unable to attend.

Sincerely,

  
Mitchell Kuhnert  
Principal

- c: Superintendent
- President of the Board of Directors
- Associate Superintendent of Human Resources
- District Legal Counsel
- Administration Legal Counsel

## **Copy of Board Policies Violated**

DISCIPLINE

The students served in the West Des Moines Community School District are highly motivated and respectful of the rights of others. They recognize the importance of education and display this through their compliance with necessary rules and policies relative to their behavior while in school.

However, in any school setting, it is realistic to acknowledge that situations will arise which are in conflict with established rules and policies. In that event, students may be disciplined for conduct, acts or behaviors which disrupt the orderly and efficient operation of the school or school activity, conduct which disrupts the rights of other students to obtain their education or participate, or conduct which interrupts the maintenance of a scholarly, disciplined atmosphere.

BREACH OF DISCIPLINE MAY INCLUDE, WITHOUT LIMITATIONS:

1. Refusal to conform to school policies, rules or regulations.
2. Conduct which disturbs the orderly, efficient and disciplined atmosphere and operation of the school or school-related activity.
3. Refusal to comply with directions from teachers, administrators or other school personnel.
4. Physical attack or threats of physical attack to students, teachers, administrators or other school personnel.
5. Possession of weapons, firearms, contraband, dangerous objects (including, without limitation, knives that do not fall within the definition of dangerous weapon under this policy because they have blades five inches or less in length) or look alikes.
6. Extortion.
7. Criminal or illegal behavior.
8. Theft or robbery.
9. Damaging, altering, injuring, defacing or destruction of any building, fixture or tangible property.
10. Causing a fire or explosion, or placing any burning or combustible material, or any incendiary or explosive device or material, in or near any school property, whether or not any such property is actually damaged or destroyed.
11. Threatening to place or attempting to place any incendiary or explosive device or material, or any destructive substance or device in or about the school premises or premises where a school-sponsored activity will be held.
12. Fighting or engaging in disruptive or violent behavior at school or at school events.
13. Making noise in the vicinity of the school or school-sponsored activities, which disrupts the orderly, efficient and disciplined atmosphere of the school or the school-sponsored activity.

DISCIPLINE

14. Abusive epithets, threatening gestures, or other uncivil behaviors to other students, teachers, administrators or other school personnel.
15. By words or action initiating or circulating a report or warning of fire, epidemic or other catastrophe knowing such report to be false or such warning to be baseless.
16. Obstructing school premises or access to school premises or premises where a school activity is being held.
17. Possessing or consuming alcoholic liquors or beer on school property or while attending a school activity.
- ~~18.~~ 18. Possession of a controlled substance or controlled substance look-alike or associated paraphernalia
19. Use of tobacco or any controlled substance.
20. Gambling.
21. Documented conduct detrimental to the best interest of the school district.
22. Harassment or Bullying as described in Policy Code No. 502.2.

This discipline policy will govern students while on school premises; while on school owned and/or operated school or chartered buses; while attending or engaged in school sponsored activities; while away from school grounds if misconduct will directly affect the good order, efficiency, management and welfare of the school.

CONSEQUENCES FOR VIOLATING THE REGULATIONS,  
RULES AND POLICIES OF THE SCHOOL DISTRICT

Students who violate policies, rules or regulations of the District, or who have documented cases of conduct detrimental to the best interest of the District, may be suspended or expelled from school or otherwise disciplined as provided by this policy.

The principal or designee(s) may impose a range of penalties based upon professional judgment and the facts and circumstances of each situation. Consequences may range from warning, counseling, reprimand, detention, in-school suspension, loss of privileges, suspension from school, suspension from participation in activities, or recommendation for expulsion.

The principal or designee(s) will have the authority to suspend students temporarily. Such suspension may be for a period not to exceed ten (10) school days. A suspended student will be given opportunity to make up work and receive credit on the same basis as other absentees. A day of suspension will be counted as an absence. The initiative to make up work must be made by the student.

## DISCIPLINE

The Board of Education, upon the recommendation of the Superintendent, may expel a student from school for violation of the policies, rules or regulations of the school district or for documented cases of misconduct detrimental to the best interest of the school district. The Board may also expel any child whose presence in school may be injurious to the health and/or safety of others or to the welfare of the school. The Superintendent in consultation with the Board President has the discretion to alter the disciplinary consequences specified in this policy for students in preschool through third grade.

Consistent with terms prescribed by the Board the Superintendent may assist a student who is expelled to maintain their educational progress or participate in an alternative form of educational programming.

### FIREARMS AND OTHER DANGEROUS WEAPONS

Any student who possesses a dangerous weapon while on school property will be suspended and may be recommended for expulsion to the Board of Education. Any student who knowingly brings a firearm to school, or knowingly possesses a firearm at school will be automatically expelled from school by the Board of Education for a period of not less than one year. The Superintendent may, at his/her discretion, recommend to the Board of Education to modify the one-year mandatory expulsion requirement on a case-by-case basis.

All school officials will be responsible for promptly reporting to the local law enforcement agency any dangerous weapon or firearm found or possessed on school property.

For purposes of this policy a dangerous weapon will be defined as follows:

Dangerous Weapon: Any instrument or device designed primarily for use in inflicting death or injury upon a human being or animal, and which is capable of inflicting death upon a human being when used in the manner for which it was designed. Additionally, any instrument or device of any sort whatsoever which is actually used in such a manner as to indicate that the student intends to inflict death or serious injury upon another, and which, when so used, is capable of inflicting death upon a human being, is a dangerous weapon. Dangerous weapons include, but are not limited to, any offensive weapon, pistol, revolver, or other firearm, dagger, razor, stiletto, switchblade knife, or knife having a blade exceeding five inches in length; or any portable device or weapon directing an electric current, impulse, wave, or beam that produces a high-voltage pulse designed to immobilize a person.

For purposes of this policy a firearm will be defined as follows:

Firearm: A firearm means (a) any weapon (including a starter gun) which will or is designed to or can readily be converted to expel a projectile by the action of an explosive; (b) the frame or receiver of any such weapon; (c) any firearm muffler or firearm silencer; or (d) any destructive device as defined by law, including any explosive, incendiary, or poison gas.

### STUDENTS WITH DISABILITIES

Any suspension or expulsion of a special education student shall be handled in accordance with the provisions of the Individuals with Disabilities Act (IDEA).

## DISCIPLINE

If a student has been identified as a student requiring special education, the Board shall not suspend or expel the student in a manner that would constitute a "change in placement" without complying with requirements of law relating to special education. In such cases, the student's IEP team shall meet to determine if the behavior leading to the disciplinary action is a manifestation of the student's disability and to determine if the IEP is appropriate.

A student eligible for special education shall not be expelled or have a long-term suspension imposed if the behavior is a manifestation of the disability. The District reserves the right to remove the student to an interim alternative educational setting for up to 45 days if the student possesses a weapon, if the student knowingly possesses, uses, sells, or solicits the sale of a controlled substance, or inflicts serious bodily injury on another person while at school, on school premises, or at a school function.

If the student's behavior is not a manifestation of the disability, the student shall be subject to the District's generally-applicable disciplinary policies in the same manner and to the same extent as those policies would be applied to a student without disabilities. The Board shall be provided appropriate special education records when considering the suspension or expulsion recommendation. If the Board suspends or expels a student eligible for special education, the student's IEP team shall determine an appropriate alternative program to allow the student to make progress toward IEP goals and in the general curriculum for the duration of the student's removal.

## READMISSION

Readmission after suspension may be made by the principal when the conditions of the suspension have been met, but readmission after expulsion will be made by the Board of Education or in the manner prescribed by the Board of Education of the District. A student will be eligible for readmission after expulsion at the beginning of the following school year or at any such other time as is determined by the Board.

## POSTING AND PUBLICATION

The discipline policy and administrative rules and procedures will be printed and distributed to attendance centers; will be made available to staff, students and parents/guardians; and will be posted in at least one location in each attendance center which is accessible to staff, parents/guardians and students at the beginning of the school year.

## REQUEST FOR AN ACCURATE RECORD

Upon the request of school officials of a school to which a student seeks to transfer or has transferred, school officials of the West Des Moines Community School District will provide an accurate record of any suspension or expulsion actions taken, and the basis for those actions taken, against the student in accordance with applicable law.

Approved 5-15-89

Reviewed 11-21-05

Revised 5/12/14

CONTROLLED SUBSTANCES -  
POSSESSING, USING, OR BEING UNDER THE INFLUENCE OF

Possessing, using or being under the influence of any, controlled substance, look-alike, substitute, or any substance represented to be a controlled substance (other than medication prescribed by the individual student's licensed health care provider and which is taken in accordance with the licensed health care provider directions) and manufacturing, possessing, or selling drug paraphernalia (pipes, roach clips, scales and other items as defined by Iowa Code Section 124.414) are strictly prohibited while a student is on any school property or under school supervision. This includes attendance in school or at a school-sponsored function.

For purposes of this policy, the term "prohibited substance" means controlled substance, look-alike controlled substance, substitute controlled substance, any substance represented to be a controlled substance, or drug paraphernalia (pipes, roach clips, scales and other items as defined by Iowa Code Section 124.414). "Prohibited substance" does not include medication prescribed by the individual student's licensed health care provider and which is taken in accordance with the licensed health care provider directions.

As used in this policy, the term "possessing" means:

- (a) that the student has actual physical control of the prohibited substance because it is on or in the student's body, in a locker individually assigned to the student, or in an item of personal property belonging to the student (including, but not limited to, a bookbag, backpack, or purse), or
- (b) that the student knows that a prohibited substance is located within a vehicle or a place (such as a house or an apartment) where the student is present and that the student can exercise physical control over the prohibited substance. If a student has left school property during his/her normally scheduled time to be in school or while under school supervision, the student will be considered in school and will be subject to disciplinary procedures listed below.

Any student violating the provisions of this policy during his/her enrollment in grades kindergarten through eighth or ninth through twelfth in the West Des Moines Community School District will be subject to the following disciplinary procedures:

First Offense

1. Parents or guardians are notified by mail and phone.
2. The violation is referred to law enforcement authorities.
3. The student will be recommended to the Board of Education for removal from school and placement in an alternate setting (i.e. DMACC, E20/20, approved online programs) unless protected by provisions of the Individuals with Disabilities Act (IDEA), in which case the Superintendent will determine if such suspension is appropriate. Students placed in the alternate setting must successfully participate in that program for 45 school days.
4. Before readmittance, a parent/guardian conference is required at which evidence of a scheduled chemical abuse evaluation, counseling or treatment program must be furnished.
5. Within 30 days of the incident, the family must meet with appropriate school officials to review the rehabilitation plan developed as a result of the chemical abuse evaluation, counseling or treatment program.
6. Failure to comply with the steps listed will result in a recommendation for expulsion to the Board of Education, unless the student is protected by provisions of the IDEA, in which case, the Superintendent will determine if an expulsion hearing before the Board is appropriate.

Approved 2-10-92 Reviewed 06-24-02 Revised 5/12/14

CONTROLLED SUBSTANCES -  
POSSESSING, USING, OR BEING UNDER THE INFLUENCE OF

Second and Subsequent Offenses:

1. Parents or guardians are notified by mail and phone.
2. The violation is referred to law enforcement authorities.
3. The student is placed on an out-of-school suspension.
4. The student will be recommended for expulsion to the Board of Education unless protected by provisions of the IDEA, in which case the Superintendent will determine if an expulsion hearing before the Board is appropriate.

Information received from students and/or parents who voluntarily seek help from school authorities concerning the student's use of ~~alcoholic beverages~~ controlled substances before being found to be in violation of the provisions of this policy, will be maintained in confidence to the maximum extent possible and will not serve as a basis for disciplinary actions. However, this does not provide immunity for disciplinary action should students continue to use or possess or be under the influence of ~~alcoholic beverages~~ controlled substances provided here. The Superintendent in consultation with the Board President has the discretion to alter the disciplinary consequences specified in this policy for students in preschool through third grade.

Approved 2-10-92 Reviewed 06-24-02 Revised 5/12/14

ALCOHOLIC BEVERAGES AND CONTROLLED SUBSTANCES -  
SELLING OR DISTRIBUTING

The sale or distribution, attempted sale or distribution and/or purchase or acquisition with the intent to sell or distribute by a student of any prohibited substance ("prohibited substance" defined for purposes of this policy to mean any alcoholic beverage, controlled substances, look-alike, substitute, or any substitute represented to be an alcoholic beverage or a controlled substance) is strictly prohibited while the student is on any school property or under school supervision. This includes attendance in school or at a school-sponsored function.

A student may be considered to have an intent to sell or distribute a prohibited substance if evidence or testimony is obtained by the school administration that supports the finding that a student intended to sell or distribute a prohibited substance.

Any student violating the provisions of this policy will be subject to the following disciplinary procedures:

1. The parents or guardians are notified by mail and phone.
2. The violation is referred to law enforcement authorities.
3. The student is placed on an out-of-school suspension and will be recommended for expulsion to the Board of Education, unless the student is protected by provisions of the Individuals with Disabilities Act (I.D.E.A.), in which case the Superintendent will determine if an expulsion hearing before the Board is appropriate.

If a student has left school property during his/her normally scheduled time to be in school or while under school supervision, the student will be considered in school and will be subject to the above procedures.

Approved 4-10-89 Reviewed 6-24-02 Revised 03-11-13

### SEARCH AND SEIZURE

School officials may, without a search warrant, search a student, student lockers, student desks, student backpacks (or any other container used by a student for holding or carrying personal belongings of any kind), student work areas or student automobiles to maintain order and discipline in the schools, promote the educational environment and protect the safety and welfare of students, school personnel and others on school premises or at school-sponsored activities. School authorities may seize any illegal, unauthorized or contraband materials discovered in the search.

It is the finding of the Board that illegal, unauthorized or contraband materials generally cause material and substantial disruption to the school environment or present a threat to the health and safety of students, employees or visitors on the school premises. Items of contraband may include, but are not limited to, controlled substances such as marijuana, cocaine, amphetamines, barbiturates, apparatus used for the administration of controlled substances, drug look-alikes, alcoholic beverages, tobacco, weapons, explosives, poisons, dangerous objects or stolen property. Such items are not to be possessed by a student anywhere on school premises, on any school property, or at school activities.

All school property is held in public trust by the Board of Education. The furnishing of a locker, desk or other facility or space owned by the District and provided as a courtesy to a student, even if the student provides the lock for it, will not create a protected student area as defined by Iowa Code Chapter 808A and will not give rise to an expectation of privacy with respect to the locker, desk or other facility or space. School officials may conduct periodic inspections of all, or a randomly selected number of school lockers, desks and other facilities or spaces owned by the District and provided as a courtesy to a student. Locker inspections will occur in the presence of the student whose locker is being inspected or in the presence of at least one other person. Periodic inspections of school lockers, desks and other facilities or spaces owned by the District and provided as a courtesy to a student may be conducted using a drug-sniffing animal. A drug-sniffing animal may not be used to search the body of a student.

All searches of individual students and individual protected student areas must be based on a reasonable suspicion that the search will produce evidence of the student's violation of the law or a school rule or regulation, and be reasonable in scope to the circumstances which gave rise to the need for the search. The search must be conducted in a manner which is reasonably related to the objectives of the search and which is not excessively intrusive in light of the age and gender of the student and the nature of the infraction. The search of the body of a student by a school official must be conducted by a school official of the same sex as the student. Strip searches and body cavity searches are prohibited. If a student is not present at the time a search of a protected student area is conducted, the student shall be informed of the search either prior to or as soon as is reasonably practicable after the search.

It will be the responsibility of the Superintendent or his/her designee to develop administrative regulations regarding this policy.

It will be the responsibility of the Superintendent or his/her designee to insure that the student search rule is published in the student handbook and to provide written notice at the beginning of each school year to all students and students' parents, guardians, or legal custodians that school

Approved 11-24-86 Reviewed 6-24-02 Revised 03-11-13

officials may conduct, without prior notice, periodic inspections of school lockers, desks, and other facilities or spaces that are owned by the District and provided as a courtesy to students.

For purposes of this policy, "school officials" means licensed school employees, and includes unlicensed school employees employed for security or supervision purposes.

Approved 11-24-86 Reviewed 6-24-02 Revised 03-11-13

Administrative Search and Seizure Checklist

What factors cause you to have a reasonable suspicion that the search of this student or his or her effects, locker or automobile will turn up evidence that the student has violated or is violating the law or the rules of the school?

Eyewitness account.

By whom: \_\_\_\_\_  
Date/Time: \_\_\_\_\_  
Place: \_\_\_\_\_  
What was seen: \_\_\_\_\_

Information from a reliable source.

From whom: Student A  
Time received: April 30  
How information was received: Written statement from a student  
Who received the information: Mr. Kahant & Mr. Stearns  
Describe information: Mr. \_\_\_\_\_ was identified as someone that has been selling prescription medications

Suspicious behavior. Explain.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Child's past history. Explain.

None  
\_\_\_\_\_  
\_\_\_\_\_

Date and Time of Search: April 30 1:00PM  
Location of search: Office  
Student told purpose of search: locate controlled substances  
Consent requested: yes

Was the search you conducted reasonable in terms of scope (objectives and intrusiveness):

What are you searching for: prescription medication  
Sex of the student: male  
Age of the student: 15  
Nature of the alleged infraction: SD2.8 selling controlled substance  
Urgency of the situation: yes  
What type of search is being conducted: Locker and pockets

Approved 11-24-86 Reviewed 6-24-02 Revised 03-11-13

Who is conducting the search: Mr. Kuhmert  
Position: Principal Male  Female   
Witness(s): Mr. Steins

Explanation of Search.

Describe the item and location of the search: none / office

Describe exactly what was searched: person and locker / backpack

What did the search yield: nothing

What was seized: nothing

Were any materials turned over to the police: no

Were parents notified of the search including the reason for it and the scope: yes

[Signature]  
Signature of person completing this form

A completed copy of this form must be submitted to the Superintendent with documents supporting a recommendation for expulsion.

**Behavior Detail Report**  
**Office Referral/Student Response**

### Behavior Detail Report

Name: \_\_\_\_\_ ) Grade: 09

14-15 VS

Total Demerits: 0      Total Points: 0

Date: 05/22/2015		Time: 7:52 AM	
Submitted By: Kuhnert, Mitch			
Alignment: Discipline		Damages: 0.00	
Location: Other		Location Description:	
Context: Unspecified		Context Description:	
Incident Details: _____ was placed on suspension because of suspected violation of school board policy 502.8 pending a school board hearing. Suspension was set for the remainder of the school year which was 9 days.			
Event: Controlled substance sale/distribution		Role: Offender	Demerits/Points: 0
Injury: No Injury		Injury Description:	
Medical Service Provided: No			
Role Details:			
Resolution 1:		Out of School Suspension *	
Assign Date:		05/21/2015	
Start Date:		05/22/2015	Start Time: 8:20 AM
End Date:		06/03/2015	End Time: 3:20 PM
Behavior Admin Staff Name: Kuhnert, Mitch			
Duration: 9.00 Days			
Resolution Details:			

12-13 ST

Total Demerits: 0      Total Points: 0

Date: 05/20/2013		Time: 2:07 PM	
Submitted By: Miller, Timothy			
Alignment: Discipline		Damages: 0.00	
Location: Gym/Locker Room		Location Description:	
Context: During class		Context Description:	
Incident Details: Hit another student----that student had been harassing him.			
Event: Fighting		Role: Offender	Demerits/Points: 0
Injury: No Injury		Injury Description:	
Medical Service Provided: No			
Role Details: Hit another student.			
Resolution 1:		In School Suspension *	
Assign Date:		05/20/2013	
Start Date:		05/20/2013	Start Time: 2:23 PM
End Date:		05/21/2013	End Time: 2:35 PM
Behavior Admin Staff Name: Miller, Timothy			
Duration: 1.50 Days			
Resolution Details:			

**Attendance Codes  
Disciplinary Dispensation**

AP: Alternative Placement	This is used if a student is still enrolled here but taking classes elsewhere such as short term stay at Lutheran Hospital (psych). This code is exempt and will not count against students' attendance. This can only be used for a maximum of 30 days, then enrollment must be ended.
CM: Contact Made (non-guardian)	If a sibling or someone that is a minor calls in for a student.
DP: Detained by Parent	Parent keep student home for various reasons.
EF: Excused Family	Student is out of town or nothing on this list is applicable for their absence.
EH: Excused Hospital/Long Term Illness	Used if in hospital or has a long recovery such as surgery.
ER: Early Release	Parent takes student home early for reasons other than medical or ill.
ET: Excused Tardy	Student had a parent note to be tardy to school and or pass from teacher being tardy to class.
FF: Family Funeral	Out of school for a funeral or traveling to a funeral
FT: Field Trip	Used for students out of the building on a field trip.
IL: Illness	Parent/guardian calls in stating student is ill.
IT: In-Transition	If a student is transferring to another school and is no longer attending but we have not yet received a request for records, code that student's attendance as In Transition. This can be used for a maximum of two weeks then enrollment must be ended back to the last day of student attendance.
MD: Medical Excuse or Appointment	Student is out for a medical appointment
NC: No Parent Contact or Note	If a student is absent and parents have been called but there was no answer. Always leave a message if possible on voice mail and mark that in comments.
NU: Excused by Nurse	If a student has missed a class period due to being in nurses office.
PR: Principal/Office/Counselor	If a student has missed a class period due to being in the principal's office or counselors office.
RE: Religious Excuse	Student missing school due to religious holiday or observance.
SA: School Activity	Student missing class periods due to music tours, school sports, etc.
SC: Student Contact	Student contacted school in regards to absence - no parental contact.
SI: In School Suspension	Student in office for in school suspension.
SO: Out of School Suspension	Students out of school for suspension
TR: Truant	Used when parent cannot get student to come to school or student skips school.
UT: Unexcused Tardy	Student came to school late without phone call or note and or came to class late without pass.
UX: Unexcused Absence	Student skips class.
XP: Expelled	Student has been expelled from school. Eventually students' enrollment will be ended.

## District Behavior Event Types (previously known as Offense Codes)

Code	Title	Description
ALI	Alcohol Influence	Under the influence of alcohol
ALP	Alcohol Possession	Possession of alcohol.
ALS	Alcohol Sale or Distribution	Selling, disturbing, or intent to distribute alcohol to other students.
ALT	Altercation	Physical and/or verbal confrontation between two individuals. However, it is NOT traditional fist fighting.
BNC	Bad Note or Bad Call	Forgery/impersonation in the form of a note or phone call for the purpose of deceiving the office regarding an absence.
CP	Cheating/Plagiarism	Students caught cheating on class work/tests, also plagiarism.
CSI	Controlled substance influence	Under the influence of drugs.
CSP	Controlled substance possession	In possession of an illegal drug.
CSS	Controlled substance sale/distribution	Selling, distributing, or intent to distribute an illegal drug.
DPP	Drug Paraphernalia Possession	Possession of drug related paraphernalia, but not possession of drugs.
DR	Discipline Referral	Traditional classroom disciplinary situation referred by classroom teacher.
DST	Disturbance or Inciting a disturbance	Causing or inciting a disturbance among a group of students.
ELC	Electronic Devices	Improper use or abuse of a personal electronic device. Using cell phone during class or using camera phone in restricted area.
EXT	Extortion	Students who gains favors or material items from others by making wrongfully threatening or inflicting harm against others.
FGT	Fighting	Physical fighting between students
FSD	Failed to Stay for Detention	Used to track students who did not stay for detention.
GAM	Gambling	Students involved in illegal gambling on school property.
HAR	Harassment or Bullying	Verbal harassment towards a specific student and/or group of students.
INC	Inappropriate Clothing	Inappropriate clothing.
INS	Insubordination or disrespect	Student resists repeated directions/orders.
IPS	In presence of a prohibited substance	NOT under the influence, NOT in possession, but in found in the presence of others with a prohibited substance such as drugs or alcohol.
NCO	No Check Out	Student has a valid note/call for an absence; however, they fail to check in or out of the school office.
OB	Out of Building	Student is outside the building, yet on school grounds without permission.
OSP	Off School Property	Student is off school grounds without permission.

OTH	Other	Used for type of behavioral event not covered by the other categories.
PK	Parking Violation	Any form of parking violation.
PRO	Profanity	Inappropriate verbal comments and/or gestures.
PRS	Profanity at Staff	Inappropriate verbal comments and/or gestures at school staff members.
PSF	Physical abuse of staff member	A student who has physical pushed/shoved or in any other way made physically aggressive motion towards a staff member.
SMK	Smoking	Student is found using cigarettes and/or smokeless tobacco on district property.
TAR	Excessive Tardies	Used for students with excessive tardies.
TEC	Technology misuse	Abuse of district owned technology, misuse of Internet, using other student's passwords.
THF	Theft - stealing or possession	Theft of district and/or another person's property.
TOB	Possession of tobacco	Student is in possession of cigarettes and/or smokeless tobacco.
TOV	Threat of violence	Students making verbal and/or written threats of violence towards any another individual.
UX	Unexcused absence	School absence without parent and/or school permission.
VAN	Vandalism	Defacing or destruction of someone else's property or possession.
WPN	Weapons Violation	Possession of weapons or dangerous objects on school property.

## District Behavior Resolution Types (previously known as Discipline Codes)

Code	Title	Description
COU	Referral to counselor or counseling	Student is referred to building counselor and/or outside counseling.
DET	Detention	
DFC	Drop from Class	When a behavioral action by a student results in them being dropped from a specific course.
E	Expulsion *	Uses the state required "E" for code.
FIN	Fine	Students/family are assessed a financial fine.
I	Removal to interim ed setting (spec ed only) *	Uses the state required "I" for code. Used ONLY for special education students who are removed to an interim ed setting as a part of disciplinary action determined by the site administration. MUST be limited to a maximum of 10 total days per year per student. For example, if a student is restricting from riding the bus home, this counts as the 1 <sup>st</sup> day.
INT	Intervention	
ISS	In School Suspension	
LTI	Loss of technology use	Students might lose computer privileges and/or Internet access.
LP	Loss of privileges	Student losses privileges such as removal from specific school activities.
LOP	Loss of Parking	Student is no longer allowed to park at school site.
OTH	Other action	
PTS	Suspension Points	
RES	Restitution	Alternative resolution community service, attending support meetings.
S	Out of School Suspension *	Uses the state required "S" for out of school suspension. When the resolution is an out of school suspension, you must also fill out the removal code.
WRN	Warning	A written warning is provided to both student and parents.

**Extenuating Circumstances  
(including police involvement, reports,  
damage costs, etc)**

# 2014-15 BACK TO SCHOOL TOOLKIT ACKNOWLEDGEMENT OF REVIEW

WEST DES MOINES  
COMMUNITY  
SCHOOLS

Please sign and submit a form for each child attending the West Des Moines Community Schools.

By signing below, I acknowledge I have reviewed the West Des Moines Community School District's required registration information referred to as the Back to School Toolkit, located on the district website at <http://toolkit.wdmcs.org> which contains the following:

## INFORMATION IN THE TOOLKIT

- 2014-15 Handbooks
  - » Valley High School
  - » Walnut Creek Campus
  - » Valley Southwoods Freshman High School
  - » Indian Hills Junior High
  - » Stillwell Junior High
  - » Elementary
- Legal Notices Included in Handbooks
  - » Non-Discrimination Statement
  - » Academic Suspension Appeal
  - » Access to Student Records
  - » Allegations of Abuse
  - » Asbestos Notification
  - » Automobile Insurance Coverage
  - » Equal Access
  - » Equal Education Opportunities: Prohibition of Discrimination, Harassment and Bullying Toward Students (Board Policy 502.2)
  - » Non-Discrimination and Equity Information
  - » Equity Statement (Board Policy 101.2)
  - » Affirmative Action - Equal Employment Opportunity (Board Policy 401.1)
  - » Equity Grievance Procedure (Board Policy 402.10)
  - » Open Enrollment
  - » Physical Restraint, Physical Confinement and Detention of Students (Board Policy 503.2)
  - » Protection of Pupil Rights Amendment (PPRA)
  - » Public Conduct on School Premises (Board Policy 909)
  - » Release of Information and Photographs
  - » Search and Seizure
  - » Student Activity Conduct Code Statement of Philosophy
  - » Student Discipline (Board Policy 503.1)
  - » Teacher Qualifications
  - » Video/Audio Monitoring Systems and Stop Arm Cameras on School Buses
  - » Waiver of Student Fees
- Nutrition Services Information
  - » 2014 Free/Reduced Application
  - » Instructions for Completing the Free/Reduced Application
  - » Q & A on Free/Reduced Application
  - » Diet Modification Request Form
  - » Food Substitutions
- Forms
  - » Do Not Release Form (sign and return only if you do NOT wish for your child's name, photo, etc. to be released by the district)
  - » Emergency Dismissal Form
  - » Volunteer Form
  - » Volunteer Driver Form
- Brochures
  - » Human Growth and Development Brochures
  - » Lice Brochure (from Polk County Health Dept.)
  - » Preventing Sexual Abuse Brochure
- District Information/Brochures
  - » 2014-15 and 2015-16 Calendar at a Glance
  - » District Brochure
  - » Community Education Information

This information is provided to parents/guardians in accordance with state and federal laws.

Student Name \_\_\_\_\_

Grade 9<sup>th</sup>

School Valley Southwoods

Parent Name \_\_\_\_\_

Parent Signature \_\_\_\_\_

Date 8/7/14

**West Des Moines Community School District  
9th Grade Health Update  
to be completed by parents**

In order to bring your child's health record up to date, please complete this form. This information is CONFIDENTIAL but may be shared with appropriate school personnel when deemed necessary.

Student's Name: \_\_\_\_\_ ID #: \_\_\_\_\_ Date of Birth: 3-17  
 Address: \_\_\_\_\_ IA Zip: 50245  
 Name Of Parent/Guardian: \_\_\_\_\_ Home Phone #: \_\_\_\_\_  
 Child lives with: Mother  Father  Step-Mother \_\_\_\_\_ Step-Father \_\_\_\_\_ Grandparent \_\_\_\_\_ Other \_\_\_\_\_  
 Business Phones: Father \_\_\_\_\_ Mother \_\_\_\_\_  
 Cell Phones: Father 515 Mother 515

In case of emergency, if parents cannot be reached, please contact:

1. Name: 31 Relationship: FLUGSO Phone #: 1  
 2. Name: \_\_\_\_\_ Relationship: \_\_\_\_\_ Phone #: \_\_\_\_\_

These people have agreed to assume this responsibility.

Dr.'s Name DR. LEONIS Phone #: 221.0112 Date of last physical 8/11/14

Should it become necessary, take my child to WELLY Hospital.

Present or Past Health Problems or Illness:

	Yes (✓)	No (✓)	Explain		Yes (✓)	No (✓)	Explain
Food Allergies		<input checked="" type="checkbox"/>		Learning Problems		<input checked="" type="checkbox"/>	
Medicine Allergies		<input checked="" type="checkbox"/>		Vision Problems		<input checked="" type="checkbox"/>	
Other Allergies	<input checked="" type="checkbox"/>		<u>588ms</u>	Speech problems		<input checked="" type="checkbox"/>	
Asthma, Wheezing		<input checked="" type="checkbox"/>		Hearing Problems		<input checked="" type="checkbox"/>	
Breathing Problems		<input checked="" type="checkbox"/>		Heart Problems		<input checked="" type="checkbox"/>	
Skin Problems		<input checked="" type="checkbox"/>		Kidney Problems		<input checked="" type="checkbox"/>	
Diabetes		<input checked="" type="checkbox"/>		Hospitalized		<input checked="" type="checkbox"/>	
Seizures		<input checked="" type="checkbox"/>		Serious Illness		<input checked="" type="checkbox"/>	
Dental Problems		<input checked="" type="checkbox"/>		Serious Accident		<input checked="" type="checkbox"/>	
Freq. Ear Infections		<input checked="" type="checkbox"/>		Surgery		<input checked="" type="checkbox"/>	
Freq. Throat Infections		<input checked="" type="checkbox"/>		Other		<input checked="" type="checkbox"/>	

Does your child take any medications regularly? If so, include name, frequency, and reason for use.

ADDAAM - TWICE A DAY

Does your child have any activity restrictions? NO

Does your child use any assistive devices? (hearing aid, glasses, braces, etc.) GLASSES

Does your child have any emotional, social, or other conditions that might affect his/her school performance?  
NO

I give permission to the School Nurse to give my child the appropriate dose of the following medications when needed: (✓)  Ibuprofen (Advil/Motrin) (✓)  Acetaminophen (Tylenol) (✓)  Tums

If a medical emergency should arise, I agree to assume full financial responsibility for my child's medical care. I understand I am responsible for updating this information as needed.

Parent Signature \_\_\_\_\_ Date 8/7/14

Holeman, Luann

---

From: [REDACTED]  
Date: Thursday, January 29, 2015 7:11 AM  
To: Holeman, Luann  
Subject: [REDACTED]

Hi Luann

I won't be able to pick up [REDACTED] medicine until Saturday. We are out at home. So would you please plan to give [REDACTED] his morning dose today and tomorrow?

I will send [REDACTED] to your office when he arrives at school. Thanks so much for your help!

Feel free to call me if you have questions [REDACTED]

Thank you!



WEST DES MOINES COMMUNITY SCHOOL DISTRICT

AUTHORIZATION for DAILY MEDICATION ADMINISTRATION

Student's Name [redacted] School V SW  
Name of Medication D-Amphetamine Salt Com XR 20mg  
Amount to be Given 1 capsule \*\*Time lunch  
Reason for Medication ADD

I request the above pupil be given this medication while in school according to the prescription or nonprescription instructions. The pupil has experienced no side effects from the medication. I agree that school personnel may contact the provider as needed and that medication information may be shared with school personnel who need to know. Prescription medication must be in its original prescription bottle. Other medication should be in the original container and labeled with the student's name.

I understand the law provides that there shall be no liability for civil damages as a result of the administration of medication/health care where the person administering the medication/procedure acts as an ordinarily reasonably prudent person would under the same or similar circumstances. I agree to pick up remaining medication or it will be properly destroyed.

- \* Medication will be administered by a registered nurse or other qualified designated personnel.
- \* Please remind your child that he/she is responsible for requesting the medication at the appropriate time.

- \* This medication **WILL NOT** be sent on Field Trips unless indicated by parent.
- \* Initial here if your child needs this medication sent on field trips \_\_\_\_\_

Parents/Guardian Signature X T Date 08/25/14

Daytime Telephone Number(s) 515-[redacted]

REQUIREMENTS for SAFE MEDICATION ADMINISTRATION  
WEST DES MOINES COMMUNITY SCHOOL DISTRICT

Only those medications that are necessary for a student's medical care will be administered at school. Most medications that are needed even up to three times a day can be given at home and should not be sent to school.

Medication that is needed for known emergencies, such as asthma or serious allergic reactions, may be stored at school.

When a student's medicine must be stored or administered at school, Iowa law requires both:

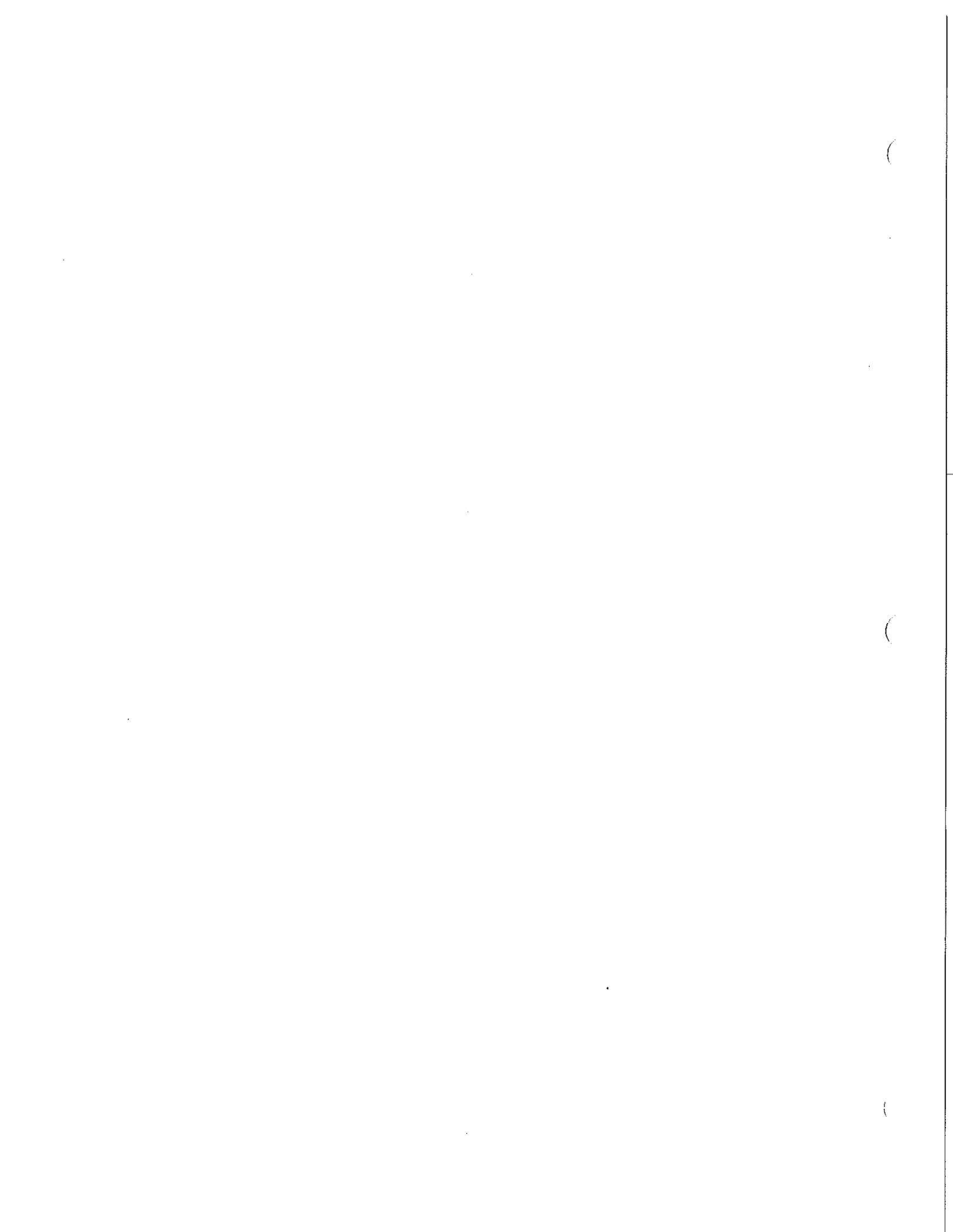
- MEDICATION in its ORIGINAL, LABELED CONTAINER (For prescription medication, ask the pharmacist to prepare 2 labeled containers, marking one for "SCHOOL USE" so you have proper containers both at home and school.)
- WRITTEN REQUEST and DIRECTIONS

Check to make sure that the container includes ALL the following information:

- Student's name (on pharmacy label or hand-printed on a nonprescription container)
- Name of medication
- Directions
  - \* Dose or Amount
  - \* Time(s) of day or when to take it
  - \* How the student takes the medication, for example, by mouth, by inhaler
- Current Date

Revised 3/01

68





WEST DES MOINES  
COMMUNITY  
S C H O O L S

Dr. Lisa Remy,  
Superintendent

Learning Resource Center  
3550 Mills Civic Parkway  
West Des Moines, IA 50265

Phone (515) 633-5000  
Fax (515) 633-5099

www.wdmcs.org  
www.facebook.com/wdmcs  
www.twitter.com/wdmcs

June 9, 2015

Re: \_\_\_\_\_ and \_\_\_\_\_ K \_\_\_\_\_

\_\_\_\_\_ lowa

Dear Mr. and Mrs. \_\_\_\_\_

The West Des Moines Community Schools Board of Education voted on May 27, 2015 to place your son \_\_\_\_\_ on a long-term suspension for the remainder of the current school year. Pursuant to Board Policy 502.8, he is expelled from school for the first semester of the 2015-2016 school year. Thereafter, he is suspended from school for the first quarter of the second semester of the 2015-2016 school year. The minutes of that meeting approved by the Board on June 8, 2015 are enclosed.

Also enclosed are the Decision of the Board of Directors, with additional stipulations. \_\_\_\_\_ may apply for readmission as provided in the Decision of the Board of Directors.

If you have any questions, please contact Valley Southwoods Freshman High School Principal Mitch Kuhnert at 633-4500.

Sincerely,

Elaine Watkins-Miller  
Secretary, Board of Education

Cc: Mitch Kuhnert  
Carol Seid  
Dr. Lisa Remy

The West Des Moines  
Community School District  
will be a caring community  
of learners that knows  
and lifts every child.  
We will inspire joy in learning.  
Our schools will excel  
at preparing each student  
for his or her life journey.

**EXHIBIT B**

BEFORE THE BOARD OF DIRECTORS OF THE  
WEST DES MOINES COMMUNITY SCHOOL DISTRICT

In Re the Expulsion of

M - K -

DECISION OF THE  
BOARD OF DIRECTORS

Statement of the Case

The Board of Directors of the West Des Moines Community School District (the "Board") held a hearing on May 27, 2015, to decide whether to expel Valley Southwoods student [redacted]. [redacted] appeared at the hearing and was accompanied by his parents [redacted] and [redacted]. He was represented by attorney David Brick. The Administration members of the District present to support the recommendation to suspend the student included the Superintendent, Dr. Lisa Remy, Associate Superintendent Carol Seid, Valley Southwoods Principal Mitch Kuhnert and Assistant Principal Bryan Stearns. The administration was represented by attorney Kristy Latta. The members of the Board present were Elizabeth Brenan, Milton Cole, Dr. Vickie Poole and Board President David Brown. The Board was assisted by attorney Jeffrey Krausman. The proceedings were recorded by Board Secretary Elaine Watkins-Miller.

Findings of Fact

[redacted] is a fifteen year old, regular education<sup>1</sup> ninth grader at Valley Southwoods. On April 30, 2015, the Valley Southwoods administration received a report from a parent of a student at the school that students were selling or using the drug Adderall at school. The party providing the information sought to remain anonymous. Based upon the information provided, the administration, including Principal Kuhnert, Assistant Principal Stearns, and Assistant Principal Barbara Goetschel, began interviewing students. In the course of these interviews, [redacted] was identified by two persons (identified at the hearing as Students A and D) as someone who had possessed or sold Adderall. [redacted] was questioned on April 30 but denied selling or possessing pills. His locker and person were searched by the administration but no contraband was found.

On May 8, 2015 Student B submitted a revised statement to the administration specifically identifying [redacted] as a person who sold pills to her. In Student B's initial interview on April 30, 2015 she had not identified [redacted] as the source of pills. She stated that she had omitted M. [redacted] actions from her earlier statement because she did not want to get a friend in trouble.

<sup>1</sup> As of the date of the hearing, [redacted] had not been evaluated for special education services or a "504" plan, nor had any request for such an evaluation been made. At the hearing it was acknowledged that [redacted] was being treated for ADHD, with medications disbursed by the school nurse. Since the date of the hearing, the parents have requested an evaluation. To the extent that any subsequent determination affects this decision, the board shall receive a revised recommendation from the administration to amend this decision as necessary.

Her revised statement also eliminated Student B as distributor of the pills and thereby eliminated her risk of expulsion.

On May 12, 2015 the administration received copies of "screen shots" from Student B's mobile phone which included text messages from " " to student B. At the hearing admitted that he was the person who had sent the texts. In those texts " agreed to sell Student B three pills, although he was currently "all out" when he received her request, M texted that he was "buying some more soon though." He promised to bring Student B "2 20's and a 30" the next day. ( stated at the hearing that he never delivered pills to Student B despite her May 8<sup>th</sup> statement and the text messages. He claimed he was just being nice to a friend by saying he would help her out.

On May 15, 2015, Mr. Kuhnert sought to interview " again. " asked for his parents so the interview was halted and the parents called. Mr. " came to the school and spoke to Mr. Kuhnert, claiming the color described by Student B for the yellow pills was wrong, but the blue pill description was correct. Mr. ( also asserted that screen shots could be faked.

(At hearing there was some evidence produced regarding what kind of capsules Adderall comes in compared to the "yellow" capsule description given by Student B. The board received color photos of capsules, one of which is described as "orange" but appeared very close to a yellow color.)

After further consultation among the administrative team and with legal counsel, the district decided to move forward with discipline regarding the allegations concerning " On May 21, 2015 he was suspended from school for the five days of school remaining, and his parents were orally notified of the May 27 suspension hearing before the Board. On May 22, 2015, a packet of material was delivered to the parents of ". The packet was also presented at the hearing and received into evidence.

The District maintains a Discipline Policy (503.1) which prohibits the possession of a controlled substance or controlled substance look-alike. The policy grants the principal or designee the authority to suspend a student temporarily for up to ten school days.

Board Policy 502.7B specifies that students who possess any controlled substance other than medication properly prescribed to them are to be recommended for "removal from the school and placement in an alternate setting." Students placed in an alternate setting "must successfully participate in that program for 45 school days" for a first offense. The policy also establishes certain additional requirements that the student must meet to be readmitted to school.

Board Policy 502.8 prohibits the sale, attempted sale, and/or purchase or acquisition with the intent to sell or distribute any prohibited substance. A prohibited substance includes, among other things, a controlled substance such as Adderall, or a "look-alike substance, substitute or any substitute represented to be" a controlled substance. The policy further provides that "a student may be considered to have an intent to sell or distribute a prohibited substance if evidence or testimony is obtained...that a student intended to sell or distribute a prohibited substance."

#### Conclusions of Law

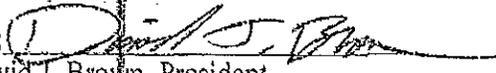
\_\_\_\_\_ has denied the allegations that he possessed or sold a controlled substance except by properly consuming his medication either at home or at the school nurses office. However, the text messages, taken in conjunction with the statements of the students, indicate an intent to distribute and actual distribution of a prohibited substance. The standard in a discipline case is a preponderance of the evidence, not proof beyond a reasonable doubt. \_\_\_\_\_ explanation of the text messages was not credible, and the statements of three others are persuasive. Student A's reports regarding other students have proved accurate to the degree that others she has named have admitted their participation in the conduct.

Pursuant to Board Policies 502.7B and 502.84 \_\_\_\_\_ is subject to a long term suspension and participation in an alternate setting for 45 days for possession, and expulsion for distribution or intent to distribute. The administration recommends expulsion for the entire 2015-2016 school year. The Board concludes that he should be suspended for the remainder of the 2014-2015 school year to obtain credit for the current semester's work, which the administration agrees is proper. He should then be expelled for the first semester of the 2015-2016 school year. He then should be suspended for the first quarter of the second semester and placed in an alternate educational setting. Thereafter he may be readmitted to the regular program.

#### Decision

\_\_\_\_\_ is hereby suspended from school for the remainder of the current school year. Pursuant to Board Policy 502.8, he is expelled from school for the first semester of the 2015-2016 school year. Thereafter he is suspended from school for the first quarter of the second semester of the 2015-2016 school year with the district to provide an educational placement in an educational program consistent with the district's practices.

During the periods of expulsion and suspension, \_\_\_\_\_ shall not be on school property or attend school events except as necessary to complete the alternate placement requirements or except as permitted in writing by the Superintendent or her designee. Upon completion of the expulsion and suspension period, an application for re-admittance must be approved by the board.

By:   
David J. Brown, President  
West Des Moines Community School District Board of  
Directors

**West Des Moines Community Schools  
Meeting Minutes**

**Special Board Meeting  
5/27/2015 6:00:00 PM  
Clive Room  
Learning Resource Center  
3550 Mills Civic Parkway, West Des Moines,  
IA 50265**

**Mission Statement**

Working in partnership with each family and the community, it is the mission of the district to educate responsible, lifelong learners so that each student possesses the skills, knowledge, creativity, sense of self-worth, and values necessary to thrive in and contribute to a diverse and changing world.

**Guiding Principles:** Continuous Improvement; Personalized Learning; Optimum Use of Resources; Integration; Diversity

**Shared Vision**

The West Des Moines Community Schools will be a caring community of learners that knows and lifts every child. We will inspire joy in learning. Our schools will excel at preparing each student for his or her life journey.

**Attendees - voting members**

David J. Brown	President
Elizabeth Brennan	Board Member
H. Milton Cole-Duvall	Board Member
Dr. Vicky Poole	Board Member

I. Call to Order

The meeting was called to order by President David J. Brown at 6:00 p.m.

II. Roll Call

III. Consent Agenda

Administration recommends approval of the consent agenda - including minutes, personnel, bills for payment, student trip requests, and facilities projects - as presented.

Motion made by: Elizabeth Brennan

Motion seconded by: H. Milton Cole-Duvall

Voting

Unanimously Approved

IV. Contracts

A. LRI

Administration recommends approving an updated 5-year Laser Resources, L.L.C. (LRI) contract beginning July 2, 2015, and ending June 30, 2020.

Motion made by: Elizabeth Brennan

Motion seconded by: Dr. Vicky Poole

Voting

Unanimously Approved

B. (c)3 Marketing/Love Scott & Assoc. - Visual Identity

Administration recommends approving the contract with (c)3 Marketing/Love Scott & Associates for the district's Logo/Visual Identity Suite.

Motion made by: Elizabeth Brennan

Motion seconded by: H. Milton Cole-Duvall

Voting

Unanimously Approved

- V. Request for Closed Session: Student Discipline (Iowa Code 21.5(1)(e))  
Administration requested to hold a closed session as provided by section 21.5 (1) (e) of the open meetings law to consider whether to suspend or expel a student. A roll call vote was taken. The closed session convened at 6:05 p.m.

Motion made by: Dr. Vicky Poole

Motion seconded by: Elizabeth Brennan

Voting

Unanimously Approved

- VI. Motion to Reconvene from Closed Session Into Regular Session  
Administration requested to reconvene the Board of Education from closed session into the regular meeting for the purpose of discussion and/or approval of a topic reviewed in closed session. A roll call vote was taken. The regular session was reconvened at 6:30 p.m.

Motion made by: Dr. Vicky Poole

Motion seconded by: Elizabeth Brennan

Voting

Unanimously Approved

- VII. Motion Concerning Student Discipline  
It was moved that a student be expelled from a school in the West Des Moines Community School District for the 2015-16 school year pursuant to the stipulations of the Consent Agreement which has been entered into by the student, the student's parents, and the Superintendent. Upon completion of the expulsion, an application for re-admission must be submitted and approved as provided in the Consent Agreement. The Secretary is directed to mail the Consent Agreement and a copy of the minutes of the Board action approving this motion to the student and the student's parents. A roll call vote was taken.

Motion made by: Elizabeth Brennan

Motion seconded by: Dr. Vicky Poole

Voting

Unanimously Approved

- VIII. Request for Closed Session: Student Discipline (Iowa Code 21.5(1)(e))  
The board recessed from 6:30 to 6:32 p.m.  
Administration requested to hold a closed session as provided by section 21.5 (1) (e) of the open meetings law to consider whether to suspend or expel a student. A roll call vote was taken. The closed session convened at 6:34 p.m.

Motion made by: Dr. Vicky Poole

Motion seconded by: Elizabeth Brennan

Voting

Unanimously Approved

- IX. Motion to Reconvene from Closed Session Into Regular Session

Administration requested to reconvene the Board of Education from closed session into the regular meeting for the purpose of discussion and/or approval of a topic reviewed in closed session. A roll call vote was taken. The regular session was reconvened at 6:56 p.m.

Motion made by: Dr. Vicky Poole

Motion seconded by: Elizabeth Brennan

Voting

Unanimously Approved

X. Motion Concerning Student Discipline

It was moved that a student be expelled from a school in the West Des Moines Community School District for the first semester of the 2015-16 school year pursuant to the stipulations of the Consent Agreement which has been entered into by the student, the student's parents, and the Superintendent. Upon completion of the expulsion, an application for re-admission must be submitted and approved as provided in the Consent Agreement. The Secretary is directed to mail the Consent Agreement and a copy of the minutes of the Board action approving this motion to the student and the student's parents. A roll call vote was taken.

Motion made by: Elizabeth Brennan

Motion seconded by: Dr. Vicky Poole

Voting

Unanimously Approved

XI. Request for Closed Session: Student Discipline (Iowa Code 21.5(1)(e))

The board recessed at 6:57 p.m. until 7:21 p.m.

Administration requested to hold a closed session as provided by section 21.5 (1) (e) of the open meetings law to consider whether to suspend or expel a student.

A roll call vote was taken. The closed session convened at 7:22 p.m.

Motion made by: Dr. Vicky Poole

Motion seconded by: Elizabeth Brennan

Voting

Unanimously Approved

XII. Motion to Reconvene from Closed Session into Regular Session

Administration requested to reconvene the Board of Education from closed session into the regular meeting for the purpose of discussion and/or approval of a topic reviewed in closed session. A roll call vote was taken. The regular session was reconvened at 10:05 p.m.

Motion made by: Dr. Vicky Poole

Motion seconded by: Elizabeth Brennan

Voting

Unanimously Approved

XIII. Motion Concerning Student Discipline

A student in the West Des Moines Community School District is hereby suspended from school for the remainder of the current school year. Pursuant to Board Policy 502.8, the student is expelled from school for the first semester of the 2015-2016 school year. Thereafter the student is suspended from school for the first quarter of the second semester of the 2015-2016 school year with the district to provide an educational placement in an educational program consistent

with the district's practices. Other stipulations are specified by the policy and outlined in the Board Decision. A roll call vote was taken.

Motion made by: Elizabeth Brennan

Motion seconded by: Dr. Vicky Poole

Voting

Unanimously Approved

- XIV. Request for Closed Session: Student Discipline (Iowa Code 21.5(1)(e))  
Administration requested to hold a closed session as provided by section 21.5 (1) (e) of the open meetings law to consider whether to suspend or expel a student. A roll call vote was taken. The closed session convened at 10:09 p.m.

Motion made by: Dr. Vicky Poole

Motion seconded by: Elizabeth Brennan

Voting

Unanimously Approved

- XV. Motion to Reconvene from Closed Session Into Regular Session  
Administration requested to reconvene the Board of Education from closed session into the regular meeting for the purpose of discussion and/or approval of a topic reviewed in closed session. A roll call vote was taken. The regular session was reconvened at 12:43 p.m.

Motion made by: Dr. Vicky Poole

Motion seconded by: Elizabeth Brennan

Voting

Unanimously Approved

- XVI. Motion Concerning Student Discipline  
A student in the West Des Moines Community School District is hereby suspended from school pursuant to Board Policy 502.7B for a period of 45 school days for placement in an alternate setting beginning on May 28, 2015. Other stipulations are specified by the policy and outlined in the Board Decision. A roll call vote was taken.

Motion made by: Elizabeth Brennan

Motion seconded by: Dr. Vicky Poole

Voting

Unanimously Approved

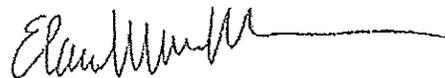
- XVII. Adjournment  
The meeting was adjourned at 12:45 p.m.

Motion made by: Dr. Vicky Poole

Motion seconded by: H. Milton Cole, Duvall

Voting

Unanimously Approved



Secretary

RECEIVED

OCT 19 2015

BEFORE THE STATE BOARD OF THE  
IOWA DEPARTMENT OF EDUCATION

DEPARTMENT OF  
EDUCATION

<p><i>In re Expulsion of M.K.</i></p> <p>R.K., Appellant,</p> <p>v.</p> <p>WEST DES MOINES COMMUNITY SCHOOL DISTRICT, Appellee.</p>	<p>Admin. Doc. No. 5015</p> <p>APPELLEE'S REPLY TO APPELLANT'S BRIEF</p>
---	--

COMES NOW Appellee West Des Moines Community School District (the "School District"), pursuant to 281 Iowa Administrative Code Section 6.17(6), and submits this reply brief in response to the briefs filed by the Appellant with regard to his appeal of the proposed decision of the Administrative Law Judge issued on September 4, 2015, in the above-referenced case.

**I. The Appellant Failed to Comply with Iowa Code Section 290.1**

The Appellant simply cannot deny that he failed to comply with the requirements stated in Iowa Code Section 290.1 for initiating an appeal to the Iowa State Board of Education.

Iowa Code Section 290.1 states:

An affected pupil, or the parent or guardian of an affected pupil who is a minor, who is aggrieved by a decision or order of the board of directors of a school corporation in a matter of law or fact, or a decision or order of a board of directors under section 282.18, subsection 5, may, within thirty days after the rendition of the decision or the making of the order, appeal the decision or order to the state board of education; the basis of the proceedings shall be an affidavit filed with the state board by the party aggrieved within the time for taking the appeal, which affidavit shall set forth any error complained of in a plain and concise manner."

(Emphasis added.) The Iowa Department of Education's administrative rules for appeals likewise require an affidavit to be filed, stating appeals "shall be made in the form of an affidavit, unless an affidavit is not required by the statute establishing the right of appeal . . . ." 281 Iowa Admin. Code § 6.3(1) (emphasis added).

There is no question that the express language of both the statute and the regulations requires that an appeal to the State Board be in the form of an affidavit.

Iowa law defines an affidavit as "a written declaration made under oath, without notice to the adverse party, before any person authorized to administer oaths within or without the state." Iowa Code § 622.85; *see also Black's Law Dictionary* (9th ed. 2009) (defining affidavit as "[a] voluntary declaration of facts written down and sworn to by the declarant before an officer authorized to administer oaths"). Under this definition, a document which has not been sworn to under oath before an authorized administering officer is not legally sufficient to be considered an affidavit. *Farmers State Sav. Bank v. J.B.H. Enterprises*, 561 N.W.2d 836, 838 (Iowa App. 1997).

The reason for the requirement of an affidavit is not insignificant. It is to show that the appealing party was sworn under oath or otherwise certified the truth of the statements being made. *See Dalbey Bros. Lumber Co. v. Crispin*, 12 N.W.2d 277, 279-80 (Iowa 1943) ("The purpose of an oath [under which an affidavit is made] is to secure the truth. . . . While a large liberty is given to the form of the oath, some form remains essential. Something must be present to distinguish between the oath and the bare assertion. An act must be done and clothed in such form as to characterize and evidence it. This is so for the double reason that only by some unequivocal form could the sworn be distinguished from the unsworn averment . . .").

Beyond question, the Appellant did not file an affidavit as expressly required by Iowa Code Section 290.1. Instead, he filed a letter with attachments. The Appellant's letter states that the letter and attachments "are the appeal of [M.K.] from the decision of the [School District] Board." The Appellant's letter and attachments are not notarized by a notary public, and do not contain any other indication that the declarations of the Appellant were sworn to and made under oath by the Appellant before an authorized administering officer. Nor do the letter and attachments contain any certification under penalty of perjury, in lieu of a sworn statement. See Iowa Code § 622.1 (providing for attestation of a matter by an unsworn written statement if that statement recites that the person certifies the matter to be true under penalty of perjury under the laws of Iowa, states the date of the statement's execution, and is subscribed by that person).

Without being sworn to and made under oath by the Appellant before an authorized administering officer, the letter and attachments are not legally sufficient to be considered an affidavit. *Farmers State Sav. Bank v. J.B.H. Enterprises*, 561 N.W.2d 836, 838 (Iowa App. 1997). The foregoing authorities make this finding obvious. The School District objects to the Appellant's continued and repeated characterizations of the letter and attachments as an affidavit when, in fact, they are plainly not.

Therefore, the Appellant undeniably failed to comply with the requirements stated in Iowa Code Section 290.1 for initiating an appeal to the Iowa State Board of Education.

**II. The Appellant's Failure to Comply with Iowa Code Section 290.1 Requires the Appeal be Dismissed for Lack of Jurisdiction**

An administrative agency only has such jurisdiction and authority as expressly conferred by statute or necessarily inferred from the power expressly granted. *Northwestern Bell Telephone Co. v. Iowa Utilities Bd.*, 477 N.W.2d 678, 682 (Iowa 1991). As a general rule,

statutory requirements as to appeal are strictly construed. *Crawford v. Iowa State Highway Commission*, 76 N.W.2d 187, 191 (Iowa 1956).

The Iowa State Board of Education has held that compliance with the requirements of Iowa Code Section 290.1 is necessary for it to have jurisdiction over an appeal made pursuant to that statute. *In re Edward Zaccaro, et al.*, 13 D.o.E. App. Dec. 126, 128-29 (April 1996). The Iowa Supreme Court long ago determined that the affidavit is “[t]he basis of the appeal” and is how the Iowa State Board of Education “obtain[s] jurisdiction” under Iowa Code Section 290.1. *Sanderson v. Board of School Directors of Lincoln Tp., Winneshiek County*, 234 N.W. 216, 218-19 (Iowa 1931).

Therefore, it follows that the Appellant’s failure to comply with the requirement for an affidavit means that he did not perfect an appeal under Iowa Code Section 290.1, and thus no jurisdiction lies for the Iowa State Board of Education to hear the appeal. To hold otherwise would be in direct contravention of the statute.

### III. The Appellant’s Arguments Are Without Merit

The Appellant makes a myriad of inconsistent arguments in an attempt to distract from the straightforward conclusion that the failure to comply with Iowa Code Section 290.1 requires the appeal be dismissed for lack of jurisdiction.

First, the Appellant appears to argue that because an affidavit is not required to appeal the proposed decision of the Administrative Law Judge, it must not be “so imperative” to comply with that requirement under Iowa Code Section 290.1. This argument misses the point. An affidavit is expressly required to initiate an appeal under Iowa Code Section 290.1. The Appellant may disagree with the need for that requirement, but that is irrelevant. The School

District did not set the requirements for appeals before the Iowa State Board of Education; it is merely seeking compliance with them.

The Appellant also tries to say that the affidavit under Iowa Code Section 290.1 does not require a notarized signature because such a specification is "noticeably absent." This is a feeble argument. By definition, an affidavit is a written declaration made under oath. Iowa Code § 622.85. The rules do not spell out the requirement for a notary acknowledgement or certification under penalty of perjury because that is precisely what is meant by an affidavit. The Appellant's letter and attachments are deficient not only because they are missing a notary acknowledgement or certification under penalty of perjury, but, more fundamentally, because the Appellant does not allege that they were sworn to and made under oath or certified under penalty of perjury.

The Appellant also claims that his statements were somehow verified through the signature of his counsel, who is an attorney and notary public. However, again, the Appellant does not allege that he (or his counsel) swore under oath, or certified under penalty of perjury, to the truth of the statements contained in the letter and attachments. Therefore, they are merely bare assertions insufficient to be considered an affidavit. *Farmers State Sav. Bank v. J.B.H. Enterprises*, 561 N.W.2d 836, 838 (Iowa App. 1997).

In spite of all of these arguments, the Appellant admittedly knew that Iowa Code Section 290.1 required an affidavit. The Appellant just chose not to comply with this requirement. In a footnote in the letter and attachments, the Appellant directed the Iowa State Board of Education that, "despite the nomenclature attached thereto, [the letter and attachments] should be construed as [M.K.]'s 'Affidavit' needed to appeal the [School District] Board's decision as required by Iowa Code Section 290.1." However, the Iowa State Board of Education is not able to acquiesce to the Appellant's directive, as it "cannot minimize the strict

requirements of [Iowa Code Section 290.1], requiring an affidavit.” See *Farmers State Sav. Bank*, 561 N.W.2d at 838 (“As the affidavit . . . was insufficient, the requirements of [the applicable statute] were not satisfied, [and the rights in relation to the applicable statute were not affected]”).

#### IV. The Relevant Legal Authority Supports the Proposed Decision of the Administrative Law Judge

As stated above, the Iowa Supreme Court long ago determined that the affidavit is “[t]he basis of the appeal” and is how the Iowa State Board of Education “obtain[s] jurisdiction” under Iowa Code Section 290.1. *Sanderson v. Board of School Directors of Lincoln Tp., Winneshiek County*, 234 N.W. 216, 218-19 (Iowa 1931). Thus, the requirement of an affidavit is most definitely jurisdictional.

The requirement of an affidavit in Iowa Code Section 290.1 may be “procedural” in nature as the Appellant argues, but it is nonetheless a jurisdictional prerequisite. As such, the requirement of an affidavit may not be waived by the Iowa State Board of Education, just as it may not waive the “procedural” requirement that an appeal be filed within thirty days of the School District’s decision. See *Brown v. Public Employment Relations Bd.*, 345 N.W.2d 88, 94 (Iowa 1984) (“An administrative agency may not enlarge its powers by waiving a time requirement which is jurisdictional or a prerequisite to the action taken.”)

The legal authority cited by the School District supports this notion. In particular, the School District points to legal precedent for this case that is directly on point. The question presented by this appeal has already been considered in *Rosa v. West Des Moines Community School District*, Case No. CV 6862 (Polk County, Iowa 2008). In that case, upon petition for judicial review, the court upheld the administrative law judge’s dismissal of an appeal to the State Board because the appeal did not constitute an “affidavit” as required by the rules, in part

because it was not notarized. The court explained that the administrative law judge in that case had no authority to excuse the failure to comply with the statutory requirements for initiating an appeal. The court stated:

The judicial system could not function if everyone was not required to follow proper procedure. The courts and agencies are bound by statutory requirements, and special exceptions cannot be made.

(Emphasis added.) See attached Exhibit A. The same holds true here.

Consistent with this legal analysis, the Administrative Law Judge's proposed decision grants the District's motion to dismiss the appeal for lack of jurisdiction. The decision states:

While we recognize that the appeal letter contains a footnote that states "this letter and its attachments are referred in this document as the appeal of [M.K.], but despite the nomenclature attached hereto, should be construed as M.K.'s 'Affidavit' needed to appeal the Board's decision as required by Iowa Code § 290.1," this statement does not make the letter an affidavit for purposes of the State Board's jurisdiction over the appeal. The State Board has found that lack of compliance with statutory requirements will result in no jurisdiction.

Additionally, the Appellant cannot cure this defect by attempting to file an affidavit after the time for filing the appeal has run. 281 --- Iowa Administrative Code rule 6.3(6) only allows a substantive amendment to an affidavit already on file, it does not allow for an extension of the filing deadline. As such, the State Board lacks jurisdiction to hear the appeal.

The record and the law amply support the proposed decision of the Administrative Law Judge.

Because there is no jurisdiction to entertain this appeal, it must be dismissed.

#### V. Conclusion

For the foregoing reasons, the School District respectfully requests that the proposed decision of the Administrative Law Judge be AFFIRMED.

/s/ Kristy M. Latta

Kristy M. Latta (AT0004519)  
AHLERS & COONEY, P.C.  
100 Court Avenue, Suite 600  
Des Moines, Iowa 50309-2231  
Telephone: 515/243-7611  
Facsimile: 515/243-2149  
E-mail: [klatta@ahlerslaw.com](mailto:klatta@ahlerslaw.com)  
ATTORNEY FOR APPELLEE  
WEST DES MOINES COMMUNITY  
SCHOOL DISTRICT

Original filed.

Copy to:

David E. Brick  
Brick Gentry, P.C.  
6701 Westown Parkway, Suite 100  
West Des Moines, Iowa 50266  
ATTORNEY FOR APPELLANT

01168175-1A11332-121A

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings, on

10-19-15

- By  U.S. Mail       Fax  
 Hand Delivery       Private Carrier  
 Electronically through CM-ECF

Signature Anna Steels

**IN THE IOWA DISTRICT COURT FOR POLK COUNTY**

**PAMELA ROSA and TRAVIS ROSA,**

**Petitioners,**

**vs.**

**WEST DES MOINES COMMUNITY  
SCHOOLS, AREA EDUCATION  
AGENCY, and IOWA DEPARTMENT  
OF EDUCATION,**

**Respondents.**

**Case No. CV 6862**

**RULING ON PETITION  
FOR JUDICIAL REVIEW**

**EXHIBIT**

**A**

This Administrative Appeal came before the court for contested hearing on April 11, 2008. Petitioners Pamela and Travis Rosa appeared pro se. Attorney Christie Scase appeared on behalf of Respondent Iowa Department of Education. Attorney Andrew Bracken appeared on behalf of Respondent West Des Moines Community Schools. Following oral arguments and upon review of the court file and applicable law, the Court enters the following ruling.

**BACKGROUND FACTS AND PROCEDURAL HISTORY**

Pamela and Travis Rosa reside with their four children at 8640 Primrose Lane, Clive; Iowa. The Rosas live in the West Des Moines Community School District. Two of their children currently attend Indian Hills Jr. High and one child attends Valley Southwoods High School. The measured route from the Rosa residence to Indian Hills Jr. High is 1.43 miles and to Valley High School is 2.31 miles. The distance from the Rosa residence to Indian Hills Jr. High and Valley Southwoods High School does not allow for free busing for the Rosa children per Iowa Code § 285.1.

The Rosas first requested that the West Des Moines Community School District bus their children to school in August 2006. The Rosas' request was denied by Richard Beechum,

FILED  
POLK COUNTY, IA  
OCT 22 11 13 AM '15

Transportation Supervisor of the West Des Moines Community School District. On November 20, 2006, Mrs. Rosa met with Beechum and the District Administrator Kurt Subra to appeal the decision. The West Des Moines Community School District submitted its written decision denying the Rosas' appeal on December 14, 2006. The Rosas appealed their case to the West Des Moines Community School District Board of Education. The Rosas' appeal was denied. The Rosas filed a timely appeal with the Heartland Area Education Agency. The Rosas had their appeal meeting with the Heartland Area Education Agency on September 6, 2007, where they were told their appeal was denied.

On September 7, 2007 (9:14 a.m.), Mrs. Rosa e-mailed Max Christensen, an Executive Officer in School Transportation at the Iowa Department of Education. Mrs. Rosa inquired about the Iowa Department of Education's appeal process and what documents she was required to submit. In his response by e-mail on the same day at 10:41 a.m., Christensen provided information about what documents needed to be filed, the mailing address for the administrative law judge (ALJ) for the Iowa Department of Education where the documents should be sent, and stated that it would probably be a good idea to notarize the affidavit, but that none of the affidavits he had seen in the past had been notarized. Mrs. Rosa e-mailed the required documents and an unsigned affidavit to Christensen on September 11, 2007. Christensen forwarded the documents to the ALJ for the Iowa Department of Education on September 14, 2007.

On September 17, 2007, the ALJ dismissed the Rosas' appeal for lack of jurisdiction because the appeal was not perfected as required by statute. The ALJ's decision was based on the following findings: (i) the Rosas' affidavit was not signed, certified, or notarized; (ii) the Rosas' appeal documents were not received by the ALJ (the designated hearing officer for the

Director) until September 14, 2007, three days after the deadline for appeal; and (iii) the Rosas did not file their appeal with the Director; instead they e-mailed the appeal to Christensen. The ALJ's dismissal was final agency action. On October 15, 2007, the Rosas filed a Petition for Judicial Review of the agency decision. The Court held its hearing on April 11, 2008.

### STANDARD OF REVIEW

The Iowa Administrative Procedure Act, Chapter 17A of the Iowa Code, governs judicial review of administrative agency decisions. Section 17A.19 authorizes the district court to review such decisions. The court shall reverse, modify or grant other appropriate relief from final agency action if it determines the substantial rights of petitioner have been prejudiced by any of the means set forth in Iowa Code § 17A.19(10)(a)-(n).

In particular, the court may reverse an agency action that is characterized by an abuse of discretion or characterized by a clearly unwarranted exercise of discretion. IOWA CODE § 17A.19(10)(n). “[A]n agency is free to exercise its expertise within a reasonable range of informed discretion. Discretion is abused when it is exercised on clearly untenable grounds or to a clearly unreasonable extent.” *Equal Access Corp. v. Utilities Bd.*, 510 N.W.2d 147, 151 (Iowa 1993). The court shall also reverse, modify, or grant other appropriate relief from agency action that is “inconsistent with the agency’s prior practice or precedents, unless the agency has justified that inconsistency by stating credible reasons sufficient to indicate a fair and rational basis for the inconsistency.” IOWA CODE § 17A.19(10)(h).

The burden of demonstrating the required prejudice and the invalidity of agency action is on the party asserting invalidity. IOWA CODE § 17A.19(8)(a). The court shall make a separate and distinct ruling on each material issue on which the court’s decision is based. IOWA CODE § 17A.19(9).

## ANALYSIS AND CONCLUSIONS OF LAW

### I. Dismissal of the Appeal

The ALJ for the Iowa Department of Education dismissed the Rosas' appeal for lack of jurisdiction because it was not perfected as required by statute. In their Petition for Judicial Review, the Rosas argue that the ALJ abused its discretion in dismissing their appeal and the agency action is inconsistent with the agency's prior practice or precedents. The Iowa Code provision relied on is §285.12, which states,

"Either party may appeal the decision of the agency board to the director of the department of education . . . by filing with the director of the department of education an affidavit of appeal, reasons for appeal, and the facts involved in the disagreement *within five days after receipt of notice of the decision of the agency board.*" (Emphasis added.)

The Iowa Department of Education appeal procedures are set forth in the Iowa Administrative Code, which reads, "An appeal shall be made in the form of an affidavit . . . which shall be signed by the appellant and delivered to the office of the director by United States Postal Service, facsimile (fax), or personal service." 281 I.A.C. 6.3(1).

The first reason the ALJ dismissed the Rosas' appeal was because the affidavit was neither signed nor notarized. The Rosas argue that Iowa Code § 285.12 is ambiguous because it does not state the requirements of an affidavit. The Rosas further argue that a lay person would not know the requirements of an affidavit, and their affidavit should be accepted because they made a good faith effort to comply with the requirements by relying on Christensen's advice. Respondents argue that Iowa Code §285.12 requires a signed and notarized affidavit, and despite their good faith efforts, the Rosas are not excused for their failure to comply with the statutory requirements.

Several resources provide the requirements for an affidavit. Iowa Code § 622.85 defines an affidavit as, "a written declaration made under oath, without notice to the adverse party, before any person authorized to administer oaths within or without the state." Iowa Rule of Civil Procedure 1.413(4) states: "Any pleading, motion, *affidavit*, or other document required to be verified under Iowa law may, alternatively, be certified pursuant to Iowa Code §622.1, using substantially the following form: [form not set out]." The form requires a person's signature. The Rosas did not comply with this rule. Likewise, Black's Law Dictionary defines an affidavit as, "a voluntary declaration of facts written down and sworn to by the declarant before an officer authorized to administer oaths, such as a notary public." Further, Webster's Revised Unabridged Dictionary defines an affidavit as, "A sworn statement in writing; a declaration in writing, signed and made upon oath before an authorized magistrate." In *Crenshaw v. Taylor*, the Iowa Supreme Court determined that even though the statute did not require the affidavit to be signed, the definition of an affidavit clearly implies that it should be signed. 30 N.W. 647 (Iowa 1886). Also, as stated above, the administrative rule covering the procedure for Department of Education appeals requires the affidavit to be signed. 281 I.A.C. 6.3(1).

The Court recognizes the fact that the Rosas are lay persons and that they made a good faith attempt to follow the statutorily required procedure. However, "[courts] do not utilize a deferential standard when persons choose to represent themselves. The law does not judge by two standards, one for lawyers and another for lay persons. Rather, all are expected to act with equal competence. If lay persons choose to proceed pro se, they do so at their own risk." *Metropolitan Jacobson Development Venture v. Board of Review*, 476 N.W.2d 726, 729 (Iowa App. 1991). The ALJ held that the Rosas failed to perfect their appeal as required by statute because the unsigned statement they e-mailed to Christensen did not constitute an affidavit as

required by law. The ALJ's decision is fully supported by the facts and documents in the record as well as by the governing law; therefore, the agency action is not characterized by an abuse of discretion.

The ALJ also determined that the Rosas' filing was not proper because the appeal was not mailed, faxed, or personally delivered to the Director in a timely manner. Iowa Code §285.12 provides for a party to appeal a decision of the agency board by filing the appeal documents with the Director of the Department of Education within five days after receipt of notice of the decision of the agency board. The Department of Education's administrative rule for appeals requires the filing to be with the Director of the Department of Education by United States Postal Service, fax, or personal service. 281 I.A.C. 6.3(1). It is undisputed that even though Christensen provided the Rosas with the ALJ's mailing address, the Rosas e-mailed their appeal documents to Christensen on September 11, 2007. The Rosas' appeal documents were provided to the ALJ on September 14, 2007, three days after the deadline for filing an appeal.

The e-mail delivery of the appeal documents to Christensen did not constitute filing under the administrative rules governing Department of Education appeals. Further, the ALJ did not receive the appeal documents until after the statutory deadline for the appeal had passed. Therefore, the Rosas' attempted appeal did not comply with the statutory requirements. The ALJ had no authority to excuse the Rosas' failure to comply with the statutory requirement of timely filing an affidavit to initiate an appeal. "An administrative agency may not enlarge its powers by waiving a time requirement which is jurisdictional or a prerequisite to the action taken." *Brown v. Public Employment Relations Bd.*, 345 N.W.2d 88, 94 (Iowa 1984). The judicial system could not function if everyone was not required to follow proper procedure. The courts and agencies

are bound by statutory requirements, and special exceptions cannot be made. Therefore, the ALJ did not abuse her discretion in dismissing the Rosas' appeal.

The Rosas also argue that they should have been given time to perfect their appeal, and dismissing their appeal for its deficiencies was inconsistent with the agency's prior practice or precedents. In her decision, the ALJ specifically states, "[the Rosas] did not file their appeal with the Director, precluding any reasonable possibility of the undersigned making contact with [them] to make them aware of the deficiencies in their attempted appeal." The footnote to this statement reads, "While there is no affirmative duty on this agency to give parties an opportunity to perfect otherwise unperfected appeals, this agency does attempt to contact would-be appellants when possible." The Court may only reverse agency action that is inconsistent with the agency's prior practice when the agency does not justify the inconsistency with credible reasons indicating a fair and rational basis for the inconsistency. Iowa Code § 17A.19(10)(h). In her decision, the ALJ provided credible and sufficient reasons for not providing the Rosas with an opportunity to perfect their appeal. Therefore, the Court will not reverse the agency decision on this basis.

## II. West Des Moines Community School District Decision

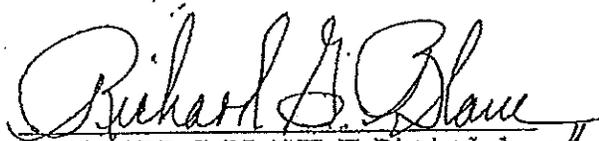
In a petition for judicial review, the Court may only review the findings and determinations made by the agency in the decision being appealed. The Iowa Supreme Court has explained, "On judicial review of administrative action, a court has no original authority to declare parties' rights." *Office of Consumer Advocate v. Iowa State Commerce Commission*, 432 N.W.2d 148, 156 (Iowa 1988) (citations omitted). In this case, the agency decision being appealed is the Department of Education's decision to dismiss the Rosas' attempted appeal. In its decision, the Department of Education did not consider any evidence as to the propriety of the

West Des Moines Community School District's decision regarding the denial of bus service. The only findings and decisions made by the Department of Education related to the dismissal of the Rosas' attempted appeal. Therefore, the only issue on judicial review is the dismissal of the Rosas' attempted appeal. This Court may not consider or review the decision of the West Des Moines Community School District regarding the denial of bus service because the Department of Education did not address it.

**ORDER**

IT IS ORDERED that the decision of the Iowa Department of Education dismissing the Petitioners' appeal is **AFFIRMED**.

SO ORDERED this 13<sup>th</sup> day of May, 2008.



RICHARD G. BLANE, II, District Judge  
Fifth Judicial District of Iowa

Clerk:    J       V    C    U    X

5/13/08  
g

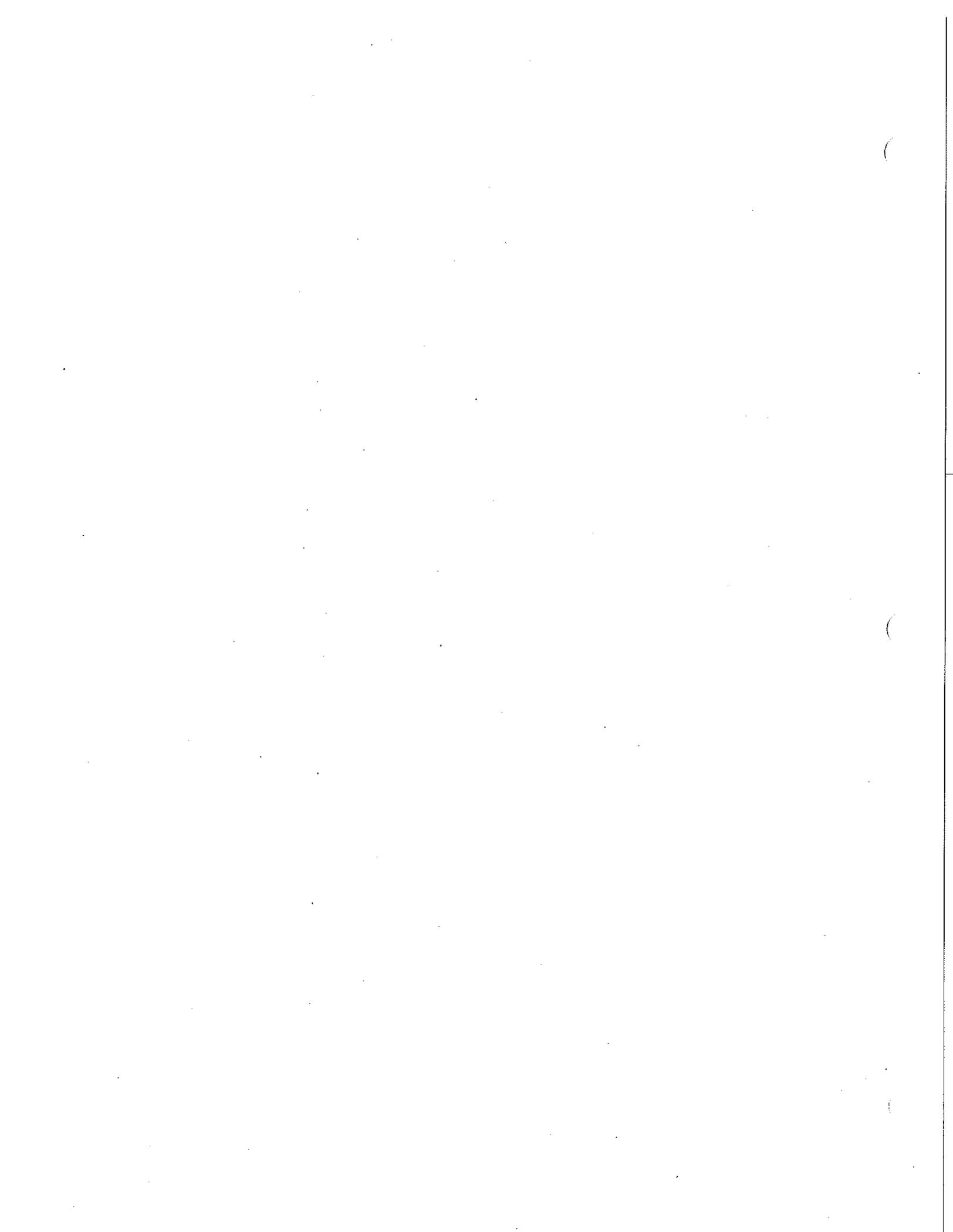
ORIGINAL FILED.  
COPIES TO:

Pamela Rosa  
Travis Rosa  
8640 Primrose Lane  
Clive, IA 50325  
PRO SE PETITIONERS

Christie J. Scase  
Assistant Attorney General  
Hoover Building, 2<sup>nd</sup> Floor  
Des Moines, IA 50319  
ATTORNEY FOR RESPONDENT  
IOWA DEPARTMENT OF EDUCATION

Andrew Bracken  
Kristy M. Latta  
Ahlens & Cooney, P.C.  
100 Court Avenue, Suite 600  
Des Moines, IA 50319  
ATTORNEYS FOR INTERVENOR,  
WEST DES MOINES COMMUNITY SCHOOL DISTRICT

**[If you require the assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator at (515) 286-3394. (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942.)]**



RECEIVED

OCT 15 2015

BEFORE THE STATE BOARD OF THE  
IOWA DEPARTMENT OF EDUCATION

DEPARTMENT OF  
EDUCATION

In re Expulsion of M.K.,  R.K.,  Appellant,  vs.  WEST DES MOINES COMMUNITY SCHOOL DISTRICT,  Appellee.	Admin. Doc. No. #5015  APPELLANT'S REPLY TO APPELLEE'S BRIEF
--	---

COMES NOW Appellant and for his Reply to Appellee's Brief pursuant to Iowa Administrative Code section 281-6.17 states as follows:

I. Appellee's Stated "Factual Background" Is Not Supported By The Record

Appellee sets forth certain facts which Appellant disagrees are accurate or supported by the record. Specifically:

- Student B's statement included a description of the yellow and blue colors of the pills she had been sold by M.K. – Student B's text indicates that she wanted two 20mg Adderall pills and one 30mg Adderall pill, yet her revised statement described the pills that M.K. allegedly sold her as "yellow and blue." There are no yellow Adderall pills and M.K. could not have provided Student B with a yellow Adderall pill. See Medication Documentation provided by Appellant at the Hearing.
- M.K. did not state in text messages with Student B that he "promised to bring Student B 2 20's and a 30 to school the next day." In fact, Appellee misquotes the text

conversation as there is no specific promise made and more importantly there is no reference or discussion of location for the alleged transfer.

- On or about May 15, 2015, the Principal did not request to talk with M.K. with M.K.'s father present and M.K.'s father did not refuse such a request. In fact, it was the Administration that refused to continue the discussion. Affidavit of Appeal p. 6.
- The Administration did not present several witnesses at hearing – in fact, they did not call a single student making the accusations against M.K. See Exhibit A.
- The discipline recommended at hearing by the Superintendent was not the same discipline recommendation included in the packet sent to M.K. See Exhibit A.

**II. Appellant Did Not Fail To Comply With The Requirements For an Appeal Set Forth In Iowa Code Section 290.1 And Any Failure To Comply Did Not Result In Lack of Jurisdiction**

As set forth in Appellant's brief, Iowa Code section 290.1 provides that a Notice of Appeal of a District Decision shall be made to the State Board by the party aggrieved within the time for taking the appeal by affidavit which affidavit shall set forth any error complained of in a plain and concise manner. Iowa Code § 290.1 (2015). Appellee argues that an affidavit must be a declaration under oath and that this oath requirement is "not insignificant." Yet in doing so, Appellee fails to reconcile the fact the Notice of Appeal is not testimony at a hearing or even evidence, but rather a means to initiate an appeal. The current appeal required all of the same elements but did not require an affidavit. See Iowa Admin. Code § 281-6.17. It cannot be argued that an affidavit is so imperative to appeal a District Decision when it is not required on subsequent appeals.

Appellant cites to *Farmers State Savings Bank v. J.B.H. Enterprises* as support for the argument that Appellant must comply with all requirements of an affidavit. However, *Farmers State Savings Bank* does not involve an appeal to the State Board, but rather an affidavit of tax

sale certificate involving the sale of real estate rather than the request for an appeal of a school district discipline decision. *Farmers State Savings Bank v. J.B.H. Enterprises*, 561 N.W.2d 836, 838 (Iowa Ct. App. 1997). It involves wholly different Iowa Code sections -- Iowa Code 447.12 rather than Iowa Code 290.1. *Id.* An affidavit is required in section 447.12 in order to truthfully establish that the Notice of Redemption has been served which then triggers the Redeemer's rights. *Id.* In the instant matter, the School District's rights were not affected by the filing as continuing forward with the appeal would have allowed them the right to be heard, make arguments, present evidence, etc. Also, in *Farmers State Savings Bank*, the document lacked a signature of a party empowered to administer oaths. *Id.* However, ALJ Proesch has recognized that David Brick is a notary with such power. Decision p. 1. Further, the need to secure the truth, which is the purpose of an oath, is not essential in a notice of appeal as the truth will not be determined by the Notice but rather pursuant to admission of evidence, testimony, oral and written arguments subsequent to the filing of the Notice of Appeal. *See Dalbey Bros. Lumber Co. v. Crispin*, 12 N.W.2d 277, 279 (Iowa 1943).

Appellee also cites to *Sanderson v. Board of School Directors of Lincoln Tp., Winneshiek County* and *Brown v. Public Employment Relations Board* in support of their argument; however, such cases are not on point in the instant matter. *Sanderson* involved the appeal of the construction of a school on a certain site and not an appeal of imposed disciplinary sanctions. *Sanderson v. Board of School Directors of Lincoln Tp., Winneshiek County*, 234 N.W. 216 (Iowa 1931). *Brown* involved the Public Employment Relations Board and the timeliness of an appeal (i.e. the deadline to file an appeal) rather than the form of the Notice. *Brown v. Public Employment Relations Bd.*, 345 N.W.2d 88 (Iowa 1984) (court actually noting "[a]n administrative agency may not enlarge its powers by waiving a time requirement which is jurisdictional or a prerequisite to the action

taken”). Simply put, the cases cited by Appellee do not support its argument or make a compelling case in contravention of Appellant’s argument.

In pertinent part, section 281--Iowa Administrative Code 6.3(1), states that “[a]n appeal shall be made in the form of an affidavit...which shall **set forth the facts, any error complained of, or the reasons for the appeal in a plain and concise manner, and which shall be signed by the appellant ...**” Iowa Admin. Code § 281-6.3(1) (emphasis added). Noticeably absent is the requirement for a “notarized signature.” Appellant is merely required to “sign” the appeal. “‘Sign’ means, with present intent to authenticate or adopt a record, to execute or adopt a tangible symbol.” Iowa Code § 9B.2(12).

In this case, Appellant executed a tangible symbol with the intent to authenticate and adopt the document submitted for his appeal. As such, Appellant “signed” the appeal and, in doing so, satisfied all requirements needed to perfect it. Appellant even stated in his appeal that, “[t]his letter and its attachment...should be construed as Michael’s “Affidavit” needed to appeal the Board’s decision as required by Iowa Code 290.1.” Accordingly, Appellant’s appeal filing met the requirements of Iowa Code section 290.1 and Iowa Administrative Code section 281-6.3(1).

Appellant’s appeal filing was signed by Appellant’s counsel. In signing the appeal, Appellant not only intended to adopt the record, he intended to swear to the accuracy of facts averred therein. *See* Iowa Rule of Civil Procedure R. 1.413 (stating that “Counsel’s signature to every motion, pleading, or other paper shall be deemed a certificate that: counsel has read the motion, pleading, or other paper; that to the best of counsel’s knowledge, information, and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law.”) Also, in signing the appeal, Appellant’s counsel’s signature qualifies as a notarial act in his capacity as a notary public and an officer of the courts. *See* Iowa Code § 9B.2 (Iowa Code Chapter 9B governs notarial acts). While appellant’s signature was not accompanied by a certification or

notary stamp, a notarial act is not invalid simply because it is not accompanied those items. *See* Iowa Code § 9B.26 (stating that “the failure of a notarial officer to ... meet a requirement specified in this chapter does not invalidate a notarial act performed by the notarial officer.”).

Finally, the absence of notarization is merely a procedural issue that would not strip the Iowa State Board of Education of jurisdiction to hear this appeal. Iowa courts have made clear that they will not “deem statutory procedural requirements as jurisdictional in the absence of explicit statutory guidance otherwise.” *Allen v. Dallas County Bd. of Review*, 843 N.W.2d 89, 94 (Iowa 2014). In this case, “the statutory provision enumerating the powers of the [Iowa State Board of Education], entitled “Appeal to State Board”, makes no reference to when the [State Board] may or may not assume jurisdiction over a case or generally perform its enumerated duties.” *Id.* As a result, the issue of whether a notarized signature or other certification is required is not a jurisdictional issue. It is a procedural issue one at best.

Appellant has actually complied with the procedural requirements needed to appeal the decision of the Board of Directors of the West Des Moines Community School District (the “Board”). On June 29, 2015, Appellant timely filed his appeal with the Iowa State Board of Education. In his appeal, Appellant set forth the background facts, the errors complained of and reasons for the appeal, and further signed the appeal. These were the only items required by 281-Iowa Administrative Code section 6.3(1) to appeal the decision of the Board. Appellant fully complied with each of the aforementioned requirements. In addition, Appellant further indicated in his appeal that despite the nomenclature attached thereto, that his appeal was to be construed as the “Affidavit” required by Iowa Code section 290.1. On July 2, 2015, the Iowa Department of Education provided notice to all parties that Appellant filed an “affidavit of appeal,” and mailed copies of the same to Appellee. Appellee admittedly received the appeal and is aware that the

corresponding documents were to be construed as the affidavit of appeal required by Iowa Code § 290.1.

Iowa courts have long recognized that the policy of the law is to favor the merits over rigid technicalities. *See Cooksey v. Cargill Meat Solutions Corp.*, 831 N.W.2d 94, 103-104 (Iowa 2013). In light of that policy, courts have declined to dismiss a case because of a procedural defect that worked no prejudice on the other parties. *See e.g., id.* (Declining to dismiss an appeal of an agency action where the Appellant failed to list Appellee as Respondent in the petition, despite a statutory requirement that he do so, when all parties and the court clearly knew who the Respondent was.”).

Accordingly, ALJ Proesch’s dismissal of Appellant’s appeal is contrary to law and in error. Appellant substantially complied with the requirements to appeal the decision of the Board, and because the Appellee has in no way been prejudiced by the alleged defect, the dismissal of this appeal on such grounds would run contrary to the established policy of the law to favor the merits over the technicalities. *See id.* (Stating that “the law in Iowa for decades traditionally has sought to avoid highly technical requirements that might serve no useful purpose and yet deprive parties of their day in court.”).

**III. There Is Not Substantial Evidence To Support The Decision Of The West Des Moines Community School Board Or The Decision of ALJ Proesch**

Appellant fully briefed this issue in his brief in Parts II and III and will not re-hash those same arguments here. Appellant does not dispute the Board’s ability to establish rules/policies or the power to suspend or expel students for violations of the policies. Rather, Appellant argues that there was not substantial evidence to prove that M.K. violated the policies based on the plain language of the policies. It was not reasonable for the West Des Moines Community School Board to expel M.K. for violations of Policies 503.1, 502.7B and 502.8 when there is absolutely no

evidence that M.K. ever sold, attempted to sell, purchased, acquired with the intent to sell or distribute, distributed, possessed or used (other than pursuant to his doctor's prescription) Adderall *at school, on school grounds, or at a school sponsored event*. Appellee conveniently leaves off the last requirement – that such possession, use, sale, distribution, purchase, etc. occur at school, on school grounds or at a school sponsored event – in its brief. There is no conflicting evidence in this case – rather there was/is ZERO evidence presented by the Appellee in this regard.

Based on the express language of the policy, to violate § 503.1, a student must not only possess a controlled substance, he or she must also possess a controlled substance “while on school premises, while on school owned and or operated school or chartered buses, while attending or engaged in school sponsored activities, while away from school grounds if misconduct will directly affect the good order, efficiency, management and welfare of the school.” Policy 502.7B provides that “possessing, using or being under the influence of any controlled substance...and manufacturing, possessing, or selling drug paraphernalia are strictly prohibited while a student is on any school property or under school supervision. This [prohibition] includes attendance in school or at a school sponsored function.” *See Exhibit A, pages 27-28*. Importantly, this section does not apply to “medication prescribed by the individual student’s licensed health care provider and which is taken in accordance with the licensed health care provider instructions.” *See Exhibit A, page 27*. Based on the express language of the policy, to violate WDCSD Board Policy § 502.7B a student must lack a valid prescription for controlled substances in his possession or must consume the medication in a manner contrary to his health care provider’s instructions. In both instances, however, the student must be at school or at a school sponsored function. Policy § 502.8 provides that the “sale or distribution, attempted sale or distribution and/or purchase or acquisition with the intent to sell or distribute by a student of any prohibited substance...is strictly prohibited while the student is on any school property or under school supervision. This includes attendance

in school or at a school sponsored function ..." Exhibit A, page 29. Based on the express language of the policy, to violate Board Policy § 502.8, a student must engage in the prohibited activity while "on any school property or under school supervision." See Exhibit A, page 29.

In this case, it is undisputed that there was no allegation made, no evidence presented, and no finding of fact that M.K. possessed a controlled substance while on school premises, while on a school owned or operated charter bus, or while attending or engaged in school sponsored activities. As indicated in its June 9, 2015 Decision, the **only** evidence relied on by the WDCSD Board in this case were the written statements of Students A, B, and D, and the text messages provided by Student B, and each are entirely silent as to the location of the alleged conduct. Further, it is undisputed that there was no allegation made, no evidence presented, and no finding of fact that M.K. improperly possessed Adderall while away from school, and that his improper possession "affected the good order, efficiency, management and welfare of school." There must be an adequate factual basis for a local school board's decision and such adequate factual basis must come from the actual evidence presented. See *In re John Lawler*, 18 D.o.E App. Dec. 61, 72 (1999). State Board cases have further made clear that there must be an adequate factual basis for a local school board's decision. *Id.* at 73. For the evidence presented to provide an adequate factual basis for a local school board's decision, it must preponderate in favor of that board's decision. *In re Ian G*, 26 D.o.E App. Dec. 71, 72 (2010). In this case, it is undisputed that M.K. has a diagnosis of Attention Deficit Hyperactivity Disorder. As part of his treatment for his attention deficit disorder, M.K.'s licensed practitioner prescribes the drug commonly known as Adderall. Because M.K. has a valid prescription for the only controlled substance at issue in this case, the only possible way that he could violate Board Policy 502.7B is to take, i.e., consume, the drug contrary to his health care provider's instructions while at school or at a school sponsored function.

Appellee boldly states that it was clear the Administration was investigating a report that students were selling or using Adderall at school. However, the evidence establishes that the investigation was initiated because a parent provided a screen shot from Student B's "secret Twitter" account stating "Who is selling the Addy this week?" Such post was not made during school hours and did not ask to buy/receive the Adderall at school, on school property or at an event under school supervision. Nothing in the reported tweet suggests M.K. was in or would be in possession of Adderall at school, on school property, or an event under school supervision.

Appellee points to the text from M.K. stating that it purports to support a finding that M.K. would bring the requested pills to Student B the next day, which was a school day, and that Student B stated the last time she bought Adderall from M.K. was on April 29. Nothing in the texts or Student B's statement provides that Adderall was ever actually sold to anybody OR sold to Student B *at school or on school grounds* on April 29<sup>th</sup>. The text message between Student B and M.K. was at 10:15 p.m. and all M.K. texted was "Ya". M.K. indicated in his testimony that because he did not know what to say to Student B, he simply responded "Ya" in order to stall Student B. M.K. testified that the next day at school he told Student B he could not get any Adderall. Student B did not testify to the contrary. Further, just because the next day was a school day does not, in and of itself, mean that an alleged sale took place during school hours, on school property, or under school supervision. Even if Student B's statement is taken as true, nothing in her/his written statement suggests he/she obtained Adderall from M.K. during school hours, at school, on school property, or at an event under school supervision. Student B's statement is wholly silent as to where the alleged sale took place.

Accordingly there was no evidence whatsoever presented indicating M.K.'s alleged conduct violated the express language of any of the applicable WDCSD Policies for the reasons stated above, the WDCSD Board's decision could not have possibly been supported by a

preponderance of the evidence. See *In re John Lawler*, 18 D.o.E App. Dec. 61, 72 (must be adequate factual basis for finding of violation). Accordingly, ALJ Proesch erred in finding there was substantial evidence to support the Board's decision and erred in upholding the decision of the WDCSD Board. Further, because there was not substantial evidence to support WDCSD Board's findings that M.K. violated any Policies, imposition of discipline, especially the drastic discipline of expulsion and suspension and movement to an alternative school, was not reasonable.

**IV. There Is Ample Evidence To Establish A Basis For Overturning The Proposed Decision of Administrative Law Judge Proesch**

In addition to the basis set forth above, The Administration and WDCSD Board violated M.K.'s due process rights.

*In re: Suspension of A.W.*, the Iowa State Board of Education reiterated that "[s]chool districts have broad discretion to punish students who break the rules" but made clear that the Board's exercise of that discretion must comport with due process requirements. *In re: Suspension of A.W.*, 27 D.o.E App. Dec. 587 (2015). In *Goss v. Lopez*, the U.S. Supreme Court examined the precise contours of these due process requirements, and made clear that due process protections extend to even those students facing suspension. *Goss v. Lopez*, 419 U.S. 565, 576 (U.S. 1975).

In this context, the Goss Court clarified that:

due process requires, in connection with a suspension of 10 days or less, that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story.

*Id.* at 581. These steps are required, the Court noted, to protect "against unfair or mistaken findings of misconduct and arbitrary exclusion from school." *Id.*

Contrary to the statement of facts set forth by Appellee, Appellant expressly denies that the Administration allowed M.K. to present his side of the story. On May 15, 2015, when M.K. requested that his parents be present, the Administration ceased commencing the interview at that

time to allow for M.K.'s father to be present. However, once M.K.'s father arrived to continue the interview, the Administration declined to resume the interview and to allow M.K. to further explain his side of the story. *See* Aff. of Appeal, page 6. Despite not allowing M.K. an opportunity to present his side of the story, the Administration proceeded with disciplinary action and suspended M.K. for the remainder of the 2014-2015 academic school year. Because M.K. was not given an opportunity to present his side of the story prior to the Administration suspending him, and since due process requires, at a minimum, that a student facing suspension of 10 days or less be given such an opportunity, the Administration erred in failing to provide M.K. with an opportunity to present his side of the story. Accordingly, the decision of the WDCSD Board and the Proposed Decision of the ALJ should be reversed.

Further, M.K.'s due process rights were violated at the formal hearing. As set forth in Appellant's Appeal Brief, M.K. was not provided a sufficient number of days to prepare prior to the hearing and the packet received by M.K. did not include the revised discipline recommendation from expulsion for one semester to one year. Both prevented the Appellant from preparing an appropriate defense. *See In re Don Shinn*, 14 D.o.E. App. Dec. 185, 190-92 (1996). M.K.'s due process rights were also violated when he was not allowed to cross examine his accusers.

In *In re John Lawler*, the Iowa State Department of Education clarified the due process requirements for students facing expulsion includes the right to cross-examine adverse witnesses. *In re John Lawler*, 18 D.o.E App. Dec 61; *see also In re Don Shinn*, 14 D.o.E. App. Dec. 185, 190-92 (student has the right to cross-examine adverse witnesses). As mentioned previously, the only evidence relied on by the WDCSD Board in this case were the written statements of Students A, B, and D, and a copy of text messages provided by Student B. None of the students were present at the hearing and only their statements were introduced. A person cannot cross-examine a written statement. As Students A, B, and D were not made available for M.K. to cross-examine,

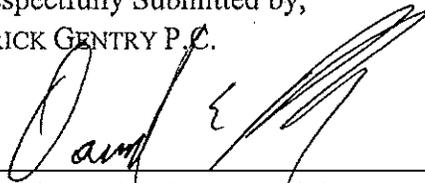
M.K. lacked the ability to challenge the reliability of the statements and to adequately defend himself against the instant allegations. Accordingly, the WDCSD Board violated M.K.'s due process rights when it failed to make the adverse witnesses available to him and when, by extension, it relied on unreliable hearsay evidence from Students A, B, and D to expel M.K. for an extended period of time.

For the reasons set forth above, M.K.'s due process rights were violated repeatedly by the Administration and WDCSD and, accordingly, the decision of the WDCSD Board and the Proposed Decision of ALJ Proesch should be reversed.

**CONCLUSION**

For the reasons set forth in this Reply as well as Appellant's Appeal Brief, Appellant respectfully requests the Board reverse the decision of the WDCSD and ALJ Proesch.

Respectfully Submitted by,  
BRICK GENTRY P.C.



---

David E. Brick (AT0001085)  
6701 Westown Parkway, Suite 100  
West Des Moines, Iowa 50266  
Telephone: (515) 274-1450  
Facsimile: (515) 274-1488  
Email: [dave.brick@brickgentrylaw.com](mailto:dave.brick@brickgentrylaw.com)  
ATTORNEY FOR THE APPELLANT

Original Filed with the  
Office of the Director  
Department of Education  
Grimes State Office Building  
400 E 14th St  
Des Moines, IA 50319-0146

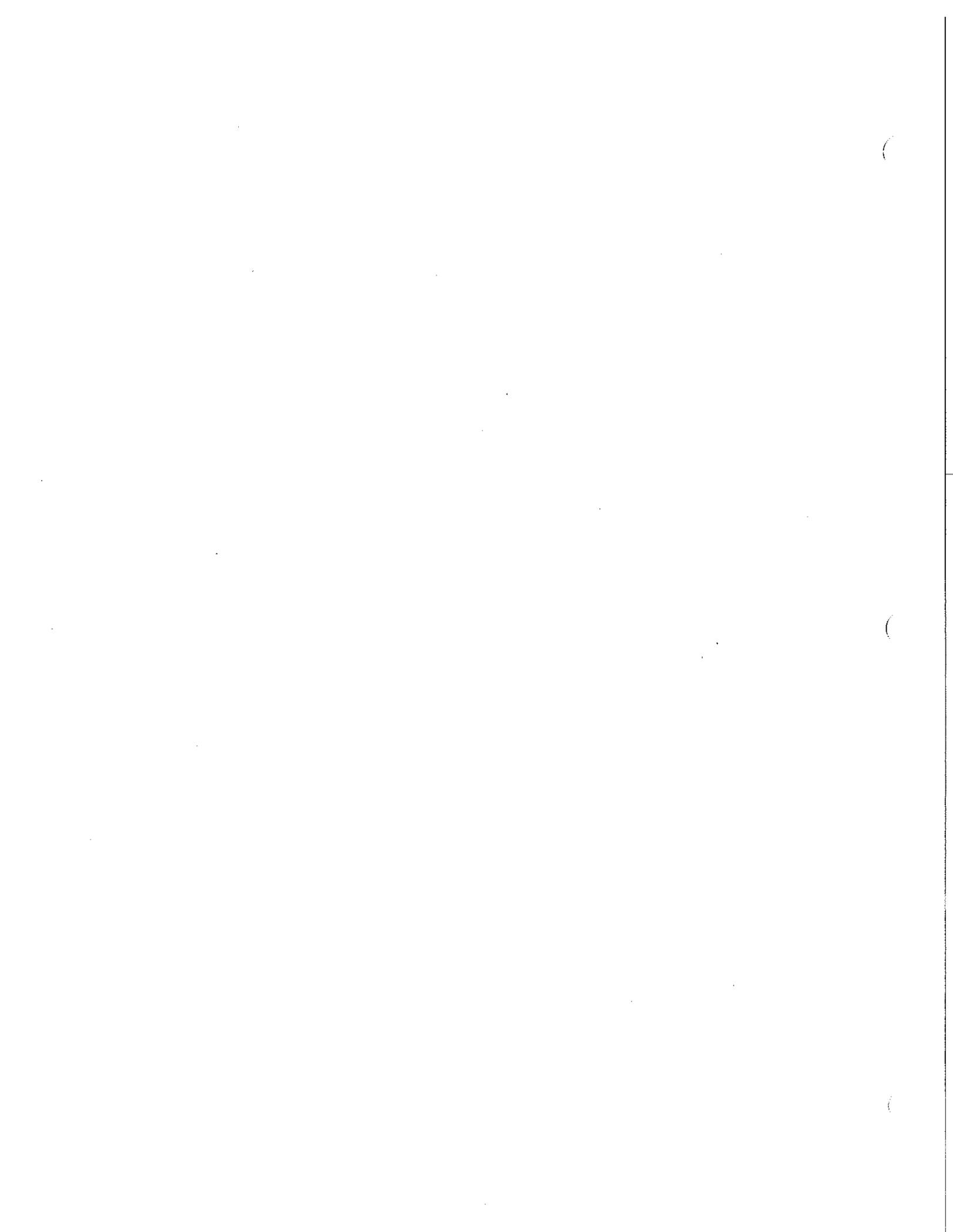
**CERTIFICATE OF SERVICE**

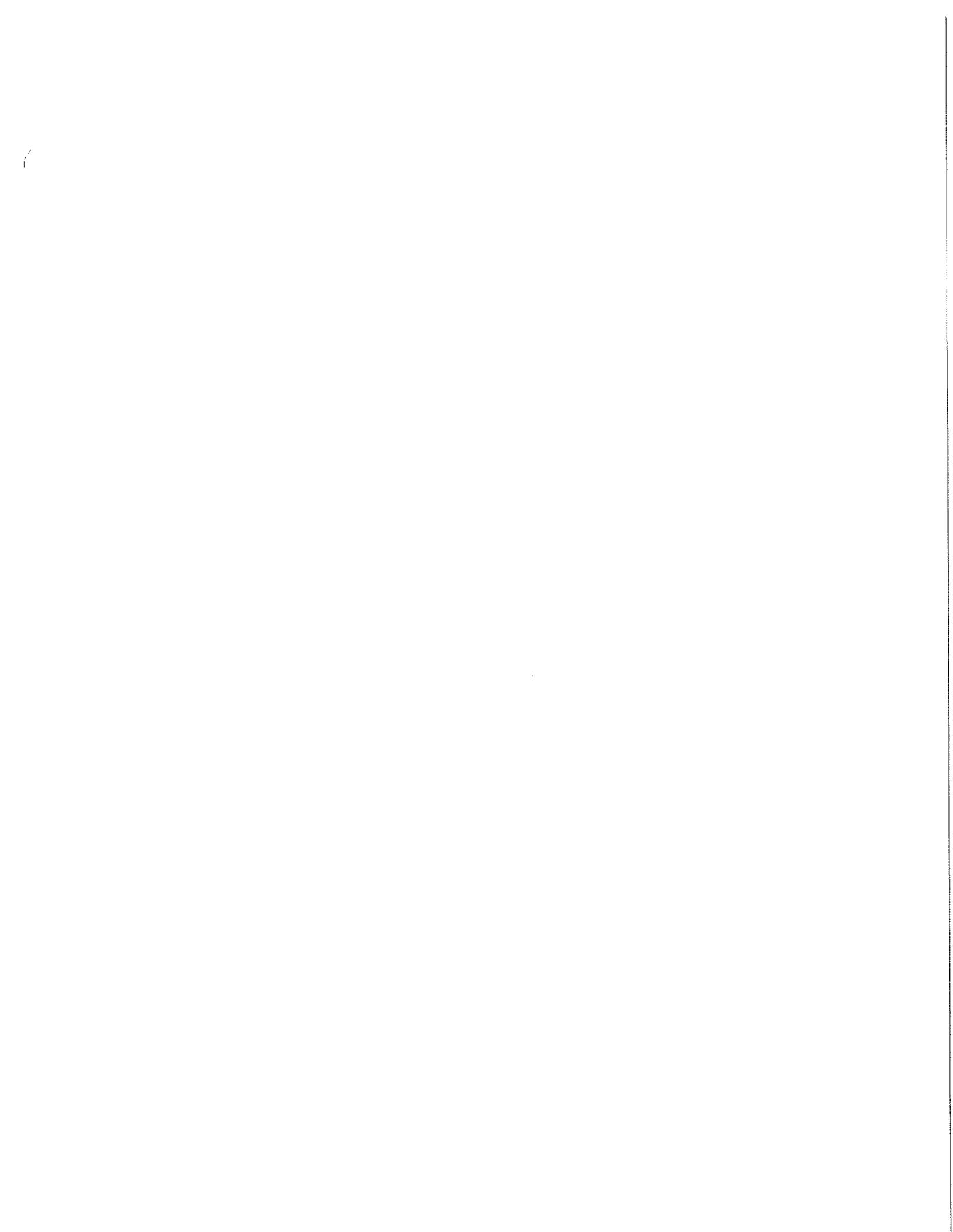
The undersigned certifies that the foregoing was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings by U.S. Mail on Oct. 15, 2015.

By: Shelley Beus

Copy to:

Kristy M. Latta  
AHLERS & COONEY, P.C.  
100 Court Avenue, Suite 600  
Des Moines, Iowa 50309-2231  
ATTORNEY FOR APPELLEE



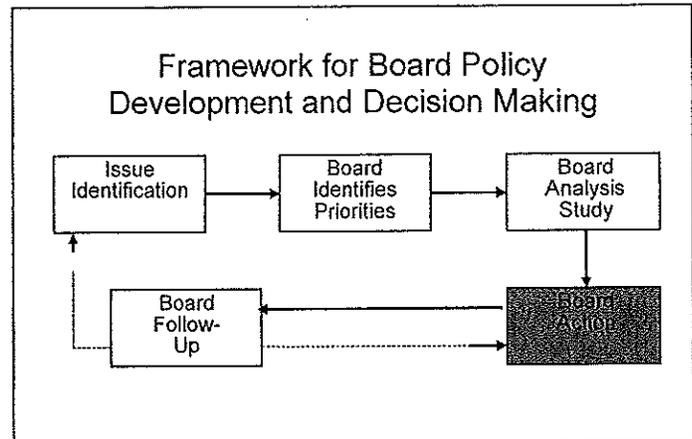




# Iowa State Board of Education

## Executive Summary

November 18, 2015



**Agenda Item:** *In Re Open Enrollment of H.H. and H.H.2 (Okoboji Community School District)*

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

**State Board Role/Authority:** Under Iowa Code sections 282.18(5) and 290.1, the State Board of Education has authority to hear appeals from local school board decisions denying applications that seek open enrollment due to "repeated acts of harassment of the student that the resident district cannot adequately address."

**Presenter:** Nicole Proesch, Administrative Law Judge

**Attachments:** 1

**Recommendation:** It is recommended that the State Board approve the proposed decision dismissing the appeal as moot and affirming the decision of the local board.

**Background:** At the time of this appeal, H.H. and H.H.2 resided in the Okoboji Community School District (OCSD). The Appellants have since moved to the Spirit Lake Community School District (SLCSD). During the 2014-2015 school year after the basketball season ended, H.H. brought some of his concerns to the administration regarding how the basketball team was being run. H.H. and his classmates wanted a new coach and a new coaching philosophy. The administration and the OCSD Board denied these requests. After the requests were denied, H.H. felt that other students were talking about him in the halls. H.H. also had a meeting with his coach regarding his goals for the team for next year. H.H. felt uncomfortable with the meeting that occurred. H.H. also believed the coach was driving by his house to harass him, although the evidence suggests he was driving by H.H.'s house to get to his own house. H.H.2 also felt uncomfortable.

Appellants filed an application to open enroll from OCSD to SLCSO on May 20, 2015, claiming bullying and harassment. The OCSD Board denied the application.

Now that the Appellants have moved to the district they were seeking to enroll in, the issue is now moot. However, because schools and parents alike look at these decisions, we will review the merits of the appeal.

In reviewing an open enrollment decision involving a claim of repeated acts of harassment under Iowa Code § 282.18(5), the Board has set out four criterion that all must be met in order to overturn the decision of the local board. The evidence at the hearing before the administrative law judge showed that under the second criterion, the harassing behavior alleged does not meet the definition of harassment under the law. Thus, the appeal falls short on the second criteria.

Thus, it is recommended that the State Board affirm the proposed decision to dismiss the appeal.

IOWA DEPARTMENT OF EDUCATION  
(Cite as \_\_\_ D.o.E. App. Dec. \_\_\_)

---

<i>In re Open Enrollment of H.H. and H.H.2</i>	)	
	)	
R.H. and M.H.,	)	
	)	PROPOSED DECISION
Appellant,	)	
	)	
v.	)	
	)	
Okoboji Community School District,	)	Admin. Doc. No. 5017
	)	
Appellee.	)	

---

**STATEMENT OF THE CASE**

The Appellants, R.H. and M.H., seek reversal of an June 8, 2015 decision by Okoboji Community School District ("OCSD") Board of Directors ("OCSD Board" or "Board") denying a late filed open enrollment request on behalf of their minor children. The affidavit of appeal filed by the Appellants on July 6, 2015, attached supporting documents, and the District's supporting documents are included in the record. Authority and jurisdiction for the appeal are found in Iowa Code §§ 282.18(5) and 290.1 (2015). 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.

A telephonic evidentiary hearing was held in this matter on August 18, 2015, before designated administrative law judge, Nicole M. Proesch, J.D., pursuant to agency rules found at 281 Iowa Administrative Code chapter 6. The Appellants were present with their children. Superintendent Gary Janssen ("Superintendent Janssen") appeared on behalf of OCSD. Also present was Football Coach John Allan ("Coach Allan"), Athletic Director Ryan Paulson ("AD Paulson"), School Board Member Jeff Nielsen ("Mr. Nielsen"), High School Principal Ryan Downing ("Principal Downing"), Elementary Principal Justin Blouse, and Board Secretary Katie Sporrer.

The Appellants and their children testified in support of the appeal. Appellants' exhibits were admitted into evidence without objection. Superintendent Janssen testified for OCSD and the District offered no exhibits.

## FINDINGS OF FACT

At the time of this appeal the Appellants and their children resided within the OCSD. The Appellants have since moved to Spirit Lake and are now residents of the Spirit Lake Community School District (SLCSD).<sup>1</sup> H.H. was a sophomore and his sister H.H.2 was a freshman at Okoboji High School (OHS) for the 2014-2015 school year. H.H. played boys basketball and football for OHS and all parties agree H.H. is well respected, a good student, and a good athlete.

In March of 2015, after the basketball season had just ended H.H. had a meeting with his basketball coach, AD Paulson, to discuss his shooting averages for the year and predictions for what his averages should be going forward. H.H. was told he was going to score eleven points a game or around that. The coach also met with other team members to go over the same figures for each individual player. H.H. and the other members were concerned about these predictions and felt that their averages should not be predetermined. Other students expressed concerns to H.H. about their roles going forward and about playing time for the next year.

On March 23, 2015, H.H. and two other students went to Superintendent Janssen and AD Paulson to discuss their concerns with the OHS basketball program. Superintendent Janssen advised the students that winning is not a goal. However, H.H. and the other students told him that winning is a goal for them. AD Paulson's coaching record for the last ten years is 44-218. During this meeting H.H. also expressed concerns about an incident with AD Paulson where he told students on the junior varsity team that they were losers and a disgrace to the community after they lost a game.<sup>2</sup> H.H. testified that the students were not going after AD Paulson as an athletic director or as a teacher because "he is a great person with numbers and everything else he does besides coaching." However, the students disagree with his coaching philosophy,<sup>3</sup> his coaching decisions, and believe that winning should be a goal of the program.<sup>4</sup> Superintendent Janssen declined to accept the students' requests for a new coach or a change in the coaching philosophy. AD Paulson testified the message to the junior varsity team was they did not give their best effort.

---

<sup>1</sup> The Appellants notified the parties after the record was closed that they were moving to Spirit Lake on August 28, 2015. The Appellants have since provided a new address to the Department in Spirit Lake.

<sup>2</sup> H.H. was not present during this incident but it was reported to him by teammates.

<sup>3</sup> AD Paulson's philosophy is: "We believe that hard work and dedication to constantly improve one skills and cornerstones of a successful program. Our program is not about wins and losses but rather about planning on doing everything we can to prepare for and expect success."

<sup>4</sup> H.H. read OCSD policy statements that supported this philosophy. The policies state they will "[P]ursue success through the primary goal of winning games or contests. Coaches and directors will play to win." philosophy and said AD Paulson was not aligned with this.

H.H. advised Superintendent Janssen that they wanted to go before the Board to express their concerns and the students were put on the Board's agenda. H.H. testified that prior to board meeting, Principal Downing called H.H. into his office and told him he should not bring this issue to the Board because it would make them look like ignorant children.<sup>5</sup> In the meeting Principal Downing told H.H. it was his decision, but that he believed he should not do it. H.H. testified that Principal Downing did not threaten him or make him feel threatened. Principal Downing testified he did not want the students to create an unflattering image by going to the Board. Coach Allan also met with members of the football team prior to the board meeting and told the students to "do the right thing."<sup>6</sup>

On April 13, 2015, the students<sup>7</sup> went before the OCSD Board to express their concerns with the program and AD Paulson. They told the Board they wanted a change in the coaching philosophy or to get a new coach. The Board advised them that a change would not occur for another three years. The students requested a private meeting with members of the Board to ask questions and address their concerns. A private meeting with Superintendent Janssen, Principal Downing, Mrs. Sporer, and two board members, Mr. Neilson and Mr. Droegmiller was held on April 24, 2015, to discuss the students' concerns. At that meeting the students indicated they wanted a new coach and that request was denied. Superintendent Janssen believed the main issue was about winning and losing.

After this meeting H.H. testified that he started getting dirty looks from students and teachers who supported Mr. Paulson. H.H. believes other students and teachers were talking about him in the hallways but he could not hear what they were saying. Two teachers, Mrs. Turner and Mr. Stephens, told H.H. they heard he was leaving OHS. The District offered testimony that the teachers asked H.H. if he was leaving because they were concerned and did not want him to leave the district.

On April 28, 2015, AD Paulson sent a text to H.H., asking to meet with him. During their meeting, AD Paulson asked H.H. what happened between the season and now. He told H.H. he was going to be the coach next year. H.H. testified that AD Paulson said "he was the best coach since sliced bread." AD Paulson gave H.H. a chart to fill out to answer how they could be a better team.<sup>8</sup> Exhibit 1. AD Paulson told H.H. he could not list that he wants a new coach on the form. H.H. testified that AD Paulson

---

<sup>5</sup> H.H. recalls being called the ring leader of the group and AD Paulson recalls calling H.H. the leader of the group.

<sup>6</sup> H.H. testified in his eyes this was Coach Allan "backing up his own." H.H. testified that the students were not threatened during this meeting; however, they felt threatened. H.H. was not present during the meeting.

<sup>7</sup> Only five of eleven students went to the meeting.

<sup>8</sup> The chart included three headings: 1) 3 Things You Want to Continue Next Year; 2) 3 Things You Want Different Next Year; and 3) 3 Things We Can Do to Build More Camaraderie.

did not threaten him during this meeting. After this meeting, H.H. decided to open enroll in another district.

After this meeting, H.H. testified that AD Paulson began driving by their house. H.H. never saw AD Paulson drive by prior to this situation arising and he started seeing him up to three times a day. AD Paulson and Superintendent Janssen both testified that AD Paulson lived in the same neighborhood as the Appellants. There is a north entrance and a south entrance to the neighborhood. If one takes one of the two entrances one would have to drive by the Appellants' house to get to AD Paulson's residence. For the remainder of the year, H.H. avoided contact with AD Paulson.

H.H.'s sister, H.H.2, testified that after the incidents with her brother she was getting messages from friends asking her if she was going to go to another district. She was told not to respond so she did not and one of her friends was upset with her for not responding. Over the summer, while H.H. played baseball, H.H.2's friend would sit with other students at the games. H.H.2 testified that AD Paulson never talked to her about H.H., but he made her nervous because he was driving by their house. H.H.2 no longer felt welcome at OHS; therefore, she no longer wants to attend OHS. Additionally, H.H.2 wants to attend SLCSO because they offer dual credit classes that OHS does not.

On May 20, 2015, R.H. and M.H. met with Superintendent Janssen about the meeting with Principal Downing and advised him they were filing applications for open enrollment.<sup>9</sup> R.H. and M.H. also requested that AD Paulson stop driving by their house. Superintendent Janssen advised them he would deny the application. The application was placed on the OCSO Board agenda for June 8, 2015. At the board meeting the Appellants were not present. Superintendent Janssen recommended that the Board deny the application because it was made after the March 1st deadline and he believed it did not meet the good cause exception for a pervasive harassment. The OCSO Board voted 3-2 to deny the application.

On July 6, 2015, the Appellants mailed a timely notice of appeal.

#### CONCLUSIONS OF LAW

In this case, the Appellants' circumstances have changed since they originally filed their applications for open enrollment. The Appellants are no longer residents of the OCSO and in fact are residents of the district to which they seek to open enroll. Under these new circumstances, any outcome of State Board's decision in the merits of this appeal no longer matters. The issue is now moot. *See Homan v. Brandstad*, 864

---

<sup>9</sup> On the application the Appellants indicated that H.H. was intimidated by administration and the basketball coach after trying to get a new coach.

N.W.2d 321, 328 (2015). "A case is moot if it no longer presents a justiciable controversy because the issues involved are academic or non-existent." *Id.* (quoting *Iowa Bankers Ass'n v. Iowa Credit Union Dep't*, 335 N.W.2d 439, 442 (Iowa 1983)). Even if the Appellants' applications for open enrollment had been approved by the District, open enrollment terminates if the students move to the receiving district. Iowa Admin. Code r. 281 -- 17.8(10)(a). This is precisely what happened here. Thus, the State Board dismisses this appeal as moot.

However, because parents and school districts look to these decisions for guidance we will analyze the facts of this case against the criterion we have previously set out in these cases.

A decision by either board denying a late-filed open enrollment application that is based on "repeated acts of harassment of the student or serious health condition of the student that the resident district cannot adequately address" is subject to appeal to the State Board of Education under Code section 290.1. Iowa Code § 282.18(5). The State Board applies established criteria when reviewing an open enrollment decision involving a claim of repeated acts of harassment.

All of the following criteria must be met for this Board to reverse a local decision and grant such a request:

1. The harassment must have occurred after March 1 or the student or parent demonstrates that the extent of the harassment could not have been known until after March 1.
2. The harassment must be specific electronic, written, verbal, or physical acts or conduct toward the student which created an objectively hostile school environment that meets one or more of the following conditions:
  - (a) Places the student in reasonable fear of harm to the student's person or property.
  - (b) Has a substantially detrimental effect on the student's physical or mental health.
  - (c) Has the effect of substantially interfering with a student's academic performance.
  - (d) Has the effect of substantially interfering with the student's ability to participate in or benefit from the services, activities, or privileges provided by a school.
3. The evidence must show that the harassment is likely to continue despite the efforts of school officials to resolve the situation.

4. Changing the student's school district will alleviate the situation.

*In re: Open Enrollment of Jill F.*, 26 D.o.E. App. Dec. 177, 180 (2012); *In re: Hannah T.*, 25 D.o.E. 26, 31 (2007) (emphasis added).

Under the first criteria, the harassment must have happened or the extent of the harassment not known until after March 1. The objective evidence shows that each of the incidents of alleged harassment the Appellants have complained about occurred after H.H.'s meeting with Superintendent Janssen and AD Paulson on March 23, 2015. This is well after the March 1 deadline. Thus, the first criteria is met.

Under the second criteria, the requirement of an *objectively* hostile school environment means that the conduct complained of would have negatively affected a reasonable student in H.H.'s position. Therefore, we must determine if the behavior of the teacher, students, and the coach created an objectively hostile school environment that placed H.H. in reasonable fear of harm to his person or property, or had a substantially detrimental effect on his physical or mental health, or substantially interfered with his academic performance, or substantially interfered with his ability to participate in or benefit from the services, activities, or privileges provided by the school.

The State Board has granted relief under Iowa Code section 282.18(5) in only three other cases. In each case, the facts established that the experienced harassment involved serious physical assaults and destruction of property of those students.<sup>10</sup> Here the evidence presented at the hearing shows that the environment was not objectively hostile. The conflict with administration and AD Paulson was a disagreement in coaching philosophy and decisions, decisions which are properly left with the coach. *See, e.g., Munger v. Jesup Cmty. Sch. Dist.*, 325 N.W.2d 377 (Iowa 1982). While we do not agree with some of the vocabulary chosen by administration in some of these meetings, this does not rise to the level of harassment. And while we agree that getting dirty looks and hearing whispers in the hallway is not nice and would make anyone feel uncomfortable this does not rise to the level of harassment either. Nor do we believe that a student or a teacher asking H.H. or his sister if they are going to another district is harassment. In fact, the District testified that teachers were concerned and did not want H.H. or his sister H.H.2 to leave.

---

<sup>10</sup> *See In re: Melissa J. Van Bommel*, 14 D.o.E. App. Dec. 281(1997)(The board ordered a student to be allowed to open enroll out of the district for the harassment of the student by a group of 20 students that climaxed when the vehicle the student was riding in was forced off the road twice by vehicles driven by other students); *See also In re: Jeremy Brickhouse*, 21 D.o.E. App. Dec. 35 (2002) and *In re: John Meyers*, 22 D.o.E. App. Dec. 271 (2004). The students in both cases had been subjected to numerous physical assaults and destruction of property at school.

H.H.'s meeting with AD Paulson appears to be an attempt to mend the relationship between H.H. and AD Paulson before the start of a new season. Adults are frequently are put in situations with individuals they have to work with, like it or not, and need to find a way to make it work. This is precisely what happened here. Finally, we do not believe AD Paulson was driving by H.H.'s house to harass him. There was no evidence of direct or indirect threats to H.H. or his family. From an objective standpoint AD Paulson could have been driving by the Appellants residence to get to his own residence. While we do not doubt that H.H. subjectively felt uncomfortable after the meetings he had with AD Paulson and administration there is no evidence to suggest that H.H. was a victim of pervasive harassment under the law. Nor do we believe that the conduct complained of by H.H.2. rises to the level of pervasive harassment. Thus, the conduct complained of does not rise to the level of pervasive harassment that the legislature and the State Board remedy by allowing late-filed open enrollment applications.

Thus, the appeal falls short on the second criteria. Since, the Appellants have now moved into the receiving district and the issues are now moot we need not examine the other criteria.

#### DECISION

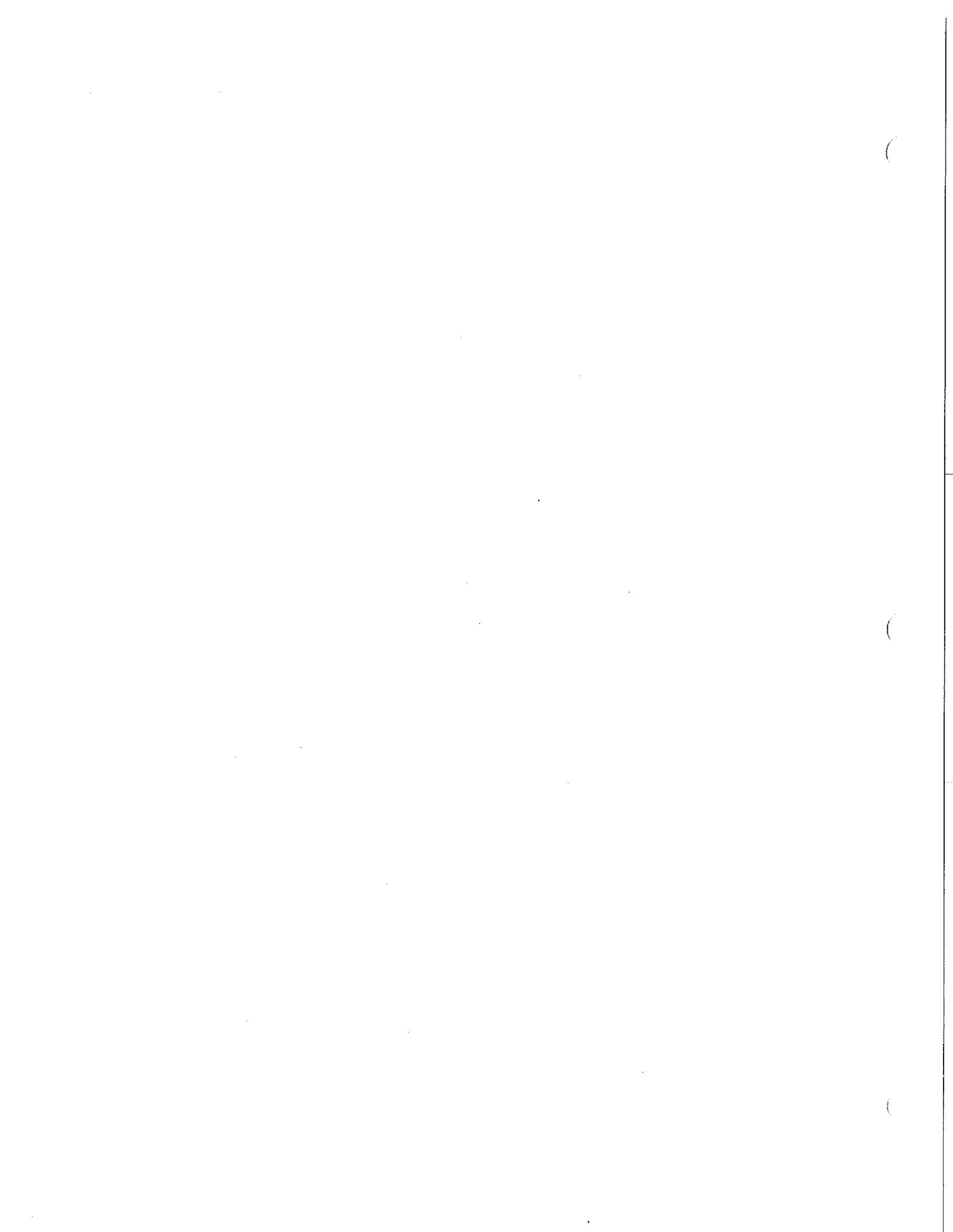
For the foregoing reasons, the appeal is hereby DISMISSED. Even if the issues were not moot the decision of the OCSD Board to deny the open enrollment application would be AFFIRMED for the reasons stated above. There are no costs of this appeal to be assigned.

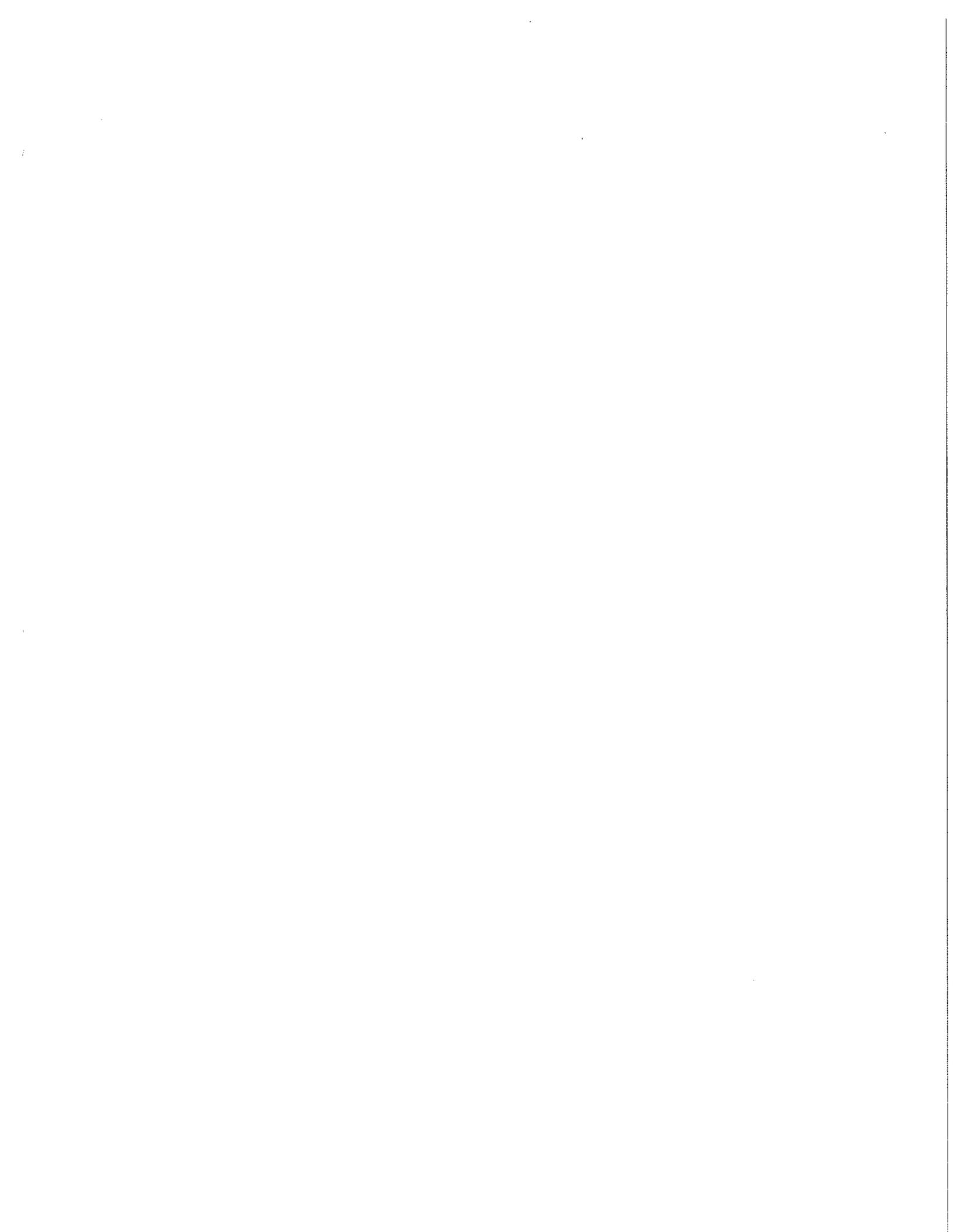
\_\_\_\_\_  
Date

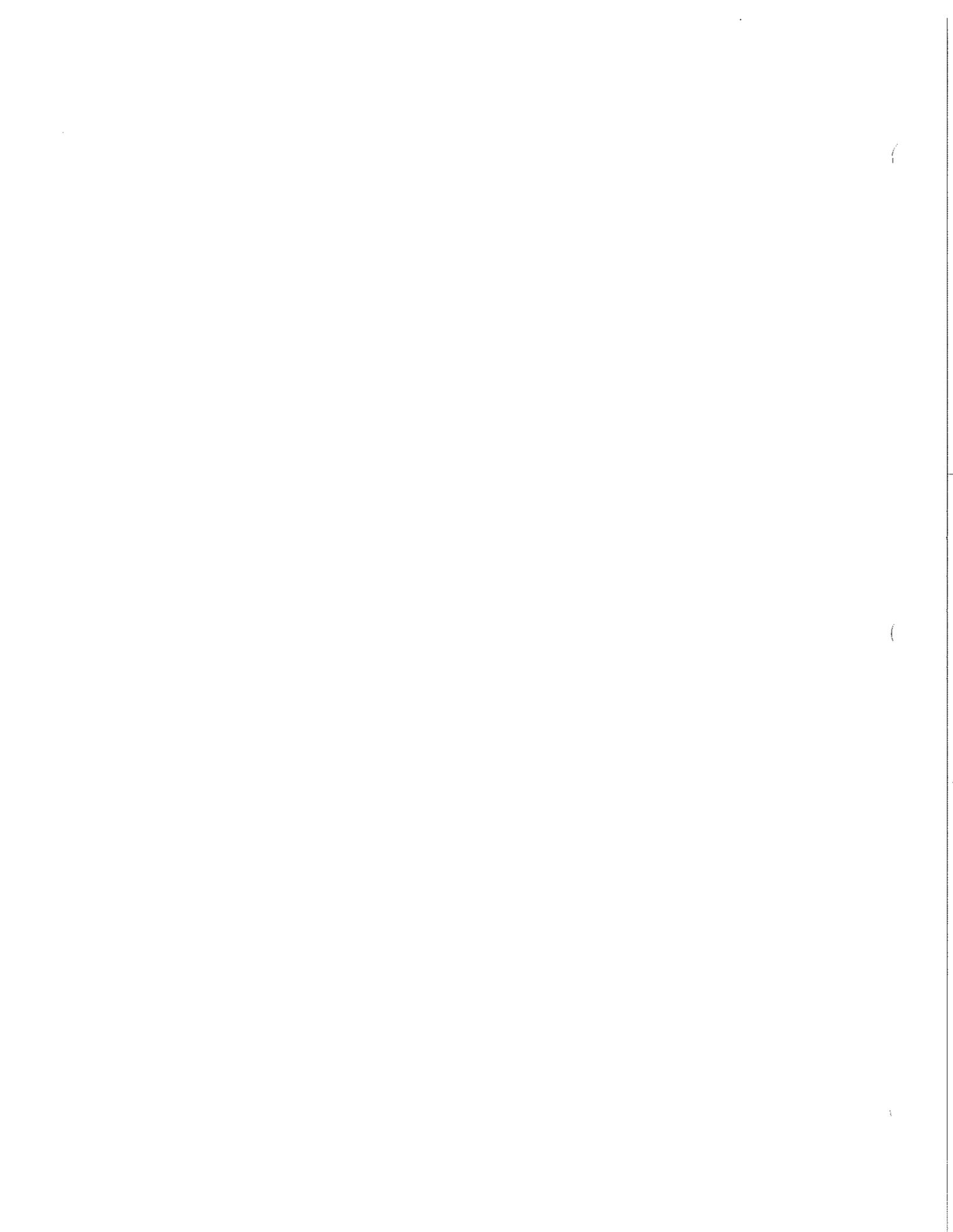
\_\_\_\_\_  
Nicole M. Proesch, J.D.  
Administrative Law Judge

\_\_\_\_\_  
Date

\_\_\_\_\_  
Charles C. Edwards Jr., Board President  
State Board of Education



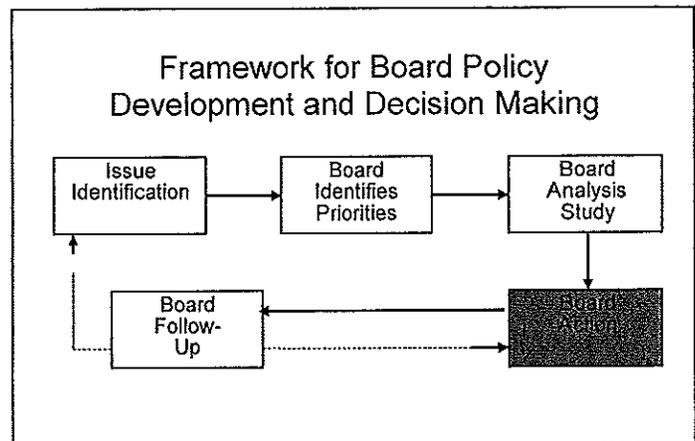




# Iowa State Board of Education

## Executive Summary

November 18, 2015



**Agenda Item:**

*In re Open Enrollment of B.M. & J.M. (Lisbon Community School District)*

**Iowa Goal:**

All PK-12 students will achieve at a high level.

**State Board Role/Authority:**

Under Iowa Code sections 282.18(5) and 290.1, the State Board has authority to hear appeals from local school board decisions denying applications that seek open enrollment due to a "serious medical condition of the student that the resident district cannot adequately address."

**Presenter:**

Nicole Proesch, Administrative Law Judge

**Attachments:**

1

**Recommendation:**

It is recommended that the State Board approve the proposed decision affirming the decision of the local board of directors of the Lisbon Community School District denying the open enrollment application filed on behalf of B.M. and J.M.

**Background:**

B.M. was in the 9<sup>th</sup> grade during the 2014-2015 school year and attended Lisbon High School (LHS) and J.M. was in the 6<sup>th</sup> grade. B. M. & J.M. reside in the Lisbon Community School District (LCSD). In April of 2015, the school nurse contacted B.M.'s parents and advised that B.M. was contemplating suicide and they were having an ambulance take him to the hospital. B.M.'s parents immediately came to the school. After a short hospital stay, B.M. returned to school. B.M. has anxiety and depression. Upon his return to school, officials believed they were doing what they could to accommodate B.M.'s needs and provide appropriate interventions for B.M. On several occasions B.M. experienced anxiety at school. The school nurse communicated with B.M.'s mom on several occasions regarding his level of anxiety. Neither B.M. nor his parents communicated to the school that

they were not meeting his needs. Nonetheless, B.M.'s parents felt that the school was communicating with B.M. and not them. Thus, they felt that the Mt. Vernon Community School District (MVCSD) was where B.M. needed to be due to his medical condition. MVCSD has a program that deals specifically with students who consider suicide. J.M. suffers from anxiety as well; however, this was never communicated to LCSD. The family feels that the MVCSD attends to their needs and additionally they attend church in Mt. Vernon and have friends there. Additionally, they would like to keep both kids in the same district for scheduling and transportation.

The appellants filed a late application for open enrollment on May 7, 2015, alleging that B.M. and J.M. have serious medical conditions that cannot be adequately addressed by the district. The local school board denied the late filed open enrollment application finding that good cause was not met.

In reviewing an open enrollment decision involving a claim of a serious medical condition that cannot be adequately addressed under Iowa Code § 282.18(5), the State Board has set out six criteria that all must be met in order to overturn the decision of the local board. The evidence at the hearing before the administrative law judge showed that under the first and second criteria there is no question that B.M. has been diagnosed with a serious medical condition that is not temporary. However, under the third and fourth criteria the district had not been provided with the specifics of B.M.'s health needs caused by the condition or given the opportunity to meet those additional needs. Thus, the appeal falls short on the third and fourth criteria. Additionally, with regard to J.M. under the first criterion, the diagnosis was never provided to the district and thus the district had not been provided with the specifics of J.M.'s health needs in her case either.

Thus, it is recommended that the State Board affirm the denial of the open enrollment application.

IOWA DEPARTMENT OF EDUCATION  
(Cite as \_\_\_ D.o.E. App. Dec. \_\_\_)

---

<i>In re Open Enrollment of B.M. &amp; J.M.</i>	)	
	)	
T.M. and K.M.,	)	
	)	PROPOSED DECISION
Appellant,	)	
	)	
v.	)	
	)	
Lisbon Community School District,	)	Admin. Doc. No. 5012
	)	
Appellee.	)	

---

STATEMENT OF THE CASE

The Appellants, T.M. and K.M., seek reversal of a May 14, 2015, decision by the Lisbon Community School District ("LCSD" or "District") Board of Directors ("LCSD Board" or "Board") denying a late filed open enrollment request on behalf of B.M. and J.M., to open enroll from LCSD to Mount Vernon Community School District ("MVCSD"). The affidavit of appeal filed by the Appellants on June 16, 2015, attached supporting documents, and the District's supporting documents are included in the record. Authority and jurisdiction for the appeal are found in Iowa Code § 290.1 (2015). 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.

A telephonic evidentiary hearing was held in this matter on August 14, 2015, before designated administrative law judge, Nicole M. Proesch, J.D., pursuant to agency rules found at 281 Iowa Administrative Code chapter 6. The Appellants were present on behalf of their minor children and represented by attorney Guy P. Booth. Superintendent Patrick Hocking ("Superintendent Hocking") appeared on behalf of the District. Also present was Ian Dye, the secondary principal, Eric Ries, who is the K-12 Dean of Students, and Roger Teeling, the elementary principal.

The Appellants testified in support of the appeal. Appellant's exhibits #1-4 were admitted into evidence without objection. Superintendent Hocking testified for the District and no exhibits were offered by the District.

FINDINGS OF FACT

T.M. and K.M. reside in the Lisbon Community School District with their children B.M. and J.M., and have for the last fourteen years. B.M. was in the 9<sup>th</sup> grade during the 2014-2015 school year and attended Lisbon High School ("LHS"). B.M. is entering his 10<sup>th</sup> grade year for

the 2015-2016 school year. J.M. was in the 6<sup>th</sup> grade during the 2014-2015 school year and is entering the 7<sup>th</sup> grade for the 2015-2016 school year.

On April 16, 2015, the school nurse, Julie Light, contacted T.M. and K.M. and notified them that B.M. had told her he was contemplating suicide. She advised them that the school would be calling an ambulance pursuant to school procedures to take B.M. to the hospital and they needed to come to the school. Up to this point in the school year Mrs. Light had been in contact with K.M. via email about B.M. and discussed his issues with anxiety. However, T.M. and K.M. had no idea B.M. was contemplating suicide or was having issues with depression. T.M. and K.M. immediately went to the school and met with Mrs. Light and the high school counselor, Mrs. Bischof. They were told that B.M. had contemplated taking pills that morning and that he was depressed and anxious. B.M. was taken to the hospital and was committed to a ward designed to deal with patients with B.M.'s medical needs. He was under the care of Dr. Jeffery D. Wilharm and therapist Tina Reiter. B.M. was there for five nights and was then released to T.M. and K.M. While in the hospital K.M. tried to make arrangements for B.M. to get his homework assignments but there was some confusion over what his assignments were.<sup>1</sup>

After B.M. was released from the hospital and returned to school neither T.M. nor K.M. contacted the school regarding B.M.'s health needs. They testified they did not do so because they were overwhelmed and they thought the school would contact them to see how B.M. was doing. K.M. and Mrs. Light kept in contact via email regarding B.M.'s anxiety level from the time he returned until school ended. However, no one else from the school attempted to contact T.M. or K.M. about B.M.'s issues and how to deal with him for the rest of this school year. K.M. did contact Mr. Ries when he first returned to school regarding the confusion with B.M.'s homework and Mr. Ries helped B.M. get the homework back on track for the remainder of the school year.

After returning home from his hospitalization, B.M. continued to have issues with anxiety and he had to leave the classroom on several occasions due to anxiety. On one occasion, Mrs. Anderson had posted a sign about suicide in the bathroom and B.M. thought the poster was meant for him because he had been discussing his issues with her. On another occasion, Mr. Hofmeister, who is B.M.'s Algebra teacher, stated he could not hold B.M.'s hand through everything and this created more anxiety for B.M. There was no evidence that the District was made aware of these incidents. The school set up several interventions for B.M., which included allowing B.M. to go to the guidance office when he got anxious, rearranging his schedule to accommodate his needs, and providing for class attendance interventions for B.M. However, many of these accommodations were arranged directly with B.M. and K.M. felt like she was left out of the conversations.

B.M. ended the year failing some of his classes even though he had previously been an honor roll student. Over the summer the family did not have any contacts with LCSD. T.M. testified that he is concerned that if B.M. returns to LCSD he will be overwhelmed by his classes and he feels that B.M. needs a fresh start at a larger school that is equipped with dealing with

---

<sup>1</sup> LCSD has a one to one laptop program and the assignments are given over Google Docs. Although, B.M. had his laptop in the hospital he was not sure about his assignments and this caused him to fall further behind.

suicide.<sup>2</sup> T.M. believes that MVCSD really works with students in these situations. K.M. feels that MVCSD staff and coaches have made extra efforts to check on B.M. and LCSD has not. B.M. is currently seeing Dr. Wilharm and Mrs. Reiter every few weeks and is taking four medications for his condition.<sup>3</sup>

There was very little testimony regarding J.M. J.M. also suffers from anxiety and has been seeing a physician and therapist. J.M. was diagnosed three years ago shortly after the family's home was burglarized. J.M. seemed to be doing better until the issues with B.M. arose and now she is getting regular treatment. The District has not been made aware of J.M.'s diagnosis or been asked for any support. However, T.M. and K.M. feel like MVCSD would be a better fit for both of their children. T.M. and K.M. believe J.M. would benefit from the many clubs and organizations that MVCSD offers. B.M. participates in soccer and cross country for MVCSD and the coach has been in contact with K.M. about B.M.'s anxiety. K.M. feels MVCSD is constantly checking on them to see how things are going. The family also attends St. John Baptist Church in Mt. Vernon and the children already have many friends in the district. They would also like to keep both children in the same district for scheduling and transportation reasons.

On or about May 7, 2015, K.M. filed an application for Open Enrollment for B.M. and J.M. from LCSD to MVCSD and noted on the application that B.M. was in the hospital for anxiety and depression and with help of counseling he feels more comfortable with fresh start in a new school. It further stated that B.M. participates in soccer and cross country for MVCSD, they attend church in Mt. Vernon, and they already feel like they are more part of Mt. Vernon than Lisbon. Superintendent Hocking reviewed the application and it was placed on the LCSD Board agenda for May 14, 2015. At the board meeting T.M. and K.M. spoke and read a letter from their children's therapist to the Board.<sup>4</sup> Superintendent Hocking recommended that the Board deny the application because it was made after the March 1st deadline and he believed it did not meet the good cause exception for a serious medical condition because the District had not been provided with information on the specific health needs of B.M. and it had not been given an opportunity to respond to B.M.'s health needs. Additionally, he did not feel they were given enough information from the family to make that determination. The LCSD Board voted 3-1 to deny the application.

On June 9, 2015, the Appellants mailed a timely notice of appeal.

### CONCLUSIONS OF LAW

The Iowa Legislature has given the State Board wide latitude in reviewing appeals under Iowa Code section 290.1 to make decisions that are "just and equitable." Iowa Code § 290.3. The standard of review in these cases requires that the State Board affirm the decision of

---

<sup>2</sup> MVCSD has a program called "You Matter, We Care" which deals with students who are at risk of suicide. Exhibits 2-4.

<sup>3</sup> Dr. Wilharm wrote a letter regarding these proceedings dated June 2, 2015; however this letter was never provided to the local board so we give it no weight in this appeal.

<sup>4</sup> T.M. and K.M. had medical records with them at the board meeting but the Board did not ask for those documents.

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).

The statutory filing deadline for an application for open enrollment for the upcoming school year is March 1. Iowa Code § 282.18. After the March 1 deadline a parent or guardian shall send notification to the resident district that good cause exists for the failure to meet the deadline. *Id.* The law provides that an open enrollment application filed after the statutory deadline, which is not based on statutorily defined "good cause," must be approved by the boards of directors of both the resident district and the receiving district. *Id.* § 282.18(5).

A decision by *either* board denying a late-filed open enrollment application that is based on an allegation of pervasive harassment or a serious health condition of the student that the resident district cannot adequately address is subject to appeal to the State Board under Code section 290.1. *Id.* § 282.18(5) (emphasis added). The State Board "shall exercise broad discretion to achieve just and equitable results that are in the best interest of the affected child or children." *Id.*

In this case T.M. and K.M. assert the both B.M. and J.M. have serious health conditions that cannot be adequately addressed by the District. It is well settled that an appellant seeking to overturn a local board's decision involving a claim of a serious medical condition must meet all of the following criteria for the State Board to reverse the decision and grant such a request:

1. The serious health condition of the child is one that has been diagnosed as such by a licensed physician, osteopathic physician, doctor of chiropractic, licensed physician assistant, or advanced registered nurse practitioner, and this diagnosis has been provided to the school district.
2. The child's serious health condition is not of a short-term or temporary nature.
3. The district has been provided with the specifics of the child's health needs caused by the serious health condition. From this, the district knows or should know what specific steps its staff can take to meet the health needs of the child.
4. School officials, upon notification of the serious health condition and the steps it could take to meet the child's needs, must have failed to implement the steps or, despite the district's best efforts, its implementation of the steps was unsuccessful.
5. A reasonable person could not have known before March 1 that the district could not or would not adequately address the child's health needs.
6. It can be reasonably anticipated that a change in the child's school district will improve the situation.

*In re Anna C.*, 24 D.o.E. App. Dec. 5 (2006); *see also In re Kathryn K.*, 26 D.o.E. App. Dec. 197, 199-200 (2012) and *In re Samantha H.*, 26 D.o.E. App. Dec. 373 (2013).

In this case, there is no question that B.M. has been diagnosed with both anxiety and depression and that the District was aware of the diagnosis. The State Board has found that depression is a serious medical condition. *In re Samantha H.*, 26 D.o.E. App. Dec. at 376. The record does not reflect that B.M.'s medical condition is temporary in any way. Thus, criteria one and two are met with regard to B.M.

The question in this case is whether or not the District was provided with specifics of B.M.'s health needs caused by his condition thus, putting the District on notice of what specific steps the district's staff could do to meet those needs. Here the evidence shows that the Appellants made little if any attempts to communicate with the District about B.M.'s health needs once he returned to school. While we sympathize with the Appellants who felt overwhelmed in this situation, we cannot overlook the fact that they made no attempts to communicate with the District about B.M. or any additional health needs that he had. The record shows the District accommodated B.M. upon his return to school, and the supports provided were objectively reasonable in the circumstances. If B.M. required more than the accommodations he was receiving, the Appellants should have communicated those needs to the District. That is not to say that the District could not have made more attempts to communicate with the Appellants upon B.M.'s return. However, under these circumstances the District cannot be expected to know what specific steps its staff can take to meet the health needs of B.M. Nor, has the District had a chance to implement those needs. Thus, the Appellants failed to carry their burden of proving the existence of the third and fourth criteria.

The appeal regarding J.M. is clearer from a legal standpoint. We do not doubt that J.M. is struggling with anxiety, although there was little evidence presented regarding her diagnosis. Nonetheless, the record is clear that the District was not provided with J.M.'s diagnosis or provided with any specific health needs caused by J.M.'s condition. Thus, criteria one and three are not met with regard to J.M.

The bigger issue for the Appellants appears to be sending both B.M. and J.M. to the same District for convenience. Understandably, if B.M. was allowed to open enroll to another district because of his health condition the Appellants would want J.M. to move also. The family also feels tied to MVCSD because they attend church in that community and B.M. participates in athletics there as well. Clearly, the family feels more support from the MVCSD. However, our open enrollment law does not contemplate an exception for siblings, comfort, or for convenience and even if we had allowed B.M. to open enroll out of the District we could not also allow J.M. to open enroll out of the District under the facts here.<sup>5</sup>

The State Board does not question that B.M. is suffering from anxiety and depression. Clearly, this is a serious condition for B.M. and we do not discount the seriousness of his condition. This case is not about limiting parental choice. The State Board understands that T.M. and K.M. want what is best for B.M. and J.M., who have serious medical conditions.

---

<sup>5</sup> The Appellants have a third child for whom they have not requested open enrollment.

We do not fault them for their decision to enroll their children at MVCSD. Nor does the outcome of this decision limit their ability to transfer to another district or remain at MVCSD.

However, our review focus is not upon the family's choice, but upon the local school board's decision under statutory requirements. The issue for review here, as in all other appeals brought to us under Iowa Code section 282.18(5), is limited to whether the local school board erred as a matter of law in denying the late-filed open enrollment request. We have concluded that the LCSD Board correctly applied Iowa Code sections 282.18(5) when it denied the late open enrollment application filed by the Appellants. Therefore, we must uphold the local board decision.

#### DECISION

For the foregoing reasons, the decision of LCSD Board made on May 12, 2015, to deny the open enrollment application of B.M. and J.M. to open enroll from LCSD to MVCSD is hereby AFFIRMED. There are no costs of this appeal to be assigned.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Nicole M. Proesch, J.D.  
Administrative Law Judge

\_\_\_\_\_  
Date

\_\_\_\_\_  
Charles C. Edwards Jr., Board President  
State Board of Education