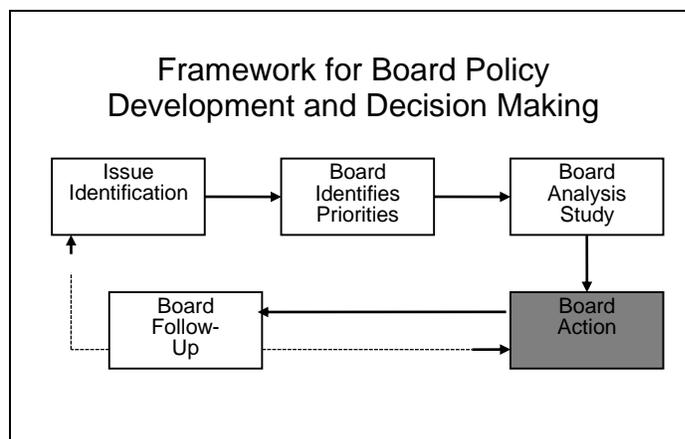


Iowa State Board of Education

Executive Summary

May 12, 2016



Agenda Item: *In re Expulsion of Student A. (St. Ansgar 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, Designated Administrative Law Judge and Legal Counsel, Office of the Director

Attachments: 1

Recommendation: It is recommended that the State Board approve the proposed decision affirming the decision of the St. Ansgar Board to expel Student A.

Background: Student A was a freshman at St. Ansgar High School at the beginning of the 2015-2016 school year. Student A had a number of disciplinary issues while attending school in the district. On September 22, 2015, during and after a volleyball game, Student A was involved in two separate incidents of student-on-student harassment. These two incidents were caught on surveillance and brought to the attention of administration. After reviewing Student A's disciplinary history and these two incidents, administration recommended to expel the minor child, Student A, for a period until the end of the 2015-2016 academic school year, to not allow Student A on school premises without permission, and requiring Student A to obtain counseling before re-admittance. Student A and

several other students testified at the local hearing. Student A testified that they were horsing around and if someone would have told him to stop he would have. The local Board approved the administrations recommendation and voted to expel Student A as stated.

Student A and his parents appealed. The Appellants argued that it was a due process violation to look at Student A's prior disciplinary record and the district should have given Student A a 504 plan. However, the record shows Student A was given appropriate due process and that a 504 plan, the parents had requested, was for academics and not for behavior.

The decision of a local Board to suspend or expel a student is clearly an issue of discretion. Thus, we review it for reasonableness. Student A had been given progressive discipline for similar conduct in the past. Given his disciplinary record, we cannot say that the local Board acted unreasonably in making its decision to expel Student A.

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

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

<i>In re Expulsion of Student A.</i>)	
)	
Parents of Student A,)	
)	PROPOSED DECISION
Appellant,)	
)	
v.)	
)	
St. Ansgar Community School District,)	Admin. Doc. No. 5030
)	
Appellee.)	

STATEMENT OF THE CASE

The Appellants seek reversal of an October 13, 2015 decision by the St. Ansgar Community School District (“District”) Board of Directors (“Board”) to expel their minor child, Student A, for a period until the end of the 2015-2016 academic school year, to not allow Student A on school premises without permission, and requiring Student A to obtain counseling before re-admittance. The affidavit of appeal filed by the Appellants on November 13, 2015, attached supporting documents, and the school district’s supporting documents are included in the record. Authority and jurisdiction for the appeal are found in Iowa Code § 290.1 (2015). The administrative law judge finds that she and the State Board of Education (“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 March 11, 2016, 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 Student A and were represented by attorney Brendon Moe. The District was represented by Attorney Drew Bracken. Superintendent Jody Gray (“Superintendent Gray”) appeared on behalf of the District. Also present for the District was Principal Lynn Baldus (“Principal Baldus”).

The Appellants and Student A testified in support of the appeal. Appellant’s exhibits were admitted without objection. Superintendent Gray and Principal Baldus testified for the District and the school district’s exhibits were admitted into evidence without objection.

FINDINGS OF FACT

At the time of his expulsion Student A was a 15 year old freshman at St. Ansgar High Schools (“SHS”) at the beginning of the 2015-2016 school year. Student A has had a number of disciplinary issues while attending schools in the District. The final incidents leading up the

expulsion hearing occurred on September 22, 2015, during and after a volleyball game at the school. The incidents were both caught on tape and alerted to Principal Baldus.

In the first incident, Student A and several other students were outside the school gym when they drug a student out of the gym and pulled his clothes off. The student's underwear were pulled down to his knees and Student A and the other students ran off. That same evening, after the game, Student A and several other students were walking out of the school gym in the hallway and decided to "ape"¹ another student. The student was pulled to the ground by several students and Student A "oil checked"² the student. Student A admitted to participating in the aping and admitted to oil checking the student.

On or about October 2, 2015, the Appellants were notified in writing that Student A was placed on out of school suspension for engaging in student to student harassment, student to student hazing, and student to student assault. They were also notified that Superintendent Gray was recommending that Student A be expelled for the remainder of the 2015-2016 school year and that a hearing would be held in front of the Board on October 13, 2015. The letter included a notification of Student A's right to attend the hearing, present evidence and testimony and the right to be represented.

On October 13, 2015, a disciplinary hearing was held before the Board to determine the appropriate punishment for Student A for the incidents and his involvement. The Board met in closed session for several hours to hear from witnesses, Student A, the Appellants, and to deliberate on the administration's recommendation to expel Student A from school for the remainder of the 2015-2016 school year. The administration based its recommendation on Student A's behavior in the current incidents and prior disciplinary record in the District evidencing similar behaviors. Principal Baldus outlined Student A's pertinent disciplinary records leading up to the current incident at the expulsion hearing for the Board.

The first disciplinary incident dates back to October 1, 2012, when Student A was in 7th grade at St. Ansgar Middle School. During this incident Student A was caught pulling down the pants of another student. Student A was required to eat lunch in the office for the remainder of the week as punishment.

The second incident occurred in December of 2012. Student A assaulted a sixth grader by sticking his finger in the student's buttocks outside the clothing while the student was wearing gym shorts and laughing at the student. This happened on several occasions and the parents of the sixth grade student contacted law enforcement who conducted an investigation. The student also reported two other students who had been assaulted by Student A. Law enforcement contacted the parents of the other students. All of the students' parents wanted the harassment to stop immediately. The parents did not want file charges and requested that the school closely monitor Student A and make sure it did not happen again. As a result, the

¹ "Aping" was described by Student A as surrounding someone and acting like an ape by making ape sounds and poking at the person.

² "Oil Checking" was described by Student A as sticking your finger in someone's butt with their clothes on. Another student testified it is also an illegal wrestling move used to startle your opponent.

school investigated the incident under its bullying and harassment policies and had a meeting with Student A regarding his behavior.

The third incident that was reported on April 9, 2013, and involved sexting. Two female students reported to Mrs. Rustad that they had received inappropriate pictures on their phones from Student A of his naked groin area, which they deleted. Student A admitted to Superintendent Gray, that Student A had sent the inappropriate photos to the two females. The discipline received for this incident was not specified in the record.

The fourth incident occurred on October 31, 2013, and involved sexting. Several female students reported that Student A requested naked photos of them and they sent the photos to Student A. Student A saved the photos and shared them with other students. Student A also sent naked photos of himself from the waist down back. Student A also threatened to tell people information about students if they did not send him pictures. After receiving several pictures from one of the students, Student A started grabbing the student in the butt and thighs and said he would only stop if she sent him another picture so the student did. Student A admitted to sending, receiving the photos, and to inappropriately touching students. The incident was referred to the police since it occurred outside the school.

The fifth incident occurred on February 27, 2014. Student A pulled down another student's shorts in P.E. class twice. The incidents were caught on tape and Student A admitted the behavior. Student A received in school suspension and removal from P.E. class for two weeks with alternative assignments.

The sixth incident occurred on March 19, 2015. A student reported to the guidance counselor that he was in the locker room after P.E. changing and Student A came up behind him and started rubbing his genitals on the students head. Student A admitted the behavior and received an in-school suspension for the incident. Student A was also found ineligible for the next scheduled performance activity under the school's good conduct policy. The incident was also reported to the police.

The seventh incident occurred on April 1, 2015. Student A sketched an inappropriate picture of himself and another student, in which he was holding a knife and performing a sex act on another student. Student A admitted to drawing the picture to "cheer up" his friend. Student A was sent to the office and given a warning.

In this instance, Superintendent Gray found that Student A violated board policy 503.12, Student to Student Harassment, and board policy 503.1, Student Conduct. Superintendent Gray testified that although the recent incidents alone would not have warranted a recommendation for expulsion; however, based on Student A's long disciplinary record involving similar conduct, Superintendent Gray recommended expelling Student A for the remainder of the 2015-2016 school year under board policy 503.2.

At the hearing before the Board, ten students testified on Student A's behalf. Overall the testimony collectively was that aping was "just guys horsing around" or "just having fun." A common theme was that "everyone is doing it" and it was not hurting anyone. Likewise, the testimony collectively was that oil checking was always done with clothes on and there was no

intention of making anyone uncomfortable. However, at least one student testified “it’s kinda perverted, but it’s just one of those things that’s gone on here for years and no one – no one usually makes it seem weird.”

Student A’s mother testified that Student A was diagnosed with ADHD in fourth grade. She provided evidence that Student A had received three weeks of counseling in 2013 due to behavioral concerns. She also provided evidence that during the 2014 school year Student A had a psychological evaluation done at Mercy Medical Center at their request due to concerns that Student A was struggling in school, avoiding and lying about homework, and other impulsive behaviors. Additionally, on September 9, 2015, she emailed Principal Baldus about getting a 504 plan for Student A to help him with distractions and focusing when taking tests. However, no plan was implemented because accommodations were given to Student A as part of his regular education plan. Student A’s father also offered information to the Board about individuals with ADHD.

Student A also addressed the Board. Student A admitted to participating in the aping but insisted that he did not know he was doing anything wrong. He also stated that he has poked others in the butt with their clothes on but that he has never oil checked. This is contrary to his written statements and contrary to what the video shows. He also stated that all someone had to do was to tell him to stop aping and oil checking and he would have stopped. He stated that everyone was doing it and no one was offended by it.

Based on the evidence, testimony, and exhibits the Board found that Student A participated in two separate acts of student to student harassment and student to student assault which involved aping and oil checking. The Board also found that student A was disciplined for similar acts of putting his fingers over the clothes in the rear end of several students in December 2012 and January of 2013. The Board also found that the diagnosis of ADHD was not an excuse and that Student A admitted the behavior. Thus, the Board found a violation of Board policies 502.12 and 503.1.

The Board voted 4-0, with two abstaining, to expel Student A as follows:

“for a period until the end of the 2015-2016 academic school year, said student shall not be present at any time on any school property during the period of expulsion without prior written consent from the school administration, and the Board and administration will require the student to engage in suitable, verified counseling and show progress before that student may be readmitted . . .”

The Appellants filed a timely notice of appeal with the State Board on November 13, 2015. The Appellants argue that Student A was not given appropriate due process, that evidence of prior incidents of discipline was improperly admitted, and that Student A was denied a 504 plan. The District argues that the punishment was based on progressive discipline, Student A received notice, and there was no violation of Student A’s rights under section 504.

CONCLUSIONS OF LAW

The State Board in reviewing appeals under Iowa Code section 290.1 has been given broad authority to make decisions that are “just and equitable.” Iowa Code § 290.3 (2013). The standard of review in these cases requires that the State Board affirm the decision of the local board unless the local board decision is “unreasonable and contrary to the best interest of education.” *In re Jesse Bachman*, 13 D.o.E. App. Dec. 363 (1996). Thus, the test is *reasonableness*.

The Iowa Legislature has conferred broad statutory authority upon local school boards to adopt and enforce its own rules and disciplinary policies. *See* Iowa Code § 279.8. Under Iowa Code section 279.8 “the board shall make rules for its own government and that of the . . . pupils, and for the care of the school house, grounds, and property of the school corporation, and shall aid in enforcement of the rules. . . .” Local school boards have the explicit statutory authority to expel or suspend students for violating school rules pursuant to Iowa Code section 282.4, which provides as follows:

1. The board may, by a majority vote, expel any student from school for a violation of the regulations or rules established by the board, or when the presence of the student is detrimental to the best interests of the school. The board may confer upon any teacher, principal, or superintendent the power temporarily to suspend a student, notice of the suspension being at once given in writing to the president of the board.

School districts have broad discretion to punish students who break the rules as long as the district follows appropriate due process requirements. Due process requires “notice and opportunity for hearing appropriate to the nature of the case.” *Goss v. Lopez*, 95 S. Ct. 729, 738 (1975). However, due process does not “shield [a student] from suspensions properly imposed”. *Id.* at 739. An expulsion or a long-term suspension will generally be upheld as long as the student received written notice of the alleged offense; notice of the time, date, and place of the hearing; sufficient time to prepare an adequate defense, to present witnesses, and to cross examine witnesses; notice of individual rights; and if the hearing conducted by the board was free of bias. *See In re Cameron Wilson*, 25 D.o.E. App. Dec. 223, 224 (2010). The State Board will not overturn a local board’s decision unless it is unreasonable. *In re Jesse Bachman*, 13 D.o.E. App. Dec. at 363.

Due Process

The Appellants argue that Student A was not afforded due process in this case. Specifically, they argue that notice was provided to the Appellants and not Student A directly. Due process in an expulsion case like this requires written notice of the alleged offense; notice of the time, date, and place of the hearing; sufficient time to prepare an adequate defense, to present witnesses, and to cross examine witnesses; notice of individual rights; and if the hearing conducted by the board was free of bias. The record shows that a letter was sent to the Appellants, who are the parents of Student A, notifying them of the alleged offense, the time, date, and place of the hearing, and of their rights. We find this notice to the parents of a minor sufficient. The Appellants and Student A were also present at the hearing and given the opportunity to present witnesses and cross examine witnesses. There is no evidence they were deprived of these opportunities in any way. Furthermore, the appellants were present at the

hearing when the Board made its decision and they were given notice that a written decision was available at the school when it was completed.

The Appellants also argue that the use of prior incidents of discipline at the hearing against Student A was improper and based on hearsay and they had no opportunity to cross examine the witnesses regarding prior disciplinary incidents. However, in an administrative proceeding of this nature rules of evidence are more relaxed and the ultimate test of admissibility is whether the offered evidence is reliable, probative, and relevant. *See* Iowa Admin. Code r. 281 – 6.12(2)(o)(1). The record shows the prior incidents of discipline were recorded in Student A’s education record, which was offered and entered as an exhibit at the hearing. There is no evidence to indicate that this record is not reliable, probative, or relevant. Student A’s disciplinary record shows that Student A received progressive discipline over time and Student A failed to correct his behavior. The failure to correct this pattern of behavior is what resulted in administrations recommendation to expel Student A. We find no due process error here.

Finally, the Appellants also argue that the District should have given Student A a 504 plan and the failure to do so was a violation of due process. However, the Appellants offer no evidence to support this claim. The evidence shows that the Appellants contacted Principal Baldus just days before receiving a notice of hearing in this case about a 504 plan for Student A relating to his academic performance, not his challenging behaviors. However, Student A was already receiving these accommodations. The Appellants did not argue at the hearing that his behavior was a result of a disability; rather, the Appellants’ case at the hearing rests on the idea that the behavior that Student A was engaging in was “just for fun” and “everyone was doing it.” The Appellants also argue that if someone would have told Student A to stop he would have, which is inconsistent with the 504-based argument they now advance. Thus, there is no evidence that the Appellants were not afforded appropriate due process.

Reasonableness

As long as the punishment of the Board is reasonable, the decision will be upheld. Based on the record before us the State Board cannot say that the decision of the Board was unreasonable, given the circumstances in this case and the long history of disciplinary issues with Student A. At least one of the behaviors involved in this incident “oil checking” Student A had been counseled on in 2012. Student A also admitted the behavior but downplayed the seriousness of it characterizing it as horseplay and suggesting that “everybody’s doing it.” While that may be the case, it does not make the behavior okay and it does not take away the fact that Student A had already been counseled on at least one prior occasion that it was not okay. Additionally, these incidents of a sexual nature may also implicate both Title IX of the Education Amendments of 1972³ and Iowa’s Bullying and Harassment statute under Iowa Code section 280.28.⁴ These types of situations must be taken seriously by the District or the District

³ Title IX is a federal civil rights law that prohibits discrimination on the basis of sex in federally funded education programs and activities. All public schools that receive federal funds must comply with Title IX.

⁴ Iowa Code section 280.28 prohibits harassment and bullying based on age, color, creed, national origin, race, religion, marital status, sex, sexual orientation, gender identity, physical attributes, physical or mental ability or disability, ancestry, political party preference, political belief, socioeconomic status, or familial status. Schools are required to have a policy in place prohibiting this conduct.

can be held liable. *See Davis v. Monroe County Board Of Education*, 529 U.S. 629 (1999). The District is right to be concerned that this behavior will continue if Student A is allowed to remain in school. Thus, it is clear from the record that the Board thoughtfully considered the evidence presented and the recommendations of administration to expel Student A. We cannot say that the Board acted unreasonably.

While this may not be the preferred educational outcome for Student A, we also understand that Student A's conduct is not the preferred conduct that the Board expects of its students. Furthermore, Student A's conduct was progressive in nature and Student A failed to correct behavior which he had previously been warned about. After the 2015-2016 school year Student A will have an opportunity to return to school after providing proof of counseling and progress to the Board. Thus, we find the decision of the Board was reasonable.

DECISION

For the foregoing reasons, the decision of St. Ansgar Community School District Board made on October 13, 2015, to expel Student A for a period until the end of the 2015-2016 academic school year, not allow Student A on school premises without permission, and requiring Student A to obtain counseling before re-admittance is hereby AFFIRMED. There are no costs of this appeal to be assigned.

Date

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

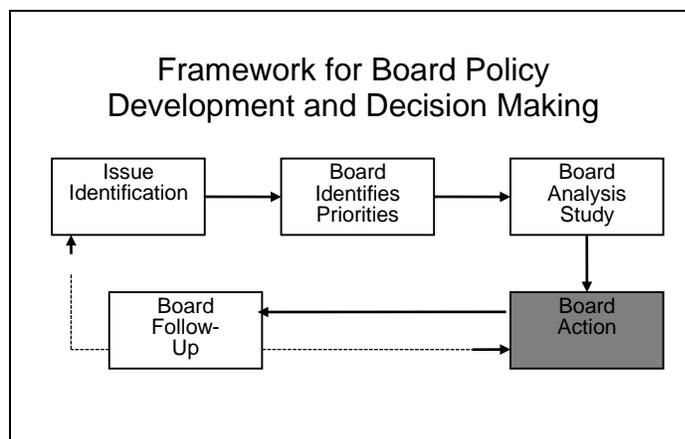
Date

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

Iowa State Board of Education

Executive Summary

May 12, 2016



Agenda Item: *In re Dissolution Appointments (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, designated Administrative Law Judge and Legal Counsel, Office of the Director

Attachments: 1

Recommendation: It is recommended that the State Board approve the proposed decision dismissing the appeal on the basis that the Appellant is not an aggrieved party and affirming the decisions of the Board to appoint members of a dissolution commission.

Background: On May 21, 2015, the Board of Directors for the Gladbrook-Reinbeck Community School District (“Board”) received a Petition and Proposal for Dissolution of the District in which the Appellant was listed as a possible individual who could serve on a dissolution commission. On August 20, 2015, the Board moved to appoint members of the community to a dissolution commission as required under Iowa Code section 275.21. The Appellant was not chosen. On September 17, 2015, the Board moved to make changes to the commission due to a recent election. The Appellant was not appointed. The Appellant appeals these decisions on the basis that the Board abused its discretion in appointing members to the commission by failing to appoint a member that represents individuals on the free and reduced lunch status.

The District filed two Motions to Dismiss. The first for improper filing of the appeal via email and not via US Mail or facsimile by the 30 day statutory deadline. The second Motion was on the basis that the Appellant is not an aggrieved party under the statute.

We find substantial compliance with the statutory filing requirements since the appeal was filed via email with the Department of Education by the deadline and thus deny the first Motion to Dismiss. On the second Motion to Dismiss, we find that the Appellant is not an aggrieved party under the statute and thus the Motion is granted.

Nonetheless, we review the merits of the underlying appeal for purposes of further review. 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. The local Board reviewed the requirements of Iowa Code section 275.51 when it made its appointments to the dissolution commission. On its face, the statute does not require that the Board appoint members from *all* socio-economic groups but from *various* socio-economic groups. Additionally, the Board did include individuals that met all of the other statutory requirements. Thus, there is no evidence that the local Board abused its discretion and acted unreasonably.

Thus, it is recommended that the State Board approve the proposed decision dismissing the appeal on the basis that the Appellant is not an aggrieved party and affirming the decisions of the Board to appoint members of a dissolution commission.

IOWA DEPARTMENT OF EDUCATION

<i>In re Dissolution Commission</i>)	
<i>Appointments</i>)	
)	
Mistery Ficken,)	PROPOSED DECISION
)	
Appellant,)	
)	
v.)	
)	
Gladbrook-Reinbeck Community)	Admin. Doc. No. #5023
School District,)	
)	
Appellee.)	

PROCEDURAL BACKGROUND

On or about May 21, 2015, the Board of Directors of the Gladbrook-Reinbeck Community School District (“Board”) received a Petition and Proposal for Dissolution of the Gladbrook-Reinbeck Community School District (“District”).¹ On August 20, 2015, the Board moved to appoint members of the community to a dissolution commission as required under Iowa Code section 275.51. On September 17, 2015, the Board moved to make changes to those appointments due to recent school board elections.

On September 21, 2015, the Appellant filed by email² an appeal of the decisions rendered on both August 20, 2015, and September 17, 2015, by the Board to the State Board of Education (“State Board”). This appeal was initiated pursuant to Iowa Code section 290.1, which allows the parent or guardian of an affected student who is aggrieved by a decision or order of the Board of Directors of a school corporation to appeal the decision to the State Board. The undersigned administrative law judge for the Iowa Department of Education has been designated to serve as the presiding officer for this case.

A scheduling conference was held on September 30, 2015 and the parties agreed to motions deadline of November 6, 2015, with any resistances or replies due by November 20, 2015. The District timely filed a Motion to Dismiss and a Motion for Summary Judgment, Statement of Undisputed Material Facts with a supporting Appendix, and a Memorandum of Authorities in Support of the motion on November 5, 2015. The Appellant timely filed a Resistance to the Motion to Dismiss on November 17, 2015. The District’s timely filed a reply to the Resistance to the Motion to Dismiss on November 17, 2015. The Appellant untimely filed a

¹ The District raised the issue of whether or not the Petition and Proposal for Dissolution was a valid Petition. This issue is not for this board to decide so we decline to address it here.

² The original filing was sent by regular mail and postmarked September 22, 2015, and received by the Department on September 24, 2015.

Resistance to the Motion for Summary Judgment, Statement of Disputed Facts, and Memorandum of Authorities in Support of the motion on November 23, 2015, via both email and U.S. mail. The District filed a Motion to Strike the untimely Resistance to the Motion for Summary Judgment on November 25, 2015. The Appellant filed a response to the Motion to Strike on December 1, 2015. On December 18, 2015 an order was issued which reserved the ruling on the Motion to Dismiss for the time of the hearing, DENYING the District's Motion for Summary Judgment, and GRANTING the District's Motion to Strike.

An in person evidentiary hearing was held in this matter on March 23, 2016, before designated administrative law judge, Nicole M. Proesch, J.D., pursuant to agency rules found at 281 Iowa Administrative Code chapter 6. The Appellant was present and represented by attorney Darrell Meyer. The District was represented by Attorney Kristy Latta. Superintendent Jay Mathis ("Superintendent Mathis") appeared on behalf of the District. Also present for the District was Board President Joshua Hemann ("President Hemann"), Business Manager and Board Secretary Deb Oleson ("Mrs. Oleson"), and the Superintendent's Secretary Kate Schildroth ("Mrs. Schildroth").

The Appellant testified in support of the appeal. Appellant's exhibits were admitted without objection. Superintendent Mathis, President Hemann, and Mrs. Schildroth testified for the District and the District's exhibits were admitted into evidence without objection.

At the hearing the District renewed its original Motion to Dismiss and also made an oral Motion to Dismiss on the basis of a lack of standing of the Appellant to file this appeal.

RULING ON FIRST MOTION TO DISMISS

First we will review the first Motion to Dismiss filed by the District. Under Iowa Code section 290.1 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 local school district in a matter of law or fact may within thirty days after the rendition of the decision appeal the decision to the state board of education. Iowa Code § 290.1. The appeal shall be in the form of an affidavit filed with the state board by the aggrieved party within the time for taking an appeal. *Id.* "The affidavit shall be considered filed with the agency on the date of the United States Postal Service postmark, the date of arrival of a facsimile, or the date personal service is made." Iowa Admin. r. 6.3(1). The rules do not specifically permit filing by e-mail or electronically. *Id.*

The State Board has found that lack of compliance with the statutory requirements will result in no jurisdiction over an appeal. *In re Intra District Transfers*, 27 D.o.E. App. Dec. 568 (2015). The Iowa Supreme Court has found that the manner of service prescribed in statute shall be strictly adhered to. *Dawson v. Iowa Merit Employment Commission*, 303 N.W. 2d 158, 160 (Iowa 1981). In *Dawson*, the Court dismissed a petition for judicial review even though the petition was personally served on the respondent but not mailed. *Id.* At the time of the appeal personal service was not permitted under the Iowa Administrative Procedures Act. *Id.* The Court held firm to the statute even though personal service is arguably more accurate than service by mail. *Id.*

Here, the District has filed a Motion to Dismiss on the basis that the affidavit of appeal was filed untimely. Specifically, the District asserts the appeal of the August 20, 2015 decision is untimely because the appeal was not postmarked by September 21, 2015. A review of the record shows the Department received the Appellant's affidavit via email on September 21, 2015 and by U.S. mail on September 24, 2015, with a September 22, 2015 postmarked date. There is no question that the postmarked date is past the filing deadline for the August 20, 2015 decision. However, the issue here is whether or not the email filing is sufficient to comply with the rule.

This case is in contrast to *Dawson* because it is not the statute that prescribes the method of service in Chapter 290 appeals it is the Department's rule that prescribes acceptable service. The rule also provides that an affidavit shall be considered filed with the agency on the date of arrival of a facsimile. Iowa Admin. Code r. 281 – 6.3(1). The Department's facsimiles are received via email exchange when they come in from the fax server. Under these circumstances we cannot say definitively that receipt of the appeal by an email is substantially different than receipt of the appeal by fax. However, this is a close question. In light of the fact that this is a close question we will accept the email filing as substantial compliance with the rules and find it is timely. The Department will further review its rules regarding acceptable methods of service and provide more clarity moving forward.

We must now review the District's Second Motion to Dismiss on the basis that the Appellant does not have standing to bring this appeal.

RULING ON SECOND MOTION TO DISMISS

At the time of the hearing the Appellant testified that on January 1, 2015, she open enrolled her children from the District to the GMG Community School District ("GMG") for the 2015-2016 school year, her children are currently attending school at GMG, and were attending GMG at the time of the Board's decisions. The District made an oral Motion to Dismiss the case on the basis that the Appellant's children are no longer "affected pupils" under Iowa Code section 290.1 and were not "affected pupils" at the time of either decision by the Board in this case. See Iowa Code § 290.1. Iowa Code section 290.1 states in pertinent part:

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, . . . 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. . .
(emphasis added)

The State Board has ruled that in order to be an aggrieved party there must be a direct and immediate impact from the decision. Simply being affected indirectly or remotely is not sufficient. *In re Pam Rohlk*, 11 D.o.E. App. Dec. 20, 22 & n. 2 (1994). First, we note that the Board's decision not to appoint the Appellant to the committee appears to have more of an impact on the Appellant than it does on her children. The Appellant failed to articulate any a direct and immediate impact of the decision on her children at the hearing. Additionally, they are no longer pupils in the District and were not pupils in the District at the time of the Board's decisions. Thus, we find and conclude that at the time of the filing of this appeal, September 21,

2016, the Appellant was not “a parent or guardian of an affected pupil” who was aggrieved by a decision of the Board. As a result, the Appellant is not an aggrieved party under Iowa Code section 290.1. As such, the State Board lacks jurisdiction to hear the appeal on this basis.

However, given that these are time sensitive issues we will review the merits of the parties’ appeal and attempt to resolve those issues for purposes of further review. Even if we assumed that the Appellant was an aggrieved party for purposes of this appeal, we find that the Appellant would not be entitled to relief for the reasons stated below.

FINDINGS OF FACT

The Appellant is a parent of five minor children who attended school in the Gladbrook-Reinbeck Community School District (“District”) until the end of the 2014-2015 school year. On January 1, 2015, the Appellant filed an application for open enrollment from the District to GMG. The Appellant’s children began attending GMG in the 2015-2016 school year.

On or about May 21, 2015, the Board of Directors of the Gladbrook-Reinbeck Community School District (“Board”) received a Petition and Proposal for Dissolution of the District. The petition proposed the following names of individuals to serve on a commission for dissolution pursuant to Iowa Code section 275.51, including the appellant:

- 1) Lisa Swanson, who is a resident of Reinbeck with children in the District and is a current school board member;
- 2) Eric Sieh, who is a resident of Reinbeck with children in the District and is a current school board member;
- 3) Doug Rowe, who is a resident of Gladbrook and is a current school board member;
- 4) Terri Luehring, who is a resident of Gladbrook and a former instructor and athletic director in the District;
- 5) Mistrey Ficken, the Appellant, who is a resident of Gladbrook with children in the district;
- 6) Keith Sash, who is a resident and Mayor of Gladbrook; and
- 7) Ted Hammer, who is a resident of Traer, a farmer, and a former school board member.

On June 18, 2015, the Board determined that the first step in the dissolution process was to appoint members of a commission for dissolution. During the July 20, 2015, board meeting the Board voted to form a commission comprised of seven members, with up to three board members from the board and other members meeting geographic and socioeconomic considerations pursuant to the statute. The Board also voted to form a subcommittee comprised of three board members to make recommendations regarding who should be appointed to the commission. Josh Hemann, Doug Roe, and Matt Wyatt made up the subcommittee. All Board members were asked to submit names to Superintendent Mathis by the end of July.

On August 18, 2015, the subcommittee met to discuss potential commission members. The Board reviewed the requirements set out in Iowa Code section 275.51. The subcommittee discussed possible members and the various geographic areas and socioeconomic factors these

members represent to include: family, occupation, education, whether employed or unemployed, number of children or grandchildren in the district, and any additional information of the proposed members. The subcommittee did not consider free and reduced lunch data³ as a consideration nor did they ask possible committee members for income information. The subcommittee also tried to balance the commission with members from both Gladbrook and Reinbeck. Based on this discussion the subcommittee selected various individuals from the community to recommend to the Board for appointment. After the meeting, the Superintendent contacted those individuals to determine if they were willing to serve on the commission. On August 20, 2015, the Board voted unanimously to appoint the following individuals to the Commission:

- 1) Rod Brockett, who is Board member, a CPA and a resident of Reinbeck;
- 2) Matt Wyatt, who is a Board member, a farmer, and a resident of Reinbeck;
- 3) Doug Rowe, who is a Board member, works in Information Technology, and a resident of Reinbeck;
- 4) Susie Petersen, who works for a co-op and lives in Gladbrook;
- 5) Gary Stanley, who is a farmer and lives in Reinbeck;
- 6) Terri Luehring, who is a single father, currently retired but was an athletic director and a teacher in the district, and resides in Gladbrook;
- 7) Ann Boyer, who is an office manager and resides in Reinbeck;

Two out of seven of the individuals who were proposed in the petition were chosen to serve on the commission. The Appellant was not chosen as a member of the committee. All of the members who were chosen are eligible electors who reside in the district and three are current board members. Three of the members reside in Gladbrook and four of the members reside in Reinbeck. Three women were on the commission and four men.

On August 24, 2015, a notice was provided to Area Education Agency 267 certifying the names of the members of the commission and that the members represent various geographic areas and socioeconomic factors. On September 8, 2015, Anne Boyer was elected to the Board. This caused the commission to have more Board members than were allowed to serve on the commission. On September 17, 2015, the Board voted to remove Mr. Wyatt from the commission and replace him with Barry Thede. Mr. Thede is a single father who works for the Department of Transportation, is an eligible elector, and resides in Reinbeck.

On September 21, 2015, the Appellant filed an appeal of the August 20, 2015, and the September 17, 2015, Board decisions with the Department. The Appellant contends that the Board abused its discretion in selecting the members to the commission on August 20, 2015 and September 17, 2015. Specifically, she contends that the Board was required to appoint dissolution commission members from "all" socioeconomic factors present in the district. The Appellant contends that the Board failed to include a member, such as herself, who represents free and reduced lunch families in the district and that this failure is an abuse of discretion.

³ Superintendent Mathis and Ms. Schildroth both testified that free and reduced lunch data is confidential and this data is not to be used for a local purpose such as this. The Board thus could not have access to this information for consideration.

CONCLUSIONS OF LAW

The State Board's review of a local school board's discretionary 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). An abuse of discretion standard is synonymous with unreasonableness. In applying an abuse of discretion standard we look at only whether a reasonable person could have found sufficient evidence to come to the same conclusion as the local board. *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 may not substitute its judgment for that of the local board. *Id.*

The decision of a school district to appoint members of a dissolution commission is clearly an issue of discretion. The question is whether or not the decision to appoint particular members was unreasonable under the facts and circumstances or based on erroneous application of the law.

Iowa Code section 275.51 provides, in relevant part:

A school district dissolution commission shall be established by the board of directors of a school district if a dissolution proposal has been prepared by eligible electors who reside within the district. The proposal must contain the names of the proposed members of the commission and be accompanied by a petition which has been signed by eligible electors residing in the school district equal in number to at least twenty percent of the registered voters in the school district.

The dissolution commission shall consist of seven members appointed by the board for a term of office ending either with a report to the board that no proposal can be approved or on the date of the election on the proposal. Members of the dissolution commission must be eligible electors who reside in the school district, not more than three of whom may be members of the board of directors of the school district. Members shall be appointed from throughout the school district and should represent the various socioeconomic factors present in the school district.

(Emphasis added.)

The Appellant misstates the requirement of the statute with respect to a requirement to establish a commission that represents *all* socio-economic/ demographics. (Emphasis added). It is clear from the text of section 275.51 that the district shall appoint members seven members who are eligible electors who reside in the district and not more than three of those members may be board members. Members shall be appointed from throughout the school district and should represent the *various* socioeconomic factors present in the school district. (Emphasis added). The text on its face requires that the Board appoint members representing a various socio-economic factors, but it does not require the board to appoint members from *all* socio-economic factors. It only stands to reason that a commission made up of only seven people would not be large enough to represent all socio-economic factors in a school district. Thus, to impose such a requirement would not be reasonable. The evidence shows that the Board considered geographic location, family, occupation, education, whether employed or unemployed, number of children or grandchildren in the district, and any additional

information of the proposed members. The commission was also made up of members from both Gladbrook and Reinbeck and was gender diverse. The evidence shows that the Board met the requirements of the statute. We cannot say that the Board was required to obtain free and reduced lunch information or income from the potential commission members based on a plain reading of Iowa Code section 275.51. Nor would they have had access to this confidential information for this purpose. Thus, we cannot say with any assurance that this group is not represented by the current commission members. Under these facts we find no abuse of discretion.

The Appellant is understandably disappointed with the Board's decision not to appoint her to the commission. But we may not substitute our judgment for that of the local board. The State Board may not disturb the local board's decision absent a showing of abuse of discretion by that Board and we find no abuse of discretion here.

DECISION

For the forgoing reasons, the District's First Motion to Dismiss the appeal as untimely filed is DENIED, the District's Second Motion to Dismiss the appeal on the basis that the Appellant is not an aggrieved party is GRANTED, and the decisions made by the Board of Directors of the Gladbrook-Reinbeck Community School District Board on August 20, 2015, and September 17, 2015, to appoint members of the dissolution commission and reappoint members of the dissolution commission is hereby AFFIRMED.

Date

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

Date

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