

IOWA DEPARTMENT OF EDUCATION
(Cite as 27 D.o.E. App. Dec.694)

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

This matter came before the Iowa State Board of Education (Board) at its regularly scheduled meetings on November 18, 2015 and December 14, 2015. Appellant filed an appeal of the West Des Moines Board of Education decision. The State Board reviewed both the local decision and the proposed decision of Administrative Law Judge Nicole Proesch. That proposed decision is attached hereto and incorporated by this reference.

After reviewing the briefs and motions filed by counsel, having discussed this matter in open session, and being fully advised in the premises, a majority of the Board modifies the proposed decision as follows.

The motion to dismiss for lack of jurisdiction is overruled. The Board finds that under these unique circumstances, the Board has jurisdiction over this matter under Iowa Code section 290.1 (2015).

Both Iowa Code section 290.1 and Department rules require an appeal to be initiated by filing an affidavit. This requirement is jurisdictional and cannot be waived by the Board--even for good cause. Here, Appellant filed a letter signed by both himself and his attorney. In a footnote, the letter urged the Board to treat the filing as his affidavit. The letter was not

stylized as an affidavit nor is it in a form customarily used for affidavits.

While the Appellee asserts that Appellant's failure to file a "traditional" affidavit is dispositive of this appeal, the Board disagrees. "No technical form for motions is required." 281 IAC 6.6(1). The failure to caption the letter as an affidavit is not dispositive and does not deprive this Board of jurisdiction.

More importantly, the letter conformed to all the substantive requirements for filing an appeal—namely, it "set forth the facts, any error complained of, or the reasons for the appeal in a plain and concise manner." 281 IAC 6.3(1). The letter was further signed by the appellant as required by 281 IAC 6.3(1).

The Iowa Supreme Court has rejected hyper-technical compliance with the statutory requirements for filing an appeal in judicial review actions. The Court has determined that only substantial compliance, not strict or literal compliance, is necessary to invoke the court's jurisdiction. *Brown v. John Deere Waterloo Tractor Works*, 423 N.W.2d 193, 194 (Iowa 1988); see also *Birchansky v. Iowa Dep't of Pub. Health*, No. 12-1827, 2013 WL 3830196 (Iowa Ct. App. July 24, 2013). "Substantial compliance is said to compliance in respect to essential matters necessary to assure the reasonable objectives of the statute." *Sims v. HCI Holding Corp.*, 759 N.W.2d 333, 338 (Iowa 2009).

Appellant's letter substantially complied with the requirements of Iowa Code 290.1 and 281 IAC 6.3(1). The letter met the substantive requirements for an appeal and reasonably appraised the school district and the Board as to the basis of the appeal. As a result, this Board has jurisdiction to consider the appeal.

Although this Board overruled the proposed decision on the procedural ground, we affirm Judge Proesch's decision on the merits. We, however, want to clarify the sanction imposed by the West Des Moines Community School District.

On May 27, 2015, West Des Moines Community School District voted to suspend M.K for the remainder of the 2014-2015 school year

and to expel M.K. for the first semester of the 2015-2016 school year. The District furthered suspended M.K. for the first quarter of the second semester of the 2015-2016 school year and placed him in an alternate educational setting. Thereafter M.K. **may be readmitted** to the regular program.

DECISION

For the forgoing reasons, Judge Proesch's proposed decision is MODIFIED IN PART.

Appellant's Motion for Summary Judgment is GRANTED. All other motions currently pending are moot and are therefore DENIED.

1/21/2016

Date

/s/

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

IOWA DEPARTMENT OF EDUCATION

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

On June 26, 2015, the Appellants filed an 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 Appellants 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.¹

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 test 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.

¹ 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.

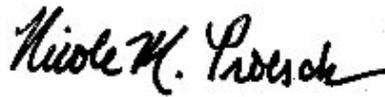
We now review the imposition of discipline for reasonableness. The State Board has found that imposing an expulsion for possession and/or distribution of drugs is reasonable and not contrary to the best interest of education. *See In re Colton L.*, 24 D.o.E. App. Dec. 177 (2007); *see also In re Hodges*, 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.



1/21/2016

Date

Nicole M. Proesch, J.D.

Administrative Law Judge

1/21/2016

Date

Charles C. Edwards Jr., Board President

State Board of Education