IOWA DEPARTMENT OF EDUCATION
(Cite as 27 D.o.E. App. Dec. 749)

In re Suspension of Student A,	)	
	)	
Parent of Student A,	)	
	)	DECISION
Appellant,	)	
	)	
v.	)	
	)	
New Hampton Community School District,	)	Admin. Doc. No. 5033, 5037
	)	
	)	
Appellee.	)	

STATEMENT OF THE CASE

The Appellant, seeks reversal of the November 17, 2015, decision made by the New Hampton Community School District ("District") Board of Directors ("Board") finding that Student A violated District policies and suspending Student A for the balance of the fall 2015-16 school semester, and the subsequent decision made by the Board on January 21, 2016, to re-review the student discipline action taken against Student A on November 17, 2015, and to change Student A's punishment by suspending Student A for time already served as ordered in the Board's decision on January 25, 2016. The affidavits of appeal filed by the appellant on December 18, 2015,[1] and on February 8, 2016[2], attached supporting documents, and the school district's supporting documents are included in the record. These two separate decisions involve common parties, common facts, and common questions of law or fact. As such, these matters were consolidated to expedite and simplify consideration of the issues. Authority and jurisdiction for the appeal are found in Iowa Code section 290.1. 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 April 14, 2016, before designated administrative law judge, Nicole M. Proesch, J.D., pursuant to agency rules found at 281 Iowa Administrative Code chapter 6. Post hearing briefs were due on April 29, 2016. The Appellant was present with her minor son, Student A, and was represented by attorneys Erich Priebe and Nate Schrader. Also present was the appellant's husband. Superintendent Jay Jurrens ("Superintendent Jurrens") was present on behalf of the District and was represented by attorney Beth Hansen.

The Appellant offered testimony through several witnesses in support of the appeal. The District offered testimony through several witnesses in opposition of the appeal. The proceedings were sealed by a prior order, witnesses sequestered, and the hearing was not open to the public.

[1] Postmarked on December 16, 2015.
[2] Postmarked on February 4, 2016.

Appellant's offered Exhibits A-T into evidence. There were no objections to Exhibits A-P. Appellee objected to Q, R, S, and T as exhibits that were not available to the Board. Exhibits R and S were not available to the District or the Board at the time of the hearing and the objection was sustained. Exhibit Q was not available to District or the Board at the time of the hearing but Dr. Updegraff testified regarding the contents of Exhibit Q. Exhibit T was not available to the Board at the hearing and was not admitted during testimony.

Appellees offered Exhibits 1-23 into evidence. Appellants objected to Exhibits 15.-2, 17.-2, 18.-2, and 19, which are meeting minutes from the underlying proceedings as new evidence. The objection was overruled as the Exhibits are relevant to the record. Exhibits 1-23 were admitted.

FINDINGS OF FACT

At the time of his suspension, Student A was a seventeen year old junior in New Hampton High School ("NHS") and finishing the first semester of the 2015-2016 school year. Student A participated in basketball and football and had no notable disciplinary issues. A review of the Board record shows the following facts leading up to the incident that resulted in local board action:

On November 4, 2015, Principal Sarah Updegraff ("Principal Updegraff") received a phone call from Kelly O'Donnell, Associate High School Principal ("Associate Principal O'Donnell") that Student B, who is a freshman, was found to be in possession of marijuana at the high school. The New Hampton Police Department was contacted and Student B was removed from the school and the incident was investigated by Detective Steve Stalder ("Detective Stalder"). During that investigation, Student B provided a statement that Student A had approached Student B in the lunchroom that morning at approximately 8:00 a.m. and asked if Student B had any money and if he wanted to buy any marijuana. Student A had approached Student B the prior week about buying marijuana; however, Student B did not have any money. Student B said Student A told him it would be $10.00 for the first time and $20.00 each additional purchase. Student B then followed Student A to his car and the two got into the vehicle. Student B got in the passenger side of the vehicle and Student A got in the driver's side of the vehicle. Student B noticed a gun in the pocket of the passenger door. Student A pulled out a mason jar with a plastic baggie inside it containing marijuana out from under the driver's seat. Student A gave the marijuana to Student B. Student B stated that he got the marijuana for Student C, although Student C did not ask him to get it. After the investigation, Detective Stalder contacted Principal Updegraff to update her on his investigation.

On November 5, 2015, Deputy Ryan Shawver ("Deputy Shawver") of the Chickasaw County Sherriff's Office, contacted Principal Updegraff after he was consulted by Detective Stalder. Principal Updegraff was concerned about a weapon being on school grounds and requested a search warrant. A search warrant was issued and during a search of Student A's vehicle, law enforcement located a cap gun revolver that was silver in color[3], cigarettes, and a Tupperware container that contained a mason jar with bread bags and a strong odor of

[3] There was no orange cap on the gun that would indicate it was a toy.

marijuana emanating from it. The jar also contained small pieces of a green leafy substance believed to be marijuana.

Deputy Shawver interviewed Student A. Student A stated that Student B approached him at school and asked to show him something. Student B asked to go to a secluded area so they went to Student A's car. Student A stated that when they got out to his car, Student B pulled out something he was not comfortable with from his laptop bag. It was a sandwich bag that contained a substance that appeared to be marijuana. Student A stated that Student B asked "don't you smoke?" and Student A answered "No, but maybe I tried it a long, long, time ago but I don't know." Student A stated he told Student B he was smarter now and into sports. Student A stated that Student B asked him to keep it hush. Student A stated he said ok and they got out of the car and went to class. Student A did not report the incident and did not want to get anyone in trouble. Student A stated that he did not know Student B well but could identify his name. Student A admitted that he kept a mason jar in his vehicle but insisted that it was used to hold his cigarettes. Student A also admitted that he had a fake little pop gun in the car that he found while working construction.

Principal Updegraff pulled school surveillance videos during the time of these incidents and observed Student A exiting the building with Student B following. On November 9, 2015, Principal Updegraff met with Student A and his parents and provided them with a letter suspending Student A. On November 12, 2015, Superintendent Jay Jurrens sent a letter to Student A and his parents that Student A was being suspended for eight days from November 5, 2015 until November 16, 2015 for violating school board policy 502.9, selling or distributing marijuana to another student on school grounds, and for violating school board policy 502.8, possessing a look-a-like weapon on school grounds.

Additionally, the letter notified Student A and his parents that administration believed the continued presence of Student A in the District caused a material and substantial disruption to the school environment and a threat to the health and safety of students, employees, and visitors and they would be making a recommendation to the school board to expel Student A for these violations. The letter also provided notice that Student A has a right to be represented by counsel, present a defense, and present oral or written testimony. A hearing was to be held on Monday, November 16, 2015, at 6:30 p.m.

On November 16, 2015, at the hearing before the Board, Deputy Shawver, Principal Updegraff, Superintendent Jurrens, and Student A all testified and evidence was presented to the Board.

Based on the evidence, testimony, and exhibits, the Board found that Student A had received a copy of the student handbook for the 2015-2016 school year and acknowledged reviewing the code of conduct policy. The Board also found that Student A violated school policy 502.9, selling or distributing marijuana to another student on school grounds and Student A violated school board policy 502.8, possessing a look-a-like weapon on school grounds.

The Board voted 5-0 to suspend Student A, instead of expelling him as was recommended by the administration, and provided the following ruling in a written decision on November 17, 2016:

> It is the ruling of the Board of Education that the student will be suspended from the New Hampton Community School for the balance of the Fall Semester of the 2015-2016 school year. [] The Board further rules that prior to readmission to the New Hampton Community School District, the student must complete a Substance Abuse Evaluation pursuant to Section 502.9 of the policy of the New Hampton Community School District.

Subsequently, due to concerns about the deliberative process held on November 16, 2015, and November 17, 2015, the district court granted a temporary injunction that prevented the Board from enforcing its order on January 5, 2016, and Student A promptly returned to school.[4] The Board called a special meeting to publically deliberate this matter on January 21, 2016. During deliberations the Board found that Student A violated school policy 502.9, selling or distributing marijuana to another student on school grounds, and Student A violated school board policy 502.8, possessing a look-a-like weapon on school grounds.

The Board voted 4-0, with one member recusing himself, to suspend Student A for time already served.

The Appellants filed a timely notice of appeal with the State Board on December 18, 2015, from the November 16, 2015 decision and on February 8, 2016, from the January 25, 2016 decision. The issues on appeal are whether or not there was sufficient evidence to support the Board's findings that Student A was in violation of school board policies and whether or not the imposed discipline was reasonable.

ADDITIONAL EVIDENCE

Student B testified before the State Board and offered substantially the same testimony that was offered to the Board. The Appellant also offered the following additional witnesses at the hearing before the State Board who were purportedly unavailable or unknown to the Appellant at the time of the local hearing and could offer exculpatory information: Student C, Associate Principal O'Donnell, and Detective Stalder. Generally, new evidence is not admitted into evidence in these proceedings because the State Board's review is for an abuse of discretion and not de novo. *See Sioux City Comm. Sch. Dist. v. Iowa Dep't of Educ.*, 659 N.W.2d 563, 569 (Iowa 2003). However, for sake of discussion, the State Board will deem their testimony relevant and admissible.

Student C testified that Student B came to first period class on the morning of the incident and was bragging that he had gotten marijuana from Student A. Student C did not see the marijuana but said she could smell it. Student C then reported this to Erica Schmidt, who contacted Associate Principal O'Donnell. Associate Principal O'Donnell met with Student C and then with Student B. Associate Principal O'Donnell searched Student B's laptop bag and located a cigar butt and a bag of what appeared to be marijuana. Student B stated that he had no idea how the marijuana got in the bag. Associate Principal O'Donnell called the police and Student B was transported to the police station for further questioning and investigation.

---

[4] Violations of Iowa Code Chapter 22 regarding Open Meetings law are not within the jurisdiction of the State Board and thus were not addressed here.

Associate Principal O'Donnell wrote a statement regarding his interview with Student B that was turned over to law enforcement. There is no dispute that the school did not have a copy of the statement at the time of the Board's disciplinary hearing. Detective Stalder also testified that he arrived at the school and took custody of Student B. Student B was interviewed and provided a statement that he obtained the marijuana from Student A. Detective Stalder wrote an investigation report but did not provide written reports to the school because they were used to apply for the search warrant. Detective Stalder updated Principal Updegraff of the situation over the phone.

Deputy Shawver and Principal Updegraff also testified before the State Board and offered substantially the same testimony that was offered to the Board. The Appellees also offered the testimony of Board member Damian Baltes, who did not testify before the Board because Mr. Baltes is a Board member and was a decision maker in the Board's decision. We find that his testimony is not relevant and will not be considered. The decision of the Board speaks for itself and his individual testimony has no bearing on the decision of the full Board.

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 State Board's 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 board's decision 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 there was sufficient evidence to come to the same conclusion as the Board that Student A violated Board policies. If a decision of the Board was supported by sufficient evidence we must find in favor of the local board.

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.

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). Due process requires "notice and opportunity for hearing appropriate to the nature of the case." *Id*. (quoting *Goss v. Lopez*, 95 S. Ct. 729, 738 (1975)). However, due process does not "shield [a student] from suspensions properly imposed". *Id. (*quoting *Goss*, 95 S. Ct. 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).

a. Due Process

The Appellants argue that Student A was not afforded due process in this case. Specifically, they find fault with Principal Updegraff's investigation because it was not based on her own firsthand knowledge of the events that transpired and it contained hearsay. They argue that the investigation was based on conversations with the parties involved, law enforcement reports, witness statements, and surveillance. Generally, hearsay evidence is admissible in administrative proceedings and may constitute substantial evidence. *Gaskey v. Iowa Dept. of Transp., Motor Vehicle Div.*, 537 N.W.2d 695, 698 (Iowa 1995). In contested cases, agency findings may be based upon the kind of evidence that reasonable prudent persons are accustomed to relying on to conduct their serious affairs and may be based on such evidence even if that evidence would not admissible in a jury trial. *Id*. In an administrative proceeding of this nature, rules of evidence are relaxed and the ultimate test of admissibility is whether the offered evidence is reliable, probative, and relevant. *In re Expulsion of Student A*, 27 D.o.E. App. Dec 726 (2016); *see also* Iowa Admin. Code r. 281—6.12(2)(o)(1). Thus, hearsay is admissible in these proceedings as long as it is reliable, probative, and relevant. Additionally, the State Board has held that a principal with no firsthand knowledge has the authority to enforce district policies and present the administration's findings. *In re Shinn*, 14 D.o.E. App. Dec. 185, 194 (1996).

The Appellants also argue that the investigation was incomplete because Principal Updegraff had not received every possible piece of evidence relating to the police investigation before making a recommendation to the Board. Specifically, Principal Updegraff had not reviewed several reports that were contained in the search warrant. Due process does not require perfection in the investigation process by the school. The Appellants were afforded notice of the proceedings, had legal representation, and were afforded an opportunity to present evidence, testimony, and cross examine witnesses before the Board. As such, we find the basic elements of due process were met.

b. Sufficiency of the Evidence

The Appellants also argue that there was not sufficient evidence to support a finding that Student A violated board policies. Specifically, they argue that Student A has repeatedly

denied the allegations and furthermore, that Student B lacks credibility because of inconsistent statements.

The Board policy on weapons provides in relevant part:

Policy No. 502.8 WEAPONS

> The board believes weapons, other dangerous weapons and look-a-likes in school district facilities cause a material and substantial disruption to the school environment or present a threat to the health and safety of students, employees and visitors on the school district premises or property within the jurisdiction of the school . . . Weapons and other dangerous objects and look-a-likes will be taken from students and others who bring them onto the school property or onto property within the jurisdiction of the school district or from students who are within the control of the school district. Parents of students found to possess weapons, dangerous objects or look-a-likes on school property are notified of the incident. Possession or confiscation of the weapons or dangerous objects will be reported to law enforcement officials, and students will be subject to disciplinary action including suspension or expulsion . . .

Student B told law enforcement there was a silver revolver in Student A's passenger door pocket when they were sitting in the school parking lot which was corroborated when law enforcement located a silver cap gun in Student A's passenger door during the search warrant. Furthermore, Student A admitted to having a fake little pop gun in the car that he found while working construction. Thus, it is indisputable that Student A possessed a look-a-like weapon on school grounds in his vehicle. The Board's finding that Student A possessed a look-a-like weapon on school grounds is supported by substantial evidence.

We will now review the sufficiency of the evidence with respect to the sale and possession of marijuana on school grounds.

The Board policy on drugs provides in relevant part:

Policy No. 502.9 SMOKING – DRINKING – DRUGS

> The board prohibits the distribution, dispensing, manufacture, possession, use, or being under the influence of beer, wine, alcohol, tobacco, other controlled substances, or "look alike" substances that appear to be tobacco, beer, wine, alcohol or controlled substances by students while on school district property or on property within the jurisdiction of the school district . . . Violation of this policy by students will result in disciplinary action including suspension or expulsion . . . Possession, use or being under the influence of beer, wine, alcohol and/or of a controlled substance may also be reported to the local law enforcement authorities . . . Students who violate the terms of this policy may be required to satisfactorily complete a substance abuse assistance or rehabilitation program approved by the school board. If such student fails to satisfactorily complete such a program, the student may be subject to discipline including suspension or expulsion . . .

There is no question for the record that Student A and Student B were together on the day of the incident. Even Student A admits to going out to his car with Student B so he could show him something, which is corroborated by the surveillance video. The question is whether or not to believe Student A's account of the events or Student B's. Student B was not completely forthcoming with school administration when they asked him about the marijuana that was found in his computer bag. In fact, his initial response was that he had no idea how it ended up in his bag. It was not until Student B was being interviewed by law enforcement that he provided information that Student A had provided him with the marijuana. However, Student B also provided law enforcement with other key details of the incident that were corroborated by the evidence found in Student A's vehicle. Although, Student A testified that he did not provide marijuana to Student B, the Board did not find Student A credible in light of the other evidence. We will not substitute our judgment regarding witness credibility for that of the local board. It is the factfinder's duty to weigh credibility of the witnesses. *See Iowa Supreme Court Attorney Disciplinary Board v. Weaver*, 750 N.W.2nd71 (Iowa 2001). "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). Although, Student B was not forthcoming with administration about where the marijuana came from, the evidence located in Student A's vehicle provided support to the truth of his statements to law enforcement. Based on the evidence presented we cannot say that the board's determination that Student A sold marijuana to Student B on school grounds is not supported by substantial evidence. This is not a criminal proceeding which would require a finding of beyond a reasonable doubt in order for a conviction. We cannot hold the Board to that standard.

Furthermore, the new evidence presented to the State Board only reinforces the correctness of the decision of the board. Nothing in the new testimony contradicts the findings of the Board. In fact, Student C testified that on the day of the incident during her first class that Student B was bragging that Student A gave him the marijuana. Student C reported this to administration and this led to the investigation by Associate Principal O'Donnell. This testimony is not inconsistent with the police reports and witness statement of Student B that were offered as evidence in front of the Board. Nor was there any exculpatory evidence presented which would nullify the findings of the Board.

c. Reasonableness of Punishment

The Appellants argue separately that a violation of the weapons policy for having a look-a-like weapon should not itself result in a suspension under the policy. However, this logic ignores that Student A was found to have violated both a weapons policy and the sale or possession of drugs policy. The Board did not separate the two violations for purposes of imposing a punishment and we cannot require them to do so. Thus, we will review the reasonableness of punishment based on both violations.

As long as the punishment is reasonable, the decision of the local board will be upheld. District administration recommended that the Board expel Student A for the violations – which was within the authority of the Board to do; however, the Board independently reviewed the evidence and made the decision to suspend Student A for the balance of the Fall Semester of the 2015-2016 school year with readmission after completion of a substance abuse evaluation.

During its second deliberation, the Board again independently reviewed the evidence and made the decision to suspend Student A for time already served, which was from November 5, 2016 until January 5, 2016. In total, this amounted to thirty-two days of school that Student A was suspended. Under these circumstances we cannot say that the Board acted unreasonably. Student A has been back in school since January 5, 2016. Thus, we find the punishment was reasonable.

DECISION

For the foregoing reasons, the decision of New Hampton Community School District Board made on January 25, 2016, finding that Student A violated school policy 502.9, selling or distributing marijuana to another student on school grounds, and Student A violated school board policy 502.8, possessing a look-a-like weapon on school grounds is AFFIRMED. Furthermore, the decision to suspend Student A for time served is also AFFIRMED. There are no costs of this appeal to be assigned.

8/04/2016 **/s/ Niciole M. Proesch**

Date

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

8/04/2016 **/s/ Michael L. Knedler**

Date

Michael L. Knedler, Board Vice-President
State Board of Education