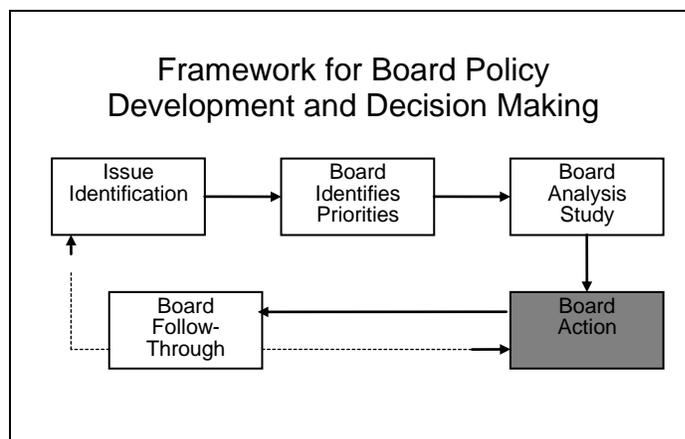


Iowa State Board of Education

Executive Summary

March 11, 2010



Agenda Item:

In re Cameron Wilson, 25 D.o.E. App. Dec. 223

Iowa Goal:

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

Equity Impact Statement:

All districts receive guidance from the legal questions answered in this decision.

Presenter:

Carol Greta, Administrative Law Judge*

Attachments:

1

Recommendation:

It is recommended that the State Board affirm the decision of the Oelwein Community School District local school board to expel Cameron Wilson for the remainder of the 2009-10 school year.

Background:

This 9th grade student has admitted that he brought marijuana to school in November with the intent to deliver. He sought assistance from a classmate (Student B) to find a buyer. Student B was also expelled, but just for the remainder of first semester. This decision concludes that the local school board was well within its discretion to discipline Cameron more harshly because his culpability was greater. While not directly relevant here, it is noted that the District provides an appropriately licensed teacher to work with Cameron so that he will be able to rejoin his class in the fall.

*In the event of an appeal of a final decision, the State Board is represented in district court by the Iowa Attorney General's office. Therefore, if any State Board member has questions for the Attorney General's office, let us know several days in advance of the March 11th meeting so we can arrange for an assistant Attorney General to be present either in person or via telephone.

IOWA DEPARTMENT OF EDUCATION
(Cite as 25 D.o.E. App. Dec. 223)

In re Cameron Wilson

Denise Wilson,	:	
Appellant,	:	
	:	PROPOSED DECISION
vs.	:	
	:	[Admin. Doc. 4707]
Oelwein Community School District,	:	
Appellee.	:	

The above-captioned matter was heard telephonically on January 22, 2010, before designated administrative law judge Carol J. Greta, J.D. The Appellant, Denise Wilson, was present on behalf of her minor son, Cameron. The Appellee District was represented by Superintendent James Patera and local board president Candace King. Present throughout the hearing but not participating herein were Cameron and his father, Kevin Wilson, as well as Oelwein high school administrators Chad Kohagen and Larry Wolfe.

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

Ms. Wilson seeks reversal of the December 4, 2010, decision of the local board of directors of the Oelwein School District to expel Cameron for the balance of the 2009-10 school year. The Wilsons appeal the harshness and the disparity of the punishment.

FINDINGS OF FACT

At the time of his expulsion, Cameron was in the 9th grade at Oelwein High School. The underlying reason for his removal from school is that Cameron was in possession of marijuana with intent to distribute the same during class on school grounds on November 23, 2009, a Monday. Marijuana is a Schedule I controlled substance according to Iowa Code section 124.204.

The facts are not in dispute. To his credit, Cameron admitted bringing the marijuana to school. He solicited a second student, Student B, to assist him in selling the marijuana to a third student, Student C. The sale did not occur. The Student B received a punishment from the local board that was less harsh than Cameron's punishment in that Student B was expelled for the remainder of first semester only. With no evidence that Student C purchased or possessed marijuana, the District took no action against Student C.

During Cameron's expulsion hearing, the local Board met in closed session for approximately one hour to hear from witnesses and deliberate on the administration's recommendation. Its members voted unanimously to expel Cameron for the balance of the 2009-10 school year. President King testified here that the board deliberately imposed a more harsh punishment on Cameron than on Student B because it was Cameron who brought the illegal drug to school and who sought out Student B for assistance in selling the drug. She also testified that another factor weighed by the local board was its requirement that the District work with Cameron, who is of compulsory attendance age, during the expulsion period so that he does not fall too far behind his classmates. (The District provides an appropriately licensed teacher to work with Cameron, and Ms. Wilson did express the family's appreciation for this.)

In its written decision, the local school board noted that “Cameron’s conduct is a serious breach of the school’s discipline policy. Such behavior is antagonistic to the rights of other students to attain their education and participate in school activities. Such conduct is a threat to the safe and orderly operation of the school.” The local board’s decision continues as follows:

The [local] Board has considered the seriousness of the conduct involved. Cameron’s conduct on November 23, 2009 indicates that his presence in the regular school environment is a serious threat to the safe and orderly operation of the school. Misconduct of this severity warrants serious corrective action. Such action is necessary for the safety and welfare of the students and staff as well as for Cameron’s own best interests.

CONCLUSIONS OF LAW

Review

The Iowa Legislature has conferred upon local boards of education the authority to set rules of conduct for students and to discipline them for violations of the same. See Iowa Code section 279.8, which states in pertinent part, “The board shall make rules for its own government and that of the ... pupils” Local boards have explicit statutory authority to expel students pursuant to Iowa Code section 282.4, which states in pertinent part 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.

Due process protections do not “shield [a student] from suspensions properly imposed.” *Goss v. Lopez*, 95 S.Ct. 729, 739 (1975). Thus, if Cameron received notice of the alleged violation; notice of the time, date, and place of a local board hearing; opportunity to defend himself, to present witnesses on his behalf, and to cross-examine the administration’s witnesses at the hearing; and if the hearing was conducted by a local board free of bias, he received all the process due to him. This Board then does not overturn a local board’s decision on discipline unless the local decision is “unreasonable and contrary to the best interest of education.” *In re Jesse Bachman*, 13 D.o.E. App. Dec. 363, 369 (1996).

Harshness and Disparity of the Punishment

Because this is Cameron’s first major violation of the District’s code of conduct, Ms. Wilson argues that he should be given a second chance to prove himself. She offers the alternative of allowing Cameron back in school on probationary status so that if he violates another school rule, he would be expelled then for the remainder of the school year. She also argues that Cameron should not have been punished more harshly than Student B.

An argument that one student was treated disparately from another requires an initial showing that the students are “similarly situated.” See, e.g., *State v. Wade*, 757 N.W.2d 618 (Iowa 2008)(principle of equal protection requires that similarly situated persons be treated alike under the law). However, Cameron and Student B are not similarly situated. They did do not stand accused of the same criminal offense. Cameron’s is the more egregious violation.

The fact that this was a “first offense” for Cameron is not persuasive. As long as a punishment is reasonable, the punishment is a policy decision “best left to the local board and school officials.” *In re Kam Schaefflauer*, 9 D.o.E. App. Dec. 188, 192 (1992). The State Board of Education does not sit as a “ ‘super school board’ substituting its judgment for that of the elected

board officials.” *In re Jerry Eaton*, 7 D.o.E. App. Dec. 137, 141 (1987). Confronted by an insidious societal problem, mindful of their duty to provide a safe environment in which all students can learn, the elected members of the Oelwein Community School District Board did not act unreasonably when they voted to expel Cameron for the remainder of the school year. And, in fact, in this case the District has gone beyond what it is obligated to do in offering a licensed teacher to work with Cameron. This Board applauds the District in making its employee available to Cameron, and urges Cameron to fully cooperate with the teacher so that he might yet graduate with his class in 2013.

DECISION

For the foregoing reasons, it is recommended that the decision of the Board of Directors of the Oelwein Community School District made on December 4, 2009, expelling Cameron Wilson from the District for the balance of the 2009-10 school year be AFFIRMED. There are no costs of this appeal to be assigned.

1/26/10
Date

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

It is so ordered.

Date

State Board of Education