

IOWA STATE BOARD
OF EDUCATION
(Cite as 9 D.o.E. App. Dec. 188)

In re Kam Schaeffbauer :
Duane Schaeffbauer, :
Appellant, :
v. : DECISION
Davenport Community :
School District, :
Appellee. ----- [Admin. Doc. #3154] -----

The above-captioned matter was heard on January 24, 1992, before a hearing panel comprising Colleen McClanahan, consultant, Bureau of Federal School Improvement; Dr. Lee Wolf, consultant, Bureau of Instruction and Curriculum; and Kathy Collins, legal consultant and administrative law judge, at the designation of the director of education, presiding. Appellant Duane Schaeffbauer was present in person unrepresented by counsel. Appellee Davenport Community School District [hereafter the District] was present in the person of Dr. Paul Johnson, director of secondary education for the District, and was represented by Carole Anderson of Lane & Waterman, Davenport.

An evidentiary hearing was held pursuant to departmental regulations found at 281 Iowa Administrative Code 6. Authority and jurisdiction for this appeal are found at Iowa Code chapter 290. Appellant timely appealed a decision of the board of directors [hereafter the Board] of the District made on October 28, 1991, expelling his daughter, Kam, for the balance of the 1991-92 school year and setting certain conditions on her readmission in the fall of 1992.

I.
Findings of Fact

The administrative law judge finds that she and the State Board of Education have jurisdiction over the parties and subject matter of this action.

Kam Schaeffbauer was a 17 year-old senior at Davenport West High School in the fall of 1991. On October 16 she provided to another West High student two "hits" of LSD, a controlled substance, in the school parking lot. She was called into the office and admitted her conduct to school officials, although she refused to identify the person from whom she obtained the drugs and initially refused to identify the student for whom she brought the drugs. She was questioned by school officials for approximately 30 minutes before her parents were called. She was suspended for ten days at that point and was told that the Administrative Council of the District would be reviewing the situation in order to make a recommendation to the superintendent and Board as to expulsion.

Kam was subsequently charged by the police with delivery of a controlled substance, a violation of Iowa Code section 204.401(1)(c), and referred to Juvenile Court. Following an evaluation she was recommended for the diversion program, placed on six months' probation, and assigned to a juvenile court officer for monitoring of her probation.

On October 23, a hearing was held before the District's Administrative Council, comprising Dr. Johnson, the associate superintendent for instruction, an associate principal from a different high school, and a teacher from West. Kam and her parents were in attendance and were given copies of existing documentation on the issue before the council. The Schaeffbawers were also advised of their right to counsel, to call witnesses on Kam's behalf, and to a hearing before the Board. No questions were raised as to Kam's innocence in the matter, nor about her knowledge of the rule prohibiting possession or delivery of illegal drugs on school grounds. Several character witnesses appeared and spoke on Kam's behalf.

The Administrative Council recommended to Superintendent Peter Flynn that Kam be expelled for the rest of her senior year. Dr. Flynn, in turn, notified Appellant and Mrs. Schaeffbauer on October 25 of the Council's recommendation, in which he concurred, and of the upcoming Board meeting on October 28. Dr. Flynn advised Appellant of the right to have the meeting open or closed, the right to representation and to present his views to the Board.

The Board met with the Schaeffbawers in closed session on October 28, 1991. Appellant made a statement to the Board wherein he made it clear that he and his wife were not there to condone Kam's actions but to urge the Board's leniency in recognition of Kam's forthrightness and honesty when she was accused and her prior disciplinary record.

The Board heard all statements, reviewed the record supplied by the Administrative Council of its hearing, and voted 7-0 to expel Kam for the balance of the school year. The Board also required that Kam "be evaluated at CADS [Center for Alcohol and Drug Services] or another comparable agency and that the recommendation of that agency be complied with, that she be directed not to be on [District] grounds during the expulsion time, and that her application for readmittance be reviewed by the Administrative Council prior to the start of the 1992-93 school year to determine appropriate placement." Previous Record, Board Minutes of October 29, 1991 Special Meeting at p. 2.

Kam had a substance abuse evaluation and completed an educational program at CADS prior to Christmas, and she enrolled at Davenport Assumption High School where she continued in attendance through the time of this hearing. She expects to graduate from Assumption in May.¹

¹ Although her enrollment at Assumption, coupled with the fact that she will presumably graduate on schedule in May or June of 1992, may be said to have mooted the expulsion issue, there still remains the ban on her presence on school grounds, which is not moot and affects Kam in terms of attending extracurricular functions with her friends.

The District has a policy and rules ("Amplification of the Basic Elements") that address liquor or controlled substances:

The use or possession of alcoholic liquor or beer or any controlled substance (as defined in the Uniform Controlled Substances Act) by a student on school property or while attending a school function as a participating representative of the school is prohibited, and appropriate disciplinary action will be taken which may include suspension or recommendation to the Board of Education for expulsion and/or legal charges.

Appellee's Exhibit 9 ["Discipline Policy Davenport Community Schools"] at p. 2 (V.B.).

Kam testified at our hearing that she doesn't use drugs, that she had never engaged in the delivery of controlled substances before this incident, and she made no money on the drug arrangement in October.

II.

Conclusions of Law

The law with respect to student discipline, including suspension and expulsion, is relatively clear.

"The board shall make rules for its own government and that of the . . . pupils . . ." Iowa Code §279.8 (1991). "Such rules shall prohibit the use of tobacco and the use or possession of alcoholic liquor or beer or any controlled substance . . . by any student of such schools and the board may suspend or expel any student for any violation of such rule." Id. at 279.9.

"The board may, by a majority vote, expel any scholar from school for immorality, or for a violation of the regulations or rules established by the board . . .; and it may confer upon any teacher, principal, or superintendent the power temporarily to dismiss a scholar, notice of such dismissal being at once given in writing to the president of the board." Id. at 282.4.

"When a scholar is readmitted by the teacher, principal, or superintendent, . . . [he or she] may be readmitted by such teacher, principal, or superintendent, but when expelled by the board the scholar may be readmitted only by the board or in the manner prescribed by it." Id. at 282.5.

Appellant has not questioned the authority of the Board to expel his daughter. He, of course, wishes the Board had exercised its discretion in Kam's favor and not expelled her, or perhaps expelled her for only the balance of first semester rather than the whole year. He complained at hearing of the interrogation of his daughter for half an hour on October 16 without a parent being present, of the fact that the District Board did not inform him of his right to appeal to the State Board, and of the

minimal contact he had with the District regarding any options the Board and Kam's family may have had in lieu of expulsion. However, it appears the thrust of his purpose in appealing was to ask for recognition of Kam's honesty from the beginning. He also asserts the Board acted hastily and without professional evaluations of Kam before it voted to expel her. It appears to us that Kam and her family think that District officials view Kam as a drug abuser or some sort of drug dealer, a characterization that they argue doesn't comport with the facts.

While the hearing panel can understand the Schaeffbauers' desire to have the District and State Board view the October 16 incident as an aberration rather than an indication that Kam has a substance abuse problem, that is not the issue here. Although the State Board has the statutory authority to review any decision appealed to it, it does not act as a "super school board," substituting its judgment for that of the elected local decision makers. In re Carl Raper, 7 D.o.E. App. Dec. 352, 355 (1989). The State Board will overturn a decision of the local school board only when an Appellant can prove that the decision was made arbitrarily or capriciously, was without basis in law or fact, beyond its authority, otherwise unlawful, or unless it constitutes an abuse of discretion. In re Jerry Eaton, et al., 7 D.o.E. App. Dec. 137, 141 (1989).

Over the course of several decades the State Board has had numerous opportunities to review expulsion decisions as well as other, lesser disciplinary sanctions for student misconduct. It has found, in some cases, that the local board exceeded its authority in one or more respects. See e.g., In re Joseph Fuhrmeister, 5 D.o.E. App. Dec. 335, 340 (1988)(in dicta, the local policy and rules excluding students, as opposed to participants, from attendance at extracurricular activities following off-school-grounds incidents with drugs -- including tobacco and alcohol). In some cases the Board has found a lack of authority in law for a decision. See, e.g., In re Jeff Tresslar, 6 D.o.E. App. Dec. 350 (1988)(Board cannot expel a non-student). In another instance, the State Board held that the local board's penalty violated substantive due process when the punishment far exceeded the violation. See In re Korene Merk, 5 D.o.E. App. Dec. 270 (1987).

With respect to student disciplinary cases involving drugs on school grounds, the State Board supported a five-day suspension for possession of a "lookalike" substance which itself was also a controlled substance in In re Amy Cline, 2 D.P.I. App. Dec. 16 (1979); affirmed an expulsion for being on school grounds under the influence of alcohol or other drugs, In re Eugene Whisenand, 8 D.o.E. App. Dec. 37 (1990); and upheld a loss of eligibility and other consequences stemming from possession of a bottle of vermouth used as a prop in a school production. In re Bryan Campbell and Craig McClure, 9 D.o.E. App. Dec. 69 (1991).

In those cases and others, the State Board has had an opportunity to develop a philosophy or position on the ultimate disciplinary penalty a local school board can impose upon a student. In 1987, the State Board of Education issued a Position Statement on academic sanctions by school officials. Therein the State Board urged, "Expulsion should be exercised only for the most serious acts which endanger the student's welfare or the welfare of others in school." This implicitly rejects expulsion as a "progressive discipline" penalty for repeated minor offenses. "[E]xpulsion . . . is a significant loss which we believe should be

reserved for singularly egregious conduct" such as distributing or using drugs or carrying weapons, "if exercised at all." In re Korene Merk, 5 D.o.E. App. Dec. at 276.

We agree with the District in its conclusion that there may be some positive, long-term results for Kam despite the embarrassment and disappointment she unquestionably feels at being excluded from school during her senior year. However, we cannot conclude, as Appellant suggests, that a school district must weigh a student's contrition or regretfulness, honesty or willingness to admit her conduct, and her previous drug-related offenses, if any, in deciding whether or not to expel her for delivery of a controlled substance on school grounds. Of course, school officials may consider all circumstances surrounding an incident, including these factors, but that is a policy decision best left to the local board and school officials.

Frankly, if we considered contrition, all students would qualify for a lesser penalty for invariably all offenders are sorry -- either that the incident occurred or that they got caught. Sometimes it's hard to tell the difference. As to honesty, the old adage is still true, that "honesty is its own reward." Besides, Kam should not conclude that if she hadn't admitted her actions she wouldn't have been expelled. An admission merely removes doubt about the ultimate issue; it isn't true that school officials or law enforcement officials would have been powerless to do anything to Kam if she had denied her participation. It appears there was sufficient evidence without her admission of guilt to believe Kam violated the policy, and possibly even proof "beyond a reasonable doubt" to convict her in criminal court.

As to Appellant's suggestion that the Board should have had Kam tested or evaluated (presumably to show whether or not she uses drugs or had evidence of drugs in her system), the State Board has never suggested or advocated drug testing for students -- either to prove or disprove their guilt.

We are a little disappointed in Kam for suggesting that she should be given leniency because she didn't make a profit on the drug transaction, and for being critical of the District's substance abuse education programs. ("What they're teaching is not working.") Casting aspersions on the efforts of the District to confront drug and alcohol use among the student population, on top of its mandate to teach everything from art to zoology, doesn't mitigate her actions. Neither does her failure to make a pecuniary profit on the exchange.

To her credit, Kam was forthright and honest when she was first questioned about her involvement in the October 16 transaction. She also maturely admitted her bad judgment at all times throughout the process. What she doesn't seem to understand is that expulsion serves, in part, to protect the welfare of all students in addition to punishing the offending student, when the Board removes someone found to have brought drugs to school. There is literally no way of knowing whether a drug transaction is the first, or the last, in a student's life. Everyone would surely claim prior innocence if the rule were that each student could have one free bite of the apple. Moreover, in a high school of 1000 students, if each were given one mistake of this nature, it would not be a healthy, educational, or safe environment.

In passing, we acknowledge Mr. Schaeffbauer's concern with the fact that he was not called before his daughter was "interrogated" by school officials. We know of no law or judicial pronouncement that prohibits an administrator from questioning a student about the student's misconduct in the absence of the student's parent or guardian. Surely this is another matter best left to the policymakers of a school district, weighing a parent's understandable desire to protect his child against the delay in the administration of school discipline that would occur while waiting for a parent to arrive.²

Any motions or objections not previously ruled upon are hereby denied and overruled.

III.
Decision

For the foregoing reasons, the decision of the Davenport Community School District board of directors made on October 28 to expel Kam Schaeffbauer, is hereby affirmed. Costs of this appeal, if any, are assigned to Appellant under Iowa Code section 290.6. Appeal dismissed.

It is so ordered.

March 12, 1992
DATE

March 4, 1992
DATE

Ron McGauvran
RON MCGAUVVRAN, PRESIDENT
STATE BOARD OF EDUCATION

Kathy L. Collins
KATHY L. COLLINS, J.D.
LEGAL CONSULTANT
AND ADMINISTRATIVE LAW JUDGE

² Appellant also complained of the District's failure to advise him of his right to appeal the Board's decision. This argument fails under the admonition that we are all charged with knowing our rights, and "ignorance of the law is no excuse." No one is responsible for telling us what steps we may next take. It is up to us individually to ask and learn.

Kam was advised by the administrative law judge at the close of the hearing that in order to overturn the Board's exclusion of her from school grounds, she must either be successful in this appeal or approach the Board asking for reconsideration of its decision to ban her from school activities during the period of her expulsion. The Board is legally entitled to exclude her from school premises as an attendant consequence of the expulsion. The Board also has the power to lift its own ban. If, for example, Kam were invited to prom or graduation ceremonies, she could ask to be placed on the Board's agenda for the purpose of reconsidering this aspect of the punishment.