

**IOWA DEPARTMENT  
OF EDUCATION  
(Cite as 21 D.o.E. App. Dec. 299)**

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*In re Cody Allen McCleary*

Cody Allen McCleary,	:	
Appellant,	:	DECISION
vs.	:	
	:	[Admin. Doc. 4532]
Central Decatur Community School District,	:	
Appellee.	:	

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The above-captioned matter was heard telephonically on February 24, 2003, before designated administrative law judge Carol J. Greta. The Appellant, Cody Allen McCleary,<sup>1</sup> participated on his own behalf at the hearing. Cody was represented by legal counsel, Angela Hill, of the Leon, Iowa law firm of Elson & Fulton. Also present on behalf of their son were Don and Sue McCleary. The Appellee, the Central Decatur Community School District, was represented by legal counsel, Jeff Hoffman of the Hoffman Law Firm of Leon, Iowa. Appearing with counsel on behalf of the Appellee were Superintendent Tucker Lillis and High School Principal Robert Meier.

Authority and jurisdiction for the appeal are found in Iowa Code § 290.1. 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.

The Appellant seeks reversal of a decision of the local board of directors of the Central Decatur District made on January 13, 2003, expelling him from the district.

**I.  
FINDINGS OF FACT**

The parties stipulated to the pertinent evidence pursuant to 281—Iowa Administrative Code 6.12(1). The stipulated facts submitted by the parties are as follows:

On January 9, 2003, at approximately 3:00 p.m., Cody McCleary obtained permission from his teacher ... to bring a pickup into the shop to work on it. The pickup was located at the parking lot east of the shop area. The teacher, Mitch Eagles, went to the pickup

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<sup>1</sup> This appeal was originally filed by Sue McCleary, mother of Cody Allen McCleary. It became known to the Administrative Law Judge that Cody is an adult and, pursuant to Iowa Code section 290.1, should have filed the appeal. The parties agreed at the outset of this hearing that Cody could be substituted as the Appellant in place of his mother.

where Cody McCleary was sitting with another student. There appeared to be a stock of a rifle sticking out of a gun case. Mr. Eagles notified the Principal, Robert Meier. At the time the weapon was initially seen, the truck was not locked.

Law enforcement was called pursuant to school policy and a partially cased shotgun was confiscated.

Cody McCleary indicated that he was not aware the gun was in the truck. Cody's father, Don McCleary, testified that the shotgun was his and he forgot to remove the gun after hunting. The gun was not loaded.

Cody was suspended and an expulsion hearing was set for January 13, 2003. At the expulsion hearing, it was the recommendation of School Superintendent Tucker Lillis that Cody McCleary be expelled... .

The notice provided by the district to Mr. and Mrs. McCleary of the time and date of the expulsion hearing states that the school administration's recommendation to the board was that Cody be expelled for a period of 12 months. *Stipulated Exhibit 1.*

The district admits that no written findings of fact and conclusions were ever prepared following the expulsion hearing. A copy of the board's minutes was the only written record of the hearing that was provided to Cody and his parents. Those minutes briefly report the Board's action, by a 3-2 vote, as being "that the recommendation of the administration to expel Student A<sup>2</sup> be upheld." *Stipulated Exhibit 8.*

## II. CONCLUSIONS OF LAW

The Iowa Legislature has directed that the State Board, in regard to appeals to this body, make decisions that are "just and equitable." Iowa Code § 290.3. The standard of review, articulated in *In re Jesse Bachman*, 13 D.o.E. App. Dec. 363 (1996), requires that a local board decision not be overturned by the State Board unless the local decision is "unreasonable and contrary to the best interest of education." *Id.* at 369.

Cody does not argue in this appeal that the local board exceeded its authority in expelling him. Indeed, a local board has the statutory authority to "make rules for its own government and that of the ... pupils, ... and shall aid in the enforcement of the rules... ."

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<sup>2</sup> The parties agree that Student A is Cody.

Iowa Code § 279.8. More specifically, school boards 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.” Iowa Code § 282.4. It is, therefore, unquestionable that the Central Decatur board had the authority to expel Cody for his violation of the district’s weapons policy.

In cases involving weapons, the board’s authority is even more directive. Iowa Code § 280.21B reads as follows:

The board of directors of a school district ... shall expel from school for a period of not less than one year a student who is determined to have brought a weapon to a school or knowingly possessed a weapon at a school under the jurisdiction of the board.... However, the superintendent or chief administering officer of a school or school district may modify expulsion requirements on a case-by-case basis. ... For purposes of this section, ‘*weapon*’ means a firearm as defined in 18 U.S.C. § 921<sup>3</sup>.  
...[Emphasis added.]

The local policy in question is Central Decatur Board Policy 502.6, Weapons, which paraphrases the language from section 280.21B above. The Iowa statute was enacted in 1995 in response to the federal Gun-Free Schools Act (GFSA) of 1994 which requires each State receiving federal funds under the Act to

have in effect a State law requiring local educational agencies to expel from school for a period of not less than 1 year a student who is determined to have brought a firearm to a school, or to have possessed a firearm at a school, under the jurisdiction of local educational agencies in that State, except that such State law shall allow the chief administering officer of a local educational agency to modify such expulsion requirement for a student on a case-by-case basis if such modification is in writing.

20 U.S.C. § 7151(b)(1).

The argument urged by Cody is that the local policy and the statute upon which it is based must be interpreted to require some degree of knowledge by Cody that he had brought a weapon to school before he can be expelled. The district counters that the plain language of the Iowa statute compels an expulsion regardless of whether Cody was aware

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<sup>3</sup> 18 U.S.C. § 921 defines a firearm as any weapon which will “expel a projectile by the action of an explosive.” The parties do not dispute that the shotgun found in Cody’s pickup fits this definition.

that he was in possession of the shotgun because there was no question that he had brought the firearm to school. The district concedes that the mandatory minimum expulsion period of one year may be modified on a case-by-case basis.

The federal statute does not require States to make knowledge a required element regarding a student's culpability. At the time that the Iowa General Assembly enacted section 280.21B of the Iowa Code, the federal Act mandated only that the State law compel the expulsion of a student "who is determined to have brought a weapon to a school." 20 U.S.C. § 7151, *supra*.

Nevertheless, it cannot be concluded by this Board that our legislature erred in drafting section 280.21B with language that deviates from the federal statute. The Iowa General Assembly must be presumed to have intentionally added the element of knowledge for the possession of a weapon at a school and not for the bringing of a weapon to school. The element of knowledge, unwritten in section 280.21B cannot be applied to the bringing of a firearm to school by any administrative body or court. *Krull v. Thermogas Co. of Northwood, Iowa, Div. Of Mapco Gas Products, Inc.*, 522 N.W.2d 607, 613 (Iowa 1994).

Neither does the fact that the legislature went beyond the requirements of the federal law in the specific provisions of § 280.21B nullify the statute. "The legislature may enact any law desired providing it is not clearly prohibited by some provision of the federal or state constitutions." *Peel v. Burk*, 197 N.W.2d 617, 619 (Iowa 1972). The more restrictive approach adopted by the Iowa General Assembly is not prohibited in the Gun-Free Schools Act. Cody's argument that this Board must insert the requirement of some degree of knowledge of bringing the shotgun to school must fail.

Although this Board does not always agree with the substantive decisions that local boards make regarding expulsions, if the local board has complied substantially with procedural due process requirements, we do not act as a "super school board," substituting our judgment for that of the local elected directors. *In re Jerry Eaton*, 7 D.o.E. App. Dec. 137, 141 (1987). Therefore, it is now necessary to determine whether the process given to Cody in this case was adequate.

This Board has previously established that the minimum procedural guarantees for students facing expulsion (suspensions longer than 10 days) are as follows:

1. No removal from school prior to hearing except in emergency circumstances;
2. A written statement of the alleged misconduct specific enough that a defense to the charge(s) can be prepared;

3. Written notice of time, date, and place of expulsion hearing;
4. Notification of the right to be represented;
5. Opportunity for the student to be heard;
6. Opportunity for the student to examine documents and cross-examine witnesses; and
7. A written decision outlining the facts upon which the decision is based and the conclusions reached by the local board.

*In re Joseph Childs*, 10 D.o.E. App. Dec. 1, 7-8 (1993).

If a procedural violation is founded, two steps remain in the analysis: first, whether the student suffered prejudice by the local board's failing(s), and second, whether the due process violation can be adequately remedied short of reversal of the local board's decision. *In re Joseph Childs, supra*, at 8-9. Certainly some due process violations may be cause for reversal if no available remedy is sufficient to correct the deficiency. *Id.* at 10.

We conclude that the violation of not preparing a written decision outlining the facts upon which the expulsion decision was based and the conclusions reached by the local board can be adequately cured in this case by ordering the local board to do "that which was not done before." *Id.* Cody was not prejudiced by the error. His argument on appeal was that the statute and its application to his situation were unfair. As discussed earlier, however, we cannot say as a matter of law that Cody could not have been expelled for the events of January 9, 2003.

Whether or not the local board believed Cody's testimony that he had no knowledge of the shotgun's presence in the pickup does not affect the authority of the local board to expel him. However, Cody is entitled to have the board commit to writing whether it believed him. The written findings of fact must state what the board believed to have occurred on January 9, including whether it concluded that Cody had brought the shotgun to school or that he knowingly possessed the firearm at school. The written conclusions also must state the precise length of Cody's expulsion. If the Central Decatur board imposes an expulsion period of less than one year, the written decision must state why the lesser punishment was imposed.

**III.**  
**DECISION**

For the foregoing reasons, it is recommended that the decision of the Board of Directors of the Central Decatur Community School District made on January 13, 2003, be affirmed as to the decision to expel Cody Allen McCleary. However, the matter is remanded to that governing body for immediate further action consistent with this decision. There are no costs of this appeal to be assigned.

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Date

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

It is so ordered.

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Date

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Gene E. Vincent, President  
State Board of Education