IOWA DEPARTMENT
OF EDUCATION
(Cite as 22 D.o.E. App. Dec. 1)

In re Peter Carlson

Bruce and Carrie Carlson, Appellants,	:	
	:	DECISION
vs.	:	[Admin. Doc. 4531]
Waterloo Community School District, Appellee.	:	

The above-captioned matter was heard in person on February 10, 2003, before designated administrative law judge Carol J. Greta. The Appellants, Bruce Carlson and Carrie Carlson, were present on behalf of their son, Peter Carlson, who was also personally present. The Carlsons chose not to be represented by legal counsel at this hearing. Appellee, the Waterloo Community School District, was represented by legal counsel, Kevin Rogers of the Waterloo law office of Swisher & Cohrt. Also appearing on behalf of the Appellee were assistant superintendent Patrick Clancy, Waterloo West High School principal Gail Moon, Waterloo West High School assistant principal Terry Kroese, board secretary Sharon Miller, and board member Don Hanson.

An evidentiary hearing was held pursuant to agency rules found at 281 Iowa Administrative Code chapter 6. 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 Carlsons seek reversal of a decision of the local board of directors of the Waterloo district made on January 21, 2003, expelling Peter from the district for the balance of the 2002-03 school year. They filed a timely appeal to this agency.

I.
FINDINGS OF FACT

The underlying facts are undisputed and were, in fact, admitted by Peter at the January 21 meeting of the Waterloo school board. Based solely on Peter's admissions, a trier of fact could find that on December 20, 2002, Peter, a sophomore student at Waterloo West High School, possessed marijuana on school premises in violation of district policy 504.2. Furthermore, he gave an unspecified quantity of marijuana to a fellow student on or about that same date at school, also a violation of policy 504.2.

December 20 was a Friday. Upon hearing from another West High student that Peter had given marijuana to her during class, Assistant Principal Terry Kroese confronted Peter early in the afternoon of the 20th with this accusation. Although Peter initially denied having marijuana, he was found to have a baggie of what appeared to be marijuana in his left shoe. Peter was transported to the police station where the substance in his shoe tested positive as marijuana.

School district administrators recommended to the board that Peter be expelled. On January 16, 2003, the district provided the Carlsons with *District's Exhibits 1 – 15*, which comprise a cover letter to the Carlsons and all documents that the district intended to provide to the board at the expulsion hearing. The exhibits included summaries of interviews with the named student who admitted to Mr. Kroese that Peter had supplied her with the marijuana found in her possession at school on December 20. The board held the expulsion hearing on January 21, 2003, and voted that evening to expel Peter from the district for the remainder of the 2002-03 school year. *District's Exhibit 16*.

The local board director who testified at this hearing, Don Hansen, was one of the four directors present at the expulsion hearing on January 21. He testified that he viewed the local board's job that evening to determine whether Peter violated the substance abuse policy and to determine the appropriate punishment if a violation was established. As Peter conceded at this hearing, he admitted to the local directors that he had marijuana in his possession at school on December 20 and that he distributed marijuana to a classmate at school on that date.

The minutes of the expulsion hearing show that at the conclusion of the three hour hearing, it was moved and seconded that

> the Board of Education conclude that the basis for the recommendation of the administrative staff that the West High School student #1 be expelled for violation of the District's Student Conduct Code, as a result of Possession and Distribution of Drugs and because the presence of the student is detrimental to the best interests of the school, has been established, and therefore, that the West High School student #1 is hereby expelled from the Waterloo Community School District for the remainder of the 2002-2003 school year.[1]

District's Exhibit 16.

[1] The parties agree that "student #1" refers to Peter. Two other West High School students were expelled that same evening, one for "Use of Drugs," the other for "Possession of Drugs." Although neither of these students was also found to have distributed drugs, these two students received the same punishment as Peter - expulsion for the remainder of the 2002-03 school year.

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.

We note that the Carlsons do not attack the board's authority to make the decision to expel Peter. Indeed, a local school "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." Iowa Code § 282.4(1). Such rules "shall prohibit the … use or possession of … any controlled substance as defined in [Iowa Code] section 124.101, subsection 5[2], by any student of the schools and the board may suspend or expel a student for a violation of a rule under this section." Iowa Code § 279.9.

The Carlsons raise five procedural due process arguments; they are as follows:

1. The district did not comply with its own policy, which requires notice of a suspension to be mailed to the parent, guardian or legal custodian within twenty-four (24) hours after the suspension.

2. The district failed to conduct an informal conference with them.

3. The district failed to afford Peter an opportunity to examine the evidence against him.

4. Peter was out of school 12 days before his expulsion hearing was held.

5. No written findings of fact and conclusions of law were prepared by the local board and submitted to the Carlsons after the expulsion hearing.

In addition to the above procedural points, the Carlsons raise the substantive issue of the expulsion being an excessive penalty for a first-time offender, which Peter admittedly is. In this regard the Carlsons presented a letter from a licensed family therapist who expressed the view that Peter abused marijuana as a means of coping with clinical depression.

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[2] Iowa Code § 124.101(5) defines a controlled substance as "a drug, substance, or immediate precursor in schedules I through V of division II of chapter 124. Iowa Code § 124.204, which lists the Schedule I controlled substances, includes marijuana.

That some process applies to students facing expulsion, and even short term suspensions, from school has long been established. In *Goss v. Lopez*, 419 U.S. 565, 95 S.Ct. 729 (1975), the United States Supreme Court held that even a short term suspension, which the Court defined as ten days or less, could not be imposed "in complete disregard of the Due Process Clause [of the Fourteenth Amendment]." *Id.*, 95 S.Ct. at 737. But, having established that some process applies, "the question remains what process is due." *Morrissey v. Brewer*, 408 U.S. 471, 92 S.Ct. 2593, 2600 (1972). The *Goss* Court described the student's interest in the process as "to avoid unfair or mistaken exclusion from the educational process, with all of its unfortunate consequences. The Due Process Clause will not shield him from suspensions properly imposed, but it disserves both his interest and the interest of the State if his suspension is in fact unwarranted." 95 S.Ct. at 739. Keeping these principles in mind, we examine in detail the arguments proffered by the Carlsons.

1. Failure to mail written notice of suspension within 24 hours

As Mrs. Carlson pointed out, the student handbook for the district states that, in cases of out-of-school suspensions, the building administrator shall mail to the parent "within twenty-four (24) hours after the suspension, a notice of the suspension." The written notice to the Carlsons is postmarked Monday, December 23, 2002. Friday, December 20, was the last day of classes prior to classes reconvening on Thursday, January 2, 2003.

Does the mailing of the written notice on the Monday immediately following the Friday of the violation give rise to a due process violation? We think not. At most, date of the mailing is a variance from the letter of the district's written procedure. This variance does not rise to the level of a deprivation of due process. December 23 was the first business day following December 20, so it could be argued that the written procedure was, in fact, satisfied. However, we do not believe it is necessary to use that argument. The intent of sending written notice to parents is to make sure that they are aware that their child has been suspended from school. The Carlsons were both well aware of Peter's suspension on the day it occurred. Furthermore, because of the holiday break from classes, the suspension was not to begin until January 2. We agree with the district that the written notice of suspension was given to the Carlsons well before the suspension took effect, and that there was more than substantial compliance with the district's policy in this regard.

2. Failure to conduct a timely conference with the Appellants

The district's student conduct policy regarding substance abuse (Policy 504.2) provides for a minimum three day suspension in all cases of violation of that policy. The policy also states that a

> conference will be held with the student's parent ... before the end of the three-day suspension to discuss the student's conduct. Possible results of this conference can include:
>
> a. readmission to school on probation
> b. referral to licensed substance abuse program for evaluation
> c. referral to the Board of Education for expulsion

District's Exhibit 19.

The Carlsons were informed by school officials on December 20 of Peter's violation. Mr. Kroese spoke with Mrs. Carlson, and Dr. Moon spoke with Mr. Carlson, both parents being informed by the administrators that Peter was suspended immediately from school, pending expulsion, because of his possession of marijuana.

In addition to the conversations the Appellants had with school administrators on December 20, Mrs. Carlson had a brief conversation regarding Peter with Mr. Kroese and Dr. Moon in the hallway of West High on January 3, although it must be noted that Mrs. Carlson was present at the high school that day on behalf of her employer, Area Education Agency 7. Mr. Carlson talked to Mr. Kroese about Peter by telephone on that same day. A face-to-face conference among the Carlsons, Dr. Moon, and Mr. Kroese did take place on the 4th day of Peter's suspension, January 7. Dr. Moon's testimony was that this meeting was used to discuss many matters with the Carlsons, from how seriously she viewed Peter's violation to what to expect procedurally at the expulsion hearing. Options short of expulsion were discussed on January 7; however, Dr. Moon told the Carlsons that her recommendation to the local board would be expulsion due to Peter's denial of guilt and to the seriousness of his offenses, both of possession of the drug and of distribution of the marijuana in school to a classmate.

The Carlsons characterize this January 7 meeting as the only conference that satisfies Policy 504.2. The district argues that the "conference" referred to in the policy typically is very informal and takes place telephonically most of the time. Therefore, according to the district, because the conference can be informal, the conversations on December 20 and again on January 3 satisfy the policy.

Again, we agree with the district. There is nothing in the policy or in the case law that has developed regarding procedural due process in this context that requires a school to have an in-person meeting with a student's parents prior to the expulsion hearing.[3] The fact that Waterloo has created the expectation of a conference between district

[3] Peter, in contrast to his parents, was entitled to be apprised of the allegations against him and given a chance to respond briefly, *Goss v. Lopez*, 95 S.Ct. at 740, and Peter was given a full measure of this process.

administrators and parents does not mean that the district can ignore its policy. But the district did not ignore the self-imposed requirement. Several conferences were held with the Carlsons. No violation exists regarding this issue.

3. Failure to allow Peter to examine all physical evidence against him

A district is required to disclose only the information and evidence that it intends to use to prove its case to the local board. Nothing in statutory or case law requires a district to disclose *all* that it knows to the student or parents. The Carlsons' argument that school's administrators made the decision to recommend that Peter be expelled using evidence from other students that was not fully disclosed to the Carlsons is without merit. Specifically, the Carlsons center this argument on the quantity of marijuana seized by the district from Peter and from other students.

It matters not what evidence the administrators relied upon in coming to their decision; the only evidence relevant herein is that which was presented to the board. This evidence was disclosed in *District's Exhibits 2 – 15* to the Carlsons five days prior to the expulsion hearing. Therefore, it simply does not matter whether the district did or did not make the Carlsons fully aware of the evidence that was collected from other students if that evidence was used solely by the district to make its internal determinations about what recommendation to make to the board. As Peter admitted at this hearing, he forthrightly told the local board at his expulsion hearing that he was in possession of marijuana and distributed some of the drug to a classmate on or about December 20, 2002, at school. This is the evidence relied upon by the board when it reached its decision to expel Peter. There was no indication that the board was told that a certain quantity of the drug was involved regarding either Peter's possession or his distribution of the marijuana, and no indication that quantity made any difference to the board in its action.

4. Failure to conduct the expulsion hearing within 10 school days

The expulsion hearing was held on January 21, 2003. The testimony of Assistant Superintendent Clancy was that this date was the first time following December 20 that a quorum of the directors of the local board of education could convene. The district admits that Peter was out of school for 12 school days (January 2-3, 6-9, 13-17, and 21) before the hearing was held. This fact, in and of itself, does not give rise to a deprivation of constitutional dimension. As a federal district court in another jurisdiction has stated, "It would be anomalous indeed for a federal court to dictate an exact number of days in which a formal hearing must be held by the school in light of this language [from *Goss v. Lopez*]:

> '…[T]he very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation.'"

Bivens ex rel. Green v. Albuquerque Public Schools, 899 F.Supp. 556, 563 (D.N.M. 1995).

What this means is that it is not enough to show a delay between a short term suspension of ten days and the formal expulsion hearing for the student. Actual prejudice caused by the delay must be demonstrated. The Carlsons assert in their post-hearing brief that "[e]very day of delay is critical and costly." However, they did not expand on this by offering any proof of actual harm to Peter.

We conclude that there was no actual prejudice to Peter caused by the two day delay. Soon after Peter was suspended, the Carlsons admit that the district offered to place Peter at an alternative educational placement site, Four Oaks. Without explaining in detail, Mrs. Carlson testified that the family felt strongly that Four Oaks would not be an appropriate placement for Peter, primarily for personal - not academic - reasons. Also, Mr. Kroese informed Mrs. Carlson that Peter would be allowed to take his final examinations for first semester. Nothing more was said by either party about this, the implication being that Peter received (or at least was given the opportunity to receive) credit for his first semester classes.

Although we have concluded that the two-day delay here is not a due process deprivation, we briefly address the delay of the expulsion hearing due to want of a quorum of directors. The Carlsons did not dispute or try to disprove Mr. Clancy's testimony that January 21 was the soonest date that a quorum could convene. Our conclusion that the two day delay here was not a due process deprivation should not be interpreted to mean that a school may postpone an expulsion hearing for lack of a quorum without negative consequences in all cases. If a student shows actual prejudice by reason of a delay in his or her expulsion hearing, even an absolute inability by the district to convene a quorum any sooner may not prevent a finding of a due process violation. Again, however, that is not the case here.

5. Failure to prepare written findings of fact and conclusions of law

The requirement of a "written decision outlining the facts upon which the decision is based" [*In re Monica Schnoor*, 1 D.P.I. App. Dec. 136, 139 (1977)] exists to ensure that a student will have no doubt about what the trier of fact – the school board – believed to have occurred regarding the incident in question and what conclusions it drew from its findings. The absence of a written decision with findings of fact and conclusions as to the alleged violations does not end the matter; rather, such absence leads to the next inquiry, that being whether the board's failure was prejudicial to the student. *In re Joseph Childs*, 10 D.o.E. App. Dec. 1, 8-9 (1993).

There is not an absence of a written decision in this case. The minutes of the expulsion hearing, *District's Exhibit 16*, specify the board's findings that Peter was in possession of marijuana and that he distributed the drug to another. Any lack of further specificity can be cured by ordering a board to correct the deficiency. However, we conclude that the minutes of the expulsion hearing do – albeit barely – adequately advise

Peter of the allegations against him, of the rule he violated and the consequence for his violation. The detail of the allegations about Peter in the documents submitted to the Carlsons pre-hearing in *District's Exhibits 2 - 15*, as well as Peter's admissions at the expulsion hearing, are crucial to our conclusion. Without those, we would not be inclined to allow the minutes to stand as the final written decision. However, there is no room for confusion here about what Peter's misconduct was, what rule was broken, and what his punishment is. Accordingly, the written decision in the minutes, *District's Exhibit 16*, constitutes adequate documentation of the board's findings and conclusions.

6. Severity of Peter's Punishment

We quickly dispatch the first part of the Carlsons' argument in this regard – that the school's administrators made a recommendation for punishment without fully considering the mitigating circumstances urged by the Carlsons. What the administration considered and recommended is not at issue in this appeal; the appeal is from the action taken by the board. The Carlsons may feel slighted, miffed, even angry that the administrators made a recommendation with which they disagreed. But those feelings are beside the point.

First, the recommendation made by the administrators was not out of line. In fact, district policy 504.2 states that a "student accused of distributing controlled substances shall be referred to the Board of Education for expulsion proceedings." *District's Exhibit 19*. This statement clearly spells out the expectation that such conduct will give rise to a recommendation that the offending student be expelled.

Second, the Carlsons were given – and took advantage of – every opportunity to present evidence that expulsion would be contrary to Peter's welfare. Director Hanson testified that the Carlsons participated fully in the expulsion hearing ("more than most parents do"), and that the board was aware of the mitigating circumstances presented by the Carlsons and was aware that other options were available to the board short of expulsion. *Appellants' Exhibits B* and *C* are documents from a substance abuse evaluator and a mental health counselor that are sympathetic to the Carlsons' position that Peter will not profit from the expulsion. These exhibits were presented both to the local board and at this hearing. Of course, we do not know the weight that the local board gave to these exhibits or to the Carlsons' arguments. However, we have previously taken the position that a "school board, as the final arbiter of a district's policies and views, may but is not required to consider mitigating circumstances in deciding whether or not to exact the full measure of punishment due a student for violating the rules." *In re Eric Plough*, 9 D.o.E. App. Dec. 234 (1992), citing *In re Carl Raper*, 7 D.o.E. App. Dec. 352 (1990).

Schools must provide a safe environment in which learning can take place with as few distractions as practical. It is entirely reasonable for a district to expel a student who introduces a controlled substance into the learning environment. It is reasonable for the Waterloo Board of Education to have expelled Peter Carlson for possession and distribution of marijuana at West High School.

III.
DECISION

For the foregoing reasons, it is recommended that the decision of the Board of Directors of the Waterloo Community School District made on January 21, 2003, expelling Peter Carlson from the district for the balance of the 2002-03 school year, be AFFIRMED. There are no costs of this appeal to be assigned.

_____ _____

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

It is so ordered.

_____ _____

Date Gene E. Vincent, President
State Board of Education