IOWA DEPARTMENT
OF EDUCATION
(Cite as 22 D.o.E. App. Dec. 279)

In re Zach Hodges

Diana Hodges, Appellant,	:	PROPOSED DECISION
vs.	:	
Missouri Valley Community School District, Appellee.	:	[Admin. Doc. 4574]

The above-captioned matter was heard telephonically on April 21, 2004, before designated administrative law judge Carol J. Greta. The Appellant, Diana Hodges, was present on behalf of her son, Zach Hodges, who was also present. Ms. Hodges was represented by legal counsel at this hearing, Thomas J. Olsen and Anthony S. Troia, of Omaha, Nebraska. [Neither Mr. Olsen nor Mr. Troia is admitted to practice law in this state. Accordingly, attorney Brian S. Rhoten of Council Bluffs, Iowa, filed a written appearance herein pursuant to Rule 31.14(2), Iowa Court Rules.] The Appellee, the Missouri Valley Community School District, was represented by legal counsel, Derrick R. Franck of Denison, Iowa. Also appearing on behalf of the Appellee were Superintendent Tom Micek, Secondary Principal Chris Lengfelder, and School Nurse Dawn Fichter.

An evidentiary hearing was held pursuant to agency rules found at 281—Iowa Administrative Code 6. Authority and jurisdiction for the appeal are found in Iowa Code section 290.1 (2003). 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.

Mrs. Hodges seeks reversal of a decision the local board of directors of the Missouri Valley District made on April 5, 2004, suspending Zach for the remainder of the 2003-04 school year, making a finding against him of a second offense of the District's good conduct policy, and barring him from all District property and all District activities (including commencement exercises).

I.
FINDINGS OF FACT

The sale, distribution, possession, and/or use of illegal substances is a problem that continues to plague school officials. The Missouri Valley Community School District is not immune to such challenges.

In a letter dated February 23, 2004, Dr. Micek notified the parents of all District high school and middle school students that illegal drug usage by District students was on the increase. The letter specifically mentioned that abused drugs included hydrocodone and oxycodrone [sic] products marketed under the brand names of OxyContin, Percodan, Percocet, Vicodin, and Lortab, normally prescribed for pain relief. The stated purposes of the letter were as follows:

1) To "signal the alarm" in the community about the issue;

2) To seek the vigilance and cooperation of parents to ensure the safety of all children;

3) To note that educational meetings for students and parents about substance abuse would be held in upcoming weeks; and

4) To remind parents and students that "the use, distribution, sale or possession of drugs or alcohol on school property results in immediate out-of-school suspension and the possible recommendation for expulsion by the Board of Education."

Following the mailing of the above letter, District Athletic Director Brian Knott, who is also the football coach at Missouri Valley High School, held a meeting of students involved in interscholastic sports. Mr. Lengfelder was present at that meeting, and stated that Zach also attended the meeting. Coach Knott specifically stressed the abuse of oxycodone products. He reminded the students of the penalties, both as to their participation in the District's academic program and extracurricular activities.

Against that background, we review the facts of this case.

Zach Hodges was a 17-year-old senior at Missouri Valley High School this past school year.[1] He was present at school on March 18, 2004, a Thursday. One of Zach's classmates ["Student A"] asked Zach to meet him in a school restroom. Zach followed Student A into the restroom, where Student A asked him if he wanted some pain relievers and whether Zach had any money. Zach produced $3.00. The money was then exchanged for two white pills. Although he initially denied any involvement, after being confronted with the statements of Student A and a student who had witnessed the restroom transaction, Zach admitted that he had purchased two pain relievers from Student A. He added that he ingested one pill and lost the other one. The lost pill was never recovered.

[1] Zach attained his 18th birthday on April 23, 2004. Because he was still a minor when this appeal was filed, his mother is the proper party Appellant.

The previous day, March 17, Student A had purchased 15 white pills from another classmate ["Student B"]. Student A admitted selling two of the pills to Zach and stated that he gave two of the pills to yet another student ["Student C"] to pay off a debt he owed to Student C. Student A gave the remaining pills he had purchased from Student B to District administrators, who mailed two of the pills to the Iowa Division of Criminal Investigation ["DCI"] Laboratory. The DCI Lab report shows that both of the submitted pills had "Endo 602" stamped on them. Only one of the pills by tested by the Lab; it tested positive as oxycodone.

According to an Information Bulletin published in January of 2001 by the U.S. Department of Justice and admitted into evidence herein, oxycodone products are marketed under such trade names as OxyContin, Percocet, and Percodan. This same Bulletin reports that oxycodone is a highly effective pain reliever with a "high abuse potential." Most persons who abuse OxyContin, which is sometimes referred to as "poor man's heroin," do so seeking euphoria, as well as pain relief.

Not more than two hours after Zach purchased the two pills from Student A, Principal Lengfelder was told of the incident by a student who had witnessed it in the restroom. He talked to Zach "within minutes" of being made aware of what had been seen. A former peace officer with Drug Enforcement Agency training and experience as an undercover officer, Mr. Lengfelder testified that Zach showed no outward signs of being under the influence of a controlled substance when he talked to Zach. Neither a urinalysis nor any other type of medical test was performed on Zach.

Criminal charges were filed against Zach and Students A, B, and C regarding the March 17 – 18 incidents. All four students were identified by name in both the local print and electronic media that covered the story. Dr. Micek testified that parents of students in the District expressed concern about keeping the Missouri Valley schools safe and free of drugs. Dr. Micek stated that his recommendation to the Board for Zach's suspension for the rest of the school year was not motivated by a desire to make an example of Zach.

Disciplinary hearings for all four students were scheduled before the local Board on April 5. The Board met in closed session for a total of just over four hours that night. The legal guardian of one of the students waived his ward's right to the hearing. Otherwise, the sole business before the Board was to determine whether the students violated local Board policy and, if so, to determine the punishment of each.

Zach was accused of possession and use of a controlled substance on school grounds. Two of the other students were accused of possession as well as *sale or distribution* of a controlled substance on school grounds. All four students received the same punishment upon being found in violation; that is, all were suspended from school for the remainder of the school year.

The written decision of the local Board regarding Zach includes this summary:

> Zach Hodges is to be suspended from school for the remainder of the school year including through July 31, 2004, the end of the summer sports season. During the period of his suspension, he is barred from school grounds and all school activities, including commencement. This offense will also be treated as a second offense under the good conduct policy.[2] Because he has completed all of the academic requirements for graduation, he is to be granted a diploma effective on May 26, 2004. [Footnote not in original.]

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.

As do most schools in Iowa, the Missouri Valley Community School District has a board policy prohibiting the "use, distribution, sale, or possession of any controlled substance or 'look alike' substance … ." Board policy No. 504.1. Policy 504.1R3 states that the penalty for violating the foregoing is "[i]mmediate out-of-school suspension and the possible recommendation for expulsion by the Board of Education." This policy is reasonably and rationally related to valid educational purposes.

Local boards of education are given their authority to enact such policies by Iowa Code section 279.8(2003), which states in pertinent part, "The board shall make rules for its own government and that of the directors, officers, employees, teachers and pupils … ."
More specifically, the Iowa General Assembly has mandated that the "rules [referred to in section 279.8] *shall* prohibit the … use or possession of … any controlled substance as defined in section 124.101, subsection 5, 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 section 279.9. [Emphasis added.]

---

[2] Zach's first offense of the District's good conduct policy occurred during the summer of 2002 when he and four other students shot at Principal Lengfelder's house – in his absence – with paint balls. Zach's disciplinary record at school included several relatively minor offenses. He has not been accused of any drug-related activity until now.

Section 124.101(5) defines a "controlled substance" as a "drug, substance, or immediate precursor in schedules I through V of division II of this chapter." Section 124.206 lists the Schedule II controlled substances, which include (but are not limited to) opiates, hydrocodone and oxycodone. Subsection 1 of 124.206 states, "Schedule II consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section."

Mrs. Hodges does not challenge the District's authority to have and enforce a policy prohibiting controlled substances on school property. Nor does she argue that Zach was deprived in any way of procedural due process.

Mrs. Hodges argues that there was insufficient evidence that the pills Zach purchased were a controlled substance. She also states that the penalty against Zach was too harsh, and that she should not have been punished to the same extent as those who distributed a controlled substance at school. She concludes with a plea that we at least allow Zach to participate in graduation exercises with his classmates.

Insufficiency of the Evidence

The only direct evidence that the pills Zach bought and ingested one of were a Schedule II controlled substance was the statement of Student A. Student A told school and law enforcement authorities that the pills he sold to Zach came from a group of pills he had purchased from Student B, the remainder of which he relinquished to the District and one of which was tested by the DCI and identified as oxycodone.

No testing could be conducted of the two pills purchased by Zach. He claims to have swallowed one and lost the other. No testing of Zach's blood or urine was requested of or volunteered by Zach. Zach did not show any outward signed to his principal of being under the influence of a drug. There was no writing on the pills that identified them as oxycodone. Zach, who had a history of migraine headaches, consistently used the term "pain reliever" when speaking to Principal Lengfelder about the pills.

But, direct evidence is not required. Even in a criminal case, where the standard of proof is "beyond a reasonable doubt" (as opposed to the "preponderance of the evidence" standard in local board hearings), direct and circumstantial evidence are equally probative. *E.g., State v. Schmidt*, 588 N.W.2d 416, 418 (Iowa 1998). "An inference of knowledge and intent can be drawn from the circumstances." *In re Amy Cline*, 2 D.P.I. App. Dec. 16, 19 (1979).

The abuse of oxycodone was a known problem in the District. Zach has sufficient academic credits to be awarded a diploma from the District, and there was no argument or evidence that he lacked the ability to appreciate the gravity of his actions. He paid $1.50 for each of two pills. Would he have paid such a price for over-the-counter

strength pain relief? Coupled with Student A's admission, it was entirely reasonable for the local Board to surmise that Zach intended to purchase and use a controlled substance at school on March 18.

Harshness and Disparity of the Punishment

There is no evidence that Zach sought out the drugs he purchased on March 18 at his school. There is no evidence that he was involved in distributing illegal drugs to other students. Therefore, his mother argues, it is not fair that his penalty mirrors that of the two students who were punished for possession and distribution of oxycodone.

Dr. Micek testified that he gave a great deal of thought to Zach's penalty before he made his recommendation to the local Board. Even so, we have previously concluded that a local board 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, 242 (1992) (expulsion upheld of a student who knowingly purchased LSD at school but threw it away before using any).

As long as a punishment is reasonable and does not go beyond the penalties spelled out in local board policy, the punishment is a policy decision "best left to the local board and school officials." *In re Kam Schaeflauer*, 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 Missouri Valley Community School District Board acted with reason when they voted to suspend Zach Hodges for the remainder of the school year.

Commencement Exercises

There is no requirement under Iowa law that school districts conduct any type of commencement or graduation exercises.[3] One federal court has stated that graduation exercises are "mere social occasions." *Smith by Smith v. Board of Educ., North Babylon Union Free School Dist.*, 844 F.2d 90, 94 (2nd Cir. 1988). Our own Iowa Supreme Court has used the phrase "public ceremony" in describing a graduation exercise. *Valentine v. Independent School Dist. of Casey*, 191 Iowa 1100, 183 N.W. 434, 437 (1921). In

[3] This stands in stark contrast to the absolute duty of a local board of education to award a diploma to any student who has satisfactorily completed the prescribed course of study and who is otherwise qualified. *Valentine v. Independent School Dist. of Casey*, 191 Iowa 1100, 183 N.W. 434, 437 (1921). Here, the local Board has acknowledged that, prior to his expulsion, Zach had completed all local graduation requirements. He is to be given his diploma on May 26, 2004.

Valentine, the class valedictorian and two other students (from a class of six) were denied the opportunity to participate in the graduation ceremony because they refused to wear the gowns provided for the occasion by the district. Although not the issue before the Court, the Justices did state that the local "board may deny the right of a graduate to participate in the public ceremony of graduation unless a cap and gown is worn." *Id.*

The jurisdictions that have squarely faced the question of any "right" of a student to participate in a graduation ceremony have all ruled that no such right exists. These courts have all drawn the distinction between the student's property right in receiving a diploma (if requirements have been met) and no such property right or interest in the graduation ceremony. *See, Williams v. Austin Independent School Dist.,* 796 F.Supp. 251 (W.D.Tex. 1992); *Swany v. San Ramon Valley Unified School Dist.,* 720 F.Supp. 764 (N.D.Cal. 1989); *Fowler v. Williamson,* 448 F.Supp. 497 (W.D.N.C. 1978); *Dolinger v. Driver,* 498 S.E.2d 252 (Ga. 1998).

This Board has previously ruled regarding a student's interest in participating in a graduation ceremony on two occasions. In the first case, *In re Sharon Ortner,* 16 D.o.E. App. Dec. 269 (1999), we held that a student charged only with misconduct that occurred *out-of-school* could not be punished under her district's good conduct policy by being denied participation in graduation exercises. However, this case is not like *Ortner*. This case is more in line with *In re Dustin Corning,* 17 D.o.E. App. Dec. 79 (1999), in which the student was in possession of a controlled substance on school property. We ruled there that Dustin had no right to participate in the graduation ceremony because of the nature of his violation. As in *Corning*, there is a direct nexus here between Zach's misconduct *at school* and the District's decision to bar him from all *school-related events*.

Zach is not being deprived of his right to receive a diploma from the District. He simply has no corresponding right to receive that diploma at a public ceremony. The District may deny Zach his interest in participating in that public ceremony and has not acted unreasonably in that denial.

III.
DECISION

For the foregoing reasons, it is recommended that the decision of the Board of Directors of the Missouri Valley Community School District made on April 5, 2004, be AFFIRMED in its entirety. 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