

**IOWA STATE BOARD  
OF EDUCATION  
(Cite as 19 D.o.E. App. Dec. 306)**

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**In re Nicholas Guthrie** :  
  
Nicholas Guthrie, :  
Appellant, :  
  
v. : DECISION  
  
Okoboji Community School :  
District, :  
Appellee. : [Adm. Doc. # 4333]

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The above-captioned matter was heard on April 10, 2001, before a hearing panel comprised of Dr. Lee Wolf and Eric Heitz, consultants, Bureau of Administration and School Improvement Services; and Susan E. Anderson, J.D., designated administrative law judge, presiding. Appellant, Nicholas Guthrie, was present telephonically along with his parents, James and Shannon Guthrie. Appellant was represented by Attorney Arthur Neu of Neu, Minnich, Comito and Neu, P.C., of Carroll, Iowa. Appellee, Okoboji Community School District [hereinafter, "the District"], was present telephonically in the persons of Quentin Reifenrath, superintendent; Larry Traugher, high school principal; Kurt Eckard, Board president; and other Board members. The District was represented by Attorney Steven Avery of Cornwall, Avery, Bjornstad and Scott, of Spencer, Iowa.

Authority and jurisdiction for the appeal are found in Iowa Code section 290.1(2001). An evidentiary hearing was held pursuant to Departmental Rules found at 281 Iowa Administrative Code 6.

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.

Appellant seeks reversal of decisions of the Board of Directors [hereinafter, "the Board"] of the District made on February 12, 2001, and April 16, 2001, to expel him permanently from its high school.

**I.  
FINDINGS OF FACT**

Nicholas Guthrie ["Nick"] is currently an eighteen-year-old attending West Alternative High School in Spencer, Iowa. He will have completed sufficient credits at West Alternative to earn an Okoboji High School diploma before the end of the spring semester of 2001. He attended Okoboji High School as a freshman, sophomore, junior, and senior, until Tuesday, February 6, 2001, when he was suspended for an incident that occurred the day before in the boys' locker room following Nick's basketball practice.

On Monday, February 5, 2001, Nick allegedly urinated on a fellow student athlete [“Josh”] while Nick, Josh and several other student athletes were showering in a larger shower room with multiple showerheads. (Apparently, it was not uncommon for athletes to urinate into the shower drain.) The accounts of the students who witnessed the incident were conflicting on whether or not the urination contact was accidental or intentional. Josh’s older stepbrother was the District’s wrestling coach and was present in the locker room, but not in the shower. He stated that he did not witness the shower incident, but that he heard Nick swearing after he was accused of urinating on Josh.

The next day, on February 6, 2001, High School Principal Traughber interviewed the students who were present in the shower. He tape-recorded the accounts of the student witnesses who supported Josh’s version that Nick had acted intentionally. Principal Traughber testified at the appeal hearing that he interviewed the student witnesses who supported Nick’s version, but that he decided not to tape-record their accounts because he did not believe them.

On February 6, 2001, the District sent a letter to Nick’s parents, which stated as follows:

This letter is to inform you that your son, Nick Guthrie, has been suspended from school and all school activities for urinating on a student, Josh Bonstead, in the shower room after practice Monday, February 5<sup>th</sup>. He then continued to verbally harass the student and tried to pick a fight with him. He also used profanity towards me when I explained to him his circumstances on Tuesday morning February 6<sup>th</sup>. Nick will not be allowed to be on school property until he has a hearing with the Okoboji school board. This type of behavior will not be tolerated.

To set up a hearing you may call the superintendent at 338-4757. At the hearing it will be recommended that the student be expelled and that he finish at the West Alternative School. However, all bills he has must be paid before credits will be transferred.

Sincerely,

Larry Traughber, Okoboji High School Principal

(Appellee’s Exh. 3.) Mrs. Guthrie testified that she received this letter on February 7, 2001.

On February 6, 2001, Mrs. Guthrie requested copy of the board agenda so she would know when the hearing would be. Later that day, the Superintendent then brought a copy of the agenda to her place of employment. The agenda indicated that there would be a hearing on Nick’s expulsion on Monday, February 12. Agenda item 1.04 reads:

Closed Session. Hearing with Parent of Student. (Iowa Code 21.5, 1.e. To discuss whether to conduct a hearing or to conduct hearing to suspend or expel a student, unless an open meeting is requested by the student or parent or guardian of the student if the student is a minor).

The Guthries never received a notice of the expulsion hearing or their rights at the hearing. On February 7<sup>th</sup> or 8<sup>th</sup>, Mrs. Guthrie called the District and asked for copies of the District's policies on expulsion hearings. She went into the high school office and picked up a copy of Board policies 503.1 and 503.2. Board policy 503.1, entitled "Student Conduct," provides, in pertinent part:

... Expulsion means the removal of a student from the school environment, which includes, but is not limited to, classes and activities for a period of time set by the board.

Students disciplined under this policy shall receive appropriate due process under the circumstances. It shall be the responsibility of the superintendent, in conjunction with the principal, to develop administrative regulations regarding this policy.

(*Id.*, Appellee's Exh. 2.)

Board Policy 503.2, entitled "Expulsion," provides:

Only the board may remove a student from the school environment. The removal of a student from the school environment, which includes, but is not limited to, classes and activities, is an expulsion from school.

It shall be within the discretion of the board to discipline a student by using an expulsion for a single offense or for a series of offenses depending on the nature of the offense and the circumstances surrounding the offense.

It shall be within the discretion of the superintendent to recommend to the board the expulsion of a student for disciplinary purposes. Only the board may take action to expel a student and to readmit the student. The principal shall keep records of expulsions in addition to the board's records.

When a student is recommended for expulsion by the board, the student shall be provided with:

1. Clear notice of the reasons for the proposed expulsion;
2. The names of the witnesses and an oral or written report on the acts to which each witness testifies;
3. An opportunity to present a defense against the charges and provide either oral testimony or written affidavits of witness on the student's behalf;
4. The right to be represented by counsel;
5. The results and finding of the board in writing open to the student's inspection.

...

(*Id.*, Appellee's Exh. 2.)

On February 7<sup>th</sup> or 8<sup>th</sup>, the Guthries requested a copy of Nick's school records and picked them up from the high school secretary. The records included Nick's disciplinary record. Nick's past disciplinary record during his high school years prior to the expulsion included 20 to 25 incidents, most of which involved profanity or disruptive language or behavior. On May 12, 2000, Nick had received a three-day, in-school suspension. The Guthries had been notified of most of these past incidents as they occurred over the years.

Mrs. Guthrie testified that she had called Superintendent Reifenrath on February 7<sup>th</sup> to ask what a "closed hearing" meant, as it appeared on the agenda. According to Mrs. Guthrie's testimony, Superintendent Reifenrath said the Board had never had an expulsion hearing. She testified that he also told her that no student witnesses could make oral statements in a closed session, only in an open session. Mrs. Guthrie called Superintendent Reifenrath again on February 8<sup>th</sup> to tell him they wanted an open session so they could bring student witnesses. Superintendent Reifenrath testified, however, that he told Mrs. Guthrie there might not be space for student witnesses in the room where the board held closed sessions. The expulsion hearing was held in open session.

Mrs. Guthrie testified that she called two attorneys to find out what a student's rights were at an expulsion hearing, but both attorneys told her immediately that they had conflicts of interest and had not given her any legal advice. The Guthries, therefore, came to the expulsion hearing on February 12, 2001, without an attorney. The Guthries testified that they did not know ahead of time that they had a right to an attorney at the hearing and that the District had not informed them of that right. They testified that they had requested and picked up Board Policy 503.2. Although that policy stated, in part, that "the student shall be provided with . . . the right to be represented by counsel," they still did not realize that they had that absolute right. Superintendent Reifenrath, on the other hand, testified that he had told Mrs. Guthrie orally that the family had a right to an attorney at the hearing.

The Guthries also requested a copy of the principal's tape recording of the students who supported Josh's version of the shower incident. During the appeal hearing, one of the District's Board members testified that prior to the Board meeting, he had listened to the tape recording at the shop where Mr. Guthrie worked. He did not discuss this with the rest of the Board members and he had participated in the expulsion votes at both Board meetings.

When the District presented its recommendation for expulsion that night, it provided the Board with copies of Nick's past disciplinary records. Principal Traughber's presentation to the Board included information on 7 of the 25 disciplinary actions that were included in the board packet. Mrs. Guthrie testified that when she tried to respond to Mr. Traughber's presentation about the past disciplinary record, Board President Eckard would not allow her to do so. The Guthries were also given the past disciplinary records at the meeting, but testified that they were unaware until then that they would be considered part of the expulsion proceeding. They testified that they thought that the expulsion hearing was only for the incidents on February 5 and 6, 2001. The District testified that the Guthries should have known that Nick's entire disciplinary record would be the basis for the expulsion hearing because they had been told on May 12, 2000, that Nick could be expelled if there were future problems with his behaviors. Board members at the

appeal hearing testified that they did indeed consider Nick's entire disciplinary record when they voted to expel him.

The Guthries were not provided with a list of witnesses ahead of time. They did, however, have an opportunity to ask the witnesses questions, although at least once Josh's stepbrother, Mr. Bouse, told Josh that he did not have to answer Mr. Guthrie's questions.

The Board also heard statements from Mr. Guthrie, Mrs. Guthrie, Nick, student witnesses who were in the shower on February 5<sup>th</sup>, and wrestling coach, Mr. Bouse. It then voted to expel Nick. The minutes from the February 12, 2001, meeting state:

With no further comments Mr. Reifenrath agreed with Mr. Traugher's recommendation to expel Nick Guthrie from Okoboji Community School, in doing so he cannot attend any Okoboji Community School event home or away. Nick would not be allowed on Okoboji Community School property at anytime.

Fisher/Chozen motioned to expel Nick Guthrie from the Okoboji Community Schools. All ayes/Carried.

(Board Minutes 2/12/01.)

At the appeal hearing, the District testified that it intended for Nick to be banned from the school premises, all school activities, and from participating in its graduation ceremony. The Administrative Law Judge directed the Board to clarify its official minutes at its next meeting. Those minutes state, in pertinent part, as follows:

Chozen/Arends moved to clarify the intent of the board, at the February 12, 2001 expulsion hearing of Nick Guthrie, was that the length of the expulsion to be permanent. All ayes/Carried.

Cooper/Chozen moved to clarify the intent of the board, at the February 12, 2001 expulsion hearing of Nick Guthrie, was that the expulsion includes Nick Guthrie not participating in the Okoboji High School graduation ceremony. All ayes/Carried.

Arends/Cooper moved to clarify the intent of the board, at the February 12, 2001, expulsion hearing of Nick Guthrie, was that Nick Guthrie would be allowed to finish high school at West Alternative School in Spencer and when credits were transferred to OHS he will be granted an Okoboji High School Diploma. All ayes/Carried.

(Board Minutes 4/16/01.)

## II. CONCLUSIONS OF LAW

In hearing appeals brought under Iowa Code section 290.1(2001), the State Board must render a decision which is “just and equitable,” and “in the best interest of education.” Iowa Code section 290.3(2001); 281 IAC 6.17(2); *In re Rashawn Mallett*, 14 D.o.E. App. Dec. 327(1997). The test is reasonableness. *Mallett, supra*, at 334. The decision must be based on the laws of the United States, the State of Iowa, and the Iowa Department of Education rules. 281 IAC 6.17(2). A local board’s decision will not be overturned unless it is “unreasonable and contrary to the best interest of education. *In re Jesse Bachman*, 13 D.o.E. App. Dec. 363, 369 (1996).

Iowa Code section 282.4 (2001) sets out the local school board’s authority regarding expulsions 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. The board may confer upon any teacher, principal, or superintendent the power temporarily to suspend a student, notice of the suspension being at once given in writing to the president of the board.
2. A student who commits an assault, as defined under section 708.1, against a school employee in a school building, on school grounds, or at a school-sponsored function shall be suspended for a time to be determined by the principal. Notice of the suspension shall be immediately sent to the president of the board. By special meeting or at the next regularly, scheduled board meeting, the board shall review the suspension and decide whether to hold a disciplinary hearing to determine whether or not to order further sanctions against the student, which may include expelling the student. In making its decision, the board shall consider the best interests of the school district, which shall include what is best to protect and ensure the safety of the school employees and students from the student committing the assault.
3. Notwithstanding section 282.6 [regarding tuition-free public school for all Iowa residents between the ages of 5 and 21], if a student has been expelled or suspended from school and has not met the conditions of the expulsion or suspension, the student shall not be permitted to enroll in a school district until the board of directors of the school district approves, by a majority vote, the enrollment of the student.

*Id.*

The questions Appellant places before the State Board focus on whether the Okoboji Board decision violated Nick’s procedural due process rights. We therefore have no reason to

discuss the expulsion itself as an appropriate discipline for Nick's actions. Since we conclude that the Board's failure to provide written notice violated Nick's procedural due process rights and that Nick was prejudiced by those violations, we must reverse the Board's decision for the following reasons.

In *Goss v. Lopez*, 419 U.S. 565(1975), the United States Supreme Court decided that the Due Process Clause of the Constitution gives students facing short-term suspensions certain procedural protections. The students in *Goss* were suspended for periods of up to 10 days. The Court stated that "interpretation and application of the Due Process Clause are intensely practical matters and that '[t]he very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation.'" *Goss, supra at 578* (quoting *Cafeteria Workers v. McElroy*, 367 U.S. 886, 895(1961).) The Court recognized that "events calling for discipline are frequent occurrences and sometimes require immediate, effective action." *Goss, supra at 580*. However, the Court held that the students subject to suspensions of 10 days or less have a right to oral or written notice of the charges against them, and if the charges are denied, an explanation of the evidence school authorities have and an opportunity to present their side of the story." *Goss, supra at 581*. The purpose of this rudimentary due process is to protect "against unfair or mistaken findings of misconduct and arbitrary exclusion from school." *Id.*

The Court held that in cases involving short suspensions, the student does not have a right to counsel, to confront and cross-examine witnesses supporting the charge, or to call his or her own witnesses. *Id. at 583*. Nevertheless, the *Goss* court suggested that "[l]onger suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures." *Goss*, 419 U.S. at 584, 95 S.Ct. 729.

The issue in this appeal is whether the District met the minimum due process requirements for an expulsion proceeding. The Guthries argue that the District failed to meet the requirements, largely because its notice of the expulsion hearing was deficient. The District argues that its notice of the expulsion hearing was adequate because the Guthries should have been aware of their rights from documents that they requested and received from the District prior to the hearing. The question presented to the State Board comes down to the determination of whose responsibility is it to take the initiative to communicate information about how the expulsion hearing will be run. We believe that our prior decisions clearly state that it is the District's responsibility to provide written notice communicating certain, specific information about the expulsion hearing, including notice of all incidents which will be used as the basis for expulsion at the hearing.

Our decision in *In re John Lawler* reaffirmed the due process requirements that the State Board has used in expulsion appeals for several years, and stated, in pertinent part, as follows:

In the case of expulsions as opposed to suspensions, therefore, due process and State Board cases require more elaborate procedures before a student is expelled. Due process is a flexible concept, and what is due in each case depends on the specifics of that case. *Matthews v. Eldridge*, 424 U.S. 319 (1976); *In re Rashawn Mallet*, 14 D.o.E. App. Dec. 327 (1997). The fundamental requirement is "the opportunity to be heard 'at a

meaningful time and in a meaningful manner.”” *Id.* at 333 (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). *In re Don A. Shinn*, 14 D.o.E. App. Dec. 185 (1997); *In re Isaiah Rice*, 13 D.o.E. App. Dec. 13 (1996); *In re Joseph Childs*, 10 D.o.E. App. Dec. 1 (1993). As reaffirmed in *Shinn*, the following are the elements of due process for students facing expulsion in Iowa:

A. Notice

1. The student handbook, board policy, the Code of Iowa, or "commonly held notions of unacceptable, immoral, or inappropriate behavior," may serve as sources of notice to the students of what conduct is impermissible and for which discipline may be imposed.
2. Prior to an expulsion hearing, the student shall be afforded *written* notice containing the following:
  - a. the date, time and place of hearing;
  - b. sufficiently in advance of the hearing (suggestion: a minimum of three working days) to enable the student to obtain the assistance of counsel and to prepare a defense;
  - c. a summary of the charges against the student written with "sufficient specificity" to enable the student to prepare a defense;<sup>1</sup> and
  - d. an enunciation of the rights to representation (by parent, friend, or counsel), to present documents and witnesses in the student's own behalf, to cross-examine adverse witnesses, to be given copies of documents which will be introduced by the administration, and to a closed hearing unless an open hearing is specifically requested.

B. Hearing Procedures

1. The student will have all of the rights announced in the notice, and may give an opening and closing statement in addition to calling witnesses and cross-examining adverse witnesses. (This is "a full and fair opportunity to be heard.")
2. The decision making body (school board) must be impartial. (No prior involvement in the situation; no stake in the outcome; no personal bias or prejudice.)

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<sup>1</sup> Inherent in this right is the fact that no new charges will be brought up at the expulsion hearing that were not in the notice. [Footnote from *In re Don Shinn*.]



3. The student has a right to a decision solely on the basis of the evidence presented.
  4. There must be an adequate factual basis for the decision. This assumes that the evidence admitted is reasonably reliable. A "preponderance of the evidence" standard is sufficient to find the student violated the rule or policy at issue.<sup>2</sup>
- C. Decision Making Process/Creating a Record
1. No one who advocated a position at the hearing should be present during deliberations unless the other party or parties are also permitted to attend the deliberation phase.
  2. Following the decision in deliberations, the Iowa Open Meetings Law (chapter 21) requires that decisions be made in open session. (§21.5(3).)
  3. The student is entitled to written findings and conclusions as to the charges and the penalty.

*Shinn, supra* at pp. 190 – 192.(Emphasis added.)

Although the above were not rules promulgated by the Department, and therefore are not absolute requirements to be followed in every case, they do provide guidance as to how the State Board will interpret due process requirements in expulsion cases. *In re Isaiah Rice*, 13 D.o.E. App. Dec. 13 (1996). With this guidance in mind, in addition to the other authorities discussed above, we will apply these principles to the circumstances of Nick's expulsion.

A. Notice:

In determining whether the District's pre-hearing procedures were sufficient to comply with due process, we must look at what was done and determine whether it allowed the Guthries to be heard at "a meaningful time and in a meaningful manner." *Matthews v. Eldridge, supra*. Previous State Board decisions have suggested that a minimum notice of three working days is required. Those decisions have also stated that the student is entitled to written notice containing the time of the hearing, a statement of charges sufficiently specific to enable the student to prepare a defense, and an enunciation of the rights to representation, to present documents and witnesses on the student's behalf, to cross-examine adverse witnesses, to be given copies of documents which will be introduced by the administration, and to a closed hearing unless an open hearing is specifically requested. *In re Don A. Shinn, supra* at 190-191.

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<sup>2</sup> A "preponderance" is enough to outweigh the evidence on the other side, enough to "tip the scales of justice one way or the other"; 51% of the total evidence suggests guilt or innocence. [Footnote from *In re Don Shinn*.]

We conclude that it is the District's responsibility to provide written notice of an expulsion hearing that contains all of the information required by our decisions. Oral notice will not suffice. Documents requested by the parents and provided in a piecemeal fashion prior to the hearing with a brief oral explanation will not suffice. The minimum due process requirement is for *written* notice provided by the District, containing all the listed information.

There is a good reason for requiring the notice to be in writing: There can then be no dispute on whether the notice required by due process was indeed provided. Here, the parents testified that notice wasn't provided. The District testified that it was. Because the requirement is for written notice, any questions regarding the sufficiency of the District's information to the parents must be resolved against the District.

In this case, the evidence is undisputed that the District provided no written notice to the Guthries regarding the expulsion hearing. The District provided only the agenda, policies and records that the Guthries requested themselves. We conclude that the notice procedures before the February 12, 2001, expulsion hearing were a violation of the due process rights of Appellant. Written notice containing all the requirements must be given to the student to allow the student to prepare a meaningful defense. This is not a case where the student admitted the accusations of the expulsion proceeding. Nick denied that his conduct was intentional. In this appeal, the lack of written notice to the Guthries that they had a right to legal counsel at the expulsion hearing prejudiced their rights to prepare a meaningful defense. They testified that although they tried to get advice from two attorneys about what their rights were, they were unable to get that advice. They testified, therefore, that they still did not know they had a right to counsel at the expulsion hearing.

The District's lack of notice was also prejudicial because the Guthries never received a summary of charges to be used at the expulsion hearing with sufficient specificity to prepare a defense.<sup>3</sup>

It is incumbent on the State Board to look at the combination of circumstances in this case. The combination of circumstances shows clearly that the Guthries were prejudiced by the lack of written notice. Prior to the hearing, Principal Traugher's letter gave only the urination incident and profanity incident on February 5<sup>th</sup> and 6<sup>th</sup> as the basis for the suspension and possible expulsion. When the Guthries came to the expulsion hearing on February 12, their reasonable expectation would have been that only those two incidents would be used as a basis for expulsion. The Board, however, considered Nick's entire prior disciplinary record. The State Board guidelines clearly state that the student is entitled to written notice containing a summary of the charges written with sufficient specificity to enable the student to prepare a defense. The guidelines also state that inherent in this right is the fact that no new charges will be brought up at the expulsion hearing that were not in the notice. Nick's disciplinary record prior to February 5<sup>th</sup> were new charges brought up at the expulsion hearing that were not in a written notice to the Guthries. We therefore conclude that the lack of written notice of the expulsion hearing violated the Guthries' due process rights as interpreted by previous State Board decisions.

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<sup>3</sup>The Guthries also didn't receive notice of the right to cross-examine adverse witnesses. No list of witnesses was provided. The Board also failed to inform the Guthries that they had a right to a closed hearing.

## B. Hearing Procedures:

We also agree with the Guthries that the procedures at the hearing itself before the Okoboji Board were inadequate. Due process requires a neutral decision maker, the right to counsel, the right to present evidence on the student's behalf, and the right to cross-examine adverse witnesses. It requires that the student receive copies of all documents relied on by the District before the expulsion hearing. It requires a decision based solely on the evidence presented at the hearing, and an adequate factual basis for the decision. *In re Don A. Shinn, supra* at 190-191. Appellant did not have all of these protections afforded him at the hearing before the Okoboji Board. The Guthries were unrepresented by counsel, and we have already recognized that they were hampered in that regard by the lack of a hearing notice.

Furthermore, the Guthries did not know until the expulsion hearing itself that the Board would be provided with copies of Nick's past disciplinary action to be considered as part of the basis for the expulsion. They testified that they thought that the expulsion was only for the incidents on February 5 and 6<sup>th</sup>. The District testified that the Guthries should have known that Nick's entire disciplinary record would be the basis for the expulsion because the Guthries were told on May 1, 2000, that Nick could be expelled if there were further problems with his behaviors. When the District provided the Board with its recommendation for expulsion that night, it provided the Board with copies of Nick's past disciplinary records. The Guthries were also given the documents at the meeting. They were unaware until then that the documents would be considered as part of the expulsion proceeding. Even after the District unexpectedly presented Nick's past disciplinary record, Mrs. Guthrie testified that she was not allowed to respond to Principal Traughber's presentation. Therefore, we conclude that the procedures followed by the Board at the hearing itself did not satisfy the due process requirements. *In re Demetricia Powell*, 15 D.o.E. App. Dec. 135, 165-6(1998).

We disagree, however, with Appellant's argument that he did not have an impartial decision maker due to the fact that one of the members of the Board had listened to the tape. In order to disqualify a board member from sitting on a hearing panel, it is necessary to prove actual bias on behalf of the board member against the individual involved. *Shinn, supra*, at 193. There was no specific evidence that any of the five members of the Board had a bias or prejudice against Nick.

We realize that there may be times that a specific board member should abstain from voting on a decision due to bias or prejudice against the student involved. It would have been more appropriate for this board member to abstain to avoid the appearance of impropriety. However, absent some specific showing of personal bias or prejudice, we are not prepared to reverse a decision of a board because one of the board members inappropriately listened to evidence that the rest of the Board did not hear. In this appeal, Appellant has failed to show any evidence of actual personal bias or prejudice on the part of any of the members of the Board. Therefore, we reject Appellant's argument that Nick did not have an impartial decision-maker.

C. Decision Making Process/Creating a Record:

The due process requirements announced in the *Shinn* decision state that an expelled student is entitled to written findings and conclusions as to the charges and penalty. The written findings and conclusions must at the very least give the student a summary of the witnesses who testified and the evidence upon which the Board based its decision. The Board's minutes from February 12, 2001, and the attached three-page summary of the special session gives Nick a sufficient explanation of the basis for the Board's findings and conclusions as to the charges and penalty against him.

D. Summary:

For the above reasons, the Board's decision to expel Nick is reversed for due process violations due to lack of written notice and deficient hearing procedures. The Guthries simply had no notice that the Board would be presented with Nick's entire disciplinary record for its consideration at the expulsion hearing. They could not, therefore, prepare a meaningful defense to the entire disciplinary record. Without notice, they did not have "the opportunity to be heard at a meaningful time and in a meaningful manner," as due process requires.

Although the decision to expel Nick for the remainder of the school year has been reversed, we would like to take this opportunity to restate the State Board's position that a local board must have heightened concerns for the safety of its students and staff. Clearly, a responsible local district must act quickly in responding to situations that disrupt the school environment. The response taken must be consistent with constitutional due process rights. A board's failure to observe these rights before depriving a student of the opportunity to attend its school permanently will expose the board to reversal upon appeal.

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

**III.  
Decision**

For the foregoing reasons, the decisions of the Okoboji Community School District Board of Education, made on February 12, 2001, and April 16, 2001, expelling Nick Guthrie from the Okoboji Community School, school activities home or away, school premises, and participation in graduation ceremony, is recommended for reversal. There are no costs to be assigned under Iowa Code chapter 290.

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DATE

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SUSAN E. ANDERSON, J.D.  
ADMINISTRATIVE LAW JUDGE

IT IS SO ORDERED.

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DATE

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CORINE HADLEY, PRESIDENT