

**Iowa State Department
of Education**

(Cite as 18 D.o.E. App. Dec. 61)

<i>In re John Lawler</i>	:	
Colleen Lawler, Appellant,	:	
v.	:	DECISION
Northwood-Kensett Community School District, Appellee.	:	
	:	[Adm. Doc. #4171]

The above-captioned matter was heard on November 3, 1999, before a hearing panel comprised of Tom Andersen, consultant, Bureau of Administration and School Improvement Services; Klark Jessen, consultant, Office of the Director; and Susan E. Anderson, J.D., designated administrative law judge, presiding. Appellant, Colleen Lawler, was present along with her son, John Lawler. Appellant was represented by Judith O’Donohoe of Elwood, O’Donohoe, O’Connor and Stochl, of Charles City, Iowa. Appellee, Northwood-Kensett Community School District [hereinafter, "the District"], was present in the persons of Jerry McIntyre, superintendent; and John Dayton, secondary school principal. The District was represented by John Greve of Northwood, Iowa.

Authority and jurisdiction for the appeal are found in Iowa Code section 290.1(1999). An evidentiary hearing was held pursuant to Departmental Rules found at 281 Iowa Administrative Code 6. In addition to extensive sworn testimony, 41 exhibits were offered into evidence.

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 a decision of the Board of Directors [hereinafter, "the Board"] of the District made on September 9, 1999, to expel her son from school through the 1999-2000 school year for violation of the Board’s weapons policy.

I. Findings of Fact

In December of 1998, John Lawler was a seventh-grade student attending the secondary school in the District. He had turned 13 years of age on August 30, 1998. He was a good student and had no history of disciplinary problems at school. On the evening of December 7, 1998, John was to perform in a band concert in the elementary building where he had attended the year before. On the bus going home from school that afternoon, John showed a package to some other students which he claimed was a “bomb”. Before the performance on that evening, John placed the package near the desk of one of his former teachers, Ted Carpenter. The package contained 3 fireworks, a glass baby food jar with cook-stove fuel in it, and a small tin of gunpowder. These items were connected together with duct tape inside the shoebox-sized cardboard container. A fuse protruded out of one end of the package and a cigarette lighter was taped to the outside of the package near the fuse. The package was wrapped in Christmas paper and a bow. It came with a note addressed to Mr. Carpenter, which included instructions for lighting the fuse, as follows:

Dear Ted: your hunky. I have loved and admired you ever since I first layed eyes on you. In order to work this gift just light the green string on the side of the gift with an “X” on it. Don’t worry there is no danger of fire, the most wonderful thing will then happen in five minutes.

P.S. For best results, place under Christmas tree and I gave you a lighter for the string.

Love your secret admirer

On the morning of December 8, 1998, Mr. Carpenter found the package in his classroom. Mr. Carpenter notified school officials of the suspicious package and the elementary building was evacuated. The package was placed outside of the building under a wastebasket until State Fire Marshal Agent Mike Keefe and law enforcement officials arrived. Agent Keefe disrupted the package by aiming a “water cannon” at it. The speed of the water coming out of a water cannon blows the package open from a distance. Agent Keefe told secondary school Principal John Dayton that the package was a device capable of doing injury to people and property. After use of the water cannon, the package was charred and blackened on the inside. The contents of the package scattered, but the evidence was inconclusive on whether the water cannon caused the scattering or whether the package actually exploded on its own.

In the meantime, Principal Dayton had come over to the elementary building from the secondary building to try to determine who had left the package in Mr. Carpenter’s room. He had remembered that students from the secondary school had been performing in a concert in the elementary building the night before. Another student told Principal Dayton that John Lawler was probably the student who had put the package on Mr. Carpenter’s desk.

Principal Dayton found John Lawler and asked if he had put the package on Mr. Carpenter's desk. After briefly denying it, John said he had. Mrs. Lawler was contacted and asked to come immediately to the school. Agent Keefe talked to John and John indicated that he had put the package on Mr. Carpenter's desk because Mr. Carpenter had been an unpopular teacher with all the students, and because John wanted to impress his peers. Mr. Keefe interviewed various students and witnesses during the afternoon as part of his investigation. During the course of the investigation, a knife and a lighter were found in John's locker.

On Thursday, December 10, 1998, John was removed from his home by law enforcement officials and taken to Mercy Hospital in Mason City for evaluations. Also on that date, Principal Dayton sent a letter to Mr. and Mrs. Lawler stating as follows:

Mr. and Mrs. Lawler, on December 8 an explosive device was discovered in the West Elementary building. While investigating this incident officers discovered that John had a knife and lighter in school. As a result, he was suspended for three days. Later, charges were formally made that he was responsible for the bomb. As a result of this latest development, John is suspended till the Board convenes to consider disciplinary action.

According to policy, this absence is excused. We will provide John with assignments. The work will be corrected and graded. If you have any questions, please phone me at 324-2142.

Regards,

John O. Dayton

Also on December 10, 1998, Superintendent McIntyre sent a separate letter to the Lawlers informing them that the Board would hold a special disciplinary meeting "to deal with board policy 903.1 – "Weapons", a copy of which was enclosed. The letter contained no list of witnesses to be called by the Board. The letter informed the Lawlers that they were entitled to bring counsel and witnesses to the meeting. The entire text of this letter follows:

Mr. and Mrs. Lawler:

This letter is to inform you of a special disciplinary meeting I have called to deal with board policy 903.1 – Weapons.

You are entitled to bring legal representatives, any witnesses you feel necessary and other people that you desire to this disciplinary hearing.

The meeting is to take place at 4:30 p.m. in the East Elementary boardroom.

If you have any questions, please give me a call at 324-2021.

A copy of the board policy 903.1 is enclosed with this letter.

Sincerely yours,

Jerry D. McIntyre
Superintendent

Policy #903.1 of the District provides, in pertinent part, as follows:

Students bringing a firearm to school shall be expelled for not less than 12 months. The Superintendent shall have the authority to recommend this expulsion requirement be modified for a student on a case-by-case basis. For purposes of this portion of this policy, the term “firearm” includes any weapon which is designed to expel a projectile by the action of an explosive, the frame or receiver of any such weapon, a muffler or silencer for such a weapon, or any explosive, incendiary or poison gas.

The text of neither letter specifically stated that John was being considered for expulsion, although it was implied by the inclusion of the weapons policy in Superintendent McIntyre’s letter. On December 14, 1998, the Special Board meeting took place. John was unavailable to attend the meeting because he was being detained by juvenile court officials for psychiatric evaluations. Mrs. Lawler had contacted John’s court-appointed attorney and he refused to attend the meeting. He instructed her to go to the meeting and request a closed session for the deliberation. John’s court-appointed attorney also instructed Mrs. Lawler not to say anything during the meeting. Therefore, Mrs. Lawler attended the meeting only to request a closed session for the deliberations by the Board members, but she did not say anything other than to request the Board to consider John’s education. She and John were, therefore, unrepresented by counsel at the December 14 meeting.

During the closed session on December 14, 1998, Superintendent McIntyre gave a statement that he had seen the package detonated and it had scattered about 20 feet. Principal Dayton read from his notes about what John had said to Agent Keefe and what Agent Keefe had reported to the school officials about the package, which he said had been referred to by Agent Keefe as a “device capable of causing injury.” Principal Dayton stated that he had seen the outside of the package, but had never seen inside of it. Agent Keefe was not present to testify. Police Chief Dorsey came to the hearing but stated that the juvenile court had sealed his notes and that he, therefore, could not discuss his notes at the meeting.

The closed session was tape-recorded by the Board and the tape was admitted into evidence as Exhibit 22A. The quality of the tape recording is very poor which makes it very difficult, if not impossible, to hear the entire evidence and discussion.

The Board heard the evidence from Superintendent McIntyre and from Principal Dayton and then went into open session. In open session, as reflected in the December 14, 1998 minutes, the Board adopted a resolution that the package violated the Board's weapons policy and that John had brought the package onto school property.

The Board did not take an official vote to expel John because it wanted to wait for more information to see whether it could expel him for more than the 12 months required by the Board's weapons policy. The Board minutes of December 14, 1998, state:

Upon motion duly made, seconded and unanimously carried, a resolution was adopted showing that the resolution would constitute a finding of fact that:

1. A bomb or incendiary device was placed on school property on December 8, 1998; and
2. The bomb or incendiary device was placed by Student X.

After detailed discussion concerning the penalties involved, it was determined that there needed to be input from juvenile authorities or parties who could provide information to the Board as to whether or not the mandatory one year expulsion should be in effect or in order to protect the students and facility of the Northwood-Kensett Community School District, a longer expulsion could be imposed. Final action was deferred pending request and receipt of information from the juvenile authorities as to the nature, treatment, and their recommendation for the student subject.

It was approved that this matter would be scheduled for further determination with respect to penalties to be invoked pending receipt of additional information, if available, from the juvenile authorities.

(Board Minutes 12/14/98.)

Some of the members of the 5-person Board had children who were then elementary students. The Board never sent Mrs. Lawler a copy of the December 14, 1998 Board minutes. She first saw the minutes when she requested them from the Board as part of her appeal to the State Board of Education on or about September 20, 1999.

John went from being evaluated at Mercy Hospital in Mason City to a Youth Shelter under the authority of the juvenile court where further evaluation was done. He was charged with first-degree arson in Worth County Juvenile Court. During John's stay at the youth shelter, John received educational instruction based on the Mason City School District's curriculum. He was released on February 8, 1999, and went home to his parents.

On February 11, 1999, Mrs. Lawler called Superintendent McIntyre and stated she was concerned with John's education and wanted to have John in school. Superintendent McIntyre told her to call Principal Dayton. During a conversation on February 17, 1999, Principal Dayton told Mrs. Lawler that the school had no further obligation to provide an education to John. Principal Dayton testified at the appeal hearing that it was very confusing to him as to what John's status was. He considered that John was expelled as of February 17, 1999. Superintendent McIntyre testified that between December 8, 1998 and September 9, 1999, he considered John to be truant. No truancy notices were ever sent to the Lawlers. To confuse matters even more, when the District filed its 1998-1999 Gun Free Schools Act Expulsions form with the Iowa Department of Education on June 23, 1999, it reported that it had expelled one student for threatening a student or teacher with a bomb or explosive device.¹ At the hearing, however, the District's position was that John was not expelled until September 9, 1999.

By February of 1999, Mrs. Lawler had obtained private counsel, Judith O'Donohoe. As a result of conversations between Mrs. Lawler's attorney and the District's attorney, the District agreed to the Lawlers' request that it would provide John with some seventh-grade books and course materials. The District also agreed to provide a list of possible in-home tutors for John. The list consisted of some substitute or retired teachers whom the District had used in the past.

Mrs. Lawler testified that she contacted the individuals on the list, but they either declined to tutor John or did not return her calls. She did receive textbooks and course materials for the remainder of what would have been John's seventh-grade year, but that was the extent to which the school was involved with John's educational needs. The District made no attempt to make a plan outlining even general procedures for Mrs. Lawler to follow regarding if, how or when John's coursework would be graded by the District. Mrs. Lawler testified that the District did not correct any of John's work. The District, through Principal Dayton, testified that if Mrs. Lawler had brought John's work to school, it would have been graded. Mrs. Lawler testified, however, that she did not bring any course work to the school, because she had no idea that she should do so.

Basically, then, John's education for the remainder of what would have been his seventh-grade year and for the beginning of what would have been his eighth-grade year has consisted of his mother's efforts to give him instruction at home from the textbooks and course materials

¹This form was not introduced into evidence at the hearing. The form was brought to the administrative law judge's attention by a member of the hearing panel the day after the hearing. We are taking notice of our Department's official form which is public record.

which the school provided after the requests by her attorney. The District has a report card for John for only the first quarter of the 1998-99 school year. There has been no credit for any work done since December 8, 1998. In August of 1999, the juvenile court judge had determined that Mrs. Lawler's attempts to provide for John's education at home were not working out. The court directed Ms. O'Donohoe to follow through with the District to ensure that John had an adequate educational program. On or about August 25, 1999, Ms. Donohoe requested that the District provide course materials and textbooks for what would be John's eighth-grade education.

During the summer of 1999, John was tried in juvenile court on charges of first-degree arson. On July 15, 1999, he was adjudicated a delinquent for committing first-degree arson. On August 24, 1999, the dispositional order sentenced John to probation for two years, with mandatory counseling. During this time, he was to reside with his parents. The Board took no action during this time due to a combination of requests by Mrs. Lawler that the Board wait until the end of the juvenile court proceedings and the Board's wish to wait until the juvenile court's proceedings were completed before deciding what action should be taken with regard to John's discipline.

Finally, on September 9, 1999, the Board met in closed session to hear statements on what action should be taken to discipline John. By this time, nine months had passed between the date of the incident and the date the Board officially met to act on John's discipline. Ms. Donohoe represented the Lawlers during the closed session. Both John and Mrs. Lawler were also present at this meeting.

The closed session on September 9, 1999 was tape-recorded by the Board and the tape was admitted into evidence at the appeal hearing as Exhibit 22B. Unfortunately, Ms. Donohoe's entire presentation on the Lawlers' behalf is absent from the tape. In addition, the quality of the tape recording of the evidence and discussion that followed Ms. Donohoe's presentation is extremely poor which makes it very difficult, if not impossible, to hear the entire evidence and discussion. However, it was audible on the tape that someone questioned the length of time between the December 8, 1998 incident and the September 9, 1999 meeting. This person also questioned whether any disciplinary action the Board took that day would be retroactive. Counsel for the District responded that the Board needed to get back into open session to vote on the disciplinary action and also to attend to several other items on the agenda. Therefore, the discussion about the length of the time between the incident and the meeting and about retroactivity was cut short and the Board proceeded back into open session.

After returning to open session, the Board heard various comments from patrons of the District, many of them parents of students who stated that they would take their children out of the District if John were allowed to return to school. The Board then voted without any deliberation to expel John "through the 1999-2000 school year." The Board in effect adopted Principal Dayton's recommendation that John be expelled for the remainder of the 1999-2000 school year. The minutes of the Board meeting simply state:

After hearing comments from some of the citizens on the student discipline issue, motion by Director Julsetah, seconded by Director Medtgaard. Upon the recommendation of secondary principal Dayton to expel the student from the Northwood-Kensett Community School District through the 1999-2000 school year. Motion carried 5-0.

Mrs. Lawler appealed her son's expulsion to the State Board of Education.

II. CONCLUSIONS OF LAW

In hearing appeals brought under Iowa Code section 290.1(1999), the State Board must render a decision which is "just and equitable," and "in the best interest of education." Iowa Code section 290.3(1999); 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. A local board's decision will not be overturned unless it is "unreasonable and contrary to the best interest of education. *Id.* 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).

Iowa Code section 282.4 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. [Not applicable to this appeal.]

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.[bracketed information supplied.]

The questions Appellant places before the State Board are whether the Northwood-Kensett Board decision violated John's procedural due process rights, and whether the decision to expel John was reasonable and in the best interest of education. We will first discuss whether the Board's decision violated John's constitutional right to procedural due process. Since we find that the Board violated John's procedural due process rights and that John was prejudiced by those violations, we must reverse the Board's decision. We therefore have no reason to discuss the expulsion itself as an appropriate discipline for John's actions.

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.

In the case of *Colquitt v. Rich Tp. High School*, 232 Ill. Dec. 924, 699 N.E.2d 1109 (Ill. App. Dec. 1 Dist. 1998), an Illinois appellate court discussed the due process requirements for expelling a student under the following circumstances:

On January 14, 1997, the Board entered an order expelling Lemont Colquitt from Rich South for three semesters due to gross misconduct, harassment, and verbal intimidation. The Board had conducted a hearing previously and provided notice to Lemont's parents in accordance with the applicable provisions of the School Code (105 ILCS 5/10-22.6 (West 1996)).

A hearing officer appointed by the Board presided over the hearing, which took place on January 9, 1997. In attendance were Lemont and his parents, their attorney, numerous witnesses, and the attorney for Rich South's administration. The hearing lasted six hours. Both oral testimony and written statements were admitted. Both attorneys were provided the opportunity to cross-examine the witnesses. Although no court reporter was present, the hearing officer prepared a 36-page report summarizing the evidence.

Id. at 1111.

The *Colquitt* court recognized the principles set forth in *Goss, supra*, and went on to analyze the due process requirements in an expulsion situation:

Due process is a flexible concept determined by the nature of the interest affected and the context in which the alleged deprivation occurs. *See, Mathews v. Eldridge*, 424 U.S. 319,334, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976).

...

The United States Supreme Court has held that "[t]he extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss[.]'" *Goldberg v. Kelly*, 397 U.S. at 262-63, 90 S.Ct. 1011, quoting *Joint Anti-Fascist Refugee Committee v. McGarh*, 341 U.S. 123, 1688, 71 S.Ct. 624, 95 L.Ed. 917(1951). Whether the loss threatened by a particular type of proceeding is sufficiently grave to warrant more than average administrative safeguards, therefore, turns on both the nature of the private interest threatened and the permanency of the threatened loss.

...

Unquestionably, a student's legitimate entitlement to a public education (is) a property interest protected by the Due Process Clause and which may not be taken away for misconduct without adherence to the minimum procedures required by that Clause.

Goss, 419 U.S. at 574, 95 S.Ct. 729.

Accordingly, Lemont's entitlement to a public education is of significance, particularly when expulsion proceedings place that interest in jeopardy for a lengthy period of time. The question remaining, therefore, concerns whether the procedures used in the instant case were sufficient to guard against the erroneous deprivation of that interest.

Colquitt v. Rich Tp. High School, supra, at 1115.

The *Colquitt* court held that the 36-page report by the hearing officer summarizing the evidence at the expulsion hearing was adequate to satisfy due process requirements, even though there was no word-for-word transcript of the hearing. The hearing officer's report was sufficiently detailed to provide for adequate and effective review. *Id.* at 1114. The court went on to hold, however, the student's due process rights were violated because he had no opportunity to cross-examine the witnesses whose written statements formed the basis for his expulsion. *Id.* at 1116.

The next year, a Washington appellate court reviewing an expulsion stated:

With *Goss* establishing that a student's entitlement to public education is a significant property interest, the remaining questions are what procedures are sufficient to guard the erroneous deprivation of that interest and how difficult those procedures would be to implement. *Mathews*, 424 U.S. at 335, 96 S.Ct. 893. Expulsion places the student's education interests in jeopardy for a long time. The risk of erroneously expelling a student must, accordingly, be treated seriously. Josh was never allowed to confront or question the only witnesses who actually observed the incident that was the basis for his expulsion. Although an expulsion hearing is not subject to all the rules of evidence, the decision of the hearing officer is based solely on the evidence presented, and the credibility of that evidence is critical to the disposition. *See*, WAC 180-40-305; *Colquitt*, 298 Ill.App.3d at 864, 232 Ill.Dec. 924, 699 N.E.2d 1109.

Stone v. Prosser Consol. School Dist., 971 P.2d 125(Wash. App. Div. 3 1999).

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. *Mathews 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;² 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.)
3. The student has a right to a decision solely on the basis of the evidence presented.

² 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.

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.³

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.

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 John'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 Lawlers 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.

³ 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.

In this case, we conclude that the notice procedures before the December 14, 1998, expulsion hearing were constitutionally inadequate and a violation of the due process rights of the Appellant. If a case were relatively simple, notice of less than three working days might be adequate if written notice containing all the requirements was given to the student. This might be sufficient to allow the student to be able to prepare a meaningful defense. We are sensitive to the fact that the District wanted to have the hearing during the suspension period, and recognize that students also have an interest in prompt hearings before the Board. However, this was not a simple case.

In this appeal, Appellant argues that the pre-hearing procedures followed by the District with respect to the December 14 expulsion hearing violated the right to due process in a number of respects. First, the Appellant did not receive the recommended minimum of three working days to enable them to obtain the assistance of counsel and to prepare a defense or ask for a continuation. The letter was dated December 10, 1998 and could not have reached Mrs. Lawler until at least December 11, which was a Friday. The hearing was on the following Monday. The two days in between the date she received the notice and the date of the hearing were Saturday and Sunday, which are not considered working days.

Furthermore, the Lawlers' notice was inadequate because it did not contain a summary of charges with sufficient specificity to prepare a defense. It also failed to mention the right to cross-examine adverse witnesses. No list of witnesses was provided.⁴ It is incumbent on the State Board to look at the combination of circumstances in this case. The combination of circumstances show clearly that Mrs. Lawler was prejudiced by these deficiencies since she did not have enough time to hire a lawyer and prepare a meaningful defense, when she was given only the weapons policy as the basis for the expulsion, and when she was not given the minimum notice of three working days. We therefore hold that the notice of the expulsion hearing provided to the Appellant violated the Due Process Clause as interpreted by previous State Board decisions.

The complexity of this case is worsened by the Board's bifurcation of its expulsion decision between its findings of fact on December 14, 1998 and its disciplinary action nine months later on September 9, 1999. The Board needed both the findings of fact and its disciplinary action to form a complete expulsion decision. Due to the Board's bifurcation of its decision in this way, we must conclude that the Board's action on John's expulsion was not final until after its September 9, 1999 meeting. We therefore conclude that all due process violations which occurred on or before the December 14, 1998, meeting contaminated the final Board action on September 9, 1999.

⁴ The Board's notice also failed to inform the Lawlers that they had a right to a closed hearing. However, there was no prejudice because they did, in fact, hold a closed hearing.

B. Hearing Procedures:

We also agree with the Appellant that the procedures at the hearing itself before the Northwood-Kensett Board were constitutionally 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. 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. The Appellant did not have all of these protections afforded her at the hearing before the Northwood-Kensett Board. Due process requires essentially that the hearing be fair. The Appellant was unrepresented by counsel, and we have recognized that she was hampered in that regard by the insufficient hearing notice. In addition, since John was not available to attend the hearing, there was no meaningful opportunity to present evidence on his behalf. The fire marshal's report was not in evidence at the expulsion hearing on December 14, 1998, which denied her the right to cross-examine either him or the many witnesses he interviewed. Therefore, the Board had inadequate evidence in the record on which to base its decision. Therefore, we conclude that the procedures followed by the Board at the hearing itself were constitutionally inadequate.

We do not agree with Appellant's argument that John did not have an impartial decision maker due to the fact that some of the members of the Board had children attending the elementary school where the package was found. 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 John due to the fact that their children were in the elementary building. People who serve on local school boards often do so because they have children in the school district. This is often one of the reasons that they decide to be on the board in the first place. Often, then, school board members are going to have a personal interest in what happens to the district and to its children, including their own.

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. However, absent some specific showing of personal bias or prejudice, we are not prepared to reverse a decision of a board merely because some of the board members were interested in the outcome of a decision because their own children would be affected by it. 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 John did not have an impartial decision maker.

C. Decision Making Process/Creating a Record:

Finally, the Board issued inadequate written findings and conclusions as to the charges and the penalty. 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

Board minutes in this case were inadequate to meet this due process requirement. 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. Neither of the Board's minutes from December 14, 1998 or from September 9, 1999 gives John a sufficient explanation of the basis for the Board's findings and conclusions as to the charges and penalty against him. In the absence of the rendition of a proper order expelling a student, there is nothing for a court to review nor, for that matter, any true legal obstacle to the student's return to classes. *Mitchell v. Leon Co. School Bd.*, 591 So.2d 1032, 1033(Fla.App. 1 Dist. 1991).

For the above reasons, the Board's decision to expel John is reversed for due process violations. John could have been expelled immediately as soon as the Board found that he had violated its weapons policy, but only after following due process requirements.⁵

Although the decision to expel John for the remainder of the school year has been reversed, we would like to take this opportunity to clarify the State Board's position in this matter. The State Board recognizes that a local board must have heightened concerns for the safety of its students and staff. The State Board supports the efforts taken by local districts to comply with the mandates of the Gun Free Schools Act. The point is this: a local district must act quickly in responding to situations that compromise the safety of the school environment. However, the response taken must be consistent with the constitutional due process rights of the student. A board's failure to observe these rights before depriving a student of the opportunity to attend school will expose the board to reversal upon appeal.

During the appeal hearing, the administrative law judge did not allow several proposed exhibits into evidence on the basis that they were not available to the Board at the December 14, 1998 and the September 9, 1999 hearings. The administrative law judge ruled that these proposed exhibits would be admitted into evidence only if the hearing tapes labeled Exhibits 22A and 22B were not available. The tapes were inaudible. All of the proposed exhibits that were not allowed into evidence during the appeal hearing subject to review of the hearing tapes are therefore admitted into evidence.

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

⁵ The State Board reminds the Northwood-Kensett Board that Iowa Code section 280.17B(1999) places the responsibility on local school authorities to prescribe procedures for continued school involvement with students during the time they are suspended or expelled.

**III.
Decision**

For the foregoing reasons, the decision of the Northwood-Kensett Community School District's Board of Directors on September 9, 1999 to expel John Lawler, is hereby reversed. There are no costs to be assigned under Iowa Code chapter 290.

DATE

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

IT IS SO ORDERED.

DATE

CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION