

**IOWA STATE BOARD  
OF EDUCATION  
(Cite as 16 D.o.E. App. Dec. 61)**

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<i>In re Theodor Arnold</i>	:	
Terry Finkbine Arnold, Appellant,	:	
	:	
v.	:	<b>ORDER</b>
	:	<b>COMPELLING DISCOVERY</b>
Fairfield Community School District, Appellee.	:	
	:	<b>[Adm. Doc. #3918]</b>

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**I.  
BACKGROUND**

On May 29, 1997, the Fairfield Community School District Board of Directors met for a special session to consider the disciplinary action that should be taken against three students who were accused of acts of vandalism in the school. [Min., Exh. A.] Each of the three students was represented by an attorney. The Minutes reflect that, “[a]ll three attorneys speaking on behalf of their client and their client’s parent(s) waived the right to a closed session”. [Exh. A.] As a result of the attorneys’ requests, the Board conducted all three hearings (Hearings “A”, “B”, and “C”) in open session. The hearing for Appellant’s son was the last to occur and ended at 10:49 p.m. on the evening of May 29, 1997. The Minutes show that the Board took a break from 10:49 p.m. to 10:55 p.m. At 10:55 p.m., the Minutes reflect that the parents and students had left the meeting. The Minutes then show that a motion was made and seconded to “hold a closed session as provided in section 21.5(1)(e) of the Code of Iowa to conduct a hearing to determine whether to suspend or expel a student. The closed session adjourned at 12:30 a.m. on May 30, 1997, and the Minutes show that “[t]his closed session will reconvene at 4:00 p.m. on May 30, 1997.” On May 30, 1997, the Minutes reflect a roll call vote to “go into closed session as provided in section 21.5(1)(e) of the Code of Iowa to conduct a hearing to determine whether to suspend or expel a student.” [Exh. A.] The Minutes of the special meeting held June 2, 1997, state that the Board voted unanimously to accept the administration’s recommendation to expel Theodor Arnold for the second semester of the 1996-97 school year and the first semester of the 1997-98 school year “with the terms and conditions to be spelled out in the fact finding report to be completed in five days for student Theodor Arnold.” [Min. 6/2/97.]

Appellant’s appeal on behalf of her son was received by the State Board of Education on July 1, 1997. Because it alleged that the District Board had violated provisions of the Individuals with Disabilities Education Act (IDEA), the appeal was referred to the Bureau of Special Education for resolution. A decision

was reached on the special education issues and rendered on September 3, 1997. The remaining issues were remanded back to the State Board of Education for resolution. A hearing was set for November 3, 1997.

On October 15, 1997, Appellant filed a Request for Discovery under the provisions of 281 Iowa Administrative Code 6.5. Ron Peeler, counsel for Appellee, refused to produce items (1) and (3) of Appellant's Request for Discovery. Those items concerned the following materials:

- (1) Any and all records, notes, transcripts, writings, and recordings taken by any and all persons present at any meeting or hearing of the Fairfield Community Board of Education at which the subject of the expulsion, discipline, suspension, and/or circumstances of Theodor Arnold was discussed, including but not limited to the hearings held on May 29 and May 30, 1997, in closed session.

...

- (3) Any and all notes, communications, writings, letters, or recordings made by John Kelley, Ralph Messerli, Steve Triplett, and Stacy Bandy made regarding the expulsion, discipline, suspension and/or re-admittance of Angela Wagner and Lorin Kline to District schools.

Mr. Peeler has refused to produce the above-described materials because they relate to the Board *deliberations*, which occurred in "closed" session. He has, however, produced the other materials requested because they pertain to the *evidentiary* portion of the expulsion hearing that occurred in open session.

## II. DISCUSSION

Iowa Code section 21.5 is very prescriptive. It states that "[a] governmental body may hold a closed session only to the extent a closed session is necessary for any of the following reasons: ... (e) to discuss whether to conduct a hearing or to conduct hearings to suspend or expel a student, unless an open session is requested by the student or a parent or guardian of the student if the student is a minor." Iowa Code sections 21.5(1) and 21.5(1)(e)(emphasis added).

By the plain terms of the statute, this section allows a school board to have a closed session when two prerequisites exist:

- (1) a hearing to suspend or expel a student; and
- (2) an open session has not been requested by the parent or guardian of a minor student.

Both conditions are required before the Board can hold a closed session under Iowa Code section 21.5(1)(e).

In the present case, it is undisputed that the second condition did not exist on May 29 and May 30, 1997, when the Board voted to go into closed session. There is no authority cited by Appellee for the proposition that “[t]he rationale for allowing production of the **evidentiary** portion of the hearing does not apply with the same force and effect to the production of the **deliberative** portions.” [Appellee Brief at 3 (emphasis in original).]

The Legislature did not carve out an exception for “Board deliberations” under the Open Meetings Law. Therefore, we agree with the Appellant that no applicable law provides that a school board can close a hearing or hearings under section 21.5(1)(e) once it has been opened at the request of the student or parent. In the absence of a statutorily authorized closed session, the materials sought by Appellant are open records under Iowa Code chapters 21 and 22.

This is not a complicated issue. We are not addressing the “law applicable to discovery of closed session tapes” as Appellee asserts. That law is unpersuasive when there appears to be no basis for having the closed session in the first place. Tausz v. Clarion-Goldfield CSD, 569 N.W.2d 125 (Iowa 1997), is inapposite because the case focuses on the attorney-client privilege, which is not an issue here. Although we would agree that internal jury deliberations should not be subject to disclosure, we are unwilling to extend that protection to a school board’s deliberations in an open meeting.

Finally, Iowa Code section 279.24, governing the termination process for administrators, does not extend to expulsion hearings as Appellee contends. On the contrary, Iowa Code section 279.24 supports the opposite conclusion. Under the terms of that statute, a board’s deliberations on

whether to accept or reject an administrative law judge's termination decision are *specifically exempted* under the Open Meetings Law. Id. (Emphasis added.) In the absence of such a specific exemption, a board's deliberations *would be* subject to the provisions of the Open Meetings Law, as they are in the present case.

### III. ORDER

- (1) For the foregoing reasons, Appellant's Motion to Compel Discovery of items (1) and (3) of her Request for Production, is hereby sustained. Appellee has 30 days from the date of this Order to comply.
- (2) Appellant's Motion for an Order limiting the record to the tapes and transcripts of hearing "C" only is hereby overruled. Having found that the Board's deliberations are subject to the Open Meetings Law and thereby open records, all of the evidence may be submitted to the State Board of Education under its de novo review, but will be admitted subject to relevance. See, 281 IAC 6.8(2)(a)(2).

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DATE

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ANN MARIE BRICK, J.D.  
ADMINISTRATIVE LAW JUDGE