Iowa State Board of Education

(Cite as 10 D.O.E. App. Dec. 184)

In re Chad Stevens		
Chad Stevens, Appellant	:	
v.	:	DECISION
West Harrison Community School District, Appellee.	:	[Admin. Doc. #3197]

The above-captioned matter was heard on July 9, 1992, before a hearing panel comprising Christine Anders, consultant, Bureau of Food and Nutrition; Don Helvick, consultant, Bureau of School Administration and Accreditation; and Kathy L. Collins, legal consultant and designated administrative law judge, presiding. Appellant Chad Stevens was not present but was represented by his attorney, Luke Cosgrove of Legal Services Corp. of Iowa, Council Bluffs. Appellee West Harrison Community School District [hereafter "the District"] was present in the persons of Superintendent Jim Kerns and Ed Daugherty, high school principal. The District was represented by Suellen Overton of Smith, Peterson, Beckman & Willson, Council Bluffs.

An on-the-record form of hearing (oral argument only) was held pursuant to departmental regulations found at 281 Iowa Administrative Code 6. Appellant sought reversal of a decision by the board of directors [hereafter "the Board"] of the District on April 7, 1992, to expel him for the balance of the school year. Authority for the appeal is found at Iowa Code section 290.1.

I.
Findings of Fact

The administrative law judge finds that she and the State Board of Education have jurisdiction over the parties and the subject matter of this appeal.

Attorneys for the parties were unable to agree to a set of facts. As the hearing before this panel was oral argument augmented by a stipulation for consideration of certain documents by the administrative law judge and State Board, detailed facts are not available.

We do know that on January 14, 1992, Chad Stevens, then a junior at West Harrison High School, got into a minor altercation in the lunchroom with a teacher, Mr. Adair. Chad used vulgarities and then said, "You wait 'til you're not a teacher anymore. You're a dead man." (Apparently Mr. Adair was nearing retirement and Chad knew this.) Chad was sent home that day to "cool off." He was later suspended and recommended for expulsion due to the threat toward a teacher.

On January 21, the District Board voted to expel Chad for the balance of the second semester. Chad and his attorney filed for an injunction in district court seeking an order placing him back in school. He was successful, returning to school in Mid-March. On April 7, the Board held another hearing to consider expelling Chad for the same incident, this time addressing the procedural flaws the court found to have occurred in the original expulsion action.[1] At that hearing the Board again voted to expel Chad for second semester.

Prior to the start of the second Board hearing, attorneys for Appellant and the Board engaged in a lengthy discussion regarding whether or not evidence related to the January incident should be presented to the Board that night for yet a third time. (The first time was the initial expulsion hearing; the second time was at the judicial hearing on the injunction where evidence was apparently taken by the court.) Appellant's offer was to stipulate to the facts as found by the district court. This offer was rejected.

Both attorneys then asked individual directors whether they were able to make an impartial decision in this matter. The unspoken subtext behind the question was probably "Given that you have been found by a court of law to have violated this young man's rights and may be somewhat hostile toward him as a result, can you give him a fair hearing?" Each director answered that he was able to render a decision free from bias or prejudice. At that point Board President Harold McCord stated, "See, I feel we were very impartial the first time. And it seems like some people insinuated that we might have based a judgment on other things that have happened or have been said over the years." Appellant's counsel immediately objected to this statement as indicating a lack of impartiality by the

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[1] Judge Charles L. Smith III ruled, in granting Appellant the injunction, that there was no violation by the Board of Chad's *substantive* due process rights at his first expulsion hearing. Rather, they had denied him his procedural due process rights to adequate advance written notice of all of the charges that would be brought up at the hearing and, correspondingly, the right to have a decision (including written findings of fact and conclusions about the violation, which were not provided) based on the violations alleged in the notice. A corollary loss was the right to confront and cross examine witnesses; the administration used hearsay documents against him dating back to second grade in Arizona with no opportunity for Chad to examine the documents or question any of the authors of those early disciplinary reports.

board.[2] The objection was overruled. The hearing commenced, evidence was taken, and the Board voted unanimously to expel Chad Stevens.

II.
Conclusions of Law

The sole issue in this appeal is whether Chad Stevens was denied the constitutional due process right to a decision by an impartial tribunal. The sole factor on which this legal issue is based is the above-quoted statement of an individual Board member, albeit the President.

In support of his argument, Appellant cites no case law but urges the State Board to heed its own advice laid down in a 1987 "Position Statement" addressing discipline, specifically the provision urging school boards to use expulsion as a last resort:

> Local school boards are requested to re-evaluate existing disciplinary codes and, in cooperation with administration, faculty, students, and concerned patrons of the district, to revise the rules and punishments for rules violations to enable students to stay in school. . .. Therefore, these recommendations are established to encourage school districts to deal with student misbehavior with an eye toward educating students and redirecting their conduct rather than removing them from the school environment, except in severe situations. . ..

"Statement of the State Board of Education Concerning Academic Saction or Penalties Imposed for Student Misconduct," Oct. 1987, p.1.

In its numerous opportunities to define further what "severe situations" are, several decisions of the State Board come to mind. The first is In re Kam Schaefbauer, where the administrative law judge concluded that "severe situations" include "distributing or using drugs or carrying weapons." In re Kam Schaefbauer, 9 D.o.E. App. Dec. 188, 192 (1992). Kam was expelled for providing LSD to a student on school grounds. The State Board upheld her expulsion. Id. at 193. See also In re Erik Plough, 9 D.o.E. App. Dec. 234 (1992)(possession of drugs, even briefly, at school is valid ground for expulsion).

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[2] In his memorandum to the hearing panel, Chad's attorney suggested that "a second, unidentified member of the school board made statements which supported this statement of the president." Those statements were not quoted.

A second case that comes to mind is In re Starla Roach, 8 D.o.E. App. Dec. 169 (1991). Starla was expelled for writing a note (characterized as a "death threat") to the school librarian.

A third case that comes to mind is In re Joseph Childs, where a student was expelled by the board for fighting, including inadvertently striking a teacher. In re Joseph Childs, 10 D.o.E. App. Dec. 1 (1993). The expulsion there would have also been upheld, albeit grudgingly, id. at 15,16; however, procedural violations occurred in the school board's rehearing that justified reversal. Id. at 16-17.

Counsel for the District Board offered case authority in support of the Board's position that a second hearing before the same body is constitutionally permissible. Olds v. Board of Educ., 334 N.W.2d 765 (Iowa App. 1983) is cited for this proposition. Olds involved a teacher whose termination by a five-member school board was reversed by a court of law and he was reinstated. Olds, 334 N.W.2d at 767. Less than one year later, the board again voted to terminate his contract and three of the five board members were the same. Id. On appeal from the second termination, the Iowa Court of Appeals held that "it does not necessarily contravene due process ... to permit judges and administrators who have had their initial rulings reversed on appeal to hear and decide the same issues on remand." Id. at 768 (citing Withrow v. Larkin, 421 U.S. 35 (1975)). In Olds, as here, the board members were individually questioned prior to the second hearing about whether or not they could make a decision solely on the record before them, and they responded that they could. This action satisfied the Court of Appeals, and it satisfies the hearing panel in this case.

Thus, it is the law in Iowa that a school board, called upon to render a second decision after being reversed on procedural grounds from the first, is not per se biased or partial. The question remains, as raised by Appellant, whether in this case the statement of the Board President (and the unquoted remarks of another director) indicated a bias or prejudice toward Chad sufficient for us to conclude as a matter of law that the West Harrison School board was partial in its decision. Despite Chad's attorney's adamant and insistent assertion that Mr. McCord's statement ("See, I feel we were very impartial the first time. And it seems like some people insinuated that we might have based a judgment on other things that have happened or have been said over the years.") reveals an obvious partiality, we cannot perceive a prejudice in his remarks, certainly not to the degree necessary to justify reversal of the Board's decision. His reference to "some people" and his admitted lack of agreement with the court's finding are evidence of, if anything, a resentment toward the judge as opposed to Chad. Even considering that intimation, we are not convinced

that such an attitude on the part of one or even two directors is conclusive proof of prejudice. Balanced against these statements are the directors' individual responses that they could be or were impartial. That, coupled with the fact that the directors wanted a full rehearing--which we believe is to their credit, not their detriment, because in this way they were certain not to consider facts or incidents included erroneously in the first hearing--seems to us more than adequate evidence of fairness and freedom from bias.

As Appellant raised no other allegation of error, we conclude that he has failed to carry his burden of proof. Any motions or objections not previously ruled upon are hereby denied and overruled.

III.
Decision

For the foregoing reasons, the decision of the board of directors of the West Harrison Community School District to expel Chad Stevens for the balance of second semester of the 1992 school year is hereby recommended to be affirmed. Costs of this appeal, if any, are assigned to Appellant.

May 20, 1993
DATE

Kathy L. Collins
KATHY L. COLLINS, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered. Appeal dismissed.

June 10, 1993
DATE

Ron McGauvran
RON McGAUVRAN, PRESIDENT
STATE BOARD OF EDUCATION