

IOWA STATE DEPARTMENT
OF PUBLIC INSTRUCTION

(Cite as 2 D.P.I. App. Dec. 164)

In re Scott Sadler	:	
	:	
	:	
Sheila & Russ Sadler, Appellants	:	DECISION
	:	
v.	:	
	:	
Montezuma Community School District, Appellee	:	[Admin. Doc. 555]

The above entitled matter was heard on July 29, 1980, before a hearing panel consisting of Dr. James E. Mitchell, deputy state superintendent and presiding officer; Dr. Lenola Allen, supervisor, preparatory and supplemental services unit; and Mr. A. John Martin, director, instruction and curriculum division. Dr. Mitchell served as presiding officer pursuant to Section 257.22, The Code 1979. Mr. & Mrs. Sadler were present and presented the facts and arguments involving their appeal. The Montezuma Community School District (hereinafter District) was represented by Superintendent Lewis Lundy and Principal Darrel Brand. The hearing was held pursuant to Chapter 290, The Code 1979, and Chapter 670--51, Iowa Administrative Code.

The Appellants appealed a decision of the Montezuma Community School District Board of Directors regarding the expulsion of their son, Scott, from school.

I.
Findings of Fact

The Hearing Panel finds that it and the State Board of Public Instruction have jurisdiction over the parties and subject matter.

On March 26, 1980, Scott Sadler, an eleventh grade student in the District, was observed by a teacher in possession of a cigarette in a restroom in the District's High School. The teacher approached Scott, took the cigarette from him and discarded it. Scott directed profanity, unspecified in the record, at the teacher and proceeded to his locker, followed by the teacher, whereupon he removed a second cigarette. The teacher then directed Scott to accompany him to Principal Darrel Brand's office. Mr. Brand discussed the incident with Scott and Scott admitted the use of profanity and the possession of cigarettes. Mr. Brand suspended Scott from school for three days and told him that he would recommend that the District Board expel him because of his "repetitious" violations of the District's rules of conduct.

Mr. Brand telephoned Scott's mother and discussed the situation with her. She was orally advised that Mr. Brand would recommend that Scott be expelled from school. He included this information in a certified letter to Mr. & Mrs. Sadler dated March 27 but not received by them until March 29. He also told Scott's mother orally that he ex-

pected Scott back in school at the end of the three day suspension unless the District Board met in the meantime and voted to expel Scott. Mrs. Sadler asked if the Board was scheduled to meet within that period of time and Mr. Brand responded that he did not know whether or not it would meet.

Unknown to Mr. Brand at the time was the fact that the District Board had scheduled a special meeting for the next evening, March 27. There was no attempt on the part of District officials to notify the Sadlers of the meeting, and the Sadlers made no additional inquiries regarding the meeting. The March 27 issue of the local newspaper which contained information that the District Board would meet on that date was not received by the Sadlers until March 28. The paper did not give the time or place of the meeting.

At the special meeting of the District Board on March 27, and in the absence of Scott and his parents, Mr. Brand presented his recommendation to the Board that Scott be expelled. In addition to his relating Scott's most recent disciplinary infraction to the Board, he related 16 or 17 previous disciplinary incidents which had come to his attention during the school year.

The District Board minutes show approval of the following motion: "It was duly moved and seconded that Scott Sadler be expelled for the rest of the current school year for severe and repeated acts of smoking and the use of profanity." The District Board made no written findings of fact and made no verbatim record of that portion of the proceeding. The matter had not appeared on the Board agenda for the meeting and the Board members were not aware prior to the meeting that the Sadler matter would be discussed.

In a telephone call and a letter dated March 28, and received by the Sadlers on March 29, Mr. Brand informed them of the Board action to expel Scott for the remainder of the school year. The letter also advised the Sadlers that they had the right to a hearing before the school board to review the situation, and suggested that the Sadlers contact the District Superintendent to set up such a meeting with the Board. That letter read in relevant part as follows:

This is also to inform you that you have a right to a hearing before the school board to review the above situation. Please notify Mr. Lewis Lundy, Superintendent of schools, within a reasonable length of time concerning a mutually agreeable date and time for such a meeting.

In testimony before the Hearing Panel, Mr. Brand and District Superintendent Lewis Lundy acknowledged that they knew that written notice of the Board meeting should have been given the Sadlers and that the Sadlers had not been given an appropriate amount of time to prepare for the hearing. They felt, however, that once the Board had taken a stand on the matter, there would still be time for an appeal and a hearing if the Sadlers so desired. The Sadlers testified that they had been frustrated in trying to get their viewpoint across to the two administrators in previous discussions and felt that once a decision was made by the School Board, there would be little chance of getting it reversed.

• There are clear indications in the record that District policy was not followed. The District's Student Handbook contains the following relevant statements from the District's "Disciplinary Code:"

- D. Student Rights and Due Process - Each student is guaranteed the preservation of his/her private rights in any disciplinary matter. This process includes administrators insuring that the student will be informed of the charges against him/her and will have the opportunity to controvert the evidence and witnesses against him/her. Respect, fairness, and recognition of responsibilities for both parties must prevail in all relations. Penalties will be assigned according to the disciplinary code. The school will make available to each student a copy of these student rights and will periodically use reasonable means to assure that they are understood.

DUE PROCESS IN CONNECTION WITH CONFERENCE OF INFORMAL HEARINGS

The purpose of the informal hearings is to enable the student to meet with the appropriate school official to explain the circumstances surrounding the event for which the student is being suspended, to demonstrate that there is a case of mistaken identity or to show that there is some compelling reason why the student should not be suspended. This informal hearing also encourages the student's parents or guardian to meet with the principal to discuss ways by which future offenses can be avoided.

CONFERENCES

Conference held with the student or with the student and parents in connection with violation of disciplinary rules, and where action to be taken for such violation is anticipated to be reprimand, detention (before or after school), denial of privileges, assignment to a supervised area, or suspension in school or out of the school may be had by simple notification in person or by telephone of the date of the conference to be held. If the parents wish to be present at such conference, such parent shall be notified sufficiently long in advance to make arrangements to be present if they desired.

INFORMAL HEARINGS

At an informal hearing, the following due process requirements are to be observed:

- a) Notification of the reasons for the suspension or expulsion, in writing, given to the parents or guardian of the student.
- b) Sufficient notice of the time and place of the informal hearing given to the student and to the parents or guardian. Sufficient notice shall be deemed to have been made in writing and mailed by restricted certified mail to the student and to the parents or guardian at least 20 days prior to the date fixed for informal hearing.
- c) The right to cross examine any witness.
- d) The student's right to speak and produce witnesses on his or her behalf.

II.

Conclusions of Law

The record before the Hearing Panel in this appeal presents a most difficult case. The difficulty lies not with interpretation of law, because the law in this area is quite clear. The problem is that a decision of school officials must be overruled on

technical grounds even though they appeared to have acted in good faith in what they felt was the best interest of Scott, his parents and his fellow schoolmates.

While requirements of Constitutional procedural due process of law are a flexible application of fairness, and the exact due process required differs in each circumstance, there are several established principles that must be taken into account whenever severe disciplinary actions are taken against students in the public schools and which appear to have not been offered Scott in this instance. A clearly established principle absent here is the requirement, except in unusual or emergency circumstances, that a due process hearing must precede a decision to administer discipline in instances of suspension and most likely expulsion. *Goss v. Lopez*, 419 U.S. 565, 95 S.Ct. 729 (1975). Students and their parents must be given sufficient notice of the charges against the students with sufficient time to prepare an appropriate defense. In *re Duane Kunde*, 1 D.P.I. App. Dec. 251. Procedural due process also requires, we think, that a recording or other verbatim record be made of hearings and a school board's decision be adequately set out in written form including findings of fact. See *Anderson v. Seckels*, Civil No. 75-65-2, (S.D. Ia., Dec. 20, 1976); and *In re Monica Schnoor*, 1 D.P.I. App. Dec. 136. Yet, we find all of the above due process principles lacking in the record before us. Scott's mother was aware that the Principal would recommend expulsion at the next District Board meeting but she was not informed in writing of when and where the Board would meet, or that Scott's previous record would be considered at the proceeding. No verbatim record was made of the proceeding and no written decision, including the necessary finding of fact, was issued by the Board. The State Board of Public Instruction has previously found these procedural safeguards to be educationally and legally mandatory and we so find them here.

The Hearing Panel makes no final judgment here as to the merits of the Board decision under review herein. We have ruled solely on the procedural aspects of the matter. Mrs. Sadler has requested that the Hearing Panel direct the District to restore the class credits Scott lost due to his expulsion from school in March. This we are not inclined to do. Our ruling here merely returns the status of events back to the time immediately before the District Board action on this matter on March 27, 1980. The result is that the District has at least two courses of action available to it, and we are not inclined to direct the Board as to which course of action it should take. The two obvious courses available to it are to remove the Board's action from Scott's record and give him a reasonable opportunity to make up his missed school work or to correct the procedural defects of the first proceeding and give Scott an opportunity to refute the allegations against him. We are not aware of any reason why a second hearing, incorporating proper procedural due process is not available to the District Board at this time. See *Strickland v. Inlow*, 485 F.2d 186, 190 (8th Cir., 1973); *In re Monica Schnoor*; and *In re Duane Kunde*.

III.
Decision

The decision of the Montezuma Community School District Board of Directors in this matter is hereby overruled. Appropriate costs under Chapter 290, if any, are hereby assigned to the Appellees.

September 12, 1980
DATE

Susan M. Wilson
SUSAN M. WILSON, PRESIDENT
STATE BOARD OF PUBLIC INSTRUCTION

August 8, 1980
DATE

James E. Mitchell
JAMES E. MITCHELL
DEPUTY STATE SUPERINTENDENT
AND
PRESIDING OFFICER