1004-A79419-8/78

IOWA STATE DEPARTMENT
OF PUBLIC INSTRUCTION

(Cite as 1 D.P.I. App. Dec. 246)

In re David Law	:	
	:	
	:	
Bernice Law, Appellant	:	DECISION
v.	:	
	:	
Charles City Community School District Appellee	:	[Admin. Doc. 440]

The above entitled matter was heard on July 11, 1978, before a hearing panel consisting of Dr. Robert Benton, state superintendent and presiding officer; Gayle Obrecht, director, administration and finance; and Carl Miles, director, supervision division. Attorney Alfred Beardmore represented the Appellant and Attorney James Erb represented the Charles City Community School District (hereinafter District). Attorney William Wegman represented the Appellant in earlier proceedings in this matter, including the filing of the "Affidavit of Appeal," but withdrew following his appointment to public office. The hearing was held pursuant to Chapter 290, The Code 1977, and Departmental Rules, Chapter 670--51, Iowa Administrative Code. The Appellant is appealing the act of the District Board in expelling her son 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.

David Law is a 16-year-old boy who, during the 1977-78 school year, was attending his sophomore year of high school in the District. On September 14, 1977, David was observed smoking in one of the restrooms at the District High School. He was placed on a two-day in-school suspension, and his parents were notified. The letter to his parents contained most of the District policy on student smoking and outlined penalties for first, second and third offense violations of the policy. On October 5, 1977, David was again observed smoking on school property. For the second violation of the smoking rule, he was given a five-day in-school suspension, and his parents were again notified in a manner similar to the earlier incident. At the conclusion of the fifth day of the in-school suspension, Mr. Lyle Sprout, associate high school principal, counseled David on the fact that one more violation of the smoking policy could result in his being expelled from school. David was expected to make up the work he missed, but he was not counted absent. On May 5, David was observed smoking in violation of the District policy for a third time. This incident occurred on a school-sponsored field trip to a local manufacturing plant where he was observed smoking by the teacher sponsoring the trip. The teacher had orally warned the students to not smoke during the trip prior to leaving school. David denied before the Hearing Panel that he had, in fact, smoked a cigarette. He claimed that he had been handed the cigarette by a colleague and was merely disposing of it. There was testimony to the effect that at the hearing before the District Board, with his attorney

present, he admitted all three smoking violations. Minutes of the District Board hearing on May 8 show that David's attorney, "conceeded that David was caught smoking three times." Taking this into account with the stipulated testimony of the teacher present on the field trip, we conclude that David Law did, on the three separate occasions, violate the District policy on the smoking of tobacco. That policy was adopted on June 13, 1977, and reads as follows:

> Policy Recommendation: Smoking by students in the school buildings and at school sponsored events is prohibited.
> Procedure Recommendation: Any student found in violation of the school policy regarding smoking shall be:
>
> (1) On the first offense, assigned to a detention area by the administrator for a period of two school days. A letter shall be sent to the parents indicating the violation.
> (2) On the second offense, assigned to a detention area for a period of five school days. A conference with the student, the parents, and the administrator shall occur prior to admitting the student to regular classes.
>
> For both of the above violations, the student will be given assignments for all classes missed and all such work must be completed during the detention time. No credit will be withheld.
>
> (3) On the third offense, the student will be recommended for expulsion from school to the Board of Education. The student, if expelled, would be eligible for readmission to school at the beginning of the next semester.
>
> The Senior High School Principal may designate a smoking area for students outside the building proper.

The District smoking policy was adopted in an attempt to alleviate a growing problem of increased student smoking in the District's High School building. The District Board felt that smoking in the restrooms and other areas of the building resulted in problems of disruption and cleanliness, and was considered a safety hazard. In order to provide for the students "addicted" to the tobacco, an area outside the building and to the rear was designated as a "smoking area" pursuant to Board policy.

The policy on smoking was published in the student handbook and David admitted knowledge of its terms. A copy of the policy was sent home to his parents after each infraction of the policy.

David's parents were notified of the District Board hearing by phone on May 5 and by a third written notice of violation of the policy dated May 5. The third notice was identical to the first two except that it pointed out that a third violation had occurred and that a Board meeting was scheduled to consider David's situation.

The District Board voted on May 8, 1978, to suspend David for the remainder of the school year with loss of credit for the second semester. David will be allowed to enter school in the fall. Mr. Sprout, the associate high school principal, testified that if he applied himself, David could make up the credits lost during second semester over the next two years and graduate with his class.

Except for requesting that the hearing before the District Board be open to the public, neither David, his mother or their attorney raised any objections to the handling

of the proceeding. Specifically, no timely objection was made regarding the time given to prepare for the hearing, or the procedures under which the hearing was carried out. The Board vice-president testified that had the Appellant requested more time to prepare for the hearing, that it probably would have been granted.

II.
Conclusions of Law

The "Affidavit of Appeal" filed in this matter contained twenty allegations of errors committed by the District Board of Directors. The allegations of errors may be grouped and summarized as violating requirements of procedural due process, acting arbitrarily, capriciously and beyond the scope of Board authority, and acting unreasonably.

The Appellant alleges that her son's right to procedural due process was abridged in that the notice of the District Board hearing did not contain specific charges against David, that sufficient time to prepare for the hearing was not available to the Appellant, that the District Board improperly acted as "prosecutor" at the hearing and that the Board sat in judgment of violations of rules promulgated by it. We do not agree with these contentions. The record in this matter does not substantiate the first three of the above due process allegations and we have not been shown nor have we found through independent research any court decisions which establish the rights argued in the fourth. The Appellant's brief cited the decision in Keith v. Community School District, 262 N.W.2d 249 (Ia. 1978), for the proposition that David's due process rights were violated in that the District Board adopted the policy, initiated the proceeding against David and made a ruling. Had the District Board actually done those three things, we might agree with the Appellant's argument. We do not feel, however, that there is any evidence to show that the District Board initiated the proceedings and thereby showed prejudice in the matter. Such were the facts in Keith, which clearly distinguish that case from the matter before us here.

The appeal affidavit also alleges error in that the notice of hearing was not specifically directed to David. Since David is a minor it was appropriate, under the circumstances, for the District to notify his parents. The fact that David appeared at the hearing before the District Board is a good indication that he was not prejudiced by a lack of notice directed specifically to him. The proper time and place to first bring up these due process allegations was at the hearing before the District Board, and the record does not show that they were raised at that time. In summary, we find no violations of commonly accepted procedural due process requirements present in this matter, nor do we find that timely objections were made in regard to the allegations of violations of due process.

The Appellant also alleged that the District Board acted arbitrarily, capriciously and beyond its authority in establishing and enforcing the rule prohibiting smoking in question here. Again we do not agree with the Appellant. In addition to the general rule-making authority of boards of directors contained in Section 279.8, The Code 1977, Section 279.9 specifically requires boards of directors to prohibit the use of tobacco and authorizes expulsion as punishment for violation.

That Section reads as follows:

> 279.9 Use of tobacco. Such rules shall prohibit the use of tobacco and the use or possession of alcoholic liquor or beer or any controlled substance as defined in section 204.101, subsection 6, by any student of such schools and the board may suspend or expel any student for any violation of such rule.

The record shows that the District Board gave a great deal of consideration to the need for a smoking urle, the language contained in the rule in question and the legal responsibilities imposed by Section 279.9. We find that the District Board of Directors did not act in an arbitrary or capricious manner or without legal authority in this matter.

Neither do we feel that the District Board acted in an unreasonable manner or with unreasonable severity in the expulsion of a student for the third violation of a rule with which the student was familiar and under which he had been twice previously disciplined. While it may be true, as the Appellant argues, that times have changed since Section 279.9 was originally enacted and that the mores of society are no longer as strongly opposed to the smoking of tobacco by minors as they once were, we cannot look upon the repeated violation of any valid school student conduct rule as being a minor infraction regardless of how insignificant a single violation of such a rule may be. We think the District Board acted reasonably in its handling of David Law and his repeated violation of the school rule against smoking.

The Appellant also argues that the prohibited acts of the District smoking rule are unreasonable because they are remote and indirect and are not sufficiently related to the proper function of the operation of the District to be valid. Had the District attempted to regulate student smoking out of school functions, we may be inclined to agree. But, such is not the case here, and we do not agree. The District rule does not seek to prohibit smoking in such circumstance. We feel that the District has promulgated a rule within its authority. See Board of Directors v. Green. 147 N.W.2d 854 (Ia. 1967), and Kinzer v. Directors, 129 Ia. 441, 105 N.W. 686 (1906).

The Appellant raises an interesting question regarding the District Board's interpretation of Section 279.9 in regard to the fact that the Board has authorized an outside area to the rear of the high school to be designated by the High School principal as a smoking area. The Appellant claims that such action, in apparent violation of Section 279.9, precludes the District from punishing a student for smoking. The District's somewhat unique interpretation of Section 279.9, as we understand it, is that the Section requires boards of directors to promulgate rules prohibiting the use of tobacco, but leaves the form of punishment to board discretion. The District Board determined, after discussion with legal counsel, that it had the authority to selectively determine where violations of the rule will result in punishment, namely, anywhere except in the designated smoking area. While we cannot unequivocally state that this interpretation, designed as a compromise solution to a difficult problem, is totally inaccurate, we do not feel that such an interpretation is likely a good reflection of legislative intent. We agree with the District Board that the manner of punishment under a smoking rule is discretionary with the Board, but we do not agree that thepunishment can be so selectively applied as the District Board has done here.

Even though we agree with the Appellant that the District Board's interpretation of its latitude under Section 279.9 is incorrect, we do not feel that any injustice has been done to David Law as a result of the District's unique interpretation.

Any other allegation of the Appellant which was not discussed here in more detail was not sufficiently founded in law or fact. All objections or motions not previously ruled upon are hereby overruled.

III.
Decision

The decision of the Charles City Community School District Board of Directors in this matter is hereby affirmed. Costs under Chapter 290, if any, are hereby assigned to the Appellant.

August 18, 1978
DATE

Jolly Ann Davidson

JOLLY ANN DAVIDSON, PRESIDENT
STATE BOARD OF PUBLIC INSTRUCTION

July 21, 1978
DATE

Robert D. Benton

ROBERT D. BENTON, Ed.D.
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
AND
PRESIDING OFFICER