

IOWA STATE DEPARTMENT
OF PUBLIC INSTRUCTION

DPI 175

In re Andrea Talley :

Andrea Talley :
Appellant :

v. :

Waterloo Community School District :
Appellee :

DECISION

[Admin. Doc. 414]

The above entitled matter came for hearing on January 10, 1978. The matter was heard before a hearing panel consisting of Dr. Robert Benton, state superintendent and presiding officer; Dr. James Mitchell, deputy superintendent; and Dr. LeRoy Jensen, associate superintendent, administration, beginning at approximately 1:00 p.m. The Appellant was present and represented by Attorney C. A. Frerichs. The Appellee, the Waterloo Community School District (hereinafter District) was represented by Attorney Wallace B. Reed. The hearing was held pursuant to Chapter 290, The Code 1977, and Departmental Rules, Chapter 670--51, Iowa Administrative Code.

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 in this appeal.

On October 27, 1977, at about 6:00 p.m., Andrea Talley, a black eleventh grade student at Central High School, was involved in an altercation with a white twelfth grade student. The relationship between the two boys appears to have been stormy for several months prior to the fight. The problem appears to have begun at a football practice where each accused the other of hitting after the coach's whistle had stopped the other action. The hostility exhibited itself some days later in a student council meeting where Andrea was attempting to speak out of turn. Steve K., student council president and the other boy involved in the altercation, told him to be quiet or leave the meeting. Andrea left the meeting, apparently in anger. He was followed by Gene Luttrell, teacher, wrestling coach and student council advisor. Mr. Luttrell counseled Andrea and advised him to cool down. A short time later on the same day, Mr. Luttrell saw the two boys advance toward each other in a threatening manner in the school hallway and stepped between them. He broke them apart and advised them to stay out of each other's way. He felt, at that time, that they were mutually willing to fight. The confrontation did not appear to Mr. Luttrell to be racially motivated. He had at no time heard racial slurs pass between the two boys. He reported the incident to the track and football coaches and the school principal.

On October 21, Andrea visited with assistant principal Larry Harris about the hostility between himself and Steve. Andrea said that the boy had called him a "nigger." Mr. Harris counseled Andrea that it was in his best interest to not get involved in any trouble by getting in a fight. Mr. Harris thought that the matter would be resolved and did not visit with Steve. Harris testified that Andrea is not a bully but has a tendency to fight rather than work out problems.

In addition to Mr. Harris, at least three other school staff members counseled Andrea to stay away from the other boy and not get involved in a fight. One was Dick Miller, a teacher and track coach. Miller testified that Andrea did not indicate to him that the problem was racial in nature.

In the late afternoon of October 27, Andrea was on the activity bus which takes students who are involved in school activities after normal school hours to their homes. He got up from his seat and went to the front of the bus. As he stepped from the bus he saw Steve and Dave P., a friend of Steve's, pass by the bus on the way to Steve's car in the parking lot. Steve and Dave did not know Andrea was present until they heard him challenge Steve to a fight. Upon hearing the challenge they turned and took several steps forward toward the front of the bus to meet Andrea who was advancing toward them. Steve told Andrea that he did not want to get in a fight. He was fearful of getting into trouble and being removed from football participation before the end of the season. Andrea took off his jacket and handed it to someone on the bus. Steve was holding a dirty jersey in one hand and a duffle bag in the other when Andrea struck the first blow. Steve grabbed his own head and took a wild swing at Andrea. After Steve took his swing, he used both hands to hold his head. As Steve stumbled forward, Andrea hit him two more times. The fight ended and Steve leaned up against a car in the parking lot. Getting the best of the fight, Andrea returned to the bus and went to the home of his foster parents. Meanwhile, Steve was taken into the school for aid. He was later taken home and then to the hospital where he remained for about four days. He returned to school four days after release from the hospital. He did not compete in football the remainder of the season.

Shortly after the fight, Mr. Harris was notified of the incident and drove to the home of Andrea's foster parents. He discussed the matter with Andrea in their presence. Andrea admitted participating in the fight and striking the first blow. In response to the question of why the fight took place, Andrea told Harris that the other boy called him a "nigger" and that he did not like the other boy's looks. Harris suspended Andrea for three school days.

Harris investigated the matter further the next day. He talked to about seven students, both black and white who had witnessed the fight, an adult who had been near the scene and Steve. Except for Andrea's version, he found no evidence of racial provocation. No disciplinary action was taken against Steve.

After investigating the incident and deliberating for one and a half hours, the administrative team of Central High School determined that Andrea had provoked the fight and had assaulted Steve, even after several warnings not to engage in a fight. The team recommended that the District Board of Directors hold an expulsion hearing on the matter. Andrea was not allowed to return to school in the meantime, but was allowed to complete his school work at home.

At the regular District Board meeting, held on November 14, 1977, the Board went into executive session to hear several disciplinary matters, including the one involving Andrea. The District Board policy provides that such matters are to be heard in executive session. Charles Vaughn, assistant superintendent of the District, testified that on several occasions in the past, students had requested that disciplinary hearings be open to the public and that the requests were honored. The record does not show that Andrea requested an open meeting or that it was denied. The Board reconvened in open meeting in the early morning hours on the next day and voted to expel Andrea for the remainder of the first semester.

The Board procedure for providing for two hearings, one for determining guilt and one for determining penalty, was not strictly followed. However, everyone present understood that only one hearing would be held. Andrea's attorney was not restricted in the presentation of evidence on both matters. Mr. Frerichs stated that by not making a timely objection, he may have impliedly waived the two-part hearing. The record does not show that Andrea was prejudiced as a result of combining the proceedings.

The major factual point in dispute is whether Steve provoked the fight by the use of a racial slur, or whether Andrea was an aggressor guilty of "assault" under the policies of the District. The District's discipline policy provides for minor disciplinary action against persons mutually engaging in fights but treats physical assaults much more severely, often by expulsion. Therein lies the importance of this factual determination.

Andrea stated that he left his seat on the bus to get away from the noise created by other students on the bus. He said that Steve and Dave were passing as he stepped from the bus, that they said something to him, and he asked that it be repeated. He testified that a short conversation took place in which Steve called him a "nigger," and he took the first swing. Steve and Dave did not remember seeing Andrea until they neared the rear of the bus with their backs to the front. They testified that they did not see Andrea until he called out a challenge and they turned around. Steve denied calling Andrea a "nigger" at that time or any other time. No person interviewed by school authorities in their investigation of the matter confirmed Andrea's version. Two coaches who had counseled with Andrea on the matter did not feel that the friction was racially motivated. Only Mr. Harris had been earlier approached by Andrea complaining that Steve had called him a "nigger."

Because there was an absence of evidence substantiating Andrea's claim of a racial slur precipitating the fight and Andrea admitted freely to striking the first punch, the Hearing Panel concludes on the weight of the evidence that Andrea was an unprovoked aggressor in a fight with an unwilling participant in violation of school policy.

II.

Conclusions of Law

Attorney's for the parties disagreed regarding the proper scope of review of the State Board of Public Instruction in matters appealed under Chapter 290. We feel that the issue was properly laid to rest in *In re: Affidavit of Grievance by Edna S. Kennett*, 1 D.P.I. Ap. Dec. 52, where the State Board determined that the proper scope was not limited to arbitrary and capricious actions or abuse of authority, but also included actions which were ill-advised, unwise and inexpedient. The result is a scope of appeal similar to that commonly referred to in courts of law as de novo.

177

The Appellant would have the State Board overrule the District Board's decision in this matter on several grounds. First, the Appellant alleges that the District Board's decision to expel Andrea is arbitrary, capricious and unreasonable in that no disciplinary action was taken against the other student involved in the fight and that previous instances of fighting without weapons resulted in suspensions from school rather than expulsions. We do not concur. We feel that the District acted properly in making and applying distinctions between students who mutually enter into combat and those that are attacked and merely defend themselves.

Secondly, the Appellant alleges that the District Board violated Chapter 28A, The Code 1977, in that the hearing conducted in this matter was closed to the public. We again disagree. Absent one of the applicable exceptions contained in Section 28A.3, school boards must meet in open public session. We feel that disciplinary matters before a board of directors, which involve particular students, fits squarely into the category of "some other exceptional reason so compelling as to override the general public policy in favor of public meetings," and is, therefore, an exception to the requirement of open meetings. Our rejection of the Appellant's contention in this regard is further supported by the record which shows that the District Board has previously acceded to requests for similar hearings to be open to the public, and that no such request was made by Andrea.

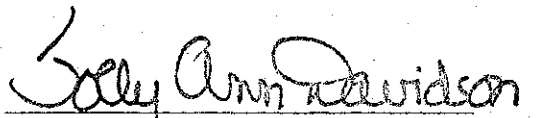
Thirdly, the Appellant contends that the District Board decision should be overturned because it violated its own rules by not holding two hearings, one to determine guilt and the other to determine the punishment. Again, we do not agree. The District admitted to the minor transgression of its own policies, but argued that a full and complete hearing was held. The record shows no timely objection made at the original hearing, and Andrea has not shown us that he was in any way prejudiced as a result of the combining of the two hearings.

III.
Decision

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

February 9, 1978

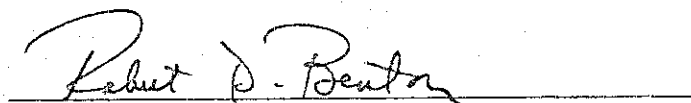
DATE



JOLLY ANN DAVIDSON, PRESIDENT
STATE BOARD OF PUBLIC INSTRUCTION

January 31, 1978

DATE



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