

IOWA DEPARTMENT OF  
PUBLIC INSTRUCTION

(Cite as 1 D.P.I. App. Dec. 136)

In re Monica Schnoor	:	
	:	
Monica Schnoor	:	
Appellant	:	
	:	DECISION
v.	:	
	:	
Manilla Community School District	:	
Appellee	:	[Admin. Doc. 397]

The above entitled matter came for hearing on Saturday, May 7, 1977, at approximately 10:00 a.m. The hearing panel consisted of Dr. Robert Benton, state superintendent and presiding officer; Dr. LeRoy Jensen, associate state superintendent, and Dr. Donald Cox, associate state superintendent. The hearing was held pursuant to Chapter 290, The Code 1977, and Departmental Rules Chapter 670--51, Iowa Administrative Code. Both parties waived the ten-day notice requirement. Monica Schnoor was present with her parents and was represented by attorneys Thomas Eller and Robert Brink. The Manilla Community School District (hereinafter District) was represented by Superintendent Robert Mason and Attorney Allen Nepper.

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 February 16, 1977, the District Board of Directors adopted a statement of policy regarding punishment of students who are truant or excessively absent from school. The policy became effective February 28 and reads as follows:

EFFECTIVE DATE: Monday, February 28, 1977

Approved by action of the Manilla Board of Education, February 16, 1977

I. School Truancy

- A. The first time will require the student to make up time for time.
- B. The second time will require the student to make up time double time for time missed.
- C. The third time will require that the student and/or parents will meet with the board of education in special session. The recommendation will be made the student be dropped from the school rolls for the remainder of the semester and all course work for that semester be marked with a F for failure.

(Terms of absenteeism portion of the policy are omitted.)

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There was wide distribution of the policy. Stories about the policy were carried in the local newspaper and the school newspaper; and copies of the policy were posted in school, sent to parents of students and read and discussed in homeroom classes.

The policy was recommended to the Board as an attempted solution for excessive absenteeism and truancy. Duane Bierle, the high school principal, testified that class attendance is very important and that not all the learning in a course can be obtained from a textbook. He emphasized that truancy was on the increase in the Manilla schools. At the time the policy was adopted, nine students had at least two truanancies each. At the same time, Monica Schnoor, an eighteen-year-old senior, and the subject of this hearing, had three truanancies. Several of her teachers testified that her irregular attendance habits were disruptive to class work and that time was taken from work with other students to help her catch up on the work she missed.

Subsequent to the adoption of the policy, Monica was alleged by the school administration to be truant on March 10 and March 16. On March 18, Monica, Mr. Bierle and Mr. Mason signed a statement which recognized that Monica was in danger of being expelled with the occurrence of any additional truancy. On April 4, Monica was determined by the principal and the superintendent to be truant a third time subsequent to the enactment of the truancy policy. Monica testified that she was in school but not in the correct classes. She maintains that she and another girl were confused about their class schedule and inadvertently missed scheduled classes. She admitted being negligent in not being in the proper classes, but denied any intentional wrongdoing.

Monica was told to turn in her books, and she left school. That evening, Monica and her father met with Board President Roger Georgius, Principal Bierle and Superintendent Mason at school. The Schnoors requested that a special session of the Board be called that night. It was determined that the next night would be the earliest the Board could be brought together. The persons at the conference discussed the matter in great detail. Mr. Mason briefly noted the Schnoor's concerns regarding the expulsion of Monica as follows:

1. As long as they were in the building-they were not truants.
2. Father should be notified of what his daughter was doing.
3. Unfair-when others have missed so much school.
4. Teacher wrongfully informed them about the day.
5. Would not come to meeting because minds were made up beforehand.
6. Time is close to graduation.
7. Did not want her to be considered with anyone else.

The Schnoors were told orally of the special Board meeting scheduled for the next night, April 5. They did not receive written notice of the allegations against Monica or of the scheduled meeting. Gilbert Withers, the school counselor, was asked by Superintendent Mason to intercede on Monica's behalf. He contacted her by phone on the day of April 5 and was told that she and her parents were not going to be in attendance at the hearing because they felt the Board Members had previously made up their minds and would not likely change them. Mr. Withers was not present at the April 5 meeting.

The Board met in special session on the night of April 5 and discussed Monica's truancy. Only Principal Bierle and Superintendent Mason, the Board Secretary and four of the five Board Members were in attendance. The situation was discussed by those present, with Mr. Bierle and Mr. Mason explaining the circumstances as they knew them. Mr. Mason related the previously mentioned seven objections of Mr. Schnoor.

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The minutes show that all four Board Members present voted in favor of Monica's expulsion for the remainder of the year. The minutes do not show the basis upon which the decision was made nor any other finding of fact. Mr. Mason testified that disciplinary matters are not fully explained in Board minutes in order to protect the student's right of privacy. The letter from Mr. Mason to Monica dated April 6 informing her of the action taken by the Board mentioned only that the Board discussed her truancy and did not give the factual basis upon which the decision was made.

No verbatim transcript or record was made of the proceeding.

## II. Conclusions of Law

The Hearing Panel has no doubt that school boards may establish reasonable rules governing the conduct of students which interferes with the operation of the school. Board of Directors v. Green, 147 N.W.2d 854. Neither do we have any qualms about a school district developing a rule which leads to the punishment of students who are repeatedly absent from school without reasonable cause. The Iowa Supreme Court held early in Iowa's history in Burdick v. Babcock, 31 Ia. 562 (1871), that schools may punish students who are truant without reasonable cause because, "[i]rregular attendance of pupils not only retards their own progress, but interferes with the progress of those pupils who may be regular and prompt." We do not think that times and schools have changed so much that the same is not true today, and we applaud the Manilla School Administration and Board for attempting to solve the increasing problem of truancy. The Hearing Panel feels that the Manilla School Administration and Board of Directors acted in good faith and with the best of intentions in this matter while attempting to do what was best for Monica Schnoor and the other students in the District.

There are, however, problems of a technical nature which cause us concern and compel us to reverse the decision of the Board of Directors. While not expressly addressing the requirements of Constitutional procedural due process for expulsions, the United States Supreme Court in Goss v. Lopez, 95 S.Ct. 729 (1975), strongly implied at page 741 that formal procedures of due process would be required for expulsions:

We should also make it clear that we have addressed ourselves solely to the short suspension, not exceeding 10 days. Longer suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures.

Numerous court decisions arising in other states have been consistent in holding that under various state laws and constitutions similar to Iowa's, students have a reasonable expectation of obtaining an education which is translated into a property right protected by the due process provisions of the Fourteenth Amendment. See Strickland v. Inlow, 485 F.2d 186 (8th Cir. 1973), where suspensions for the balance of the semester were held to be severe enough to require procedural due process for the students involved. The particular elements of Constitutional due process required vary with the circumstances of each case, and unfortunately, often with the courts.

Recognizing both the legal and the educational value of having such procedures, this Department released in May 1975 (reprinted January, 1977) a pamphlet entitled, "Student Suspension and Expulsion Procedures: A model Policy and Rules." While recognizing that following such procedures does not necessarily guarantee a correct decision, and the

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failure to follow them does not necessarily result in a wrong decision, the Department felt that such policies would enable boards to become more knowledgeable decision-makers. The procedural steps recommended in the pamphlet were not meant to be considered a minimum procedure, but were intended to be more than a minimum. Some of the more important aspects of the procedure outlined for expulsions in the pamphlet are:

1. No removal from school prior to a hearing. (except in emergency circumstances.)
2. A written statement of the alleged misconduct, sufficient to prepare a defense to the charges.
3. Written notice of time, date and place of the hearing.
4. Right to be represented.
5. An opportunity for the student to be heard.
6. An opportunity to examine documents and cross examine witnesses.
7. A written decision outlining the facts upon which the decision is based.
8. A verbatim record of the hearing.

The only court decision known to the Hearing Panel which addresses the question of procedural due process under Iowa's suspension and expulsion statute, Section 282.4, The Code 1977, is Anderson v. Seckels, Civil No. 75-65-2, (S.D. Ia., Dec. 20, 1976). In a portion of that decision at page 15, a federal court magistrate found that two students had their constitutionally-protected rights of procedural due process violated:

With respect to the claims of Snowdahl and Sickler, the record establishes an inadequate notice and hearing process in connection with their six-month suspension.

Formal charges against these students were not adequately detailed. No transcript or recording of the proceedings resulting in their suspension was made. The Board's findings of fact and determination were not adequately set out.

Considering the length of their suspensions, the Court must conclude that these plaintiffs were suspended in violation of the constitutional guarantee of procedural due process.

In light of the above discussion, the Hearing Panel finds that the Board of Directors of the Manilla Community School District acted unreasonably and in violation of Monica Schnoor's right to procedural due process in that it did not provide a verbatim transcript or recording of the proceedings nor was the Board's determination and finding of facts adequately set out in a written decision. Testimony before the Hearing Panel, for instance, indicated that the school administration and Monica do not agree upon the facts surrounding the March 10 and April 4 alleged trancies. It is imperative that the Board determine such important factual matters and a record be made thereof.

The Hearing Panel finds that Monica's other allegations of deprivation of procedural due process are not sufficiently founded in law or fact. We feel that the requirement of notice of charges and hearing date were sufficiently met, even though not in writing, as a result of the April 4th meeting between Monica, her father and school officials. There occurred at that meeting a thorough discussion of the allegations against Monica so that she should have known the basis of the charges against her. Monica and her father had insisted that a Board meeting be called immediately that evening and thus, impliedly waived the written notice requirement. The Board merely acceded to the Schnoors' wishes for a speedy hearing when it agreed to meet the following evening, April 5. The Schnoors should not now be allowed to complain on the ground of insufficient notice.

Although Monica raised several other issues through motion and affidavit, the Hearing Panel feels that except for the question of constitutionality of Iowa statutes, the reversal on the issue of procedural due process is sufficiently dispositive of this matter at this time and does not feel compelled to discuss those issues. The question of constitutionality of Iowa statutes is beyond the scope of authority and jurisdiction of the Hearing Panel and the State Board of Public Instruction.

The Hearing Panel would have preferred to reach a conclusion upon substantive issues rather than on purely technical grounds. We make no judgment here as to the merits of the Board decision under review herein. However, it should be noted that the burden to furnish due process is upon the Board and not Monica. Monica had the burden of proving that proper procedural due process was not afforded her, and the Hearing Panel feels that she has successfully done so. Procedural defects in this matter may possibly be rectified by a subsequent hearing incorporating proper procedural due process. See Strickland v. Inlow, 485 F.2d 186, 190 (8th Cir. 1973). The Hearing Panel is not aware of any reason why a second hearing incorporating proper procedural due process for Monica is not an alternative available to the Manilla Board of Directors.

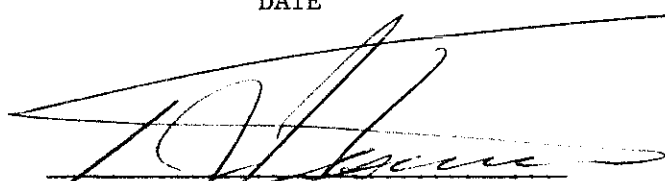
All motions and objections not previously ruled upon are hereby overruled.

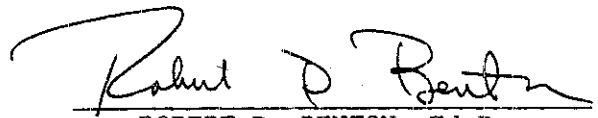
III.  
Decision

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

May 20, 1977  
DATE

May 19, 1977  
DATE

  
T. J. HERONIMUS, PRESIDENT  
STATE BOARD OF PUBLIC  
INSTRUCTION

  
ROBERT D. BENTON, Ed.D.  
STATE SUPERINTENDENT AND  
PRESIDING OFFICER