

Iowa State Department
of Education

(Cite as 13 D.o.E. App. Dec. 62)

In re Nicole Law	:	
Susan Lange,	:	
Appellant,	:	
v.	:	DECISION
Schaller-Crestland Community	:	
School District,	:	
Appellee.	:	[Adm. Doc. #3713]

The above-captioned matter was heard telephonically on February 2, 1996, before a hearing panel comprising Jeff Lorenz, Bureau of Internal Operations; Mary Jo Bruett, Bureau of Planning, Research and Evaluation; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding. Appellant was "present" by telephone along with her daughter, Nicole Law. They were unrepresented by counsel. Appellee, Schaller-Crestland Community School District [hereinafter "the District"] was also present on the telephone, in the persons of Superintendent Alan Meyer and Dennis Mozer, High School Principal. The District was not represented by counsel. Other board members were present on the conference call but did not testify.

A mixed evidentiary and stipulated hearing was held pursuant to Departmental Rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for the appeal are found in Iowa Code section 290.1.

Appellant seeks reversal of a decision of the Board of Directors [hereinafter "the Board"] of the District made on November 28, 1995, to expel her daughter from school for twelve months for "bringing a weapon to school and possessing a weapon on school grounds."

I.
Findings of Fact

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

This appeal arises from the same set of facts reviewed in the State Board of Education's decision In re Curtis Faist, 12 D.o.E. App. Dec. 406, decided January 11, 1996. By stipulation of the parties, those facts will be incorporated in this appeal by reference and will be repeated here as appropriate.

Nicole Law is a 14 year old ninth grader at Schaller-Crestland High School. On the morning of November 13, 1995, Nicole admitted riding a school bus to school with a hand gun in her jeans' pocket. Nicole indicated that at the time she brought the gun to school she did not know if it was loaded. She indicated that the gun belonged to a male friend and she was going to return it to him at school. Apparently, she knew that he intended to "run away" that day and he wanted the gun back before he "took off." He had left the gun at her family's previous home¹ on Saturday, November 10, 1995. On Saturday evening, a group of students had gathered in the empty house but later were confronted by police who asked them to leave at approximately 10:30 p.m. The students cleared out of the house, leaving the gun behind. Nicole testified that she went back to the empty house on Sunday and retrieved the gun, keeping it in her room until she placed it in her pocket on Monday morning and rode the school bus to school.

On the morning of November 13, 1995, Nicole waited for her friend in the parking lot but decided that he must have already "run away" so she started for the school building. That's when she encountered Curtis Faist who told her not to take the gun into the school. She then gave the gun to Curtis so he could put it in his car until the owner of the gun drove into the parking lot. At that time, Curtis gave him the gun and Curtis and Nicole went into the school.

On November 14, the next day, Dennis Mozer, who is the principal of the high school, received information that there had been a handgun on school property.² Nicole was the first student Mr. Mozer interviewed that morning and she admitted riding the school bus to school with the gun in her pocket. Ms. Lange was called and Nicole was sent home at that time with a 10-day suspension.³

¹The family had moved from this home and the home was vacant.

² This information came to the principal as a result of a police investigation in which the fellow-student and another juvenile (not a district resident) were picked up in Storm Lake as runaways. They had the gun in their possession. Apparently, the gun had been stolen.

³Curtis Faist along with the runaway student were also immediately suspended for 10 days because of their possession of the gun on school property.

The Superintendent referred to the District's weapons policy and recommended that Nicole be expelled for 12 months. Additionally, the Superintendent exercised his discretion to modify the expulsion requirement as follows:

1. Counseling will take place for each student, targeting legal and behavioral issues regarding what and why the behavior was wrong and that acceptable behavior will be recognized and practiced. A clinic evaluation will be submitted to the school district indicating that the student is of no danger to themselves or others before the student can be re-admitted as an active student on the first day of school during the fall of 1996 presumed to be August 26, 1996.
2. The student will with parental cooperation, begin and maintain a minimal core educational program in the basic or core subject areas for the duration of the academic year through a homeschooling arrangement, private tutorial services or correspondence classes. The core area will be in math, science, language arts and social studies. Credit will be accepted for coursework successfully completed.
3. The student will observe strict adherence to Board policies and the student good conduct policies prior to and when in school or face removal from the system until the end of the twelve month period and possible loss of credits earned during the expulsion period beginning on November 29, 1995. During the active expulsion the students will not be allowed to enter upon school property or participate in any school activities.

(Letter of November 30, 1995, from Superintendent Meyer to Ms. Lange.)

Appellant, Susan Lange appealed the Board's decision on the grounds that "neither she nor Nicole realized what the weapons policy was until Nicole had been expelled from school." Ms. Lange argues that because the weapons policy is not in the student/parent handbook that it is unenforceable against her daughter.

II. Conclusions of Law

The Gun-Free Schools Act (GFSA) was enacted on October 20, 1994, as part of the Improving America's Schools Act of 1994 (the

reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA)), Public Law 103-382. The GFSA provides that each state receiving federal funds under ESEA must have in effect, by October 20, 1995, a state law requiring local educational agencies to expel from school for a period of not less than one year a student who is determined to have brought a weapon to school. (Emphasis added.) Each state's law also must allow the chief administering officer of the local education agency (in Iowa this is the superintendent) to modify the expulsion requirement on a case-by-case basis.⁴ The Iowa Legislature not only complied with the federal law, it expanded it by enacting H.F. 528 which will be codified as Section 280.21 B. See H.F. 528, 76 General Assembly, 1st Reg.Sess., § 23 (1995). This new statute entitled "**Expulsion-Weapons in School**" provides in pertinent part as follows:

The board of directors of a school district and the authorities in charge of a nonpublic school which receives services supported by federal funds shall expel from school for a period of not less than one year a student who is determined to have brought a weapon to school or knowingly possessed a weapon at a school under the jurisdiction of the board or the authorities. However, the superintendent or chief administering officer of a school or school district may modify expulsion requirements on a case-by-case basis. This section shall not be construed to prevent the board of directors of a school district or the authorities in charge of a nonpublic school that have expelled a student from the student's regular school setting from providing educational services to the student in an alternative setting. . . . For the purposes of this section, "weapon" means a firearm as determined in 18 U.S.C. section 921. This section shall be construed in a manner consistent with the federal Individuals With Disabilities Education Act, 20 U.S.C. section 1400 et seq.

Id. (Emphasis added.)

The section above which is emphasized is the section which was added by the Iowa Legislature that went beyond the requirements

⁴ This discretionary requirement was put in the legislation so that the GFSA would not conflict with the Individuals With Disabilities Education Act (IDEA). That law makes federal funds contingent on providing a free appropriate public education to all children who are identified for special education services. It would be contrary to the IDEA for school officials to expel a special education student for behavior related to the student's disability. Guidance issued by the United States Department of Education and revised October 31, 1995, does not limit the use of the case-by-case exception to special education students. However, the guidance specifically states that "this exception may not be used to avoid over-all compliance with the one-year expulsion requirement." (Guidance at page 6, Q15).

of the federal GFSA.⁵

The facts are undisputed that Nicole took a handgun to school -- riding the school bus with a hand gun in her jeans. She admitted doing it and explained why she did it. Her actions clearly come within the proscriptions of the law.

Nevertheless, Appellant Lange argues that the weapons policy cannot be applied to Nicole because it was not part of the student/ parent handbook. Although the District is normally bound to act in accordance with its duly adopted policies, and to give appropriate notice of those policies to the students, it is a well-settled legal proposition that "ignorance of the law is no excuse." State v. Clark, 346 N.W.2d 510 (Iowa 1984).⁶

The GFSA and House File 528, §23, constitute a unique usurpation of a local school district's control over the discipline of its students who bring weapons to school. Although these laws recognize the broad disciplinary authority historically conferred upon schools, that authority is reserved to the superintendent's ability to "modify the expulsion requirement on a case-by-case basis." Id. The expulsion requirement itself, however, is not optional. If a student is found to have brought or possessed a weapon at school, the student must be expelled. Iowa Code §280.21B (Supp. 1995).

Therefore, even if Appellant Lange and her daughter, Nicole did not have actual knowledge of the consequences of bringing a weapon to school, that defense is inadequate here: "All persons are presumed to know the Law." Iowa Code §701.6 (1995).

III. Decision

For the foregoing reasons, the decision of the Schaller-Crestland Community School District's Board of Directors, made on

⁵ The Iowa Legislature added additional requirements for school districts involved in disciplinary actions for weapons. School districts must adopt procedures:

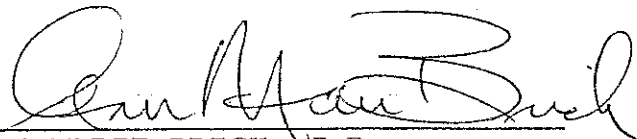
- a. Requiring "school officials to report to local law enforcement agencies any dangerous weapon, as defined in section 702.7, possessed on school premises in violation of school policy or state law." (H.F. 528, section 21-codified as section 280.17A);
- b. "Prescribing procedures for continued school involvement with a student who is suspended or expelled for possession of a dangerous weapon... ." H.F. 528, section 22 (codified as section 280.17B).
- c. Providing "for the reintegration of the student into the school following the suspension or expulsion." Id.
- d. Referring students who "possess" a "dangerous" weapon on school premises to the criminal justice or juvenile justice delinquency system. H.F. 528, § 21 (codified as section 280.17A).

⁶Besides, the District had enacted a weapons policy and the administration had discussed the policy with the student body. The fact that the policy was not reproduced in the student handbook has no legal significance here.

November 28, 1995, is hereby affirmed. There are no costs to be assigned under Iowa Code chapter 290.

3/4/96

DATE




ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

3-14-96

DATE



CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION