

1004-A79416-8/78

IOWA STATE DEPARTMENT
OF PUBLIC INSTRUCTION

(Cite as I D.P.I., App. Dec. 251)

In re Dwaine Kunde :

:

:

JoAnn Kunde, Appellant :

:

:

DECISION

v. :

:

Preston Community School District
Appellee :

:

:

[Admin. Doc. 444]

The above entitled matter was heard on July 14, 1978, by a hearing panel consisting of Dr. Robert Benton, state superintendent and presiding officer; Carl Miles, director, supervision division; and Giles Smith, chief, guidance services section. By agreement of the parties, the matter was submitted to the Hearing Panel on the record before the Preston Community School District (hereinafter District) Board of Directors and through written arguments. Written arguments were submitted for the District by Clifford Cameron, high school principal, and for the Appellant by Attorney William Stansberry. 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 decision of the District Board to expel her son from school. The basis of the appeal is the violation of procedural and substantive due process.

I.

Findings of Fact

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

Some of the facts involved in this matter are somewhat sketchy on the record, but we have endeavored to do our best to review the facts as presented to us. Dwaine Kunde is a 13-year-old boy who, until May 8, 1978, was an eighth grade student in the District's schools. Following a hearing before the District Board of Directors on that date, he was expelled from school for the remainder of the semester.

On or about April 28, 1978, William Kritsonis, superintendent of schools, prepared a "Notice of Hearing" indicating that a hearing before the District Board was to be held on May 8 for the purpose of a full discussion of charges against Dwaine. The Notice contained the charges and evidence upon which the charges were based as follows:

Specifically, the above-named student is charged with Continual [sic] disregard of class proceedings and rules of the teachers. Preliminary evidence and statements thus far indicate that specifically the above named student did continually interfere with the maintenance of the educational environment. [emphasis added]

At the opening of the hearing, William Stansberry, Dwaine's attorney, moved that the charges be dismissed on the ground that the charges against Dwaine contained in the Notice were too vague and not stated with sufficient specificity. He said that Mrs. Kunde was unable to obtain a statement of the charges, or a copy of the charges and that neither he or Mrs. Kunde really knew what the charges were. Mr. Stansberry asked in the alternative, that if the District Board would not dismiss the charges, that the hearing be postponed until more specific charges could be provided. Mr. Cameron replied that the specifics were on file, and if Mrs. Kunde had asked, she would have received copies of them. Mr. Stansberry stated that the disciplinary referrals in the file were too vague. The record contained photocopies of six "Disciplinary Referrals." Each was dated and contained X's in appropriate boxes under the titles, "Reason(s) for Referral," "Action Taken Prior To Referral" and "Present Action and Recommendation(s)." The items most checked on the six referrals under, "Reason(s) for Referral" were, "Rude, Discourteous," "Lack of Cooperation," and "Restless, Inattentive." No details of the events which led to the referrals were contained on them. Each referral also contained the name of the staff member involved and a statement of action taken. Mr. Cameron filed or joined in filing five of the six referrals, Mr. William Kritsonis, the superintendent, joined in filing one of the referrals, Mrs. Lucille Bethel, a mathematics teacher, filed one separately, and joined in another, and Mr. Gude joined in one referral. In total, two teachers and two administrators filed or joined in the filing of all six referrals.

At the hearing before the District Board, neither of the teachers filing referrals explained the details of the allegations contained in the referrals. Mrs. Bethel stated generally that she had disciplinary problems with Dwaine and that there was a constant undercurrent of noise when Dwaine was in her class. Mr. Gude, a science teacher, was not present at the hearing, but Mr. Cameron stated to the District Board that Mr. Gude did have a disciplinary problem with Dwaine.

Other teachers also made statements to the Board. Mr. Joe Riepe, a social studies teacher, stated that Dwaine disrupted his study halls, but not his classroom. Mrs. Gladys Clausen, English teacher, stated that she had no discipline problems with Dwaine.

Mr. Stansberry made only a limited cross examination of the teachers.

Mrs. Kunde stated that Mr. Cameron would not allow her to talk to Mr. Gude or to students about incidents involving Dwaine. In response, Mr. Cameron told the District Board that the teachers felt that nothing positive could come from a meeting with Mrs. Kunde.

Mr. Stansberry asked whether the school guidance counselor had been directed to see Dwaine early in the year. Mr. Cameron replied in the affirmative, but did not know whether it had been done.

In a response to the question of whether the school psychologist felt that Dwaine had a learning disability, Mr. Cameron replied in the negative. Mr. Cameron said that Dwaine had refused to talk to the psychologist. The psychologist had not given Dwaine any tests, but felt that there was no learning disability present. The basis for this determination is not clear from the record. Mrs. Kunde stated that she felt that Dwaine may have a learning disability due to an incident which occurred when Dwaine was an infant.

There was nothing in the record to indicate which specific school or classroom rules were violated by Dwaine. The only specific incident involving breach of discipline contained in the record revolved around a locker padlock. This was apparently the incident on April 28 which precipitated the District Board hearing. Mr. Cameron stated that he

told Dwaine to put his padlock on his locker, and he reported that Dwaine replied, "No, it takes too long." Dwaine stated during the hearing that he saw Mr. Cameron come down the hall and start to write down his locker number on a piece of paper, and that he told Mr. Cameron to wait because his padlock was on top of the locker. Dwaine said that he told Mr. Cameron that it took too long to put the padlock on, but he denied telling Mr. Cameron that he wouldn't do it.

The District Board voted five to zero to expel Dwaine for the remainder of the school year. The District Board's findings of fact dated May 9, 1978, and signed by Mr. Cameron stated that the following was determined to be fact: "Dwaine Kunde does continually interfere with the maintenance of the educational enviroment [sic] and fails to follow the rules and regulations of the school district." There was no further statement of findings of facts.

II. Conclusions of Law

The Appellant claims that her rights and those of her son to procedural and substantive due process were violated by the District Board when it expelled Dwaine on May 8. We tend to agree. While we do not rule here on all of the issues raised in the Appellant's appeal document, we do agree that the notice of hearing was deficient to the extent that it did not comply with appropriate procedural due process requirements.

The United States Supreme Court ruled in Goss v. Lopez, 419 U.S. 565, 95 S.Ct. 279 (1975), that even in instances of a short suspension, a student must be informed of the accusations against him or her and the underlying evidentiary basis of the accusations.

In the simplest lay terms, due process is fairness, and we do not find much difference between what is required by law and what is considered as good educational practice. See In re Monica Schmoor, 1 D.P.I. App. Dec. 136. We feel that good educational practice requires that students charged with disciplinary infractions be given enough information about the allegations against them, so that they may be able to intelligently discuss the matter with school officials considering disciplinary action.

Even though the "Notice of Hearing" purported to state the charges and underlying evidence of those charges "specifically," it failed to do so. Its language was too vague to sufficiently alert the Appellant as to what preparations needed to be made in defense of those charges. Such questions as who would need to be interviewed and who would need to be called as witnesses, cannot be answered from a charge of "continual disregard to class proceedings and rules of the teachers."

A review of the "Disciplinary Referrals" would be of no greater help in preparing a defense against allegations of misconduct. Charges of "Lack of Cooperation" and "Restless, Inattentive," hardly provide sufficient information to prepare a defense. We noted in our findings of fact that the Appellant's attorney failed to extensively cross-examine the witnesses. We have come to the conclusion that this may have resulted, at least in part, from a lack of knowledge of the specific charges which a notice of hearing should contain if it wishes to comply with procedural due process requirements.

The only court decision known to the Hearing Panel which addressed 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 filed. 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. [emphasis added]

The decision rendered in the Anderson case above is not unlike those found in jurisdictions other than Iowa.

The problem of the vagueness of the charges and underlying evidence on which the charges were based could have been resolved at the outset of the hearing. The Appellant's attorney objected to the vagueness of the charges and asked that the Board continue the hearing until such time as more specific charges could have been provided. The District Board should have granted what appears from the face of the Notice to be a reasonable request. We feel that when parties involved in hearings which require procedural due process make a reasonable request for more time to prepare a defense or for a more definite statement of the charges, such requests should be granted. What great harm would befall the District for readmitting Dwaine to school for a few days while more specific charges were drawn up? We think none.

In light of the above discussion, the Hearing Panel finds that the Board of Directors of the Preston Community School District acted contrary to accepted educational practice and in violation of the procedural due process rights of JoAnn and Dwaine Kunde in that it did not provide a sufficient notice of charges or the basis for the charges against Dwaine Kunde for him to prepare a proper response. The Hearing Panel makes no judgment here as to the merits of the District Board decision under review. From the record it appears that there is some evidence of the need for disciplinary or special education attention to be given Dwaine. However, it should be noted that the burden to furnish due process is upon the District Board, and the record shows that the District Board has failed to adequately comply with the requirements of procedural due process.

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). We are not aware of any reason why a second hearing, incorporating proper procedural due process is not available to the District Board of Directors at this time. In the absence of actions taken to cure the defects of the May 8 hearing, we feel that it would be appropriate to grant Dwaine a reasonable opportunity to make up school work missed since his original suspension in April and remove the expulsion incident from his school records. In light of his poor grades, however, successful completion of the eighth grade cannot and should not be guaranteed.

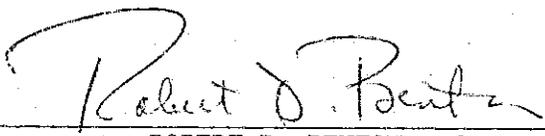
III.
Decision

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

August 18, 1978
DATE


JOLLY ANN DAVIDSON, PRESIDENT
STATE BOARD OF PUBLIC INSTRUCTION

August 1, 1978
DATE


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