

1995 WL 608534
United States District Court, N.D. Illinois, Eastern
Division.

John DOE, By and Through his parents and next
friends Joe and Jane DOE, and the class of all
others similarly situated, Plaintiffs,

v.

BOARD OF EDUCATION OF OAK PARK &
RIVER FOREST HIGH SCHOOL DISTRICT 200,
et al., Defendants.

No. 94 C 6449.

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Oct. 12, 1995.

MEMORANDUM OPINION

KOCORAS, District Judge:

*1 This matter is before the court on the defendants' motion for summary judgment. For the reasons set forth below, the defendants' motion is granted.

BACKGROUND

On September 9, 1994, Plaintiff John Doe, a 13 year-old learning disabled freshman at Oak Park River Forest High School ("OPRF"), allegedly was found to be in possession of a pipe and a small amount of marijuana at a freshman dance. As punishment for this transgression, the OPRF Board of Education ("the Board") issued a ten-day suspension to Doe and subsequently expelled him for the remainder of the fall semester. Doe thereafter filed an eight-count complaint against the Board and OPRF administrators alleging that these punishments were unlawful. In Counts I and II, Doe claims that the suspension and expulsion violated his rights pursuant to the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983. In Count III, Doe asserts that OPRF's Code of Conduct as it relates to the possession of illegal substances is unconstitutionally vague. Count IV sets forth Doe's contention that the discipline imposed upon him violated the Illinois School Code. Count V maintains that the Board violated its own

rules by expelling him pursuant to a "zero tolerance" policy. Counts VI and VII allege that OPRF's purported "zero tolerance" policy similarly violated the state law and constitutional rights of a class of OPRF students. Finally, in Count VIII, Doe alleges that his and others' rights as special education students under the Individuals with Disabilities Education Act ("IDEA") have been violated by OPRF's alleged policy of not offering alternative educational services during expulsions. The defendants' motion for summary judgment as to Count VIII was withdrawn prior to the writing of this opinion.

Although Doe related several accounts to school officials regarding how he obtained the marijuana, the plaintiff maintains that he cooperated fully with school authorities regarding the incident on September 9, 1994. Doe and Doe's mother were questioned by OPRF's disciplinary representative for the dance, Defendant Suzanne Casey, OPRF's Assistant Superintendent for Special Education, and the disciplinary process was explained to them. Given the criminal nature of Doe's offense, the police were contacted.

It is not disputed that Doe and his parents received a copy of OPRF's Code of Conduct prior to the commencement of the school year. The OPRF Code of Conduct prohibits students from using or possessing mind-altering substances during school-related activities. Appropriate punishments for specific disciplinary infractions are set forth in a matrix and "students who choose to display behavior in violation of the Code of Conduct, will be held accountable to the... Code of Conduct matrix." *See* Defendants' Exhibit F, p. 6. Pursuant to the matrix, "possession of an illegal substance" is a Class III, Code "G" infraction. As such, it is punishable by a ten-day out-of-school suspension, an expulsion recommendation, and an expulsion hearing. *See Id.*

*2 The disciplinary procedures afforded to students accused of misconduct are likewise set forth in the Code of Conduct. These procedures include notice to the student's parents of the date, time, and place for hearing, to be followed by a formal hearing conducted by a hearing officer. The hearing, which may involve witnesses, parents, and legal counsel, is tape recorded, and a written summary of testimony is prepared by the hearing officer and made available to the student. The written summary is then presented to the Administrative Review Committee ("ARC"). If the ARC determines that the misconduct revealed in the summary of testimony requires that the student involved in the misconduct be considered by the Board for expulsion, then the summary is presented to the Board. If, however, the ARC

determines that the misconduct can be addressed more appropriately by action other than consideration for expulsion, then the student's dean may assign a more appropriate disciplinary measure.

By letter dated September 12, 1994, an OPRF dean informed Mr. and Mrs. Doe that their son was suspended for ten days for possession of marijuana. *See* Defendants' Exhibit I. The Does were also notified that a disciplinary hearing had been scheduled for the purpose of obtaining a written record of evidence concerning the incident at the school dance. *See* Defendants' Exhibit J. This letter further advised the Does that the hearing evidence would be submitted to the ARC for a determination as to whether the matter warranted referral to the Board for possible expulsion from school. The letter requested that Doe and his parents attend the hearing, along with any witnesses and an attorney, if they so desired. A copy of OPRF's policy on suspension and expulsion was enclosed, as was an outline of hearing procedures.

Doe's expulsion hearing commenced on September 19, 1994. At the hearing, Doe and his parents were represented by an attorney. The attorney presented witnesses and other evidence, cross-examined the OPRF witnesses, advised Doe not to testify about the events which led to the disciplinary hearing, and made a closing argument on Doe's behalf. The hearing lasted approximately five hours and was tape recorded.

OPRF representatives likewise conducted an Individualized Educational Plan Conference for Doe on September 19, 1994. The purpose of this meeting was to determine whether Doe's misconduct on September 9, 1994 was related to a learning disability. (Doe's special education records indicated an organizational learning disability and possible Attention Deficit Hyperactivity Disorder ("ADHD"), which had never been formally evaluated by the school.) Following this meeting, which Doe's parents were invited to attend, the OPRF representatives determined that Doe's possession of marijuana was unrelated to his learning disability. Accordingly, the provision of the IDEA prohibiting the expulsion of a disabled student for misconduct related to his disability was not to be applied.

*3 On September 20, 1994, the hearing officer issued a seven page "Summary of Evidence" which summarized the testimony taken and arguments made at the disciplinary hearing. The summary included Doe's attorney's closing statement in which she acknowledged Doe's culpability and requested leniency:

The parents understand the gravity

of the situation and are not dismissing the offense as unimportant. They are respectful of School's position and they need help in dealing with the situation. [John] is a young freshman at 13 years of age and is not up to task. She asks that the Board take his special education LD status into consideration in reviewing his case. He is not a harm to others and no testimony was received that showed he tried to sell to others. There has only been an allegation of possession, and throughout the investigation he has been cooperative and respectful.

Defendants' Exhibit K, p. 7. The hearing officer's summary was presented to the ARC, which recommended that Doe be expelled for the remainder of the semester. The Board accepted the ARC's recommendation, and Doe was expelled.

The Does subsequently filed an administrative appeal of OPRF's decision that Doe's misconduct was not related to his disability. A "Level I" due process hearing was held on November 28, 1994, and the decision to expel Doe was upheld as proper. The Does filed a second appeal and a "Level II" due process hearing was held on March 13 and April 10, 1995. The "Level II" due process hearing officer reversed the Level I decision which affirmed the Board's expulsion.

LEGAL STANDARD

Summary judgment is appropriate if the pleadings, answers to interrogatories, admissions, affidavits and other material show "that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Fed. R.Civ. P. 56(b). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The party seeking summary judgment carries the initial burden of showing that no such issue of material fact exists. Pursuant to Rule 56(b), when a properly supported motion for summary judgment is made, the adverse party must set forth specific facts showing that there is a genuine issue as to any material fact and that the moving party is not entitled to judgment as a matter of law. *Anderson*, 477 U.S. at

250.

In making our determination, we are to draw inferences from the record in the light most favorable to the non-moving party. We are not required, however, to draw every conceivable inference, but rather, only those that are reasonable. *De Valk Lincoln Mercury, Inc. v. Ford Motor Co.*, 811 F.2d 326, 329 (7th Cir. 1987); *Bartman v. Allis-Chalmers Corp.*, 799 F.2d 311, 313 (7th Cir. 1986), *cert. denied*, 479 U.S. 1092 (1987). The nonmovant may not rest upon mere allegations in the pleadings or upon conclusory statements in affidavits; rather he must go beyond the pleadings and support his contentions with proper documentary evidence. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986); *Howland v. Kilquist*, 833 F.2d 639, 642 (7th Cir. 1987).

*4 The plain language of Rule 56(c) mandates the entry of summary judgment against a party who fails to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. *Celotex*, 477 U.S. at 322. "In such a situation there can be 'no genuine issue as to any material fact,' since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial". *Id.* at 323.

It is in consideration of these principles that we examine the defendants' motions.

DISCUSSION

Entitlement to a public education has long been recognized as a fundamental property interest protected by the Due Process Clause of the Constitution. *See Goss v. Lopez*, 419 U.S. 565, 573-575 (1975). In accordance with this principle, certain procedural safeguards are established by public schools in order to ensure that the due process rights of its students are not violated. While,

[i]t is not the role of the federal courts to set aside decisions of school administrators which the court may view as lacking a basis in wisdom or compassion...
[p]ublic high school students do have substantive and procedural rights while at school.

Wood v. Strickland, 420 U.S. 308, 326 (1975). In *Goss*, the Supreme Court held that due process for a suspension of 10 days or less required that the school give the student

both notice of the charges against him and an opportunity to be heard. *Goss*, 419 U.S. at 579. "Longer suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures." *Id.* at 584.

In the present case, Plaintiff Doe received a ten-day suspension and was subsequently expelled for the remainder of the fall semester. OPRF argues that the procedures which it followed in determining whether to expel Doe afforded Doe all of the protections which the due process clause mandates. We agree.

It is not disputed that Doe received both notice and a formal hearing as to the disciplinary action being considered against him. At that hearing, which lasted five hours, Doe was represented by counsel and had both the opportunity to present and cross-examine witnesses. As a matter of law, therefore, OPRF argues that Doe was afforded all of the protections which due process requires. Doe had the opportunity to present his case to the School Board, and the Board was acting within its policy guidelines when it voted to expel Doe for possessing marijuana at the school dance. Due process, OPRF contends, requires nothing more.

The plaintiff disagrees, noting that inherent in the due process requirement of a hearing is the notion that the hearing be "meaningful." *See, e.g., Sieck v. Oak Park-River Forest High School District No. 200*, 807 F.Supp. 73, 76 (N.D.Ill. 1992). For purposes of satisfying due process, if an element essential to the decision is excluded from consideration, then the hearing is not meaningful. *Bell v. Burson*, 402 U.S. 535, 542 (1971).

*5 The defense which Doe set forth during the expulsion hearing was based upon mitigation. Doe was a special education student with a history of poor impulse control, poor judgment, low self esteem, and possible ADHD. He had no disciplinary history. There was no indication that Doe had ever used drugs. There was no evidence of use or sale. Doe was a very young, new student at OPRF who had not fully comprehended the gravity and consequences of his behavior. These factors, which were all presented for consideration at the hearing, warranted consideration prior to Doe's expulsion. The plaintiff argues, however, that the mitigating factors which he submitted were virtually ignored.

At the close of the hearing, the hearing officer prepared a seven-page summary for submission to the ARC. The summary was certified by the hearing officer as correctly and accurately representing the five-hour proceeding over which he presided. Although the plaintiff's plainly

disagree with the hearing officer's summation of the testimony, an examination of the summary does reveal the essence of the plaintiff's presented defenses. Moreover, a tape recording of all hearing testimony was made available to the ARC. On the basis of the evidence before it, the ARC determined that Doe should be recommended for expulsion. The ARC communicated its recommendation to the Board, and Doe was expelled for the remainder of the fall semester. As indicated above, the Does were given ample opportunity to present their case. The fact that the Does' presentation was memorialized in summary form rather than offered live before the decisionmaking body does not run afoul of due process. (This is especially true given that a taped transcript was readily available.) The Board's failure to make specific findings as to any possible mitigating circumstances in Doe's case likewise does not violate the plaintiff's rights.

The area of school discipline is a realm in which the courts enter with great hesitation and reluctance. Generally, the decision of whether or not to expel a student for gross disobedience or misconduct is best left to the discretion of the school board. In the present case, Doe was caught on school property in the possession of a controlled substance. An independent body found that Doe's actions were unrelated to any disability, thus

expulsion was not precluded. On the basis of the evidence before the Board and in full accordance with clearly established procedures and guidelines, Doe was subsequently expelled for the remainder of the semester. Although such a punishment might appear to be harsh under the given circumstances, the decision properly remained within the province of the Board. A harsh result does not suggest that due process was lacking or that the procedures followed to reach that result were unlawful. Summary judgment will be entered in favor of the defendants.

CONCLUSION

For the reasons set forth above, the defendants' motion for summary judgment is granted.

All Citations

Not Reported in F.Supp., 1995 WL 608534