

IN THE IOWA DISTRICT COURT FOR CHICKSASAW COUNTY

JENNIFER HEYING, on behalf of C.R., a minor, Plaintiff, VS. THE BOARD OF DIRECTORS OF THE NEW HAMPTON COMMUNITY SCHOOL DISTRICT, THE NEW HAMPTON COMMUNITY SCHOOL DISTRICT, and in their capacity as board members, JOE ROSONKE, DAMIAN BALTES, TIM DENNER, JAY MATHEWS, & NATHANIEL SCHWICKERATH, Defendants.	Case No. CVCV003556 RULING ON MOTIONS FOR SUM MARY JUDGMENT
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A hearing was held August 30, 2016 by conference call with counsel of record on the motions for summary judgment. No testimony was presented, all evidence was by judicial notice of the file, prior exhibits, and affidavits. The hearing was not reported, the court took the application under advisement, and now files its ruling.

FFACTUAL BACKGROUND

The plaintiff, Jennifer Heying, is the mother of a child, C.R., born in 1998, who was 17 years of age at the times relevant to this case, and a student in his junior year in high school at the New Hampton Community School District.

The defendant New Hampton Community School District operates a high school and is governed by a Board of Directors. Members of the board were Joe Rosonke, Damian Baltes, Tim Denner, Jay Mathews, and Nathaniel Schwickerath.

On November 4, 2015, New Hampton Community School District staff confronted another high school student [the court will refer to him as X.X.] on school property and found X.X. to be in possession of a substance believed to be marijuana. School staff reported this incident to local law enforcement officials, who promptly investigated and questioned X.X. X.X. admitted to officers that the substance was marijuana, asserted that he had obtained the marijuana from C.R. and disclosed his version of the circumstances surrounding his acquisition of the marijuana from C.R., claiming that C.R. possessed the marijuana in his car on school property. He also reported seeing a pistol in a compartment in the driver's door of the car.

On November 5, 2015, officers obtained a search warrant from a judge for C.R.'s car and executed the warrant. During the search of the car, the officers reported that they found a jar, which when opened, smelled like marijuana and contained small pieces of a green leafy substance believed to be marijuana, according to a Chickasaw Deputy Sheriff's written report. They also found a toy, silver colored cap pistol, with the orange paint on the end of the barrel covered up or removed. This information was then given to school officials before school began on November 5, 2015.

On November 5, 2015, school officials contacted C.R.'s mother before school began and asked her to keep C.R. home from school on summary suspension while the incident was investigated. She complied with the request.

On November 9, 2016, school officials met with C.R., his mother, and their attorney. A suspension letter was given to them for C.R.'s alleged violations of the local school board policies on weapons and drugs.

On November 12, 2016, the superintendent of the district issued a letter to C.R.'s mother and stepfather formally notifying them that C.R. is suspended from school for 8 days, from November 5 to 16, 2016 for violating Policy 502.9 for selling or distributing marijuana to another student on school grounds and Policy 502.8 for possessing a look-a-like weapon on school grounds. The letter also stated that a special school board meeting would be held on November 16, 2015 at 6:30 p.m. to consider the administration's recommendation that C.R. be expelled from school for these violations, and to hear any defense to the charges on behalf of the student.

C.R. appeared at the November 16th school board meeting with his mother and his attorney. All board members were present with the school board secretary, school board attorney, superintendent of schools and his attorney, and the high school principal, together with members of the public. Evidence, including documents and witness testimony was presented to the board by attorneys for both the superintendent and the student.

All testimony was presented in public session, for about one hour.

After the evidence was completed, the board left the room to deliberate in private session, which was tape recorded. At the beginning of the session, the student through his attorney requested that all proceedings be held in public. When the board declined to remain in public session and left to deliberate with the board's attorney and board secretary, the student's attorney did not renew the request for public proceedings. Private deliberations lasted about one hour.

After deliberating, the board returned to the public meeting room in the presence of the parties, the attorneys, and the public. The board's attorney made this statement as summarized in the board minutes: ".....the Board deliberated and made a finding that the Administration had carried its burden that the student did possess the marijuana and did have a look alike weapon in his possession and punishment requested was to drastic and student should be suspended the balance of the semester and complete substance abuse evaluation to be readmitted."

No vote was taken by the Board on the decision to deliberate in private session and no vote was taken on the decision announced by the Board's attorney. The meeting then adjourned.

A second Board meeting was held regarding this matter on November 17, 2015 with all board members present, together with the board secretary and superintendent. The student and his mother were present, but C.R. was unable to attend. C.R.'s attorney objected to the meeting on the grounds that he and his clients received inadequate notice just that afternoon, that this notice was not enough time to prepare, and C.R. was not available.

The official board minutes explain the purpose and timing of the meeting, as follows:

"The Board reconvened with less than 24 hour notice to the public because of scheduling conflicts. The special meeting for Tuesday, November 17, 2015 is an emergency meeting because the board is unavailable on November 18, 2015 and the student will run out of due process time. The board improperly went into closed session during the special board meeting on November 16, 2015, so any decisions made are null and void. Since the hearing was in the open the Board did not have the right to deliberate in a closed session and this meeting is to deliberate in the open and make a factual decisions on the evidence presented at the November 16 meeting."

Discussion was had about making the tape of the closed session public. No vote was taken on this suggestion.

No significant board discussion occurred about the evidence presented on November 16.

4 motions were made, seconded, and passed by the board on November 16, which were:

No. 1: Administration proved C.R. possessed or distributed marijuana on school property.

No. 2: Administration proved C.R. had a look-a-like weapon on school property.

No. 3: C.R. is suspended from school for the balance of the first semester.

No. 4: C.R. must complete a substance abuse evaluation before being readmitted to school.

The board then adjourned. The meeting lasted 21 minutes.

At no time did C.R., his parent, or his attorney, consent to the procedure followed by the board on November 16 and November 17.

The reason the board was not available for a meeting on November 18, 2015 was the fact that all board members were scheduled to attend a state school board association meeting in Des Moines beginning on November 18 and planned to drive to Des Moines on the evening on November 17.

The district has telephone facilities available to conduct conference calls and has the capacity to hold a public school board session with telephone participation.

At all times prior to these events, C.R. was a student in good standing, participated in extra-curricular activities, was on track to graduate timely at the end of his senior year, had plans to attend college, and had no criminal record of any kind.

As a result of the suspension, C.R. has been unable to attend class, complete course work, and will not be able to take his semester tests. He may have opportunities to make up the work later, but with considerable extra time, effort and expense. Potentially this could delay his graduation from high school and prejudice his ability to gain admission to or assistance for higher education. He has also been prohibited from participating in sports and other extra-curricular activities.

According to the undisputed testimony, no formal criminal charges were filed against C.R. by local law enforcement and no juvenile court actions, either formal in court, or informal out of court, have been taken against him for this incident.

The defendants justify their actions based upon the public interest in maintaining order and discipline in the public schools and protecting all students from exposure to illegal drugs and violence.

On November 19, 2016, the plaintiff filed a petition for relief under the Iowa Open Meetings law, Chapter 21 of the Code of Iowa, and requested a stay of the board proceedings.

On December 29, 2015, the court held an evidentiary hearing on the request for stay and all parties participated with the assistance of counsel.

The court filed its ruling on January 5, 2016, granting the stay and ordering the issuance of a temporary writ of injunction by the Clerk of District Court, strictly restraining and enjoining the defendants from suspending C.R. from attendance at classes in the New Hampton Community School District for the balance of the first semester of the 2015-2016 school year.

The required bond was posted, the injunction issued, and served.

The defendants fully complied with the injunction.

The plaintiff filed a motion for summary judgment on July 25, 2016.

The defendants filed a motion for summary judgment on August 18, 2016.

DISCUSSION OF THE RELEVANT LAW

The court has jurisdiction of the parties and the subject matter of these proceedings as

provided by Chapter 21, Code of Iowa.

A motion for summary judgment is used to avoid useless trials and to streamline the litigation process. *AMCO Ins. Co. v Stammer*, 411 N.W.2d 709 [Iowa Ct. of App. 1987]. The motion is authorized by Iowa Rule of Civil Procedure 1.981[3]. The rule provides, in part, that:

“The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”

If the court finds that a reasonable trier of fact could return a ruling/verdict for the plaintiff, a defendant’s motion for summary judgment must be denied. *Clinkscales v Nelson Sec., Inc.*, 697 N.W.2d 836 [Iowa 2005].

The evidence must be viewed in the light most favorable to the resisting party. *Scheckel v. Jackson County, Iowa*, 467 N.W.2d 286 [Iowa Ct.App. 1991].

The moving party bears the burden of showing the nonexistence of an issue of material fact. *Cent. Nat’l Ins. Co. of Omaha v Ins. Co. of N.Am.*, 522 N.W.2d 39 [Iowa 1994]. After that, the burden then shifts to the resisting party to present specific facts showing that there is a genuine fact issue. *James v. Swiss Valley Ag Serv.*, 449 N.W.2d 886 [Iowa Ct.App. 1989].

It is up to the trier of fact to decide credibility, weigh the evidence and draw appropriate inferences from the facts of the case. *Carr v Bankers Trust Co.*, 546 N.W.2d 901 [Iowa 1996].

Counsel for both parties informed the court at oral argument on the motion that they each believed that the case could be fully adjudicated on the opposing motions for summary judgment and that a further trial or hearing would not be needed no matter which motion was granted.

The Iowa Open Meetings Law is codified in Chapter 21, Code of Iowa. Section 21.5 permits closed sessions except under specified exceptions. The defendants have essentially admitted that they violated this law on November 16 when they deliberated in private.

The Board’s attempt to correct their mistake on November 17 was flawed. The minutes show the meeting was again convened on less than the statutory notice of 24 hours, as required by Section 21.4[2][a]. The attempt to justify it under the emergency exception of Section 21.4[2][b] also fails. They could have delayed their departure and attendance at the Des Moines meeting or they could have held a telephone hearing. However, even at the “emergency” meeting on November 17th, they did not “deliberate” by thoroughly discussing the evidence in a public forum as required, but merely adopted the prior private taped deliberations.

It is not disputed that there is a strong public interest in maintaining order and discipline in the

public schools and protecting students from exposure to illegal drugs and violence. By the same token there is a strong public interest in having public officials obey the law and provide due process when carrying out their duties.

The plaintiff has established the claim that the defendants violated the open meeting law as described above.

The legal remedies provided by Section 21.6 are limited to fines against offending officials, recoupment of costs of suit, and actions to prevent future violation.

The record shows that the board members acted in good faith on the reliance of advice from legal counsel, although that advice was improvident. There is no evidence of spite or ill will. They believed prompt action was needed to protect all students by maintaining a drug and weapons free environment.

Relief in court was promptly sought by the plaintiff and promptly given through the temporary injunction.

Punitive fines against the board members or the school district would serve no useful purpose.

It is highly unlikely that such a violation by these defendants will occur again and issuance of a permanent injunction is not warranted.

This was a unique situation and unlikely to again occur.

RULING AND ORDER

It is therefore ORDERED that:

The plaintiff's motion for summary judgment is granted and the action by the board in suspending the student in November of 2015 are all set aside and declared illegal.

The defendants' motion for summary judgment is denied.

The plaintiff is entitled to recover a reasonable amount of attorney fees from the defendant New Hampton Community School District for obtaining relief.

Court costs are assessed to the defendant The New Hampton Community School District.

No personal judgment is granted against the individual members of the school board for costs or fees.

The clerk of court shall furnish copies of this order to counsel of record.

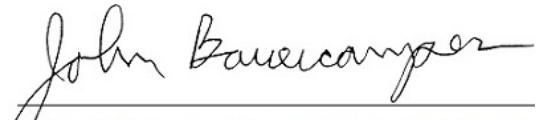


State of Iowa Courts

Type: OTHER ORDER

Case Number	Case Title
CVCV003556	JENNIFER HEYING ET AL V NEW HAMPTON SCHOOL ET AL

So Ordered



John J. Bauercamper, District Court Judge,
First Judicial District of Iowa