

SOLANO COUNTY BOARD OF EDUCATION
5100 Business Center Drive
Fairfield, CA 94534

MINUTES
Special Meeting – Expulsion Appeal
August 13, 2008

In accordance with Education Code §48919 – §48925, the Solano County Board of Education met in closed session on Wednesday, August 13, 2008, in the Boardroom of the Solano County Office of Education, 5100 Business Center Drive in Fairfield, California.

I. CALL TO ORDER

Board President Mayrene Bates called the meeting to order at 8:06 PM.

II. ROLL CALL

Members Present

Mayrene Bates, President
John Galvan, Vice President
Doug Ford
Maria Kennedy
Raymond Silva
Rozzana Verder-Aliga
Dee Alarcón, Secretary

Members Absent

Larry Asera

Mrs. Bates noted that a quorum was present as was County Superintendent of Schools Dee Alarcón.

Others Present

Rob Phillips, County Superintendent of Schools Office
Jay Speck, County Superintendent of Schools Office
Lisette Estrella-Henderson, County Superintendent of Schools Office
Laryn Bishop, County Superintendent of Schools Office
Monica Ross, County Superintendent of Schools Office
Carrie Scarlata, Deputy County Counsel
Gwendolyn Lawton, Fairfield-Suisun Unified School District
Cathy Hill, Fairfield-Suisun Unified School District
Joseph Kinkade, School and College Legal Services
Charles and Donna Howard, Parents, and their son

III. APPROVAL AND ADOPTION OF AGENDA

Motion was made by Mr. Galvan, seconded by Dr. Verder-Aliga, and unanimously carried by those present to approve and adopt the agenda as presented.

IV. HEARING OPENS

- (a) Introduction of appellant, respondent, their representatives, SCOE staff, legal counsel, and others present

The family members, district representative, and SCOE staff were introduced. Deputy County Counsel Carrie Scarlata indicated that she is present to represent the Board, answer legal questions, rule on objections, maintain focus to areas under the Board's limited jurisdiction, and facilitate the hearing. However, she is not a voting member of the Board and will not make recommendations or take sides on the matter.

- (b) Review of legal authorization, purpose, scope, and procedures of the student expulsion appeal hearing and materials pertaining to the appeal

Rob Phillips, Associate Superintendent of Student Programs and Educational Services, stated that all parties had received the expulsion packet containing the documentation pertaining to this appeal. The Board shall determine the appeal based upon the record of the hearing before the Fairfield-Suisun Unified School District (FSUSD) governing board. Limitations to the Board's scope and decision were reviewed and are contained in the expulsion packet.

Mrs. Scarlata said each side will be allowed 30 minutes total, which, if desired, may be divided among more than one speaker or a portion saved to respond to the other party's comments.

V. PRESENTATION OF CASE

- (a) Appellant or representative presentation

Mr. Phillips said the Board has had an opportunity to review the expulsion appeal packet and is familiar with the parent's reasons for requesting an appeal.

The mother read a prepared statement asking that her son be allowed to return to school and for his record to be expunged citing the following reasons:

- The district board acted without or in excess of its jurisdiction by failing to show that the infraction for which the student was expelled violated Education Code. No evidence was presented showing damages, workers' comp, or intent by the student; therefore, by definition of the law, no crime was committed. Testimony shows that the child raised his hand to ask for paper or a pencil. The child was upset as he left the room, and his head was down causing him to trip as he exited. The student realizes he did not handle the situation well.
- The district board failed to provide a fair hearing by excluding relevant evidence from the expulsion hearing. There was no evidence presented to indicate that the teacher's injuries were not a preexisting condition. The teacher's testimony alone cannot be relied upon, and three important witnesses were not subpoenaed to testify as the parent requested including the police officer who took the report and whose testimony was vital.
- There was prejudicial abuse of discretion in the hearing because the hearing panel failed to recognize that all witnesses and the student indicated that contact between the student and teacher was accidental. The teacher did not immediately call attention to any injuries, and incidental contact is not enough to have caused the type of damage claimed by the teacher.
- The parents were denied their due process rights when not permitted to re-call the accuser. There was also some testimony provided to the hearing panel, but these individuals were not called as witnesses so the parents could have access to them. Additionally, the parents felt that the panel chairperson was rude and hasty.
- There was further prejudicial abuse of discretion because some of the witnesses that were not called had positive things to say about the student. The witnesses that were called by the district set a negative tone for the hearing.
- The district's initial plan was to send the student to attend Mary Bird Community Day School. The parents do not know why this plan was changed, and they do not believe that the Golden Hills Education Center is an appropriate placement because they have heard bad things about it. They believe their son needs to be in a regular school program.

The parent then answered questions from the Board. The determination to expel was a close 4-3 vote. The student's expulsion began last spring and lasts through the fall 2008 semester; however, he has not attended school since the expulsion was pending at the end of May.

(b) Respondent presentation

Gwen Lawton, Pupil Services Coordinator for FSUSD, addressed the parent's comments. Concerning the violation of due process, she clarified that the expulsion case was heard by a panel who made a recommendation to the school board, but that does not mean the board will take the panel's recommendation.

The student's mother had initially said that the school principal suggested a suspended expulsion, but the parents declined. The district subpoenaed most of the requested witnesses, although the police officer was not called to testify due to an oversight. The district can ask witnesses to come to the hearing but cannot force them to appear the way a court of law can. One student that was subpoenaed is a minor, and the parent would not permit him to miss summer school to attend the hearing.

Ms. Lawton then answered questions from the Board. The student does not currently qualify for special education services, but she offered to meet with the principal of Golden Hills to help the struggling student get back on track.

(c) Appellant or representative closing remarks

The parent said she had met with Ms. Lawton several times and respects her, but the testimony of the three witnesses who were not called was very important. Without them, a negative tone was set at the hearing. The principal confided that she had to back her staff at the hearing making the process seem to the parents like a losing battle. Due to his expulsion being in limbo, the student could not attend summer school at Rodriguez High or at the school where he may be assigned to serve his expulsion time. He already struggles in school, and it is important that he not fall further behind.

Ms. Lawton added that Golden Hills offers a wonderful program with a fulltime resource specialist, smaller classes for more one-to-one attention, and credentialed teachers who meet the No Child Left Behind (NCLB) requirements.

Mr. Phillips clarified for the parent that some of the things she has heard about the Golden Hills program are untrue. Students are permitted to bring backpacks and other needed materials.

VI. HEARING CLOSES

Mrs. Bates closed the hearing at 8:39 PM.

VII. CLOSED SESSION DELIBERATIONS

Pursuant to Education Code §35146, the Board adjourned to closed session to deliberate the appeal. The Board may (1) affirm the district governing board's decision, (2) reverse the district governing board's decision, (3) remand the matter back to the district for reconsideration or for adoption of the required findings, or (4) grant a hearing *de novo*.

VIII. HEARING RECONVENES

The Board reconvened at 8:48 PM.

Motion was made by Dr. Verder-Aliga, seconded by Mr. Galvan, and unanimously carried by a roll call vote of those present to affirm the decision of the FSUSD governing board and *deny* the appeal. Mr. Phillips' staff will send the Decision and Order to the concerned parties by the end of this week.

IX. ADJOURNMENT

There being no further business, the hearing was adjourned at 8:52 PM.

Dee Alarcón, Secretary
Solano County Board of Education