

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

MINUTES

Special Meeting – Expulsion Appeal
January 13, 2010

In accordance with Education Code §48919 – §48925, the Solano County Board of Education met in closed session on Wednesday, January 13, 2010, in the Boardroom of the Solano County Office of Education, 5100 Business Center Drive in Fairfield, California.

I. CALL TO ORDER

Board President Larry Asera (Trustee Area 5) called the meeting to order at 7:15 PM during a recess in the Board's regular meeting.

II. ROLL CALL

Members Present

Larry Asera, President
Rozzana Verder-Aliga, Ed.D., Vice President
Mayrene Bates
Doug Ford
John Galvan
Maria Kennedy (*arrived at 7:17 PM*)
Raymond Silva
Dee Alarcón, Secretary

Mr. Asera noted that a quorum was present as was County Superintendent of Schools Dee Alarcón, serving as Secretary to the Board.

Others Present

Lisette Estrella-Henderson, County Superintendent of Schools Office
Laryn Bishop, County Superintendent of Schools Office
Carrie Scarlata, Deputy County Counsel
Cecelia Mendoza, Vallejo City Unified School District
Student and Parent
Mustafa Abdul-Ghane, non-attorney advisor

III. APPROVAL AND ADOPTION OF AGENDA

Motion was made by Mrs. Bates, seconded by Mr. Galvan, and unanimously carried by those present to approve and adopt the agenda as presented. Ms. Kennedy was not present.

IV. HEARING OPENS

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

The hearing began at 7:17 PM. Mr. Asera called attention to the expulsion packet received and reviewed individually by the board members a week prior to this meeting. Copies were also previously distributed to the appellant and the respondent.

Lisette Estrella-Henderson, Assistant Superintendent of Educational Services, stated that, per Education Code, this hearing is being held in closed session. She reviewed the hearing procedures, Board's authority in the case, and possible actions, all of which is contained in Section 6 of the expulsion packet.

Each side was given a total of 30 minutes in which to speak. The time may be split between the opening and closing statements in whatever increments the speaker chooses. Following each presentation, members of the Board may ask questions of any person appearing before them. Questions should be limited to the scope of the hearing.

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

Those in attendance introduced themselves. Mrs. Estrella-Henderson served as facilitator. Carrie Scarlata, Deputy County Counsel, explained that her role is to answer questions, rule on evidentiary objections, maintain focus to areas under the Board's limited jurisdiction, and advise the Board on legal matters. She is not a voting member of the Board and will not take sides on the matter or make recommendations as to how the members should vote.

Representing the Vallejo City Unified School District (VCUSD) was Cecelia Mendoza, Director of Secondary Education (respondent). The pupil (appellant) and her mother were also in attendance. Prior to the hearing, the parent submitted to SCOE a written request to allow a non-attorney advisor to speak on her behalf. Mrs. Scarlata stated that both the Education Code and Board policies prohibit representation of a pupil at an expulsion appeal hearing by a non-attorney. Mr. Abdul-Ghaneer was invited to the hearing by the parent and was allowed to stay but was not permitted to speak on appellant's behalf.

V. PRESENTATION OF CASE

- (a) Appellant or representative presentation

The pupil is a 15-year-old female in 9th grade at Vallejo Senior High School. The parent read a prepared statement describing the reasons for her daughter's appeal:

- The school board failed to provide for a fair hearing because the hearing process was not sufficiently explained to the parent, so the parent did not understand the process well enough to ask the proper questions or do what was needed to get her daughter a fair hearing. The parent stated that the district offered no help to her, and staff participation was not balanced or in the student's best interests. During the district hearing, the parent did not have an opportunity to question witnesses in the case or make an opening statement. There were discrepancies in the evidence and testimonies, and the pupil was consistently referred to by the wrong first name rather than being called by a prefixed title (i.e., Miss Last-Name) as were the other people present.
- There was a prejudicial abuse of discretion in the hearing as described in Education Code Section 48922. The decision to expel was not supported by a required secondary finding. There was no testimony at the hearing indicating that other means of correction are not feasible or have repeatedly failed to bring about proper conduct, or that the pupil causes a continuing danger to the physical safety of herself or others. The mother feels that the findings are not supported by the evidence. The only actual witness to the incident was not at the hearing, and the parent believes her daughter was named simply because she was wearing the same color shirt as one of the alleged perpetrators. School officials did not meet procedural requirements because: there was no conference held in which the parent could review the charges and argue against an extended expulsion; they added an unfounded charge to the recommendation for expulsion; they did not allow the parent sufficient time to review all of the information used by the school to make its case or to prepare an effective defense; and the parent received redacted evidence making it impossible for her to fully analyze the case and prepare an effective defense. Additionally, the district did not give her daughter the opportunity to continue to attend school during this appeal process.

(b) Respondent presentation

Ms. Mendoza said she was representing VCUSD on behalf of Dr. Susan Craig, Assistant Director of Student Support Services, who was unable to attend the Board meeting. She said that a review of all the documentation contained in the expulsion packet shows that the district staff did all they could to keep the parent informed. Required timelines were met, there is enough evidence to show that the student was given her due process, and the district did not violate that process.

(c) Appellant or representative closing remarks

The mother directed the Board to sections 3.4 through 3.6 of the expulsion packet. These pages contain notes by the VCUSD Administrative Hearing Panel members. Each mentions a doctor's report regarding the extent of the victim's injuries. The doctor's report was not presented as evidence at the hearing, yet it seems to have been considered by the panelists in determining whether or not to recommend expulsion of her daughter to the governing board.

Mr. Galvan inquired whether it was possible that the notes were taken during the telephoned testimony of the male campus supervisor who mentioned the doctor's report. He asked the parent if she had been present during that telephoned testimony, and she replied that she had heard it. Ms. Mendoza added that the campus supervisor was an eye-witness to the incident and was sworn in over the phone prior to his testimony.

Mr. Galvan asked for clarification on two matters: Did the student also attend Vallejo Senior High School last year as a 9th grader? The district confirmed that the pupil is repeating 9th grade this year. Did this incident occur during the second week of this school year? The student affirmed.

The parent continued that the campus supervisor did not know her daughter by name or sight. Witnesses to the incident gave statements that were read into the hearing record saying that her daughter was not involved, but they were not taken into consideration. The incident occurred in the street near the school. Her daughter was sitting near the fight but was not involved. She was mistakenly identified by only the color of her shirt. A female campus supervisor took the injured girl to the school office and came back later to try to find out who was involved. There were other girls involved in the incident. One was taken to juvenile hall but is now attending another district high school. All of the other girls involved have returned to school, but her daughter is the only one expelled.

Ms. Mendoza stated that the district had held a series of conferences with the parent, gave her an expulsion procedure guide that the parent signed (see page 4.4 of expulsion packet), and notified her of the next steps. The district is confident that, from the beginning of this investigation, all processes, procedures, timelines, and notifications were adhered to. The student's due process was properly followed. In reference to the secondary findings, an incident that causes injury is a serious safety issue on campus that can escalate if not handled in a timely fashion.

VI. HEARING CLOSES

Mr. Asera closed the hearing at 7:58 PM.

Mrs. Estrella-Henderson reviewed the Board's four possible actions as found in section 6 of the expulsion packet. 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*.

Mrs. Scarlata reviewed the scope and limitations under which the Board shall make its decision: (1) whether the district governing board acted without or in excess of its jurisdiction. The parent did not raise these grounds. (2) whether there was a fair hearing before the district governing board, the student received due process, and the parent received notices as required. (3) whether there was a prejudicial abuse of discretion in the hearing (e.g., procedural requirements were not met, the decision to expel is not supported by the findings, or the findings are not supported by the

evidence). (4) whether there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the district governing board. The parent did not raise these grounds.

VII. CLOSED SESSION DELIBERATIONS

Pursuant to Education Code §35146, the Board adjourned to consider the matter.

VIII. HEARING RECONVENES

Deliberations concluded at 8:25 PM, and the hearing reconvened.

Motion was made by Dr. Verder-Aliga, seconded by Mr. Galvan, and unanimously carried by a vote of those present to affirm the decision of the VCUSD governing board and deny the appeal based on the evidence and administrative record presented. Mrs. Scarlata will prepare the Decision and Order, and Mrs. Estrella-Henderson's staff will distribute it to the parties within a few days.

IX. ADJOURNMENT

There being no further business, the hearing was adjourned at 8:27 PM.

Signature on File

Dee Alarcón, Secretary
Solano County Board of Education