1996 WL 79411
United States District Court, N.D. Illinois.

John DOE, By and Through his parents and next friends Joe and Jane DOE, and the Class of all other similarly situated, Plaintiff/Counter-Defendants,
v.
BOARD OF EDUCATION OF OAK PARK & RIVER FOREST HIGH SCHOOL DISTRICT 200, et al., Defendant/Counter-Plaintiff,
and
Illinois State Board of Education, Defendant.

No. 94 C 6449.
|
Feb. 16, 1996.

MEMORANDUM OPINION

KOCORAS, District Judge:

***1** This matter is before the court on the plaintiffs' motion for summary judgment as to Count VIII of the plaintiffs' complaint and the parties cross-motions for summary judgment as to the defendants' counter-claim. For the reasons set forth below, the plaintiffs' motion as to Count VIII is denied. The plaintiffs' motion as to the defendants' counter-claim is denied. The defendants' motion as to the counter-claim is granted.

BACKGROUND

On September 9, 1994, Plaintiff John Doe ("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 activity, 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. The present motions pertain to Count VIII of the plaintiff's complaint and to a counter-claim filed by the Defendant Board. Count VIII of the plaintiff's complaint alleges that OPRF's policy of not offering alternative educational services during expulsions violated Doe's and others' rights as special education students under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 *et seq.* The defendants' counter-claim seeks review and reversal, pursuant to 20 U.S.C. § 1415(e), of an administrative decision regarding the expulsion of Doe from OPRF for the first semester of the 1994-95 school year.

Although classified as learning disabled,[1] Doe has been mainstreamed in all academic areas since the 1991-92 school year. In January 1992, while Doe was still in elementary school, Doe was reevaluated. His handicapping characteristic of learning disabled was not changed, and Doe was placed in a regular classroom with consultative services to work towards improvement of organization and study skills. On February 16, 1994, a staffing was held at Doe's elementary school district. The district personnel recommended that Doe receive special education services via a resource room for learning disabilities support and that Doe not take biology as a freshman. The district recommendation notwithstanding, Mrs. Doe requested the elimination of these services and enrolled Doe in biology, abiding by a comment made by an elementary school psychologist to the effect that Doe's learning problems were almost non-existent. The effect of Mrs. Doe's requests was to reduce the amount of special education services for her son and to increase his academic load.

At the beginning of Doe's freshman year at OPRF, Doe participated in a sport where the use of illegal substances was prohibited. Doe and his parents acknowledge that they received copies of the OPRF regulations on the subject. In addition, on the morning of September 9, 1994, the school district's rules of conduct were reviewed by staff for all students during a homeroom period. Doe admits that he was in attendance. Later that night, Doe was discovered in possession of marijuana at a school dance on school grounds.

***2** On September 19, 1994, a multi-disciplinary conference ("MDC") for Doe was conducted by OPRF representatives. The purpose of the meeting was to determine whether Doe's misconduct on September 9, 1994, was related to a learning disability. The MDC team determined that no relationship existed between Doe's bringing marijuana to the school dance and 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.

Doe's goals were also reviewed at the MDC, and it was reiterated that Doe was eligible for learning disability resource services and support services. The resource room recommendation which had been made at the February 1994 staffing and eliminated at Mrs. Doe's request was subsequently reinstated.

A separate expulsion hearing likewise convened on September 19, 1994. At the hearing, Doe and his parents were represented by an attorney who presented witnesses and other testimony, cross-examined OPRF witnesses, and otherwise acted in Doe's behalf. The hearing lasted approximately five hours and was tape recorded. On or about September 20, 1994, a seven page "Summary of Evidence" was submitted to the Administrative Review Committee ("ARC"). The ARC recommended that Doe be expelled for the remainder of the semester in accordance with the OPRF Code of Conduct. On or about September 22, 1994, the ARC's recommendation was accepted by the Board, and Doe was expelled.

On September 23, 1994, the Does filed a due process request under the IDEA, seeking, *inter alia,* that Doe's expulsion be rescinded and that Doe be provided an evaluation for Attention Deficit Hyperactive Disorder ("ADHD") or Attention Deficit Disorder ("ADD"). 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 19, 1995. The Level II due process hearing officer reversed the Level I decision which affirmed the Board's expulsion. On October 12, 1995, this court held that the expulsion hearing procedures which Doe was afforded were not violative of due process. The plaintiffs now move for summary judgment as to the plaintiffs' IDEA claim. The parties have filed cross-motions for summary judgment as to the defendants' counter-claim.

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.

***3** 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).

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 parties' motions.

DISCUSSION

A. Count VIII: The IDEA

In *Honig v. Doe,* 484 U.S. 305 (1988), the Supreme Court held that a school district could not unilaterally exclude disabled children from the classroom for conduct growing out of their disabilities. In the present case, the plaintiffs ask us to extend the holding of *Honig* to prohibit the exclusion of disabled children for conduct *not* arising out of their disabilities. The plaintiffs argue that educational services may not cease for such children regardless of the circumstances. For the reasons set forth below, we decline to so extend *Honig* or the IDEA.

Congress enacted the IDEA "to assure that all handicapped children have available to them... a free appropriate public education which emphasizes special education and related services designed to meet their unique needs...." 20 U.S.C. § 1400(c). The continued provision of educational services to a student who has been expelled for reasons unrelated to a disability is not expressly required by the IDEA or its regulations, nor is there any reason to believe that Congress intended to erect an impenetrable shield insulating students with disabilities from the consequences of misconduct totally unrelated to their disabilities. The plaintiffs correctly assert that Congress intended for disabled children to be afforded special protections. However, where such children engage in actions not stemming from any known incapacity, the protections of the IDEA lose much of their purpose.

The plaintiffs maintain that children with disabilities may not be subject to expulsion (and the accompanying discontinuation of educational services) by the school district regardless of whether or not their conduct relates to any disability. We find such a proposition to be without merit. In *Honig,* the Supreme Court expressly limited its holding to cases in which the infraction related to the disability. The position urged by the plaintiffs, however, extends the scope of the IDEA beyond what Congress intended. By affording protections to disabled children, the IDEA necessarily impinges on local control of schools. Congress deemed such an encroachment to be warranted in order to prevent students with disabilities from being denied an education *because of their disabilities.* By ignoring the causal relationship between the disability and the misconduct, however, the encroachment is greatly expanded and becomes largely unjustified. In support of its argument against such an expansion of the IDEA, the school district sets forth an effective, though perhaps overly simplistic, hypothetical. In the hypothetical, a student is apprehended for possessing drugs in school, and subsequently recommended for expulsion. Under normal circumstances, this student could be expelled, and his right to educational services from the school district would cease.

***4** However, suppose that this student has a minor speech irregularity for which he receives 30 minutes per week of speech therapy. The student would then be classified as handicapped under the IDEA, even though in every respect other than the receipt of speech therapy, his school program would be identical to that of his non-disabled peers. Following an MDC, it is determined that the student's drug possession was unrelated to his speech irregularity, and the school district determines to expel him.

Solely because this student possesses a disability, minor as it may seem, the plaintiffs would impose upon the school district an obligation to continue educating him. This is so, even though the same student, absent the minor disability, would be expelled and denied further services. The disabled student would effectively be entitled to an unlimited exemption from any such punishments. Such an occurrence is not only patently unfair to students with no disabilities who are treated more harshly, but it likewise teaches the wrong lesson to students with unrelated disabilities who receive a "blank check" to behave in any manner they select. From the standpoint of the school district, it is further unjust to require the expenditure of already strained resources to provide an education to a disabled student who is sanctioned for conduct not linked to any disability.

The law requires the state to have in effect policies which ensure all children with disabilities the right to a free and appropriate education. *See* 20 U.S.C. § 1412(1). That is not to say, however, that a child with a disability cannot act in such a manner which would forfeit that right. John Doe was admittedly aware of the school's strict policies regarding the possession of controlled substances on school premises. Still, John Doe brought a bag of marijuana to a school dance. Armed with an independent determination that such actions were not related to Doe's disability, the Board expelled Doe for the remainder of the semester and ceased providing educational services. By his actions, Doe forfeited his right to a "free and appropriate education." Given the extent of Doe's disability and the nature of his actions, it was not improper for the Board to hold Doe accountable.

The issue of whether or not Doe's placement should have been stayed pending the outcome of the due process hearings is a bit more troubling. For many of the same reasons discussed above, however, we do not believe that the school district is required to bear this burden where the student's conduct is unrelated to his disability. Absent a relationship between disability and misconduct, the school district is not required to discipline the student with a disability any differently than it would the non-disabled student. Following expulsion, the non-disabled student is entitled to receive no services unless he can persuade a court to issue an injunction so requiring. In the present case, no such injunction was sought.

***5** The plaintiffs argue that the "stay-put" provisions of the IDEA and other regulations precluded the school district from denying Doe services pending his appeal. Section 1415(e)(3) of the IDEA does provide that a child "shall remain in the then current educational placement of

such child" during the pendency of any proceedings. 20 U.S.C. § 1415(e)(3). However, such a provision does not expressly apply to stay expulsion where the student's misconduct is unrelated to his disability. Once the school district has properly determined that the student's misconduct is unrelated to his disability, the school district may treat the case as any other-- and it may cease providing educational services, as would be its right in any other case. *See Doe v. Maher,* 793 F.2d 1470, 1482 (9th Cir. 1986), *aff'd as modified, Honig v. Doe,* 484 U.S. 305 (1988). The student whose misconduct is unrelated to his disability is entitled to no more.

We recognize that the cessation of educational services in a student with disabilities can have a significant impact on the future progress of that student. This recognition, however, does not lessen the importance of a causal connection and how such a connection may affect the school district's actions. Where the misconduct is caused by the student's disability, the student's placement is more often sufficiently restrictive (e.g., a self-contained classroom) so that additional monitoring and managing of the student's behavior can be effectuated with minimal changes in staffing and cost. In such a case, the cessation of educational services would not be (and should not be) permitted. However, in cases where the misconduct is unrelated to the student's disability, it is more often the case that a relatively minor disability is present, and the special services provided to the student are fairly minimal. In these less restrictive placements or programs, the options for managing the student who is intent on misconduct are limited and costly. Without the option of expulsion, the school would have little ability to control such a student. Doe, who had been mainstreamed at OPRF, no doubt belongs in this latter category.

Accordingly, where a student with a disability engages in misconduct which is found to be unrelated to that disability, the school district is entitled to treat that student as if he had no disability. This is so even where the disabled student faces expulsion and the cessation of educational services. The plaintiff's motion for summary judgment is denied.

B. Counter-Claim: The Due Process Hearings

Following the expulsion of Doe, Doe's parents filed a due process request seeking that Doe's expulsion be rescinded. The Does maintained that the school district's determination to the effect that Doe's conduct was unrelated to his disability was inadequate. Two hearings were subsequently conducted. The "Level I" hearing officer upheld the Board's actions. The "Level II" hearing officer reversed. The defendants now seek review of the "Level II" decision via a counter-claim before this court. Both parties have moved for summary judgment.

***6** In an action challenging a special education decision, section 1415(e)(2) of IDEA provides:

> [T]he court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party and basing its decision on the preponderance of the evidence shall grant such relief as the court determines is appropriate.

20 U.S.C. § 1415(e)(2). Federal courts have interpreted this section to mean that judicial review is not held to the highly deferential standard of review established in other agency actions. *Ojai Unified School District v. Jackson,* 4 F.3d 1467, 1471 (9th Cir. 1993). Rather, district courts conduct a *de novo* review, while affording "due weight" to the administrative decision. The amount of deference a district court gives to the administrative decision is a matter of judicial discretion. *Gregory K. v. Longview School District,* 811 F.2d 1307, 1311 (9th Cir. 1987). However, findings of fact made in a regular manner and with evidentiary support are entitled to presumptive validity. *Doyle v. Arlington County School Board,* 953 F.2d 100, 105 (4th Cir. 1991)

Whether or not the school board had adequately evaluated the extent of Doe's disability and its possible connection with Doe's misconduct on September 9, 1994 provided the focus of the two hearings. In this regard, the plaintiffs note several alleged shortcomings of the Board, including the absence of ten days notice prior to the convening of the MDC, the quality of information available at the MDC, and the Board's refusal to evaluate Doe for ADHD and ADD prior to his expulsion.[2] The Level I hearing officer and the Level II hearing officer markedly disagree as to the significance of each of these matters, choosing to focus on different aspects of the testimony and record. Having independently reviewed the record, we find that, while the school district may not have been overly accommodating to the Does and their requests, the district did possess adequate information with which to evaluate Doe at the September 19, 1994 MDC.

At the September 19, 1994 MDC, the staff reviewed Doe's goals and determined that the learning disability resource room and support services which had been recommended for Doe at his February 16, 1994 MDC and

then eliminated at Mrs. Doe's request should be reinstated. The plaintiffs would argue that this reinstatement is indicative of the staff finding Doe's placement at OPRF to be inappropriate. However, given that it was Mrs. Doe who requested that these special services be discontinued and that these precise measures had first been recommended in February 1994 at the MDC held in preparation for Doe's transition into high school, we disagree.

The plaintiffs devote a significant amount of energy in arguing that Doe should have been evaluated for ADD or ADHD. At the September MDC, the plaintiffs' attorney requested that Doe be evaluated for ADD. According to the plaintiffs, the MDC staff's failure to so evaluate or consider Doe's case in light of such a possibility, i.e., that Doe might have ADD or ADHD, violated Doe's rights.

***7** At both due process hearings, the plaintiffs attempt to elicit testimony as to Doe's alleged ADD or ADHD. Several individuals testified, each of whom, the plaintiffs claim, suggests that Doe has ADD or ADHD. Whether or not Doe has ADD or ADHD (and the parties vigorously dispute this), however, is not the issue. If, for example, the presence of ADD or ADHD under the circumstances would have had little impact on the MDC staff's decision as to the relationship between Doe's misconduct on September 9, 1994 and his disabilities, then no rights would have been violated. If, however, such a diagnosis would have clearly influenced the MDC staff's decision, the outcome changes.

Although the plaintiffs maintain that several members of the staff indicated a desire to have more information, the MDC staff nevertheless unanimously determined that Doe's conduct was unrelated to his disability. In forming this decision, the staff relied upon, *inter alia,* a series of annual MDC's and accompanying evaluations dating back to 1988, as well as an evaluation by the OPRF psychologist. Notably, at no time prior to the September 19, 1994 MDC was the possibility of ADD or ADHD ever mentioned by the Does, former teachers, or past MDC reports. This is significant, especially given that such disorders customarily manifest during the grade school years. Given the absence of several of the more prevalent signs, the MDC staff thus had some basis for finding the attorney's request for an ADD evaluation to be somewhat suspect.

The evidence presented by the plaintiffs at the hearings is likewise uncertain as to whether Doe's act of bringing marijuana to school related to his disability--ADD, ADHD, or otherwise. There was testimony by the Doe's psychologist, for example, to the effect that Doe's conduct reflected a sense of low self-esteem, thus compelling Doe to act in such a way which would make him look "cool" to impress his peers. Indeed, this was offered as an explanation for Doe's behavior on September 9, 1994, the presence of ADD or ADHD notwithstanding.

The Does' psychologist did testify that Doe exhibited behavioral traits indicating ADHD. As such, Doe lacked a sense of impulse control. However, the psychologist also stressed that Doe did not exhibit any problems with inhibitory control. Based on Doe's behavioral history and scholastic achievement, Doe's psychologist believed that Doe could behave spontaneously, impulsively, and without being aware of the consequences of his actions. However, Doe knew fully the difference between right and wrong. Doe could have excellent control of his behavior when he understood the consequences of his actions.

The day of the school dance, Doe admits to having been present while the OPRF rules of conduct were being explained to the students. Doe had received a copy of school regulations at home and had been instructed as to OPRF's drug policies as a member of the soccer team. Moreover, Doe had the marijuana for at least a day prior to the dance, and the circumstances of the day further indicate a conscious decision to bring the marijuana to the school dance. Doe's conduct on September 9, 1994 was not spontaneous. To the contrary, the nature and circumstances surrounding Doe's actions indicate that they were quite deliberate.

***8** Even assuming the presence of ADD or ADHD, there is little support in the record that Doe's actions related to any of his disabilities. There is moreover little support that the presence of ADD or ADHD under the circumstances would have significantly altered the findings of the MDC or that the Does were in any way prejudiced by the swiftness with which the MDC was held. We do not deny that the defendants exhibit minimalist tendencies where due process is concerned. Nevertheless, we are hesitant to tread into the area of school discipline absent flagrant inequities. If the conduct of the school district reasonably protected the rights of the student and the district's actions were reasonably informed, our inquiry must end.

John Doe was a mainstreamed special education student who was just starting high school. In an effort to nurse a sense of low self-esteem and to gain the approval of his peers, John Doe brought a bag of marijuana to a school dance. An MDC determined that this action was not related to Doe's disabilities. As such, John Doe was

subject to expulsion. Whether the punishment given actually fit the crime is not for this court to decide. The Level I hearing officer heard testimony and determined that the school district had proceeded appropriately under the circumstances. The Level II hearing officer reversed, and in so doing, became entwined in certain factual contentions which were not properly dispositive. Because we ultimately agree with the conclusion of the Level I hearing, we grant summary judgment as to the defendants' counter-claim. The plaintiffs' cross-motion as to the counter-claim is denied.

CONCLUSION

For the reasons set forth above, the plaintiffs' motion for summary judgment as to Count VIII of the complaint is denied. The plaintiffs' motion for summary judgment as to the counter-claim is likewise denied. The defendants' motion for summary judgment as to the counter-claim is granted.

All Citations

Not Reported in F.Supp., 1996 WL 79411

Footnotes

1 Although Doe's achievement test scores were not nearly so low, the plaintiffs maintain that Doe possesses a fourth grade reading ability, first grade handwriting ability, third grade spelling ability and a sixth grade math ability. The plaintiffs further maintain that Doe suffers from Attention Deficit Hyperactivity Disorder ("ADHD"), low self-esteem, poor impulse control, and poor judgment. The defendants admit that Doe was a special education student. However, the defendants do not agree with the ADHD assessment or with the extent of Doe's alleged problems.

2 The plaintiffs' also assert that the school district did not adequately contact them once the semester expulsion was over. Although the school district presents evidence to the contrary, Doe had already been placed in a different school with no apparent plans to return to OPRF.