1996 WL 392160
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/Counter–Defendants,
v.
BOARD OF EDUCATION OF OAK PARK & RIVER FOREST HIGH SCHOOL DISTRICT 200, et al., Defendant/Counter–Plaintiffs,
and
Illinois State Board of Education, Defendant.

No. 94 C 6449.
|
July 11, 1996.

MEMORANDUM OPINION

KOCORAS, District Judge:

***1** This matter is before the court on Plaintiff's motion for clarification or reconsideration of this court's April 19, 1996 Memorandum Opinion and Defendant's motion for reconsideration of that same opinion. For the reasons set forth below, the plaintiff's motion is denied. The defendant's motion is granted.

DISCUSSION

It has been nearly two years since Plaintiff, John Doe ("Doe"), a then 13 year-old learning disabled freshman at Oak Park River Forest High School ("OPRF"), was discovered with marijuana while attending a freshman school dance. Defendant Board of Education of Oak Park River Forest High School District 200 ("the Board") issued a ten-day suspension to Doe as punishment for this activity, and Doe was ultimately expelled for the remainder of the fall semester. Two due process hearings and an eight-count complaint filed in federal court followed. Nearly two years and numerous dispositive motions later, the parties vigorously continue their dispute with virtually nothing amiably resolved.

On October 11, 1995, this court granted summary judgment in favor of the defendant as to Counts I–VII of the plaintiff's complaint. On February 15, 1996, this court denied summary judgment in favor of the plaintiff as to Count VIII. By virtue of a motion for reconsideration and in light of a recently published opinion letter issued by the Office of Special Education Programs ("OSEP"), however, the court on April 19, 1996, reconsidered that portion of its February opinion which concerned the issue of whether the school district was obligated to continue providing services to special education students who had been properly expelled. *See* 23 IDELR 894–95. OSEP's position as to that issue was in the affirmative, and the court, expressing reservations with the policies endorsed by OSEP, nevertheless decided to afford deference to OSEP solely as to that issue. Summary judgment in favor of the plaintiff was thus granted as to Count VIII. *As to all other issues the plaintiff's motion for reconsideration was denied.*

Seemingly dissatisfied, the plaintiff now seeks clarification and/or reconsideration of a second issue, i.e., the question of the Individuals With Disabilities Education Act's ("IDEA") stay-put provision. *See* 20 U.S.C. § 1415(e)(3). As indicated above, however, the court expressly declined reconsideration of this issue on April 19, 1996, and we do not feel inclined to revisit it at the present time.[1] In our February 15, 1996 Memorandum Opinion, the court made clear that neither the Supreme Court nor the IDEA mandates the enforcement of a stay-put provision where the student's misconduct is found to be unrelated to his disability. Once the school district has properly made such a determination, the school district is authorized to treat the case as any other—i.e., 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.

***2** In the present case, Doe's act of bringing marijuana to a school dance was found by the school district to be unrelated to his disabilities. In so finding, the defendant's adherence to due process was quite possibly on the sparse end of the spectrum, but the rights of the student were nevertheless reasonably protected and the district's actions were reasonably informed. That Doe has now been independently evaluated as having Attention Deficit Hyperactive Disorder ("ADHD") does not change the propriety of the district's actions. As we noted in our February 15, 1996 Memorandum Opinion, even assuming the presence of ADHD, little support existed in the record

that, under the circumstances, the findings of the multi-disciplinary conference or the school district would have been significantly changed. Absent flagrant inequities, the court is hesitant to tread into the area of school discipline. Here, the school district made a reasoned determination that Doe's conduct was unrelated to his disabilities. That being so, the stay-put provision of IDEA was not implicated, and the plaintiff's motion for reconsideration as to that issue is denied.

One matter remains. As previously indicated, the court on April 19, 1996 afforded deference to an opinion letter issued by OSEP and reconsidered that portion of its February 15, 1996 opinion dealing with the school district's obligation to continue providing services to Doe even though his conduct was found to be unrelated to his disabilities. The defendant, noting that such deference was not warranted given the interpretive nature of the agency's letter and further noting the court's expressed lack of agreement with the agency's views on the issue, now seeks "reconsideration" as to the April 19, 1996 reconsideration. The defendant argues that the deference afforded by the court to the OSEP opinion letter constituted an error of law, effectively rendering administrative agencies such as OSEP super-legislatures by permitting them to issue opinions with legislative effect absent any review by affected parties or courts. Upon further reflection, we agree with the defendant. In *Raymond S. v. Ramirez,* 23 IDELR 965, 970 (N.D.Iowa 1996), the district court recently set forth the parameters for the standard of review for interpretive rules. As observed by the court:

> "Interpretive rules" have not been subjected to "notice-and-comment," but instead have been " ' "issued by an agency to advise the public of the agency's construction of the statutes and rules which it administers." ' " *Guernsey Memorial Hospital,* 115 S.Ct. at 1239 (quoting *Chrysler Corp. v. Brown,* 441 U.S. 281, 302 n. 31 (1979), in turn quoting the *Attorney General's Manual on the Administrative Procedure Act* 30 n. 3 (1947)). Such "interpretive rules" do not have the force and effect of law and "are not accorded that weight in the adjudicatory process." *Guernsey Memorial Hosp.,* 115 S.Ct. at 1239; *St. Paul–Ramsey Medical Ctr.,* 50 F.3d at 527 n. 4; *Doe v. Reivitz,* 830 F.2d 1441, 1447 (7th Cir.1987). Although the courts may find such interpretations persuasive and treat them as if they were binding, the courts have the discretion to substitute their own judgment on all questions of statutory interpretation. *See St. Paul–Ramsey Medical Ctr.,* 50 F.3d at 527 n. 4 (citing *Guernsey,* 115 S.Ct. at 1238); *Reivitz,* 830 F.2d at 1447 (citing 2 K. Davis, *Administrative Law Treatise* § 7.11, at 55 (1979)). The preliminary power of the interpretation is in the agency, but the final power of interpretation is in the courts. *Id.*

Ramirez, 23 IDELR at 970. The policy endorsed by the OSEP opinion letter here relied upon by the court was clearly interpretative, not legislative. That being so, this court was entitled to defer to such a policy, but the court was not bound by it. To the contrary, we believe that OSEP's position requiring a school district to continue to provide services where the student's misconduct is found to be unrelated to the student's disability is based upon an erroneous extension of the Supreme Court's decision in *Honig v. Doe,* 484 U.S. 305 (1988). We further note that such a policy is not otherwise explicitly mandated by the IDEA. Accordingly, based on additional consideration, we believe that the basis for our April 19, 1996 decision was flawed. We grant the defendant's motion for reconsideration. Summary judgment in favor of the plaintiff as to the entirety of Count VIII is denied.

CONCLUSION

***3** For the reasons set forth above, the plaintiff's motion for clarification or reconsideration of this court's April 19, 1996 Memorandum Opinion is denied. The defendant's motion for reconsideration is granted.

All Citations

Not Reported in F.Supp., 1996 WL 392160

Footnotes

1 We likewise decline the plaintiff's suggestion that we should reconsider our October 11, 1995 opinion.