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A CIRCUITOUS ROUTE TO TEACHER DISMISSAL: SEXUAL HARASSMENT AND TEACHER DISMISSAL

Shreve v. Bd. Of Education of Mt. Vernon High School District No. 201, et al.

No. 4-99-0132 (December 20, 1999)

Jason P. Klein, M.S. Ed.

Facts of the Case

Just before Winter Break during the 1994-95 school year, Mt. Vernon High School District 201 dismissed tenured teacher, Ronnie O. Shreve. Mr. Shreve's dismissal was based upon evidence gathered by School District 201 in response to charges of sexual harassment against him. These charges were made by female students in Shreve's math classes. District 201 immediately dismissed Shreve by determining that the reasons for his dismissal were not remediable. Shreve objected to his firing, and the matter went before a hearing officer.

Shreve, who has one natural, functioning eye and one glass eye, claimed that his rights were violated by District 201 in accordance with the Americans with Disabilities Act of 1990 (ADA).[1] Shreve also argued that the charges against him were baseless. He claimed that what the students termed sexual harassment was nothing more than normal teacher behaviors to ensure an appropriate learning environment in the classroom. In other words, Shreve's actions were methods of classroom management. It is here that the facts of the case become

unclear. The complaints of the female students state that "they were moved to the front of the room because they were pretty. Other evidence indicated they were moved to the front of the room because they were talking and being disruptive."[2] Likewise, other facts of the case are disputed as to whether or not Shreve's actions were sexual harassment or were simply common methods of keeping students on task. One such example of this is that the female students complained that when Shreve stared at them it made them uncomfortable. During the dismissal hearing, Shreve and other teachers, "testified that some of the students in plaintiff's classes were those who did not stay on task and that staring at a student was a method employed to get a student's attention."[3] In addition to the question of whether or not Shreve was harassing students or simply keeping them focused on math, Shreve believes that evidence used against him that was from 1989 should have been inadmissible in the case.

Either way, the facts of the case are brought forward through the initial dismissal hearing. After all, the outcome of that hearing is based upon the facts of the case, not the procedural maneuvering that is often featured in court cases. As such, these facts are considered to be true by all subsequent courts unless there is a compelling reason to force the court to consider the information as if it were new.[4] In considering the "voluminous"[5] record of this case, the hearing officer did determine "that a gender-hostile environment existed in plaintiff's math classes in school years 1993-94 and 1994-95."[6]

Contributing to this environment, Shreve "did

playfully and intentionally bump hips with a female student JF in the hallway while in route from the classroom, to a routinely used computer lab."[7] Not only that, Shreve used his seating chart policy to "seat selected pretty girls in the front row."[8] It was these instances that led the hearing officer to determine that Shreve's classroom was indeed a "gender-hostile environment."[9] By determining that Shreve's classroom was such an environment, the hearing officer determined that Shreve was guilty of one type of sexual harassment-hostile environment.[10]

The school district had brought nine charges against Shreve in firing him from his teaching position. The hearing officer found enough truth in some of these charges to prove that a hostile environment existed. While the hearing officer agreed that Shreve's actions were in err, he also determined that Shreve's actions were remediable. Thus, District 201 must give Shreve opportunities to alter his behavior before he is dismissed from his position. District 201 had not done this, and as a result, Shreve must be reinstated. From there, the District took this matter to Circuit Court, which found in favor of the District. Shreve, of course, appealed, and the case rested in the hands of the Appellate Court.

Analysis of the Case

In examining the case, the court relied heavily on the proceedings from the dismissal hearing. Often times, a court will carefully examine the decision of the court immediately proceeding it, and in this case, the circuit court's decision was rarely mentioned. In deciding the case, the court immediately took care of one of the issues

that Shreve maintained on appeal—that his rights had been violated under the provisions of the ADA. Apparently, Shreve had determined that this argument was "meritless,"[11] and the court succinctly agreed. With that baseless claim out of the way, the court moved on to an examination of the powers of the hearing officer. After a lengthy discussion of previous cases, the court determined that the findings of the hearing officer take precedence over the findings of the School District, "including the issue of remediability,"[12] a point which the district had disputed. The district had claimed that its findings that Shreve's actions were irremediable had greater legal weight than the hearing officer's alternative findings. The Appellate Court disagreed, and in doing so, determined that Shreve's behavior was remediable.

School District 201's arguments in this case continued to attack the hearing officer's decision. The District claimed that the hearing officer had overstepped his legal bounds in determining that Shreve must be reinstated. This court disagreed. "In making his decision, the hearing officer correctly concluded that his authority was limited to (1) reinstating plaintiff with no loss of pay or (2) upholding the dismissal."[13] In this case, the hearing officer had chosen option one based on the fact that the school district had not warned Shreve and given him an opportunity to alter his behaviors with students.

The Appellate Court moved on to examine the reasons of the actual dismissal. First, the court points out that "a tenured public school teacher may not be removed from employment except for cause."[14] What constitutes cause is defined in *Fadler v. State Board of*

Education. "'Cause' is some substantial shortcoming which renders continuance in employment detrimental to discipline and effectiveness of service; something which law and sound public opinion recognize as a good reason for the teacher to no longer occupy his position."[15] In this case, the hearing officer upheld that cause did exist, and that cause was the charge of sexual harassment.

A sexual harassment case centered on charges of a hostile environment is far more unclear than a quid pro quo case. "To establish the existence of a hostile environment, there must be both (1) an objective showing that a reasonable person would find the environment hostile and abusive and (2) a subjective showing that the victim in fact found it hostile and abusive."[16] The court goes on to acknowledge that the hearing officer found that Shreve's actions and the reactions of his female students met this standard. On Shreve's inability to maintain an appropriate demeanor with students, the hearing officer and the School District agreed. On whether or not such behaviors were reparable, the hearing officer and school district disagreed.

On this question, the hearing officer simply concluded that the behavior was remediable, and the district needed to present Shreve with a Notice to Remedy. The hearing officer did suggest that if the district's more severe charges of quid pro quo sexual harassment had been found true, the situation would likely have been considered irremediable. These charges, though, were not found to be true. Additionally, there was the confusing question of whether or not some of Shreve's actions may have been common classroom management techniques. With these questions, the hearing officer deter-

mined that the district had erred in firing Shreve without providing him an opportunity to remedy his actions.

In the end, the court upheld the hearing officer's initial decision and determined that Shreve was entitled to damages. This decision was based on the legal precedent that "when conduct is remediable, the failure to give a written warning requires reversal of the teacher's dismissal."[17] While Shreve's behavior was inappropriate, he maintained his job because of the procedural mistakes of School District 201.

Implications for School Administrators

Due to the combination of sexual harassment and personnel issues that are presented by this case, it has important implications for school administrators. First, school administrators must understand the legal concept of sexual harassment. Such an understanding serves as the foundation to preventing it in one's own school building. Again, there are two types of sexual harassment. The first is quid pro quo harassment. This is when a specific good or service is exchanged for sexual favors. This might occur if a teacher and student become sexually intimate in exchange for specific grades for that student or if a building-level administrator demands sexual relations from a teacher in exchange for a favorable performance evaluation.

The second type of sexual harassment is exhibited in this case. The courts recognize an environment that is hostile as a result of repeated joking, sexual innuendo, and even touching as a form of sexual harassment. For an environment to be considered hostile, there are two standards that must be satisfied.[18]

(1) A reasonable person would find the environment hostile and abusive.

(2) The victim did in fact find the environment hostile and abusive.

Building-level administrators must be on-guard against such an environment. First, school districts must have district-wide policies in place. These policies should include complaint procedures, and these procedures should not burden the individual filing the complaint as this subject can be difficult enough to breach. Policies also should include male and female liaisons with whom complaints can be filed. The people that fill these roles should be chosen wisely for they must be the type of people whom individuals trust and feel are caring. At the same time, there must be great care in maintaining high levels of confidentiality with the person who is charged with sexual harassment. Even if such charges prove false, the very fact that one has been charged with this crime can prove damaging to that individual's career and their character. As such, policies and practices must balance the need to care for an individual who may have been the victim of such a crime with the need to protect the rights of the accused.

While policies are absolutely necessary, they will only go so far as to help prevent sexual harassment from occurring in the first place. Policies tend to be reactive, and this is a topic that requires proactive behavior and leadership on the part of school administrators. A key element to preventing a hostile environment is a basis of trust among all members of the school community, including students and parents. Issues of sexual harassment are difficult to speak about with others, and if there

is not a trusting climate, they will be even more difficult to breach. Additionally, there needs to be communication and education of all members of the school community about the topic of sexual harassment. In recent years, some of the most highly-publicized battles[19] in school law have revolved around the topic of sexual harassment. It is critical that school officials are aware of this topic and takes steps to prevent it before finding their school mired in a legal dispute.

This case presents a number of critical implications on the topic of sexual harassment for school administrators, but at its heart, this case is really one that deals with personnel issues. As such, in its wake this case also has personnel implications for school administrators. The first issue presented by the decision of the court in this case is a reminder to all school administrators. A teacher cannot be fired simply because an administrator does not like him or her. The administrator must have cause to dismiss a teacher. The definition of cause is more open-ended than most administrators realize. As a result, it may be even easier to demonstrate cause than is commonly assumed. As previously quoted here, cause centers on a "substantial shortcoming"[20] of the teacher. This definition goes on to state that this shortcoming is recognized "as a good reason for the teacher to no longer occupy his position."[21] As a result, what constitutes cause will vary greatly from case to case, but the law itself gives this concept a wide berth to encompass many issues and situations. Nevertheless, the first step in dismissing a teacher is to determine that one has cause.

It seems that a key reason many administrators do not pursue dismissing teachers is that they fear the

process of teacher dismissal. This process is critically important, as this case has demonstrated. In this case, Shreve was given back his job because of procedural errors committed by School District 201. While the process is rather time consuming, it is not difficult. The process is laid out in great detail by law. Additionally, school districts should have policies that lay out the process in steps of greater detail that are clearly understandable to teachers and administrators. Administrators must consistently document incidents and conversations with the employee. Teachers must be provided with the warnings and support to allow them the opportunity to modify their actions and make different decisions. Though it may be difficult and uncomfortable for both parties, it is critically important that the administrator develops a climate of free communication with the teacher. Ideally, these steps allow the teacher an opportunity to change what his or her performance and maintain his or her job. The goal of the administrator should not be simply to fire the teacher. Rather, the goal of the administrator is to help each teacher become more proficient in the science and art of education.

If these intermediary steps do not help the teacher, and the teacher must be dismissed, the dismissal hearing is a critical step in the legal process. As the court has stressed in this case, the outcome of the dismissal hearing is based upon facts. Additionally, those facts are used as the factual basis of the case in future court proceedings the majority of the time. This means that a clear and accurate rendering of the facts is vital to the success of court cases that may ensue on appeal. If the school administrator has taken pains to document incidents with

the teacher, ensuring a complete and accurate portrayal of the case will not be difficult.

Finally, this case demonstrates the legal and ethical dilemmas, along with the political guesswork, that regularly face school administrators. In a case like this, school administrators are faced with a choice among difficult options. If the school administrators fire the teacher, they likely face a lengthy, time-consuming, and expensive legal battle with the teacher. At the same time, they may gain greater trust and support from students and parents. If the school district does not fire the teacher, it has potentially opened itself up to suit from the students and their parents for not providing a safe environment for those students. This illustrates the necessity of being able to reframe problems and situations. School administrators must ask themselves if there might be other solutions to help resolve this situation. For example, can a teacher be transferred to another school? This may afford the teacher a fresh start, an opportunity to rebuild a teaching career along a different path.

The dismissal of a teacher is a difficult situation for everyone involved, and this is no secret to school administrators. This case demonstrates a number of pitfalls that other administrators must avoid once they have made the decision to pursue a teacher's dismissal. Additionally, this case highlights the critical concepts of sexual harassment, an issue that is antithetical to the instructional trend of making schools a place that are more physically and emotionally safe for students.

References

[1] 42 U.S.C. Section 12101 et seq. (1994 & Supp. III 1997)

[2] Shreve v. Bd. of Education of Mt. Vernon H.S. District No. 201, et al. No. 98MR195 (December 20, 1999) p. 8

[3] Ibid. at p. 8

[4] Chicago School Reform Board of Trustees v. Illinois Educational Labor Relations Board and Chicago Teachers Union Local 1, American Federation of Teachers, AFL-CIO. No. 97-CA-0059-C (November 16, 1999)

[5] Shreve v. Bd. of Education of Mt. Vernon H.S. District No. 201, et al. No. 98MR195 (December 20, 1999) p. 2

[6] Ibid. at p. 3

[7] Ibid. at p. 2

[8] Ibid. at p. 2

[9] Ibid. at p. 3

[10] There are two types of sexual harassment. The first is quid pro quo harassment—where the harasser requires the harassed to provide sexual favors in exchange for something. This is the traditional type of

sexual harassment in which a superior demands something of a subordinate in exchange for something like a promotion, a pay raise, or possibly a grade. The other type of sexual harassment is hostile environment. This is where jokes, comments, or other displays are made consistently over a long period of time such that sexual harassment is pervasive throughout the environment.

[11] Shreve v. Bd. of Education of Mt. Vernon H.S. District No. 201, et al. No. 98MR195 (December 20, 1999) p. 3

[12] Ibid. at p. 5

[13] Ibid. at p. 5

[14] Ibid. at p. 5. In its decision, the court cites: Fadler v. State Board of Education, 153 Ill. App. 3d 1024, 1026 506 N.E.2d 640, 642 (1987).

[15] Fadler v. State Board of Education, 153 Ill. App. 3d at 1026-27, 506 N.E.2d at 642-43.

[16] Shreve v. Bd. of Education of Mt. Vernon H.S. District No. 201, et al. No. 98MR195 (December 20, 1999) p. 6. This standard was taken from Farragher v. City of Boca Raton, 524 U.S. 775, 787, 141 L. Ed. 2d 662, 676, 118 S. Ct. 2275, 2283 (1998).

[17] Ibid. at p. 9. This statement rests on the decision in: Hegener v. Board of Education of the City of Chicago, 208 Ill. App. 3d 701, 725, 567 N.E.2d 566, 582 (1991).

[18] Shreve v. Bd. of Education of Mt. Vernon H.S. District No. 201, et al. No. 98MR195 (December 20, 1999) p. 6. This standard was taken from Farragher v. City of Boca Raton, 524 U.S. 775, 787, 141 L. Ed. 2d 662, 676, 118 S. Ct. 2275, 2283 (1998).

[19] These cases have included a tremendous range of scenarios. May 1999 saw the Supreme Court decide Davis v. Monroe County Bd. of Education. This case involved student-on-student sexual harassment. The decision here found the schools held liable for being negligent in dealing with issues that it was aware were occurring. A year earlier, Doe v. University of Illinois, a case which dealt with high school students at the University of Illinois Lab School, determined the same outcome. While the outcome was the same, University High School administrators had taken a number of actions against the perpetrators the harassment. Nevertheless, the court determined that what the school was doing was not enough. There are also cases of teacher-on-student harassment. This type of sexual harassment is age-old, but recent years have seen this area muddied with what seems to be consensual sexual relations. The most glaring case is that of teacher Mary Kay LeTorneau who has mothered two children by her former sixth grade student. In these types of cases, the court has held that regardless of what the child says, there cannot be consensual relations because of the child's age and the naturally deferential position of student in relation to the teacher. Finally, schools, like any other business, must also address issues of sexual harassment among adults. In this area there is a wide array of well-publicized case law that

addresses such issues in all types of employment settings.

[20] Shreve v. Bd. of Education of Mt. Vernon H.S. District No. 201, et al. No. 98MR195 (December 20, 1999) p. 5. In its decision, the court cites: Fadler v. State Board of Education, 153 Ill. App. 3d 1024, 1026 506 N.E.2d 640, 642 (1987).

[21] Ibid.

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LESSONS FROM DECATUR: WHAT HAPPENED AND WHAT IT MEANS FOR SCHOOLS

Fuller, et al. v. Decatur Public School Board of Education, et al.

No. 99-CV-2277 (January 11, 2000)

Jason P. Klein, M.S. Ed.

Following the incidents of school violence that have occurred throughout the United States in recent years, local school boards across the country spent the summer months during 1999 establishing a get-tough stance on violence in their own schools. School boards made all types of symbolic statements in an effort to demonstrate their commitment to maintaining safe and peaceful schools in their community. Like other school districts, the Decatur Public School District took these same steps to combat school violence in its economically depressed Central Illinois community, a community that has seen its share of violence committed by and against its youth. Nevertheless, Decatur became the center of national media attention throughout Fall 1999 as these steps could not prevent a violent fight at a football game and its ensuing legal aftermath.

Decatur is a community of about 83,000 people, and the public school system features three high schools, Eisenhower, MacArthur, and Stephen Decatur. At a September football game between two of these schools, Eisenhower and MacArthur, a fight broke out that scat-

tered fans from one set of bleachers. As a result of this fight, seven students, all African-American males, were expelled from school for a period of two years. The expulsions immediately caught the eye of the newly formed Decatur chapter of Operation PUSH, the civil rights organization run by the Reverend Jesse Jackson. The local Operation PUSH organizers quickly came to the defense of the expelled students as they tried to intercede to have the severity of the expulsion reduced.

While the situation quickly took over the local spotlight, little progress was made at any type of negotiation. The school board held firm on its expulsions citing the severity of the fight and stressing the importance of policy actions that demonstrated that school violence would not be tolerated. At an impasse, the situation captured the attention of civil rights leader Jesse Jackson. Jackson determined that this situation was symbolic of a maligned policy practice in action. Jackson made his way to Decatur were he suggested that a two-year expulsion merely served to put the seven young men out on the street rather than in the classroom, where Jackson believed they belonged. When Jackson arrived in Decatur so, too, did the national media. The nation's attention had so often focused on school violence in recent years, and it would now focus on a specific incident that in some ways was a product of that violence.

Jesse Jackson proved to be a lightning bolt in Decatur. Within hours of his arrival, he had made speeches proclaiming that the boys would be back in school. Controversy erupted across Decatur as local citizens took up sides in the fight. Jackson's supporters believed

that expulsions were not the solution to school violence. They suggested that these boys should not be out of school as that would place a greater burden on society in the long run. The school board had its share of supporters as well. The school board's supporters reminded the public of other recent incidents of school violence around the country. They believed that the only way to end school violence was with tough policies that were strictly and routinely enforced.

On Monday, November 8, 1999, the showdown came to a boiling point. The previous day, Jackson had announced that he would be bringing the boys to school. Facing the real threat of a major showdown between Jackson and his supporters and the School Board along with its supporters in a school full of students and faculty, the Decatur School District canceled classes on November 8th. With that began high-level negotiations to resolve what could now be termed a crisis as classes were cancelled for thousands of students, protests occurred, and the national media descended on Decatur. The key players in these negotiations were Jesse Jackson, representing the interests of the expelled students, Decatur School Superintendent Kenneth Arndt, the Decatur School Board, and Illinois Governor George Ryan, who appeared on November 8th to serve as a mediator armed with a box of doughnuts in hand.

Negotiations continued throughout the day on Monday, November 8, 1999, and it became apparent as the afternoon turned to evening that the situation would not be resolved before school the following day. Public interest remained high, and the national media tracked the story closely. Decatur school officials determined

that they would again keep their schools closed on Tuesday, November 9th. Rather than drawing to a close, the situation actually escalated on November 9th as both sides began legal maneuvers to ensure victory in the long term. The Macon County[1] Sheriff's Police charged nine people with mob action as a result of the football game fight that had occurred nearly two months earlier. The Macon County Sheriff's Department insisted that the timing of the charges was purely coincidental and that the investigation had been ongoing. Also on November 9th, a lawsuit was filed in Federal District Court by six of the seven students against the Decatur Public School Board. Operation PUSH supported the students in the filing of this lawsuit.

In spite of the weighty legal happenings of the day, progress had been made by late in the evening. School would be back in session on Wednesday, November 10th for a day that had previously been scheduled as a half day. Additionally, through Governor Ryan's intervention, it was agreed that the expelled students would have the opportunity to attend an alternative school in Decatur beginning on Wednesday, November 10th. The school board also had relented and decreased the length of the students' expulsions from two years to the remainder of the 1999-2000 school year.

As things began to quiet down in Decatur, this conflict left a trail of confusion and questions in its wake. The confusion regarding the specific incident in question here would be resolved in Illinois' Central District Federal Court in late December 1999. At the same time, the situation in Decatur had left legal and policy questions about who was being expelled from schools, why

these students were expelled, what determined the length and severity of their expulsion, and what processes were in place to protect students who were expelled. Finally, politicians, educators, and news editors grappled with ethical questions surrounding expulsion itself. With these lingering questions hanging like a cloud, the case appeared before United States District Judge Michael McCuskey from December 27 through December 29, 1999. His decision was rendered on January 11, 2000.

Facts of the Case

When an issue of school discipline goes before the courts, it is rather unusual that the facts of the case are a critical part of the courtroom proceedings. Ordinarily, both parties generally agree on the facts of the case. That would hold more or less true in the Decatur case, but the facts of the case nevertheless took on an unusually important position as a result of the media coverage that had occurred in early November. The media coverage left one wondering what had really occurred, and the Federal Court would provide a detailed record of the facts of this case.

The case sprang, initially, from a fight that occurred during the third quarter of a high school football game in Decatur on Friday, September 17, 1999. The fight, a third of which was caught on video by a spectator across the field, caused spectators throughout the bleachers to scramble out of the way as the fight moved from one end of the bleachers to another. The bleachers, which were nearly full at the fight's outset, were half-empty when the fight ended. Ed Boehm, the principal at MacArthur High School, "stated that he had never seen a fight

of this magnitude in his 27 years in education."[2] The videotape, which was a focal point of media interest during the tensest days of the crisis in November, corroborated the severity of the fight. In the court's eyes, "the videotape showed a violent fight where the participants were punching and kicking at each other, with no regard for the safety of individuals seated in the stands watching the game. The videotape also showed that spectators in the bleachers were scrambling to get away from the fight."[3] While the fight was severe, none of the school administrators were able to talk with or detain any of the fight's participants that night. For the most part, administrators were busy providing support to all of those who had been upset by the incident or who had been mildly injured in their attempt to move out of the path of the fight. There was one incident of a school administrator trying to stop one of the students on his way out of the stadium immediately following the fight, and this student merely pushed the administrator out of his way.[4]

The Monday following the football game, the administrators at each of the respective high schools began the process of determining what exactly had happened at the football game and who was involved. Each of the principals immediately suspended the students in their building who had been involved in the incident for ten days. At the same time, each principal recommended that the students from their school be expelled for two years. With the students now out of the school building, the school district began taking steps to expel the students for the two-year period.

The first step in the expulsion process was a letter

from the Decatur Superintendent Kenneth Arndt. This letter was written on September 23, 1999, and was addressed to the parent or guardian of each of the students. The letter explained that students would have a hearing before an independent hearing officer, and the letter included pertinent information such as the date, time, and location of the hearing. The letter requested that the student and parent or guardian appear at the hearing, and it explained to the recipients that they had the right to bring an attorney and witnesses if they so desired. Not only did the letter provide the details for the next step in the expulsion process, but the letter also outlined the rules that the District claimed that students had violated. This comprehensive letter stated the recommendation for a two-year expulsion, and it stated that the final decision regarding the expulsion of the students rested with the school board. Finally, the letter provided students and their parent or guardian the date and time of the special board meeting that would decide their fate. The court record shows that "the parent or guardian of each of the students received this letter prior to the hearing."[5]

The hearings were scheduled for September 27th through September 29th before Dr. David Cooprider, the Macon and Piatt Counties Regional Superintendent of Schools. Each student had his own individual hearing before Dr. Cooprider, though three of the students did not attend their respective hearings. In each of the hearings, information was presented by a Decatur police officer who works as a school liaison officer. Additionally, school administrators presented their evidence. At the hearings in which students, or representatives on their

behalf, were present, additional witnesses and testimony were presented to the hearing officer. At the conclusion of each hearing, Dr. Cooprider wrote a report specifically for each student. These reports all recommended two-year expulsions.

Within two days of the last of the individual hearings before Dr. Cooprider, the Decatur School Board met to determine the fate of two of the students. The School Board met in closed session, but they nevertheless allowed representatives from Operation PUSH "to address the Board during the closed session."[6] After considering the evidence, the School Board expelled each of the two students in separate votes.

On October 4, 1999, the School Board held a second special meeting to consider the cases of the other four students. Again, the School Board went into closed session, but this time one of the students, with his mother and another adult appeared before the School Board. This student asked to be allowed to voluntarily withdraw from school in Decatur. The Board agreed. Following this, the Decatur School Board, again in separate votes, expelled the three remaining students each for a period of two-years.

A month would quietly pass before the case would make national news. Then, on November 8, 1999, Decatur school officials, the Reverend Jesse Jackson, and Illinois Governor George Ryan renegotiated the students' penalties. In response to these meetings, the Decatur School Board reduced the expulsions from two years to the remainder of the 1999-2000 school year. It is important to note that the student who had voluntarily withdrawn from school had not been expelled. As a

result, these School Board actions had no legal impact on this student.

At this point, the students were still not pleased with the decisions of the Decatur School Board. Thus, they sought relief through adjudication in Federal Court. As the court succinctly states:

> "The students in this case argue that they were expelled by the School Board for a period of two years because of a 'zero tolerance' policy which punished them as a group, denied their constitutional rights and was racially motivated. The students additionally argue that they were stereotyped as gang members and racially profiled by the actions of the School Board. The students claim that, because the fight was of a short duration and that no guns, no knives, and no drugs were involved, no expulsion was warranted for their actions in the fight."[7]

It was these arguments which the court would analyze in light of the evidence presented in late December 1999.

Analysis of the Case

In an extremely well written decision, Judge McCuskey addresses each argument in turn. McCuskey first addresses those points of contention that are, in fact, not in question at all according to the court. The court first determines that students have no right to challenge the two-year expulsion penalty because that penalty was replaced by an expulsion penalty in which the student's will remain out of Decatur Public Schools for the remainder of the 1999-2000 school year. The two-year penalty was

replaced by the Decatur School Board on November 8, 1999, the day before this case was filed in Federal Court. As a result, "the court cannot enjoin enforcement of a penalty which is no longer in existence."[8] From there, the court addresses Gregory Howell's involvement as a plaintiff in this case. Howell was the student who voluntarily withdrew from the Decatur Public Schools. The School District argued that Howell did not share in the claims of the other students because of his decision to voluntarily withdraw. The court agreed with the School District on this point. As a result, the court examines the rest of the case only as it pertains to the other five plaintiffs.

The analysis of the court now focuses on the claims made by the students against the School District. First, though, the court discusses the limited role of the federal judicial system in addressing school discipline. The court is very clear about the trepidation with which it steps into matters that it considers to be within the realm of the school. "School discipline is an area which courts are reluctant to enter."[9] The court goes on to cite the important United States Supreme Court decision in *Wood v. Strickland* that said, "The system of public education that has evolved in this Nation relies necessarily upon the discretion and judgment of school administrators and school board member."[10] Before moving on to discuss specific arguments of this case, the court also discusses the constitutional status of whether or not one has a right to an education. The court points out that there is no constitutional right to an education,[11] and schools have been given a wide berth in what constitutes due process for student discipline issues.[12] In other words,

schools are not likely to violate a student's right to due process except in all but the most egregious or neglectful cases on the part of school administrators. With these caveats, the court examines the plaintiffs' claim that their right to procedural due process had been violated.

While the Supreme Court has stated that students do not have a constitutional right to an education, the Supreme Court also acknowledges that the right to a public education is a property interest. This means that the right to an education is not in itself an absolute right, but it can nevertheless not be taken away without respecting the student's right to due process under the 14th Amendment.[13] As mentioned previously, the students alleged that their due process rights had been violated by the Decatur School District. Public schools, as the court pointed out, must respect a student's due process rights, but public schools are not held to the same standards as are police and other governmental agencies. As a matter of fact, the Seventh Circuit Court of Appeals has stated that an expulsion hearing meets the requirements of procedural due process for a public school.[14] The students argument hinges on their claim "that their due process rights were violated because their parents 'were discouraged in pursuing the due process proceeding for their children.'"[15] In examining this argument, the court determined that the Decatur Public Schools did not violate the rights of the students to procedural due process.

With the students' due process argument decided, the students' next claim to be addressed was the argument that their right to equal protection under the law had been violated. "The students alleged that the District has

maintained a policy and practice of arbitrary and disparate expulsions with regard to African-American students."[16] In response to this claim, the court ordered Decatur Superintendent Arndt to determine the race of all students expelled from the start of the 1996-1997 school year through early October 1999.[17] The results showed that 82% of students who had been suspended were African-American whereas African-American students comprise only 46-48% of the District's student population. While these statistics are powerful, the court responded to them bluntly by clearly stating that "this court cannot make its decision solely upon statistical speculation."[18] In the end, the court suggests that the equal protection claim is not valid because there were no Caucasian students who would be "similarly situated."[19] In other words, students would only be able to use this claim in court if Caucasian students had been involved in this fight or in a similar fight[20] and had received a significantly different consequence for a similar action. On this argument, the court stated that the plaintiffs did not demonstrate that race impacted the School Board's decision.

The most volatile issue brought forth by this case was the appropriateness of *Zero Tolerance* policies. This phrase received a great deal of attention in the press as the situation wore on, and the students claimed that the School District had violated both their procedural and substantive due process rights with the use of a zero tolerance policy. Underlying the students' argument was a resolution that the School Board had passed at the beginning of the school year. This resolution, in response to the incidents of school violence that had occurred

around the United States, stated that it declared "a no-tolerance position on school violence, and encourages all citizens to make a commitment to violence-free schools." In testimony on this topic, even the students' witnesses acknowledged that the adoption of a resolution should not be construed as a demonstration of policy or actions of the board. One school board member, who happened to be one of the two African-Americans on the Decatur School Board, even said that the August resolution did not play a part in any discussions during the October meetings in which students were expelled. As a result of the testimony of witnesses during the trial, the court determined that there was no zero tolerance policy, in word or action, to play any part in this decision.

Finally, the students argued against one of the Decatur School District rules that they had been found to have violated. This is a rule against "gang-like activities." The students claimed that this rule is overly vague.[21] In the court's analysis of this argument, there were three factors that stood out in influencing the court's decision. First, the court determined that this rule is probably not overly vague for a school policy. "A school disciplinary rule does not need to be as detailed as a statute or ordinance, which imposes criminal sanctions."[22] Second, the expulsion hearing testimony of the School Liaison Officer noted that the September 17th fight was a fight between members of the Vice Lords and the Gangster Disciples, two rival gangs who had been involved in an earlier incident on September 3, 1999. The officer's testimony leads the court to believe that students did violate this District rule. Finally, even if the court had thrown out the "gang-like activities" rule, the

students would have still been in violation of the other two District rules that had previously been cited.[23]

The students went into this case hoping to gain a permanent injunction that would allow them to re-enter their home high schools for the remainder of the school year. To obtain a permanent injunction, the burden of proof rests with the plaintiffs. The court determined that the plaintiffs' arguments did not meet the necessary burden of proof to provide them with the injunction to reinstate them in their high school classes. As a result, the November 8th decision of the Decatur School Board stands. The students can attend an alternative high school through the end of the 1999-2000 school year. They may return to their high school at the outset of the 2000-2001 school year.

Implications for School Administrators

With this decision, the courts have reiterated the power of local school districts to make decisions about school discipline. In this high profile case, the court relied heavily on some key landmark United States Supreme Court decisions in making this case. These decisions acknowledge the rights that students have as citizens while at the same time acknowledging the powers of the school *in loco parentis*, or in place of the parent. The school, unlike other arms of the government, has much greater power in relation to the citizens with which it primarily works, the students. The Decatur decision has maintained this legal tradition.

There are a number of critical issues, though, that this case should remind school administrators to ask themselves. First, this case highlights the importance of

school district policies. School districts must ensure that their policies are well written and updated, or at least reviewed, on a regular basis. Additionally, it is critical that school districts self-assess their practices. Are the policies being followed as they are written? In a courtroom, the court will examine the language of the policy as well as the actions and behaviors of the institution and the individuals who work within that institution. To have a well written policy that is utterly ignored by school administrators is, legally, very nearly the same as having no policy or a poorly written policy.

School administrators might also use the Decatur decision to remind themselves about the absolute importance of providing students with the procedural due process to which they are entitled. According to the facts of this case, the Decatur School District seems to have done an exemplary job of providing the students and their parents or guardians with knowledge of and a right to a fair process. One important reminder for many school districts, though it was not an issue in the Decatur case, is that informing students and parents of their rights must be done in plain and understandable language, though that language may not be English. While this is not necessarily a legal mandate binding upon school districts, it is imperative, both for legal protection and ethical reasons, that students and their parents or guardians are informed of their rights and of the process in an understandable and meaningful way.

The most unique facet of this situation was the dramatic media attention that the story garnered around the country. While the initial incident received space in the local media, no one in the school district could likely

predict this type of attention. A school district never knows when it will be thrust into the media spotlight. Additionally, when a school district is suddenly thrust into this position, it is usually not for something very positive. School districts would be wise in today's world of telecommunications to have some type of media-readiness plan. Every school district should have a designated spokesperson. In many cases that will be the Superintendent, but some school districts may wish to select another district-wide administrator for such a job. Then, once this person has been selected, it is critical that this person remains well informed of any school district developments. Sadly, there are always legal and ethical issues popping up for local school districts that must be addressed in the media. As a result, it is imperative that each time one occurs, it does not become a case of crisis management for the school district, but rather it is an opportunity for the district to demonstrate how well it can handle the situation.

Finally, there is one recurring issue that rests as a foundation in all cases of school violence. The best solution to such situations is, of course, preventing them in the first place. There are a myriad of instructional reforms for middle schools and high schools that are designed to improve student achievement but which are also likely to improve school safety. Reorganizing the school into small learning communities, the development of an advisory period and program, and content-area learning that engages students and is meaningful to their lives will all enable teachers and students to get to know one another better and resolve problems before they occur. The most important lesson from the Decatur

experience is to prevent it from occurring again by working with our students.

For more on the situation in Decatur, see the Illinois State School Law Quarterly Online at:

http://www.coe.ilstu.edu/islq

References

[1] Macon County is the Illinois county in which Decatur is located.

[2] Fuller, et al. v. Decatur Public School Bd. of Education, et al. No. 99-CV-2277 (January 11, 2000) p. 7

[3] *Ibid.*, p. 7

[4] *Ibid.*

[5] *Ibid.*, p. 8

[6] *Ibid.*, p. 9

[7] *Ibid.*, p. 2

[8] *Ibid.*, p. 12

[9] *Ibid.*, p. 16. In stressing this critical point of school law, the court cites: Anita J. v. Northfield Township-Glenbrook North High School District 225, 1994 WL 604100, at 2nd (N.D. Ill. 1994).

[10] Wood v. Strickland. 420 U.S. 308, 326 (1975)

[11] The court cites: Smith v. Severn, 129 F.3d 419, 429 (1997). This opinion in the *Smith* case had cited the landmark decision in: San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 35-37 (1973).

[12] Dunn v. Fairfield Community High School District No. 225, 158 F.3d 962, 966 (1998)

[13] Goss v. Lopez, 419 U.S. 565, 574 (1975)

[14] Betts v. Board of Education of City of Chicago, 466 F.2d. 629, 633 (1972)

[15] Fuller, et al. v. Decatur Public School Bd. of Education, et al. No. 99-CV-2277 (January 11, 2000) p. 19

[16] *Ibid.*, p. 21

[17] Two interesting points related to this order. First, it is important to note that the six expulsions in this situation were included in this report. Second, the court makes a special point in its decision to note that Arndt complied with this order overnight. The court seemed quite impressed with his work.

[18] Fuller, et al. v. Decatur Public School Bd. of Education, et al. No. 99-CV-2277 (January 11, 2000) p. 22

[19] *Ibid.*, p. 24

[20] The court notes that none of the fights for which Caucasian students had been expelled were comparable to this fight. "Arndt testified that no other fight listed in the Summary even came close to the magnitude of the September 17, 1999, fight. The videotape speaks volumes on this issue. Boehm testified that it was the only fight of this magnitude he had seen in 27 years in education." *Ibid.*, p. 24

[21] *Ibid.*, p. 26

[22] *Ibid.*, p. 27

[23] *Ibid.*, p. 28

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