

**GLENN COUNTY BOARD OF EDUCATION**

**STATEMENT OF DECISION**

**In re the Expulsion Appeal Hearing of**

**GARY TUDESKO, APPELLANT**

**Upon His Expulsion from the**

**Willows Unified School District**

**Findings of Fact and Order of the Glenn County Board of Education**

**In Accordance with Education Code Sections 48922 and 48923**

On Tuesday, January 19, 2010, the Appeal of the Expulsion Order of the Willows Unified School District Governing Board ("District"), expelling pupil Gary Tudesko ("Pupil"), came before the Glenn County Board of Education ("GCBOE") for hearing upon a stipulation by the District and Pupil, through their respective counsel, continuing the hearing from January 15, 2010. Pursuant to the pupil's request under Section 48920 of the Education Code, the expulsion appeal hearing was conducted by the GCBOE in a public meeting.

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The Pupil was represented C.D. Michel, Esq. and the District was represented by Matt Juhl-Darlington, Esq. Prior to commencement of the appeal, the GCBOE received the record of the expulsion hearing before the District.

#### PROCEDURAL BACKGROUND

On November 20, 2009, the District issued its Order expelling the student for the remainder of the 2009/2010 school year following an expulsion hearing on November 19, 2009. (Transcript of Record, ("TR"), pp. 168.) In its order, the District "found that Gary did violate Education Code sections 48900 Education Code section 48900(b); Possessed, sold, or otherwise furnished a firearm, knife, explosive or other dangerous object, AND under section 48915(c)(1): Possessing selling or furnishing a firearm." (TR, pp.167.) The pupil filed a timely appeal on December 16, 2009 with the GCBOE. (TR 002.) On December 17, 2010, the GCBOE set the hearing on the appeal for January 15, 2010 by written notice to the parties. (TR 001.) Thereafter, the District provided a copy of the record of the Expulsion Hearing that took place on November 19, 2009.

On January 5, 2010, counsel for the Pupil submitted a hearing brief and binder which will be made part of the record. On January 14, 2010, counsel for the District submitted a hearing brief which will be made part of the record.

By stipulation of the parties, the GCBOE rescheduled the appeal hearing to January 19, 2010 at 10:00 a.m. at the GCBOE office and the hearing took place that date with all parties present.

On the appeal, the Pupil requested that the GCBOE reverse the Expulsion Order on multiple grounds. The District requested that the Expulsion Order be affirmed. At the commencement of the hearing, counsel for the pupil also made a motion to strike the brief of the District submitted on January 14, 2010, and made a request for a hearing de novo, which was not opposed by the District.

Upon completion of the hearing, the GCBOE took the motions under submission, including the request for a hearing de novo, and a motion by Pupil's counsel to exclude any new evidence. At the conclusion of the hearing, counsel for the District also objected to the participation of the Glenn County Office of Education Superintendent, Arturo Barrera, in the in GCBOE closed session deliberations.

The GCBOE notes that Superintendent Barrera, at his own choosing, did not participate in any of the deliberations of the Board and did not attend closed session during any of the deliberations.

### STANDARD OF REVIEW

Section 48922 specifies the scope and standard of review by the County Board of Education. The scope of review is limited to four key areas: did the

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District act without or in excess of its jurisdiction (44922(a)(1)); was there a fair impartial expulsion hearing (44922(a)(2)); was there any prejudicial abuse of discretion in the hearing (44922(a)(3); and was any relevant and material evidence improperly excluded or was there any relevant and material evidence that could not have been produced even through reasonable diligence (44922(a)(4)).

Following the hearing and during its closed session deliberations that followed, the Glenn County Office of Education renders the following decision:

- A. The Board denies the motion to strike the brief of the District and GCBOE considered the briefs of both parties and all arguments made by the parties during the appeal hearing.
- B. The Board sustains the objections to the introduction of new evidence and did not consider any new evidence, except for the stipulation made by the parties.
- C. **Findings**
  - 1. The District governing board acted in excess of its jurisdiction to expel the Pupil in that the District commenced the proceedings based upon acts enumerated in Education Code 48915(c)(1) that did not occur on school grounds or at a school activity off school grounds, among other things.
  - 2. The pupil was not afforded the opportunity for a fair hearing before the District governing board in that the Pupil was not provided timely written

notice of all evidence to be presented against him, or given the opportunity to present evidence as it related to evidence of prior conduct unrelated to the charges noticed for expulsion (48900(b) and 48915(c)(1)). Failure to provide such notice would not allow the Pupil, prior to the hearing an opportunity to present evidence addressing other means of correction or whether, due to the nature of the act charged, he poses a continuing danger to the physical safety of the student or others. As a further example, the argument of the Principal during the closing argument that: "All of this dirty laundry, so to speak, would not have been aired had Gary agreed that, 'Yes, I did something wrong. Yes, the school is right in giving me discipline.'" (Reporters Transcript of Appeal Hearing, p 104:15-18.).

3. There was prejudicial abuse of discretion by the District as a result of the following: (a) the charge under 48900 (b), is not supported by a finding related to the act of possession of a firearm that other means of correction were not feasible related to that act. Nor is there a finding that due to the nature of the act, the presence of the Pupil causes a continuing danger to the physical safety of the student or others. Nor is there evidence in the record that other means of correction related to the act of possession of a firearm are not feasible, or that due to the nature of the act upon which the expulsion

was based, namely possession of a firearm, that this Pupil's presence causes a continuing danger to the physical safety of the student or others.

4. Given the above findings, the GCBOE need not reach the determination of whether relevant and material evidence did not exist 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.

### **Order of the Board**

Based on the foregoing findings, which are based upon the review of the record before us, the Glenn County Office of Education reverses the decision of the Willows Unified School District Board to expel Gary Tudesko from the Willows Unified School District. The District shall reinstate the Pupil, orders that his record of expulsion, and any references to it, be expunged by the District, and awards any costs incurred by the Pupil or his parents or guardian related to the preparation of the record presented on this appeal be reimbursed by the District.

In rendering this decision, the GCBOE wants to make clear to the Pupil and District that County Board has the utmost concern for the safety of students at all schools, at school sponsored activities whether on or off school grounds and for students as they travel to and from school. The Pupil and District should understand that this decision was based solely on the record before the GCBOE.

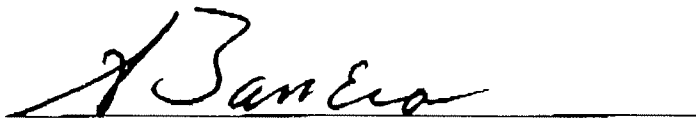
Ayes: Holzapfel, Hanes, Zimmerman, Massa, Perez

Noes: None

Absent: None

Abstain: None

The above is a true and correct report of the action taken by the Glenn County Office of Education on January 22, 2010.

A handwritten signature in black ink, appearing to read "Arturo Barrera", is written over a horizontal line.

Arturo Barrera, Superintendent and Secretary to the Glenn County Office of Education

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