FILED
AUG 26 1980
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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DEXFIELD COMMUNITY SCHOOL DISTRICT,

Plaintiff-Appellee,

vs.

IOWA STATE BOARD OF PUBLIC INSTRUCTION, Appellant, and DARYL L. BARNARD, as Father and Next Friend of AMY A. CLINE,

Defendant-Appellant.

Filed August 26, 1980

0-235
63918

Appeal from Dallas District Court - M. C. Herrick, Judge.

Appellant Board of Public Instruction takes this interlocutory appeal from district court's order denying its motion to dismiss appellee school district's petition for review of a Board ruling. The Board claims the District has no standing to challenge the ruling. AFFIRMED AND REMANDED.

Thomas J. Miller, Attorney General of Iowa; and Howard O. Hagen, Assistant Attorney General; for defendant-appellant.

David J. Welu of Redfield, Iowa, for plaintiff-appellee.

Edgar H. Bittle and Edward W. Remsburg of Ahlers, Cooney, Dorweiler, Haynie & Smith, Des Moines, amicus curiae.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Appellant Board of Public Instruction (Board) takes this interlocutory appeal from district court's order denying its motion to dismiss appellee school district's (District) petition for review of a Board ruling. The Board claims the District has no standing to challenge the ruling. We affirm the district court order and remand for further proceedings.

I. On December 4, 1978, the Board of Directors of the Dexfield Community School District ("District") voted to impose disciplinary measures on an eighth-grade student for possession of a controlled substance. The student appealed pursuant to Chapter 290, The Code, and the Board reversed the District's decision on April 20, 1979. The District brought a certiorari petition to review the Board's decision, and subsequently amended its petition to seek judicial review under the Iowa Administrative Procedures Act, § 17A.19, The Code.

The Board filed a motion to dismiss the petition for review, claiming the District has no statutory authority to appeal a decision of the Board.

II. At the outset we must stress that we do not consider the merits of either the District's action or the Board's decision. The only issue to be decided at this point is the propriety of the order denying the Board's motion to dismiss. Such a motion should be sustained only when it definitely appears plaintiff has failed to state a claim on which any relief can be granted under any provable facts in support of the claims asserted in the petition. Rick v. Boegel, 205 N.W.2d 713, 715 (Iowa 1973). We conclude that standing to seek judicial review may be challenged by such a motion.

The Board claims there is no statutory authority given a school district to appeal a Board decision. The specific claim is that Chapter 290, The Code, which allows appeals from decisions of local school districts to the State Board of Public Instruction, does not itself provide that a school district may appeal a decision of the Board. This argument is without significance, however, if, as claimed by the District, such right of judicial review is conferred by section 17A.19(1), The Code. That section authorizes review of "any final agency action"; under section 290.5, the decision of the Board in this case overruling the District's imposition of discipline "shall be final." We therefore conclude that statutory authority for the District's appeal exists under section 17A.19 and that the district court's order denying the motion to dismiss was correct.

In so holding we reject the Board's claim that the District has not been "aggrieved or adversely affected" by the Board's decision. The test for standing under section

17A.19 is stated in City of Des Moines v. Public Employment Relations Board, 275 N.W.2d 753, 759 (Iowa 1979):

> First, the party claiming aggrievement must successfully demonstrate a specific, personal and legal interest in the subject matter of the decision, as distinguished from a general interest, such as is the concern of all members of the community as a whole. Second, the party claiming aggrievement must successfully establish that this specific personal and legal interest has been specially and injuriously affected by the decision.

Quoting Nader v. Aldermott, 166 Conn. 43, 51, 347 A.2d 89, 94 (1974). We find that the District is aggrieved or adversely affected under this standard.

The Board also claims the District's standing is foreclosed by Iowa Department of Revenue v. Iowa State Board of Tax Review, 267 N.W.2d 675 (Iowa 1978). That case held that a subordinate official or agency lacks standing to seek judicial review of a decision of a superior official or coordinate board or tribunal. "The subordinate's personal interest in seeing the superior's decision reversed is insufficient to confer standing. Mere pride of opinion, however sincere or deeply felt, it is not enough (sic)." Iowa Department of Revenue, 267 N.W.2d at 678. The Board claims the District is subordinate to the former since school district decisions are appealable to the Board under Chapter 290, The Code, and thus lacks standing under Iowa Department of Revenue.

We disagree. A similar issue was presented in Southeast Warren Community School District v. Department of Public Instruction, 285 N.W.2d 173 (Iowa 1979). In that case, the school district expelled a special education student. The Department reversed, holding that such students may not be expelled under any circumstances. The school district sought judicial review of the Department's decision under the Iowa Administrative Procedures Act. The Department claimed the district lacked standing, relying on Iowa Department of Revenue. The court disagreed, saying: "This case does not involve a petition for judicial review based on a subordinate's dissatisfaction with a superior agency's reversal of an adjudication of a matter entrusted by statute to agency discretion. Instead it involves a question of the nature and extent of the subordinate's statutory powers." 285 N.W.2d at 177. (emphasis added). This was held sufficient to confer standing on the district under the "aggrievement" test set forth above in City of Des Moines v. Public Employment Relations Board.

We believe the same is true in this case. Under sections 279.8 and 279.9, The Code, the boards of directors of school districts have a statutory duty to "make rules

for its own government and that of the directors, officers, teachers and pupils, * * * and aid in the enforcement of the same." Section 279.9 requires the rules to "prohibit the use of tobacco and the use or possession of alcoholic liquor or beer or any controlled substance." While the Board has advanced substantial arguments against the validity of the District's rule (as involved in this case), and the interpretations which District personnel placed on the rule, neither of these issues are presented on this appeal. We consider only the issue of standing. The district court was correct in overruling the Board's motion to dismiss District's petition for judicial review for lack of standing. We, therefore, affirm and remand to district court for further proceedings.

AFFIRMED AND REMANDED.