

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR HENNEPIN TECHNICAL COLLEGE

In the Matter of the Student Discipline of
R.K.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
RECOMMENDATION, AND
MEMORANDUM**

This matter came on for hearing on March 5, 2002 in Brooklyn Park, Minnesota before Allan W. Klein, Administrative Law Judge.

Appearing on behalf of Hennepin Technical College was Patrick M. Driscoll, Assistant Attorney General, 445 Minnesota Street, Suite 1200, Saint Paul, Minnesota 55101-2130.

R.K.¹ appeared on his own behalf, without assistance of counsel.

The hearing began at approximately 9:30 a.m. on March 5, 2002, and it concluded shortly after 12:30 p.m. At the end of the hearing, Mr. Driscoll submitted a Memorandum of Law regarding whether blocking an exit from a room is a threatening or coercive act. R.K. was given the opportunity to file responsive materials with the Administrative Law Judge by March 11, 2002, but no such materials were received. The record in this matter was closed on March 11.

NOTICE

Please take notice that this Report is a recommendation only and **not** a final decision. Chancellor James H. McCormick or his designee will make the final decision after review of the record. The final decision may adopt, reject, or modify these Findings of Fact, Conclusions of Law, and Recommendation. Under Minnesota Statutes section 14.61, the final decision shall not be made until this report has been made available to the parties to the proceeding for at least 10 days. An opportunity must be afforded to each party adversely affected by this report to file exceptions and present argument to the final decisionmaker. Parties should contact Kristine Legler Kaplan, MnSCU, 500 World Trade Center, 30 East Seventh Street, St. Paul, Minnesota 55101-4946, telephone 651-296-3905, to learn the procedure for filing exceptions or presenting argument to the to the final decisionmaker.

¹ While the respondent is over 18 years of age, the parties have stipulated that only R.K.'s initials will be used in this proceeding.

STATEMENT OF ISSUE

Whether Hennepin Technical College (“HTC”) has sufficient cause to expel R.K. for violations of the HTC Code of Student Conduct, Policy 05.01 (revised 9-2-1999).²

WITNESSES

The following persons testified at the hearing:

1. Carol Tulikangas, Vice President of Academic & Student Affairs at HTC;
2. Marty Patterson, Senior Dean of Instruction at HTC;
3. Thomas Tonkin, Associate Dean of Academic Affairs at HTC; and
4. Ronald Kraft, Dean of Student Affairs at HTC.

Based upon the entire record herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Hennepin Technical College is a technical college located in Brooklyn Park, Minnesota. HTC is a part of the Minnesota State Colleges and Universities system (MnSCU). Programs offered at HTC fall primarily into the career and technical fields. Among the specific courses of study offered at HTC are accounting, architectural drafting, auto technology, computer and Internet technology, graphic design, health fields, and landscaping. HTC grants Associate degrees, which are normally two-year courses of study. No students reside on the campus, but there are dining facilities available to them.

2. The MnSCU Board has adopted policies to govern its member institutions as authorized by Minnesota Statutes section 136F.06, subd. 1. As a member of MnSCU, HTC is governed by these MnSCU Board Policies. Chapter 3.6 of those Policies governs student conduct, and Part 7 of that chapter states the following:

Students shall be provided an avenue of appeal within the institution for any adverse outcome of a conduct proceeding. In addition, in cases involving sanctions of suspension for 10 days or longer, students shall be informed of their right to a contested case hearing under Minnesota law (Chapter 14, MSA).

3. HTC has adopted College Policies. Among these College Policies is the Code of Student Conduct. Violations of that code include “[f]ailure to comply with directions of . . . college officials acting in the performance of their duties,”³ “verbal

² HTC Code of Student Conduct (hereinafter “Code”), Parts 4(B)(5), (12) and (14).

³ Code, Part 4(B)(5).

abuse, threats, intimidation, ... or other conduct which endangers or threatens to endanger the health or safety of any person,”⁴ and “engaging in assault or battery upon a member of the college community”⁵

4. R.K. was enrolled as a student at HTC during Spring Semester of 2001. That semester, R.K. attended two courses conducted by Instructor Roger Beyer, and he received two “B” grades in those courses.

5. In July 2001, Thomas Tonkin received a telephone call from an employee in an office adjacent to the Registrar’s office. Tonkin was told that a student, later identified as R.K., was “being very loud and threatening.” R.K. was in the Registrar’s office discussing his grades, and his voice was loud enough that it could be heard in offices down the hall. Tonkin proceeded to the Registrar’s Office. After Tonkin entered the Registrar’s office, R.K. calmed down and continued to speak with the Registrar’s office staff. The meeting ended without incident, but the grade issue was not resolved.

6. An appointment with Carol Tulikangas and R.K. was scheduled for August 1, 2001 at 5 p.m. as the final step in an appeals process regarding the two “B” grades that R.K. had received from instructor Roger Beyer in two computer classes. Tulikangas did not talk with Beyer before her August 1 meeting with R.K., and Beyer was not invited to attend the meeting.⁶

7. On August 1, 2001, R.K. arrived at Tulikangas’ office at 3:50 p.m., or an hour and ten minutes before the scheduled time. Since R.K. was early, Tulikangas asked for ten minutes to prepare for the meeting. Tulikangas had read that some R.K.’s actions leading up to the appeal appeared “threatening,” so she asked Marty Patterson if he could remain in the area during the meeting in case she needed help.⁷ At around 4 p.m., Tulikangas told R.K. that it was too hot in her office so she would rather meet in Room F-150. Tulikangas chose Room F-150 both because it was cooler and also because she wanted to be closer to Patterson.⁸ Tulikangas and R.K. then walked to Room F-150, and the door to the room was left open.

8. R.K. and Tulikangas sat on opposite sides of a long conference table, both near the end closest to the door.⁹ R.K sat on the side of the table closest to the door, and Tulikangas sat on the side farthest from the door. Throughout the meeting, R.K. did most of the speaking, and Tulikangas primarily listened. Shortly after the meeting began, R.K. became agitated. With animated hand movements, R.K. told Tulikangas that the grade appeal process “was a lie,” that Dean of Students Ronald Kraft had “torpedoed” his appeal, and that teachers are supported unconditionally. R.K. showed

⁴ Code, Part 4(B)(12).

⁵ Code, Part 4(B)(12).

⁶ Tulikangas testimony.

⁷ Patterson’s office, Room F-151, is approximately ten feet from Room F-150, the location of the incident.

⁸ Tulikangas testimony.

⁹ See black dots on Exhibit 10. Exhibit 10 is an enlargement of the diagram in Exhibit 7, page 9.

Tulikangas several documents¹⁰ detailing the grades that R.K. had received. In a loud and agitated manner, R.K. argued that the numbers on those documents did not add up.

9. Tulikangas told R.K. that if he wanted the conversation to continue, he would need to calm down and stop making accusations. Soon after hearing this, R.K. became more agitated and made more accusatory statements.

10. After about five more minutes, Tulikangas stood up and told R.K. that if they could not have a civil conversation, then the meeting was over. Tulikangas walked around the table to leave the room. At the same time, R.K. stood up very quickly and moved between Tulikangas and the door.¹¹ There was no verbal exchange at this point, but R.K. stood very close to Tulikangas,¹² he crossed his arms, and he gave her an “intense” look. The combination of these actions made Tulikangas feel “very threatened.”¹³

11. Frightened, Tulikangas called Patterson’s first name and yelled to Patterson and Thomas Tonkin to “call the police.” Within seconds, Patterson and Tonkin approached the doorway of Room F-150. Both saw that R.K. was standing between Tulikangas and the door.¹⁴ Patterson entered the room, and Tonkin remained in the hallway. After Tonkin saw that Patterson was handling the situation, Tonkin left the area.

12. Tulikangas, who appeared to be upset and afraid,¹⁵ told Patterson that she needed help, that R.K. was blocking her path, and that “[R.K.] won’t let me leave.” Patterson told Tulikangas that he would talk with R.K., and Tulikangas then left the room. The entire meeting between R.K. and Tulikangas lasted about ten minutes.

13. After Tulikangas left, Patterson and R.K. sat at the table and spoke for about fifteen to twenty minutes, while Patterson tried to calm R.K. down. Patterson tried to ascertain what had happened between R.K. and Tulikangas, but instead R.K. focused on the grade dispute. R.K. seemed “obviously upset,” claiming that he was getting a “bum steer.” Patterson informed R.K. of the college’s harassment policy. R.K. kept showing Patterson the documents relating to his grades¹⁶ and argued that his grades should be changed.

¹⁰ Exhibit 11.

¹¹ See Exhibit 10

¹² Testimony gauging the distance between R.K. and Tulikangas ranged from 12 inches (Tulikangas testimony) to 24 inches (Tonkin testimony). Regardless, it seems clear that R.K. moved inside than the accepted boundaries for public interaction.

¹³ Tulikangas testimony.

¹⁴ Patterson stated that R.K. was directly between Tulikangas and the door, while Tonkin stated that Tulikangas was slightly to the right and R.K. was to the left.

¹⁵ Patterson testimony.

¹⁶ Exhibit 11.

14. At the end of the conversation between R.K. and Patterson, R.K. stated that he wanted to go to the financial aid office. That office is next door to Tulikangas' office, and Patterson feared Tulikangas was in her office at the time. Patterson walked with R.K. to the financial aid office, then watched as R.K. left the building unescorted. The police were never called.

15. On August 3, 2001 Dean of Student Affairs Ronald Kraft sent a letter to R.K. stating that R.K. was being summarily suspended from HTC based on the August 1 incident. Kraft scheduled an August 6 meeting with R.K. to discuss the August 1 incident. It was Kraft's duty to determine whether the summary suspension was to be continued.

16. On August 6, 2001 Kraft met with R.K. regarding the August 1 incident. The purpose of informal meeting was to give R.K. an opportunity to present his side of the story and for Kraft to assess whether R.K. still posed a safety concern. In that meeting, Kraft asked R.K. if he still posed a safety concern to the college community. R.K. declined to answer the question and responded that there was "no way that he could answer that question in a meaningful way."¹⁷ R.K. explained that if he answered no, Kraft would not be able to tell whether R.K. was being truthful or not. On the other hand, if R.K. answered yes he would be "condemning himself."¹⁸ During the meeting, R.K. also spoke about corruption, violence, "justifiable violence," and—among other items—the righteousness of the Boston Tea Party. R.K.'s statements that Tulikangas was "corrupt" were made in the same context as his comments that violence may be sometimes justified.¹⁹

17. On August 22, 2001, Kraft notified R.K. that the HTC Student Conduct Panel would conduct a meeting on August 27 to review R.K.'s suspension.²⁰ The Student Conduct Panel reviewed the testimony and documents presented at the meeting, and it voted to impose the sanction of expulsion upon R.K.²¹ An August 28 letter from Kraft formally notified R.K. of the Panel's decision.²²

18. On September 4, 2001, R.K. appealed the Panel's decision and filed a brief in support of his position.²³

19. On September 27, 2001, HTC President Sharon K. Grossbach wrote a letter to R.K. informing him of her decision not to overturn the Panel's decision.²⁴ In an

¹⁷ Testimony of Ronald Kraft; Exhibit 7, Part IV.

¹⁸ Testimony of Ronald Kraft.

¹⁹ *Id.*

²⁰ Exhibit 5.

²¹ Exhibit 6.

²² *Id.*

²³ Exhibit 7.

²⁴ Exhibit 8.

October 19 letter to Grossbach,²⁵ R.K. opted to have this contested case hearing. On February 1, 2002, HTC issued the Notice and Order for Hearing, setting March 5 as the date for this hearing.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the HTC have jurisdiction in this matter pursuant to Minnesota Statutes sections 14.50, 136F.06, subd. 1; MnSCU Board Policy Chapter 3.6, Part 7; and HTC Code of Student Conduct, Part 4B.

2. R.K. received timely and proper notice of the expulsion hearing. HTC has complied with all applicable procedural requirements to properly set this matter for contested case hearing.

3. The HTC Code of Student Conduct prohibits certain conduct, including:

- a. Violation of published policies, rules, procedures or regulations of the Board of Trustees or of the college.
- b. Failure to comply with directions of . . . college officials acting in the performance of their duties . . .
- c. Physical or psychological abuse or harassment of a person, including stalking; abuse or harassment through other persons, or by use of electronic or other communication devices such as audio/video recorders, computers, and telephones.
- d. Physical abuse, verbal abuse, threats, intimidation, coercion, or other conduct which endangers or threatens to endanger the health or safety of any person
- e. Engaging in fighting; engaging in assault or battery upon a member of the college community or a visitor to the college; engaging in obscene, abusive, lewd, or profane language; engaging in boisterous or noisy conduct reasonably intended to arouse alarm, resentment, or anger in others; disrupting classes, meetings, or other college activities.²⁶

²⁵ Exhibit 9.

²⁶ Hennepin Technical College Code of Student Conduct, Policy 5.01, pp. 2-3, (Student Conduct – Behavioral Proscriptions) B.2, 5, 11, 12, 14.

4. The HTC Code of Student Conduct contains reasonable regulations that are clear and definite, and those regulations were known to R.K.

5. On August 1, 2001, by refusing to comply with the decision of Vice President Carol Tulikangas to terminate their meeting, and by blocking her attempt to leave the room, R.K. violated the HTC Code of Student Conduct. Specifically, R.K. did so by engaging in intimidation, coercion, and boisterous conduct reasonably intended to arouse alarm, resentment, or anger in others.

6. R.K.'s violations of the HTC Code of Student Conduct on August 1, 2001 constitute grounds for expulsion.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the proposed expulsion of R.K. be AFFIRMED.

Dated this 29th day of March, 2002.

/s/ Allan W. Klein

ALLAN W. KLEIN
Administrative Law Judge

Reported: Tape Recorded.
No transcript prepared.

NOTICE

Under Minnesota Statutes section 14.62, subd. 1 (2001), HTC is requested to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

The record supports HTC's contention that R.K. has "[failed] to comply with the directions of . . . college officials acting in the performance of their duties."²⁷ At their August 1 meeting, when Tulikangas indicated that the meeting was over, R.K. blocked her exit from the room—an action that was in direct opposition to Tulikangas' decision to

²⁷ Code, Part 4(B)(5).

end the meeting. Further, his demeanor caused alarm to Tulikangas, as it reasonably would have alarmed most similarly situated people.

The purpose of the instant hearing is not to ascertain what R.K.'s "B" grades should have been. Rather, the question is whether R.K.'s actions on August 1 violated the Code of Student Conduct. While the grade dispute was the initial purpose of the meeting, the grade dispute became overshadowed by R.K.'s behavior on August 1, which is the issue at hand. While some evidence offered by R.K. concerning his grades was admitted, the purpose of that admission was to establish R.K.'s state of mind and attitude before and during the incident. However, at no time did the scope of this proceeding change. The scope was, and remains, limited to R.K.'s conduct on August 1, not whether his grades were correct.

The evidence provided by HTC regarding the August 1 incident is for the most part uncontested by R.K. With the exception of certain details of peripheral importance,²⁸ R.K.'s evidence and the testimony elicited agree. The evidence shows that the events of August 1 occurred as they have been outlined in the Findings of Fact. R.K. became upset during his August 1 meeting with Tulikangas. Tulikangas made the decision to end the meeting and leave the room, and R.K.—in a threatening and intimidating manner—blocked her exit from the room.

Blocking a person's rightful exit from a room is inherently coercive behavior. The United States Supreme Court has held that blocking a person from entering or exiting the premises may be intimidating and prohibited conduct. *Schenck v. Pro-Choice Network Of Western New York*, 519 U.S. 357, 117 S.Ct. 855 (1997) (upholding injunction against blocking entrance to abortion clinic); *N.L.R.B. v. Iowa Beef Processors, Inc.*, 675 F.2d 1004, 1005 (8th Cir. 1982) (enjoining labor unions and striking workers from blocking entrances and exits). The record shows that R.K. prevented Tulikangas from exiting the room at their August 1 meeting, and he did so in an intimidating, coercive manner.

R.K. has a history of "boisterous or noisy conduct reasonably intended to arouse alarm, resentment or anger in others."²⁹ The incident in the Registrar's office to which Associate Dean Tonkin was called was an example of the behavior that R.K. has exhibited in the past. R.K. acknowledged that he was speaking loudly in both instances, but he does not recognize that causing alarm in others by raising one's voice is unacceptable conduct. He states in his appeal materials that "Raising one's voice is not immoral."³⁰ However, the record shows that R.K.'s demeanor in both instances caused alarm and fear to employees of the college.

²⁸ These details include the distance between R.K. and Tulikangas, and whether R.K.'s arms were crossed while he blocked Tulikangas' path to the door.

²⁹ Code, Part 4(B)(14).

³⁰ Exhibit 7, p. 10 (final of the unnumbered pages).

In addition, R.K. has continued to indicate that he may pose a threat of continuing similar behavior in the future. At the August 6 meeting with Ronald Kraft, R.K. asserted that raising one's voice is not out of the ordinary, that violence is sometimes justified, and—with regard to corruption—there is sometimes “justifiable violence.” This evidence indicates that, if R.K. were allowed to remain there, HTC might be forced to deal with similar situations in the future.

R.K. has argued that he does not believe that his actions were threatening, intimidating, or coercive enough to justify the school's decision to expel him. While he may not perceive this to be the case, there is ample evidence to show that R.K. violated the Student Code of Conduct by failing to comply with Tulikangas' decision to end the meeting. In the process, R.K. effectively intimidated Tulikangas, and the actions would have intimidated any reasonable, similarly situated person. R.K.'s subjective perceptions of his actions cannot overcome the evidence on the record showing that R.K. violated the policies outlined in the Code of Student Conduct.

HTC bears the burden of demonstrating, by a preponderance of the evidence, that R.K.'s conduct on August 1, 2001 constituted serious violations of the HTC Code of Student Conduct. Based on the entire record in this matter, HTC has met its burden, and the Administrative Law Judge recommends that the decision to expel R.K. be affirmed.

A.W.K.