

IOWA DEPARTMENT OF EDUCATION
(Cite as 26 D.o.E. App. Dec. 170)

In re Good Conduct Discipline

Stephanie Vickroy,	:	
Appellant,	:	
vs.	:	DECISION
	:	[Admin. Doc. 4743]
Knoxville Community School District,	:	
Appellee.	:	

The above-captioned matter was heard telephonically on January 25, 2012, before designated administrative law judge Carol J. Greta, J.D. Stephanie Vickroy and her minor son, Colton, were present. The Knoxville Community School District was represented by Superintendent Randy Flack and Assistant Secondary Principal Joe Ferguson. Colton's stepfather was also present, but did not testify.

Ms. Vickroy seeks reversal of the December 12, 2011 decision of the local board of directors of the Knoxville School District to uphold the administrative finding that Colton violated the District's good conduct policy. Ms. Vickroy filed a timely appeal to the State Board of Education on January 11, 2012.

Hearing was held pursuant to agency rules found at 281 Iowa Administrative Code chapter 6. Authority and jurisdiction for the appeal is found in Iowa Code chapter 290 (2011). The administrative law judge finds that she and the State Board of Education have jurisdiction over the parties and subject matter of the appeal before them.

FINDINGS OF FACT

Colton S. is the minor son of Ms. Vickroy. He is a junior at Knoxville High School. Colton has participated in four interscholastic sports on behalf of Knoxville High School: football, wrestling, track and field, and baseball.

On Monday, November 21, 2011, Colton was in seventh period chemistry class, taught by Mike Moats. Colton asked to go to the restroom during class. When he returned, Mr. Moats noticed a bulge in Colton's lower lip. When Mr. Moats asked Colton to show what was in his mouth, Colton "quickly lifted his water bottle to his mouth and poured a mouthful of water. He then swooshed the water around and swallowed. When he opened his mouth and lowered his lip, there was a significant amount of a brown residue between his teeth." Believing that Colton had been using chewing tobacco, Mr. Moats escorted Colton to the office of the High School's Associate Principal, Joe Ferguson.

Colton disputes that the substance in his mouth was chewing tobacco. He states that he ate chocolate birthday cake immediately before going to class, and that accounts for what Mr. Moats saw.

Dr. Flack admits, for the sake of argument, that Colton had a piece of the cake. However, Dr. Flack agreed with the conclusions of district administrators Joe Ferguson, Activities Director Randy Wilson, and Principal Kevin Crawford that it was more likely than not that Colton had been using chewing tobacco on the afternoon of November 21.

Mr. Ferguson testified that he relied on the observations of Mr. Moats, who formerly used chewing tobacco and who told Mr. Ferguson that he knew what tobacco residue looked like and was sure that tobacco residue is what he saw in Colton's mouth. The administrators admit that no search of Colton's person or belongings was conducted, nor was law enforcement called.

Like most schools, Knoxville has a good conduct policy, proscribing certain behaviors for its secondary students who participate in extracurricular activities, including interscholastic sports. Among the prohibited conduct is possession and use of any tobacco product.

While she disputes that Colton was using tobacco, Ms. Vickroy also argues that Colton did not receive all the process due to him because he was not searched and because he was sanctioned under the good conduct policy in the absence of any citation from law enforcement.

CONCLUSIONS OF LAW

The local school board's authority to enforce a good conduct policy derives from Iowa Code section 279.8, which states that "the board shall make rules for its own government and that of the ... pupils, and for the care of the schoolhouse, grounds, and property of the school corporation" The Iowa Supreme Court has also ruled that schools and school districts may govern out-of-school conduct of its students who participate in extracurricular activities. *Bunger v. Iowa High School Athletic Association*, 197 N.W.2d 555, 564 (Iowa 1972).

In *Bunger, supra*, the Iowa Supreme Court addressed the reasonableness of a good conduct rule. The Court reasoned as follows:

It was plainly intended, therefore, that the management of school affairs should be left to the discretion of the board of directors, and not to the courts, and we ought not to interfere with the exercise of discretion on the part of a school board as to what is a reasonable and necessary rule, except in a plain case of exceeding the power conferred.

Id. at 563, quoting *Kinzer v. Directors of Independent School Dist. of Marion*, 129 Iowa 441, 444-445, 105 N.W. 686, 687.

With that brief general legal background, we address whether Colton's due process rights were violated.

The polestar case on this issue remains *Brands v. Sheldon Community School*, 671 F.Supp. 627, 630-631 (N.D. Iowa 1987). That case clearly establishes the following principles, which are followed in the vast majority of states:

- A secondary student has no “right” to participate in interscholastic athletics or other extracurricular activities.
- Accordingly, very little process is due to the student. Such due process consists of two elements:
 - The student must be told what he is accused of and
 - The student must be given an opportunity to tell his side of the story.
- It is only required that there be “some evidence” that a student violated the school’s good conduct policy for a student to be disciplined under such policy.

Ms. Vickroy argues that there was not a preponderance of evidence that Colton was using tobacco. As the *Brands* case establishes, the standard of proof is not the preponderance standard. Rather, it is the much lower standard of “some evidence.” The observations of Mr. Moats, along with his statement to Mr. Ferguson that as a former user of chewing tobacco, Mr. Moats was very familiar with the look of chewing tobacco residue, easily meets the requirement that there be “some evidence” of a violation.

Finally, Ms. Vickroy argues that the district violated Colton’s rights by punishing him in the absence of a citation issued (for possession of tobacco) by law enforcement. There is simply no requirement limiting a school’s ability to discipline students when no criminal charge is involved. In fact, schools may punish students for misbehavior that does not violate the criminal code. See, e.g., *In re Heather Kramme*, 13 D.o.E. App. Dec. 89 (1996) (student was of age where her use of tobacco was not a crime, but school still could impose punishment against her under good conduct policy for the use of tobacco), *In re Scott Martin*, 16 D.o.E. App. Dec. 252 (1999) (school could impose punishment against student whose drinking beer in Germany did not violate the law in Germany) and *In re Travis Childs*, 24 D.o.E. App. Dec. 186 (2007) (student who drank beer at home with parental permission could be disciplined under district’s good conduct policy).

A school can – purposefully or inadvertently – create additional rights not otherwise imposed by the law if the school’s own policies include additional protections for a student. That is not the case here. Nothing in the school’s policy prohibits school officials from imposing discipline in the absence of a citation from law enforcement. To the contrary, the policy puts a student and his parents on notice that the school may act on “credible information to support a determination that it is more likely than not the student violated the Good Conduct rule.”

Colton received all the process that was due him. He had no confusion about what violation he allegedly committed and he was given several opportunities before several administrators and, eventually, the local school board, to tell his story. The evidence was credible and sufficient for the local school board to uphold the finding that Colton violated the good conduct policy by using chewing tobacco at school on November 21.

DECISION

For the foregoing reasons, the decision of the Board of Directors of the Knoxville Community School District made on December 12, 2011, finding that Colton S.

committed his third violation of the District's good conduct rule, is AFFIRMED. There are no costs of this appeal to be assigned.

01/30/12
Date

/s/
Carol J. Greta, J.D.
Administrative Law Judge

It is so ordered.

03/29/12
Date

/s/
Rosie Hussey, President
State Board of Education