1004-C88018-2/78

IOWA STATE DEPARTMENT
OF PUBLIC INSTRUCTION

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In re Jason Clark	:	
	:	
Franklin D. Clark Appellant	:	
	:	DECISION
v.	:	
	:	
Panora-Linden Community School District Appellee	:	
	:	[Admin. Doc. 408]

The above entitled matter came for hearing on December 22, 1977, at approximately 10:00 a.m. in Des Moines, Iowa. The Hearing Panel consisted of Dr. Robert Benton, state superintendent and presiding officer; Dr. LeRoy Jensen, associate superintendent, administration; and Carl Miles, director, supervision division. The Appellant was present and represented by Attorneys James Q. Blomgren of Des Moines and Michael F. Mumma of Jefferson. The Appellee was present and represented by Attorney John E. Donahey of Panora. The hearing was held pursuant to Chapter 290, The Code 1977, and Departmental Rules, Chapter 670--51, Iowa Administrative Code.

I.
Findings of Fact

The Hearing Panel finds that it and the State Board of Public Instruction have jurisdiction over the parties and subject matter. There is little dispute in the facts. Jason Clark was a sixteen-year-old junior in the Panora-Linden Community School District (hereinafter District) and was a starting member of that school's football team. He is also vice-president of the high school student council and participates in wrestling, track and drama activities.

At approximately 5:30 p.m., after school hours, on Monday, September 19, 1977, Jason was seen driving an automobile by Kenneth Janvrin, the District's athletic director. Mr. Janvrin saw a beer can thrown from the passenger's side of the car as it pulled into the driveway leading to the Clark residence.

Early the next day, September 20th, Jason met with Mr. Kim Whiten, the boys' football coach. Jason was told that someone had seen something tossed from his car, that it would be investigated by school officials and that some action would probably be taken. Jason testified that he was told that the Principal would talk to him regarding the matter.

Later in the morning, Jason was summoned to the office of Anthony Wilcoxson, the District's high school principal. He was not told immediately why he was summoned, but was questioned concerning the events of the previous day. Mr. Wilcoxson apparently did not suspect Jason of any offense at the time he was brought to the office. Jason testified that the investigation focused on the other student,

because the school officials thought he was "pretty straight" and would not be guilty of such an offense. Mr. Wilcoxson made a tape-recording of the discussion. Jason was told that a recording was being made, but he did not give his consent. Neither did he object.

During the conversation, Jason admitted consuming two cans of beer the previous evening. The two discussed the incident at length. At the conclusion of the conversation, Jason was removed from all extra-curricular activities of the District by Mr. Wilcoxson for a period of six weeks pursuant to the "Standards of Eligibility" adopted by the District Board. He was allowed to continue to practice, but he could not compete in interscholastic competition. Jason participated in two football competitions prior to his removal by Mr. Wilcoxson and one after. No action was taken to remove him from student council activities because that is an elective office. (The passenger in the car was a student active in band, who was declared ineligible to participate in band activities for six weeks.)

Jason's parents first learned of the situation on the evening of Tuesday, September 20, after returning from a business trip. They went to the school the next morning to discuss the matter with Mr. Wilcoxson. Mr. Wilcoxson testified that he had attempted to contact them by phone but had been unsuccessful.

Jason and his parents appealed his removal from extra-curricular activities to a review panel as provided in the District's "Standards of Eligibility." Jason did not contest the issue on a factual basis. The primary purpose for the appeal appears to have been that Jason felt that six weeks was an unfair term of ineligibility. The eligibility panel consisted of three students, three teachers in charge of other extra-curricular activities and one administrator. All were selected by Jason from a list of eligible staff members and from the student body, except football participants.

On September 21, the eligibility panel heard evidence in the matter and affirmed Mr. Wilcoxson's decision. The panel's only options were to declare Jason eligible or ineligible. There was considerable discussion about the possibility of a lesser penalty.

Jason and his parents, through Michael Mumma, his attorney, appealed the panel decision to the District Board of Directors. The Board heard evidence in the matter at a special meeting held on September 22, 1977. The Clarks had requested a prompt meeting and did not object on the basis of insufficient time. Following the hearing, the Board affirmed the decision of the eligibility panel.

Jason Clark, through his father, Franklin D. Clark, appealed the District Board's decision to the State Board of Public Instruction. The appeal was filed November 4, 1977.

Much testimony was heard by the Hearing Panel in this matter regarding the desirable and undesirable traits of rules similar to the District's "Standards of Eligibility." Paragraphs one, four and five of the "Standards" are the most relevant here and read as follows:

> The following standards of eligibility pertain to any Panora-Linden student who is participating in co-curricular activities. Co-curricular activities include all athletics, vocal and instrumental music, cheerleading, drama, debate, drill team, speech, newspaper, yearbook, FHA, FFA, medical careers, and any other

activity offered at Panora-Linden. During any period of ineligibility the student may practice but cannot take part in a performance or contest.

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Any student who is found guilty, or admits to breaking the law, or is placed on official or unofficial probation status, whether it be voluntary or not, will have his or her eligibility for extra curricular activities reviewed and if deemed serious enough could possibly be declared inelgible (sic) for a period of time. Any student found guilty, or admits to use of tobacco, consumption, possession, acquiring, delivering or transporting of alcoholic beverages; or dangerous drugs; will be ineligible to participate in any of the activity events for 6 weeks. Second time infractions will result in ineligibility for a period of one year.

The period of ineligibility starts when the administration is made aware of the infraction. If the student is engaged in an activity covered, he is ineligible at once. A panel will be established to review and hear special cases. The panel will also serve as the initial hearing board for any student appeals on activities ineligibility. The panel will consist of 3 sponsors, 3 student representatives of activities, and an administrator. The decision of his panel can be appealed to the superintendent and Board of Education.

* * * * * * * * * *

The "Standards of Eligibility" were originally developed several years ago by sponsors of extra-curricular activities and adopted by the Board. During the summer of 1977, they were reviewed by a committee of teachers, administrators and board members. The committee made recommendations for minor revisions. A provision which had been in earlier policies requiring a statement that the student and parents were in agreement with the policy as well as being familiar with its terms was removed after community objection and is no longer required. Currently, students participating in extra-curricular activities and their parents must sign and return to the school, a copy of the standards to merely evidence that they have read the regulations. Jason and his mother signed and returned a copy to school.

Jason's father testified that he has opposed this rule and its predecessors for several years and refused to sign the statement. He feels that such rules are unwise, and he has made his feelings known to the District Board on the subject. Also, he does not feel that the rule should be enforced against his son when the incident occurred on private property. Mr. Clark testified that the Clark household does not object to the consumption of beer by its members.

Testimony disclosed several points regarding the standards and interpretation of the standards:

1. The policy is not applied to students regardless of when or where it is breached. For instance, it is not applied to students drinking beer outside the activity season.

2. The policy would not be enforced against a student who drank beer in his or her own home under parental supervision.

3. Procedures for suspension from classroom activities are governed by a different set of procedural guidelines than suspensions from extra-curricular activities.

4. Even though the policy does not expressly contain an informal hearing procedure, the principal institutes one prior to a decision on eligibility.

5. The policy was not enforced against a student who transported alcoholic beverages for his father's business.

6. The policy is intended to aid in the creation of exemplary citizenship.

7. Students involved in extra-curricular activities are considered a reflection of the school.

II.
Conclusions of Law

The Appellant's "Appeal Affidavit" has stated four grounds for appeal in this matter. For the first, it states that Jason's right to procedural due process under the Fourteenth Amendment to the United States' Constitution was violated because he was not informed of the charges against him nor informed of the evidence upon which those charges were based. The primary authority for such a view is found in Goss v. Lopez, 419 U.S. 565, 95 S.Ct. 729 (1975), where the Supreme Court required such due process for students suspended from school for less than ten days. The Court found that both "property" and "liberty" interests protected by the Fourteenth Amendment were involved. The Court found that Ohio statutes created an entitlement to a public education, a property right, which could not be withdrawn for misconduct, for even a short period of time, in the absence of fundamentally fair procedures to determine whether the misconduct had occurred. The Court also found that punishing a student for misconduct injures a student's reputation to such an extent that the student may be deprived of his or her liberty, and thus, fair procedures must be utilized in an effort to determine the truth of the allegations against the student.

While the State Board of Public Instruction has previously ruled in In re Monica Schnoor, 1 D.P.I. Ap. Dec. 136, that such procedural concepts are applicable to expulsions from Iowa's public schools, we have been shown no case, nor have we found any through independent research which draws us to the conclusion that Iowa law creates similar protected rights in athletic participation or that participation in athletics is anything more than a privilege. See Board of Directors v. Green, 147 N.W.2d 854, 860 (Ia. 1967). Indeed, there is no legal requirement that an Iowa school district provide for interscholastic athletic competition in football or any other sport. Exclusion from athletic participation in interscholastic events, therefore, does not necessarily require the application of procedural due process protections. See Dallam v. Cumberland Valley School District, 391 F.Supp. 358 (M.D. Pen. 1975); and Albach v. Odle, 531 F.2d 983, (10th Cir. 1976).

However, it must not be forgotten that the Due Process Clause also forbids arbitrary deprivation of "liberty." Such a deprivation of liberty may include conduct by a school district which injures a person's good name and reputation. Such is especially true when the school places a record of the misconduct in the student's education records. As the Goss court said at pages 574 and 575:

> School authorities here suspended appellees from school for periods of up to 10 days based on charges of misconduct. If sustained and recorded, those charges could seriously damage the students' standing with their fellow pupils and their teachers as well as interfere with later opportunities for higher education and employment. It is apparent that the claimed right of the state to determine unilaterally and without process whether that misconduct has occurred immediately collides with the requirements of the Constitution.

We feel, therefore, that in order to protect a student's reputation from arbitrary findings of misconduct, that some type of procedural due process is required when a student is excluded from participation in extra-curricular activities for alleged violation of rules of good conduct. The question is, what kind of process is due?

The law, and we think education, both recognize the flexibility of the concept of procedural due process in that the minimum acceptable due process is dependent upon the circumstances of each incident. A balance between the competing interests involved--the rights and responsibilities of the student and the school--must take place. Goss, pp. 577-581. The Goss decision held that in the instance of a suspension from school for less than ten days, that the disciplinarian and the student informally discuss the alleged misconduct. The student is to be informed of the allegations and then be given an opportunity to respond with his or her own version of the facts.

In the circumstance before us here, we feel that the requirements of due process have been met. Mr. Whiten, not knowing the extent of Jason's involvement, told Jason that the incident of September 19 was being investigated and that he would likely be contacted by Mr. Wilcoxson. The transcript of the conversation between Mr. Wilcoxson and Jason, and the testimony of several witnesses including Jason, indicate that Mr. Wilcoxson did not originally suspect the degree of Jason's participation in the drinking episode, and for that reason did not immediately give notice of allegations against him. The transcript shows that Jason admitted his involvement without being asked directly, and after Mr. Wilcoxson became aware of the extent of Jason's involvement, the two had a lengthy discussion of the matter. Following the removal from eligibility on Tuesday, Jason and his parents took advantage of two hearings at which they had a full opportunity to present their side of the issue. The eligibility panel met on Wednesday and the Board of Directors met on Thursday. Under the circumstances, we feel that sufficient procedural due process was afforded Jason and his parents.

The Appellant's second contention is that removal of a student from extra-curricular activities for acts which, if committed by a student not participating in extra-curricular activities, would go unpunished by school officials violates the student's Fourteenth Amendment right to equal protection of the law. We do not agree. The mere differentiation between classes of students has been found by the Iowa Supreme Court to not be a denial of equal protection. The Iowa Court in Boards of Directors v. Green, 147 N.W.2d 854 (Ia. 1967) said at page 860:

> Mere differentiation is not enough to constitute a denial of equal protection. In fact statutes and school board rules often create classifications which are valid and enforceable. It is only invidious discrimination which offends constitutional rights. See Griffin v. County Sch. Bd. of Prince Edward Co., 377 U.S. 218, 230, 84 S.Ct. 1226, 1233, 12 L.Ed.2d 256; Dickinson v. Porter, 240 Iowa 393, 400-414, 35 N.W.2d 66; and Lee v. Hoffman, 182 Iowa 1216, 1221-1223, 166 N.W. 565, L.R.A. 1918C, 133.

We find that Jason Clark has not been denied equal protection of the laws as a result of the application of the "Standards of Eligibility" to him. We feel that, within reasonable limitations, it is appropriate for schools, wishing to do so, to provide different standards for students participating in extra-curricular activities. This view is substantiated by the Iowa Supreme Court's discussion in Bunger v. Iowa High School Athletic Association, 197 N.W.2d 555, 564 (Ia. 1972) of the different roles played by those students involved in extra-curricular activities and those who are not.

> The present case involves the advantages and enjoyment of an extracurricular activity provided by the school, a consideration which we believe extends the authority of a school board somewhat as to participation in that activity. The influence of the students involved is an additional consideration. Standout students, whether in athletics, forensics, dramatics, or other interscholastic activities, play a somewhat different role from the rank and file. Leadership brings additional responsibility. These student leaders are looked up to and emulated. They represent the school and depict its character. We cannot fault a school board for expecting somewhat more of them as to eligibility for their particular extra-curricular activities.

The third contention of the Appellant is that the District Board does not have the authority to promulgate rules providing for the removal of a student from extra-curricular activities for acts not occurring on school property, not during school hours and not during participation in the activity. In light of the decision in Bunger, we must disagree. A relevant portion of that decision appearing at page 564 is as follows:

> We have no doubt that school authorities may make a football player ineligible if he drinks beer during football season. No doubt such authorities may do likewise if the player drinks beer at other times during the school year, or if he then possess, acquires, delivers, or transports beer. See O'Connor v. Board of Education of Central School District No. 1, 65 Misc.2d 40, 316 N.Y.S.2d 799. Probably a player shown to have actually violated beer laws during summer vacation, whether convicted in criminal court or not, can be rendered ineligible by school rule. All of these situations have direct bearing on the operation of the school, although the bearing becomes progressively less direct.

While the Bunger decision went on to find that the scope of the particular rule in question was beyond the scope of authority of a school district, we feel that the "Standards of Eligibility" currently before us are not. The application of the Standards to a 16-year-old football player during the football season clearly meets the facts in the first hypothetical situation stated above.

The fourth contention of the Appellant is that the promulgation of rules providing for the removal of a student from extra-curricular activities for acts not occurring on school property, not during school hours and not during participation in extra-curricular activities violates the student's First Amendment right to privacy. We are somewhat perplexed by the Appellant's contention of privacy rights under the First Amendment rather than more commonly accept privacy areas such as the Ninth Amendment; however, none of the cases cited by the parties

or known to us through independent research have caused us to conclude that Jason Clark had any rights to privacy which were violated in the circumstances presented here on appeal.

In addition to responding to the above contentions of the Appellant, the District, in its "Resistance to Appeal Affidavit," raised the issue of mootness. The District seems to feel that an issue no longer exists here as Jason again became eligible for extra-curricular activities on November 1, 1977. We do not agree. The matter of discipline imposed upon a student normally finds its way into the student's education records, often for an indefinite period of time. Also, because a second offense violation will bring the penalty of a year's ineligibility rather than another six weeks, we feel that the issue is not moot.

It should be noted, in conclusion, that the Hearing Panel does not wish to necessarily imply by its decision in this appeal that it agrees with the educational philosophy incorporated in the "Standards of Eligibility" or other "good conduct rules." All we have done here is to affirm the discretionary authority of the Panora-Linden Community School District Board of Directors to adopt such a policy and the proper application of the policy to the facts before us in this appeal.

All motions and objections not previously ruled upon are hereby overruled.

III.
Decision

The decision of the Board of Directors of the Panora-Linden Community School District rendered in this matter upon September 22, 1977, is hereby affirmed. Appropriate costs under Chapter 290, if any, are hereby assigned to the Appellant.

February 9, 1978
DATE

Jolly Ann Davidson
JOLLY ANN DAVIDSON, PRESIDENT
STATE BOARD OF PUBLIC INSTRUCTION

January 31, 1978
DATE

Robert D. Benton
ROBERT D. BENTON, Ed.D.
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
AND PRESIDING OFFICER