IOWA DEPARTMENT
OF EDUCATION
(Cite as 25 D.o.E. App. Dec. 8)

In re Board Policy		
Brenda Paul, Jordan Corrigan, and Amy Caves, Appellants,	:	
	:	DECISION
vs.		
	:	[Admin. Doc. 4654, 4655, 4658]
Alburnett Community School District, Appellee.	:	

The above-captioned matter was heard telephonically on September 24, 2007, before designated Administrative Law Judge Carol J. Greta. Appellants Brenda Paul and Amy Caves were present on behalf of their minor sons, as was the mother of Appellant Jordan Corrigan, Kellie Corrigan.[1] Appellee, the Alburnett Community School District, was represented by Superintendent Mike Harrold. Also present on behalf of the Appellee were Secondary Principal Tom Stewart, Board President Barry Woodson, and Board member David Kirk. Neither Board member testified herein. All other persons present were sworn in and gave testimony.

An evidentiary hearing was held pursuant to agency rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for the appeal are found in Iowa Code § 290.1. 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.

The Appellants seek reversal of a decision the local Board of Directors of the District made on August 20 2007, to make no change to the District's local policy regarding academic eligibility of students to participate in interscholastic athletics. Said policy goes beyond the statewide rule that imposes 20 school days of ineligibility for a final failing grade, and imposes 18 weeks of ineligibility as the consequence for a final semester grade of "F."[2]

[1] Because Jordan is an adult, the appeal on his behalf should not have been filed by a parent. Jordan has filed a consent herein that he be substituted as his mother as one of the Appellants, and his mother was allowed to be his spokesperson at this hearing.

[2] Alburnett's school schedule is the traditional two semesters. The local policy also requires that a student with a failing grade at the end of either the first or third quarter serve nine weeks of ineligibility from extracurricular activities

I.
FINDINGS OF FACT

Mr. Stewart, the Alburnett high school principal, testified here and before the local board that the District, for at least the past three years, has available to students and their families an on-line service whereby students and families can access class information, including assignments and grades, at any time. The District also offers traditional parent-teacher conferences and issues midterm (4 ½ week interval) grade reports. Mr. Stewart explained that additional interventions or services available to students include re-testing options; tutoring by appointment; a child study team; a student assistance team; and a "success center." The Appellants dispute the efficacy of some of these options, but do not dispute their existence.

Jordan Corrigan and Keegan Paul are seniors at Alburnett High School; Gavin Caves is a junior. All three students received second semester grades of "F" at the conclusion of the 2006-07 school year. According to the Alburnett eligibility policy, all three are to sit out 18 weeks from extracurricular activities, including interscholastic athletics. The three participate in baseball, which is designated as a nine week season by the District, leaving nine weeks of ineligibility for football season. The remaining nine weeks covers all regular season football games. The local policy means that the students do not participate in two full sports seasons.

The District also has a good conduct policy, governing the out-of-school behavior of students involved in extracurricular activities. That policy prohibits the possession or use of alcohol, controlled substances, and tobacco, as well as any other conduct that would constitute a crime. The penalties imposed for some of the offenses covered in the good conduct policy[3] are less severe than 18 weeks of ineligibility.

The Appellants argue that the Alburnett eligibility policy is unreasonably strict, and they believe that it is counterproductive to sound educational goals. They presented the following arguments to the local board in support of their contentions:

1. More than one sports season is impacted.
2. The policy does not treat all students with dignity and respect, and therefore is contrary to the new antiharassment law and policy.
3. The policy is harsher than the District's good conduct policy.
4. Students will be cautious about taking challenging courses.
5. Students will quit extracurricular activities.
6. The local policy is not applied consistently to all affected students in the District.

The Appellants or persons supporting them also presented alternatives to the local board, which deliberated the intent of the policy, discussed alternatives, but ultimately voted 3 -2 to retain its policy without making any adjustments thereto.

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[3] A first offense can be punishable by a three week period of ineligibility from extracurricular activities if the student self-reports and if a controlled substance if not involved. However, all other violations subject the student to 12 weeks to 12 months suspension from extracurricular activities.

II.
CONCLUSIONS OF LAW

The Iowa Legislature has directed that the State Board, in regard to appeals to this body, make decisions that are "just and equitable." Iowa Code § 290.3. The administrative rules adopted by the State Board for appeals before it also state that the "decision shall be based on the laws of the United States, the state of Iowa and the regulations and policies of the department of education and shall be in the best interest of education." 281—IAC 6.17(2). Therefore, the standard of review as first articulated in *In re Jesse Bachman*, 13 D.o.E. App. Dec. 363 (1996), requires that a local board decision not be overturned by the State Board unless the local decision is "unreasonable and contrary to the best interest of education." *Id.* at 369.

This case is governed primarily by section 279.8, which states as follows:

> The [local] board shall make rules for its own government and that of the ... pupils ... of the school corporation ... .

This Board has adopted a state rule to set a *minimum* standard for academic eligibility of secondary students who compete in interscholastic athletics. But another of our own rules states that local boards are free to impose more (but not less) stringent requirements upon their students as a condition of representing the school interscholastically.[4]

Our state academic eligibility rule for participation in interscholastic athletics [281—Iowa Administrative Code (IAC) 36.15(2)] was amended by this Board, effective with the 2006-07 school year, in two ways:

1. The academic standard was increased from a requirement that students pass just four of their classes per final grading period to a requirement that students pass all coursework.
2. The consequence for not meeting the above academic standard was decreased or lessened from a full semester (18 weeks) of ineligibility to 20 school days of ineligibility to be served in a sport in which the student is a bona fide competitor.

The Alburnett local policy, prior to the change to the state rule, was also more stringent than the former state requirement of "pass four" in that it required students to pass all but one class per semester. The consequence was the same then as it is now. Thus, the Alburnett board made a conscious decision to increase its standard while leaving its consequence in place. The Appellants do not dispute the local board's right to impose a more stringent penalty. Rather, they argue that the local policy is unreasonable and contrary to the best interests of education for the reasons referred to earlier. We now address those arguments.

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[4] 281—IAC 36.15(1) *Local eligibility and student conduct rules.* ... Nothing herein shall be construed to prevent a local school board from declaring a student ineligible to participate in interscholastic competition by reason of the student's violation of rules adopted by the school pursuant to Iowa Code sections 279.8 and 279.9.

More than one sports season is impacted.

It is well established in Iowa that there is no "right" to participate in an extracurricular activity. *Brands v. Sheldon Community School,* 671 F.Supp. 627 (N.D. Iowa 1987). The arguments posed here – that students lose opportunities to be seen by college scouts and to amass relevant sport statistics, possibly leading to the loss of an athletic scholarship – were posed in the *Brands* case. Tom Brands was denied the opportunity to defend his state wrestling title two decades ago because he ran afoul of his school's good conduct policy. He attempted to obtain injunctive relief from the federal courts. In this case, Iowa joined the majority of jurisdictions that have concluded that persons have no legitimate entitlement to participate in interscholastic or intercollegiate athletics. 627 F.Supp. at 631.

It is also possible under the state rule that a student will be ineligible for more than one season. If the student is currently participating in interscholastic athletics when he or she receives an "F" as a final semester grade, if there are not 20 school days remaining in the current sports season, the remaining time of ineligibility is applied to the student's next sport.

Given that Jordan, Keegan, and Gavin have no right to participate in their chosen sports, the fact that the local policy will inevitably affect at least two seasons is not unreasonable.

The policy is contrary to the new anti-bullying/anti-harassment law and policy.

In support of this argument, the Appellants state that the District's implementation of its eligibility policy has been "repeatedly causing discomfort and suffering to the victims."

Students who are involved in extracurricular activities and who fail a course are not a protected class. To label these students "victims" is an unfortunate trivialization of the anti-bullying and anti-harassment law.

The Iowa Supreme Court has recognized that students who represent their schools in extracurricular activities may be subjected to higher expectations:

> 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 extracurricular activities.
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> ... In dealing with ineligibility for extracurricular activities .... and with students who represent the school in interscholastic activities as contrasted to less active students, school rules may be broader and still be reasonable.

Bunger v. Iowa High School Athletic Association, 197 N.W.2d 555, 564-565 (Iowa 1972).

We do not doubt that the young men here have experienced discomfort because of the consequences imposed for their failing grades. However, the Appellants' argument that the eligibility policy somehow deprives Jordan, Keegan, and Gavin of dignity and respect is misplaced. The whole point of an academic eligibility rule is that there must be *some* consequence for failing grades; otherwise, the rule would be meaningless. Some "discomfort" is built into the rule to drive home the point that academics take precedence over athletics. This Board will not depart from the solid legal principles of the *Bunger* case by concluding that the Alburnett policy is unreasonable solely because these young men felt discomfort.

The policy is harsher than the District's good conduct policy.

The purpose of a good conduct policy is to impose consequences on *out-of-school* conduct. Such policies may only impose penalties upon students involved in extracurricular activities because there is no nexus between out-of-school misconduct and suspension from extracurricular activities if a student has no involvement in the latter. For example, if a student possesses a controlled substance while at school or a school function, the school could suspend or even expel the student from school. However, if the student is found to be in possession of a controlled substance on a weekend in a non-school setting, the only consequence that a school can impose is with respect to the student's opportunity to represent the school in extracurricular activities.

Therefore, not only is it reasonable that the two policies have differing sets of consequences, it is to be expected. Because a student's failure to pass all coursework is directly related to school, it is also reasonable that the penalties associated with the eligibility policy are more harsh than those imposed under the good conduct policy.

Students will be cautious about taking challenging courses or will cease participation in extracurricular activities.

We deal with these two arguments together inasmuch as both deal with the purposes underpinning the eligibility rule.

We have repeated previously that the "State Board of Education does not sit as a 'super school board' substituting its judgment for that of the elected board officials." *See, e.g., In re Jerry Eaton,* 7 D.o.E. App. Dec. 137, 141 (1987); *In re Zach Hodges*, 22 D.o.E. App. Dec. 279, 284 (2004). Accordingly, although there may be other ways – even better ways – of addressing this issue than the policy approved by the Alburnett Community School District Board, it matters not. Our duty, "regardless of personal views or individual philosophies, is to uphold a school regulation unless it is clearly arbitrary and unreasonable. Any other approach would result in confusion detrimental to the management, progress, and efficient operation of our public school system." *Board of Directors of the Independent School District of Waterloo v. Green*, 147 N.W.2d 854, 858 (Iowa 1967); *In re "Guest" Board Policy*, 23 D.o.E. App. Dec. 090 (2005).

This Board knows firsthand the pro and con policy arguments regarding a no-pass/no-play eligibility rule, having debated our state rule in several State Board meetings between January 2002 and March 2006. We are confident in stating that there is not one policy argument on either side of the issue that was not thoroughly heard and discussed by this Board. The closeness of the vote of the local board at its meeting on August 20, 2007 indicates that reasonable minds may disagree as to the means by which to impress

upon students that academics take precedence over athletics and other extracurricular activities. And while this Board ultimately decided upon a period of 20 school days as the term of ineligibility, we discussed retaining the former penalty of 18 weeks. Therefore, we can hardly conclude that it is unreasonable of any local board to impose the harsher consequence upon its students.

The local policy is not applied consistently to all affected students in the District.

Much of the testimony herein concentrated on inconsistencies regarding implementation of the District's new rule, but no proof of intentional selective enforcement of the policy was provided. The experience of just one other student under the local rule was discussed by the parties. As with any new policy – particularly one as complicated as the local policy – there are bound to be growing pains. The Alburnett administrators admitted as much. We cannot conclude that the policy is deliberately enforced in an arbitrary manner.

However, we note that during the 20 days of ineligibility imposed under our state rule, an ineligible student may not be allowed by the District to dress in team uniform for contests and competitions. Once the state's penalty has been satisfied, local schools may determine the parameters (including whether the student appears in team uniform) for any further period of ineligibility.

III.
DECISION

For the foregoing reasons, it is recommended that the decision of the Board of Directors of the Alburnett Community School District made on August 20, 2007 be AFFIRMED. There are no costs of this appeal to be assigned.

10/08/07
Date

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

It is so ordered.

11/14/07
Date

Rosie Hussey, Vice President
State Board of Education