

IOWA DEPARTMENT OF EDUCATION  
(Cite as 27 D.o.E. App. Dec. 954)

<i>In re Student A, Good Conduct Violation,</i>	)	
	)	
Parent of Student A,	)	
	)	DECISION
Appellant,	)	
	)	
v.	)	
	)	
Lenox Community School District,	)	Admin. Doc. No. 5042
	)	
Appellee.	)	

**STATEMENT OF THE CASE**

The Appellant seeks reversal of an April 25, 2016, decision by Lenox Community School District ("LCSD") Board of Directors ("LCSD Board") suspending Student A for the remainder of his high school career from participation in extracurricular activities for a violation of the schools Good Conduct policy ("GC Policy"). The affidavit of appeal filed by the Appellant on May 24, 2015, attached supporting documents, and the school district's supporting documents are included in the record. 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 ("the State Board") have jurisdiction over the parties and subject matter of the appeal before them.

An in person evidentiary hearing was held in this matter on July 21, 2016, before designated administrative law judge, Nicole M. Proesch, J.D., pursuant to agency rules found at 281 Iowa Administrative Code chapter 6. The Appellant was present with his minor child, Student A, and was represented by Attorney Rod Maharry. Superintendent David Henrichs ("Superintendent Henrichs") was present for the LCSD and represented by Attorney Matt Hansen. Also present for the district was Secondary Principal Michael Still ("Principal Still").

The Appellant and Student A testified in support of the appeal. Jodie Mabin, an Adams County Speedway employee, also testified. Appellant's Exhibit A was admitted into evidence without objection. Superintendent Henrich and Principal Still testified for LCSD. Appellees Exhibits A, B, E-O and U were admitted into evidence without objection. Exhibits C, D, and Q-T were excluded since they were not part of the record before the LCSD Board.

**FINDINGS OF FACT**

At the time of his suspension, Student A was a seventeen year old junior in the Lenox High School ("LHS") and finishing his second semester of the 2015-2016 school year. Student A participated in football, wrestling, track, and baseball for LHS. Prior to coming to LHS Student A attended school in Des Moines and was getting into trouble and hanging out with the wrong

people so he moved to Lenox to live with his father to go to school. Student A had been disciplined on two prior occasions for three separate violations of the school's GC Policy before the incident involved in this appeal.

On September 4, 2013, Student A received a letter of notice that he was being cited for violations of the GC Policy for stealing and for smoking marijuana. Student A was issued two separate violations for each infraction. There is no dispute that the two infractions arose out of an incident that occurred on the same day. Student A self-reported the incidents and thus was deemed to be ineligible for activities for forty-five days.<sup>1</sup> Student A was also required to complete a treatment program prior to reinstatement. Student A was also notified that a third infraction would result in a one year suspension from the date of the third violation. Student A did not appeal the decision, sat out for forty-five days, and was later reinstated.<sup>2</sup>

On November 6, 2013, Student A received a letter of notice that he was being cited for a violation of the policy for charges pending with the Lenox Police Department.<sup>3</sup> According to the Officer Statement, the incident involved a group of minors who were at a party and consuming alcohol. Several minors left the party and took a vehicle without the owner's consent. Student A was with the group and drove the vehicle at some point. Principal Still spoke with Student A about this incident. Student A stated he understood this was a violation of the policy. Student A was deemed to be ineligible for activities for one year from the date of the violation. Student A was also notified that a fourth infraction would result in ineligibility for the rest of his high school career. Student A did not appeal the decision, sat out for one year, and was later reinstated.<sup>4</sup>

The facts regarding the incident that resulted in the current local board action are largely undisputed. On April 19, 2016, a community member reported to Principal Still that Student A had stolen a trophy from the Adams County Speedway. The trophy was in the grandstand area waiting to be given out when Student A took it on a dare because he thought it would be funny. Speedway staff noticed that the trophy was missing and reviewed surveillance video. After reviewing the video, they determined that Student A had taken the trophy. The Speedway announcer made an announcement asking that the trophy be returned immediately without punishment. Student A admitted that he heard the Speedway announcer ask for the trophy to be returned, but stated that he was scared to so he left the Speedway and took it home. In the meantime, Student A's father received a message from a raceway worker that Student A had taken the trophy. Student A spoke with his father on the way home and told him he had the trophy. Student A and his father returned the trophy to the Speedway and there were no

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<sup>1</sup> Under the GC Policy a student who admits the violation within 24 hours is entitled to half off of the suspended days. A first violation is a thirty day suspension and a second violation is 60 days. Thus, Student A received forty-five days total.

<sup>2</sup> The Appellant now argues that Student A should have only received one violation for this incident and not two.

<sup>3</sup> The charges that were being investigated were operating a motor vehicle without owner's consent, criminal mischief, and operating without a license.

<sup>4</sup> The Appellant now argues that Student A should not have received a violation for this incident because there were no charges pending at the time the district found a violation of the GC Policy. Student A pled guilty to a traffic violation for driving on a permit on December 28, 2013, nearly two months after the violation of the GC Policy was found. (See Exhibit A).

charges filed. Principal Still spoke with Student A, who admitted to taking the trophy from the Speedway as a joke because his friends were daring him to. Student A stated he did not believe it was a big deal and he should not be issued a violation of the GC policy for the incident.

On April 19, 2016, Principal Still sent a letter to Student A's parents notifying them he found Student A's taking of the trophy to be a violation of the school's GC policy. The letter also notified them that this was Student A's fourth offense, thus he would be ineligible for extracurricular activities for the rest of his high school career. On April 20, 2016, the Appellant sent a letter of appeal to Superintendent Henrichs.

On April 20, 2016, Superintendent Henrichs sent a letter to the Appellant notifying him that he reviewed the GC Policy and the information provided by Principal Still, the Appellant, Student A, and a law enforcement officer and determined that he would uphold the decision of Principal Still. Superintendent Henrichs found the following:

The decision is based upon two factors found within the "Good Conduct Policy."

- A. Students will be subject to suspension from extracurriculars for violating any of the following . . . The commission of a crime under any governmental law or ordinance except those merely regulating the use of a motor vehicle.
- B. Determination of a violation will be based upon . . . Admission by the Student.

(April 20, 2016, Letter from Superintendent Henrichs).

On April 21, 2016, the Appellant sent a letter of appeal to Superintendent Henrichs. On April 25, 2016, the LCSD Board held a hearing to review the decision of the Superintendent to uphold the decision of Principal Still. The Appellant and Student A were present and provided evidence and testimony to the LCSD Board. A representative from the Speedway also testified before the LCSD Board.

The LCSD Board GC Policy states in relevant part:

**Student Good Conduct Rule, Code No. 503.9**

It is the believe of the Lenox Community School District that students should conduct themselves as good citizens if they desire to represent the school in any activity sponsored by our school. Not only is it a privilege and an honor to be able to participate and represent the Lenox Community School in its extra-curricular activities, but students should realize they serve as models to many other people and their behavior and attitude have an important impact on themselves and others. In short, directly, and indirectly, the conduct of the student reflects in the standards, attitudes, and philosophy of our school and community. . . .

Student will be subject to suspension from extracurricular activities for violating any of the following while in season:

- 1) A secondary student has no "right" to participate in interscholastic athletics or other extracurricular activities.
- 2) Since there is no right to participate, the amount of due process owed to a student in such cases is minimal. Due process requires only two elements: 1) the student must be told what he is accused of; and 2) the student must be given an opportunity to tell his side of the story.
- 3) In order for a student to be disciplined under a school's good conduct policy there need only be "some evidence"<sup>5</sup> that a student violated the policy.

*Id.*

There is no argument that the Appellants were deprived Due Process. In this case, there are two issues raised by the Appellants. The first is whether or not Student A committed a crime under the terms of the GC Policy. If Student A violated the policy, the second issue is whether or not this violation should be counted as a fourth offense subjecting Student A to a suspension from extracurriculars for the remainder of his high school career.

The Appellants argue that Student A did not commit a crime as required under the policy because he was never charged. They also argue that Student A did not have the requisite intent to deprive the owners of the trophy because he returned it. We find this argument unpersuasive. First, by the policy's plain language, the fact that Student A was not charged with a crime does not bar the LCSD Board from finding a violation of the policy. Admission of the violation alone is enough under the policy to determine that there was a violation without a charge or conviction in a court of law. Student A admitted that he took the trophy. Furthermore, Student A only returned the trophy after he knew that the raceway requested over the intercom that it be returned and after he had already left the raceway with the trophy in hand and drove home with it. By this point Student A's father was aware that he had taken the trophy and then went with him to return it. There is certainly "some evidence" Student A violated the policy as required under *Brands*. Even if it was a "joke" or "dare" as Student A characterizes it, "these student leaders are looked up to and emulated" and "they represent the school and depict its character." *Bunger*, 197 N.W. 2d at 564. Student A's behavior in this instance is not the type of behavior that the school expects students to emulate. Thus, the determination that Student A violated the GC Policy under these circumstances is reasonable.

We now turn to the second issue which is the determination of whether or not this violation should be deemed a fourth violation. First, we note that Student A was no stranger to the GC Policy because he had violated it on two prior occasions. Second, Student A was provided with written notice for all three of the prior violations and Student A did not appeal any of those violations. Finally, Student A was also provided with notice that any further violations would result in a suspension of his privileges to participate in extracurricular for the remainder of his high school career. To his credit Student A took responsibility for the prior violations, admitted them to administration, and was given a lesser suspension because he cooperated with administration. However, the time to appeal those prior violations expired in 2013. We cannot allow the Appellant to re-litigate those prior violations as part of the instant

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<sup>5</sup> Due process does not require courtroom evidence standards. "Some evidence" is less than preponderance of evidence and far from beyond a reasonable doubt.

1. Possession or consumption of alcohol, controlled substances, or tobacco in any form with the knowledge, intent, and control thereof.
2. The commission of a crime under any governmental law or ordinance except those merely regulating the use of a motor vehicle.

Determination of a violation will be based upon:

- Admission by the student, or
- Conviction by court of law, or
- An investigation by school officials and determination that some evidence exists that a violation has occurred. This investigation may include, but is not limited to, a report from law enforcement, or interviews and/or statements from other students, staff, or members of the community. . . .

(Student Good Conduct Policy, Code No. 503.9, Page 1).

The LCSD Board voted 4-1 to uphold the decision of administration finding that Student A had a fourth violation of the GC Policy and holding that Student A would be suspended from activities for the remainder of his high school career. On May 24, 2016, the Appellant filed a timely notice of appeal to the State Board.

#### CONCLUSIONS OF LAW

Under Iowa Code section 290.1, a parent or guardian of an affected student who is aggrieved by a decision or order of the board of directors of a school corporation may appeal the decision to the State Board. Iowa Code § 290.1. In these appeals the Legislature has mandated that the State Board render a decision that is both "just and equitable." The State Board will not disturb a local Board's decision in school discipline issues unless it is "unreasonable and contrary to the best interest of education." *In re Jesse Bachmann*, 13 D.o.E. App. Dec. 363, 369 (1996). Thus, the test is reasonableness.

School districts have the authority to promulgate rules for the governance of pupils. Under Iowa Code section 279.8, a local school board "shall make rules for its own government and that of the . . . pupils, and for the care of the school house, grounds, and property of the school cooperation, and shall aid in the enforcement of the rules, and require the performance of duties imposed by law and the rules." Iowa Code § 279.8. Inherent in this law is the school board's authority to adopt and enforce a good conduct policy. The Iowa Supreme Court has ruled that schools and school districts may govern out of school conduct of its students who participate in extracurricular activities because "these student leaders are looked up to and emulated" and "they represent the school and depict its character." *Bunger v. Iowa High School Athletic Association*, 197 N.W. 2d 555, 564 (Iowa 1972).

*Brands v. Sheldon Community School District* remains the paramount case in good conduct appeals. 671 F. Supp. 627, 630-631 (N.D. Iowa 1987). The Court in *Brands* established several principles regarding good conduct violations that are still followed by the State Board today. Those principles are as follows:

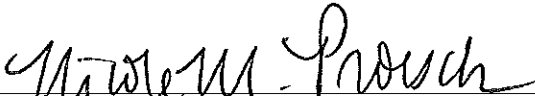
appeal.<sup>6</sup> Thus, we find the LCSD Board finding that this is Student A's fourth violation of the GC Policy reasonable under the circumstances.

Therefore, the State Board finds that the decision of the LCSD Board that Student A violated the GC Policy for taking a trophy from the Speedway was reasonable and the decision to treat this violation as a fourth violation resulting in Student A being suspended from participation in extracurricular activities for the remainder of his high school career is also reasonable under the circumstances.

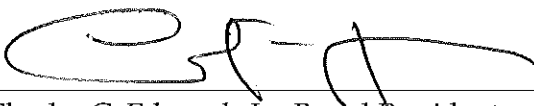
### DECISION

For the foregoing reasons, the decision of Lenox Community School District Board of Directors made on April 25, 2016, suspending Student A for the remainder of his high school career from participation in extracurricular activities for a violation of the school's Student Good Conduct policy is hereby AFFIRMED. There are no costs of this appeal to be assigned.

9/16/16  
Date

  
Nicole M. Proesch, J.D.  
Administrative Law Judge

9/15/16  
Date

  
Charles C. Edwards Jr., Board President  
State Board of Education

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<sup>6</sup> Even if we were to re-examine the number of infractions issued to Student A, we would conclude that the Board's decision to issue two infractions for the string of occurrences on September 4, 2013, was reasonable and in the interest of education. Secondly, even if we found this violation to be a third and not a fourth violation Student A would still be suspended for a year from participation in activities under the GC Policy which would still result in a suspension for the remainder of his high school career since he will be a senior.