

**IOWA DEPARTMENT
OF EDUCATION
(Cite as 22 D.o.E. App. Dec. 67)**

In re Colby Gibson

Laurie Gibson, Appellant,	:	
vs.	:	DECISION
Lisbon Community School District, Appellee.	:	[Admin. Doc. 4542]

The above-captioned matter was heard telephonically on June 25, 2003, before designated administrative law judge Carol J. Greta, J.D. Appellant, Laurie Gibson, was present on behalf of her son, Colby, who was also present. She was not represented by legal counsel. Appellee, the Lisbon Community School District [“the District”], was represented by legal counsel, Joe Holland of the Iowa City law office of Holland & Anderson. Also appearing on behalf of the Appellee were Superintendent Robert Torrence, High School Principal Dan Conner, and Board Secretary Gene Lawson.

An evidentiary hearing was held pursuant to agency rules found at 281 Iowa Administrative Code chapter 6. Authority and jurisdiction for the appeal are found in Iowa Code § 290.1 (2003). 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.

Mrs. Gibson seeks reversal of the April 23, 2003 decision of the local Board of Directors of the District to uphold the administration’s conclusion that Colby had committed a second violation of the District’s Good Conduct Rule as contained in the High School Student Handbook. She filed a timely appeal to this agency on behalf of her minor son, seeking a dismissal of the Good Conduct violation.

Although the District argues that Mrs. Gibson’s appeal is limited to procedural concerns, it is clear from the record as a whole that she bases her appeal on two broad arguments: (1) that Colby did not commit the alleged violation and (2) that Colby did not receive all process due to him. Mrs. Gibson does not dispute the punishment (which has been fully served by Colby); nor does she dispute that Colby’s alleged misconduct, if proven, would be a violation of the District’s Good Conduct Rule.¹

¹ The 2002-2003 Lisbon High School Student Handbook, on page 11 thereof, unequivocally sets out the “use of profanity or verbal abuse toward any person” as a violation.

I. FINDINGS OF FACT

The parties stipulated to the submission herein of a record that includes six pieces of correspondence between the parties, pertinent pages of the High School Student Handbook, and the certified minutes of the April 23, 2003 meeting of the Board. They agree that Colby (who was born in March 1986) and other students were in the high school library on February 28, 2003, and that they were supervised by Mrs. Albang, a District employee. There is disagreement about what occurred in the library.

Mrs. Albang reported to Mr. Conner that one of the students in the library called her a “bitch.” She further told Mr. Conner that she *assumed* it was Colby. This assumption was based on her observation that Colby had been noncompliant earlier that day when she issued “multiple directives” to him, primarily to the effect that he be more quiet and that he sit at a table alone. She admitted to Mr. Conner that she had turned her back to Colby, but she was still standing by him at the time she heard the offending word spoken.

Both Mr. Conner and Mr. Torrence, at the request of Mrs. Gibson, conducted separate investigations of the incident. In addition to talking to Mrs. Albang, Mr. Conner interviewed Colby and four other students who were present at the time. Colby denied the allegation. Two of the four students told Mr. Conner that it was Colby who had called Mrs. Albang a bitch; the other two related that they had not been paying attention.

Several weeks later, Mr. Torrence also talked to Colby and asked Colby for the names of persons whom Colby wanted Mr. Torrence to interview. He eventually spoke with five other students; no one stated that Colby did not utter the epithet. These students told their superintendent either that they heard nothing or that they did not know who spoke the word. The strongest statement made to Mr. Torrence in Colby’s favor was from two students who said that they did not believe that the utterance came from the table at which Colby was seated.

Based on their investigations, both administrators independently concluded that Colby had violated the District’s Good Conduct Rule. As noted earlier, this was Colby’s second violation of the Rule. He and his mother chose a penalty option available through the Good Conduct Rule that cut his suspension time in half because he agreed to a voluntary assessment by a third party and follow-up as deemed necessary by the third party. His punishment, therefore, was three days of suspension from the educational program of the high school and 63 calendar days of suspension from extracurricular activities. These penalties have been fully served by Colby.

Certain portions of the High School Student Handbook that deal with the District’s Good Conduct Rule are confusing, even self-contradictory. For example, the second numbered paragraph of the Good Conduct Rule states, “The sponsor for an

extracurricular activity and/or principal may declare a student ineligible whose conduct is contrary to and/or in violation of, the established rules and regulations as set forth herein.” The numbered paragraph immediately following that paragraph informs students and parents that “violations will result in a student being suspended” from extracurricular activities (with provision for appeals to the superintendent and local board). [Emphasis added.]

On the other hand, there is a section in the student handbook entitled “Student Assistance Team² and Good Conduct Policy Due Process.” This section appears immediately after the Good Conduct Rule in the student handbook, and states as follows:

When the administrator (principal) has reasonable belief that a student has violated the Good Conduct Code, all circumstances will be reviewed in a just and equitable manner. The following due process procedure will be followed:

1. The high school principal will initially meet with the student. During the meeting, the student will be informed of the alleged violation and be presented with whatever evidence merited the meeting.
2. If the student admits to the violation or if the evidence suggests the reasonable possibility of guilt, the student will appear before the Student Assistance Team. ...
3. The Student Assistance Team will hear the testimony of the administration, the student, and any other witnesses. The team will render a decision... .
4. The decision of the Student Assistance Team may be appealed to the superintendent. ...
5. The decision of the superintendent may be appealed to the [local] Board of Education. ...

[Emphasis added.]

² No students serve on the Student Assistance Team. Although its composition is flexible, it appears that the Team is generally intended to include the high school principal, guidance counselor and a secondary teacher.

It is the above “due process procedure” outlined in the Lisbon High School Student Handbook that Ms. Gibson argues was not followed by the District. The District admits it did not follow this procedure, but counters that it acted in reliance on the second numbered paragraph of the Good Conduct Rule, which allows a coach or the principal alone to declare a student in violation of that Rule.

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 (2003). The standard of review, 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. In the context of this case the question becomes whether the board’s decision to uphold the administration’s conclusion that Colby had violated the Good Conduct Rule and the subsequent punishment was a reasonable exercise of its authority.

Local school boards have statutory authority to enact and enforce rules for the governance of their students. Iowa Code § 279.8 (2003) states in part that the “board shall make rules for its own government and that of the directors, officers, employees, teachers and pupils... .” The Iowa Supreme Court has ruled that schools and school districts may include good conduct rules as part of their policies that govern student behavior. *Bunger v. Iowa High School Athletic Association*, 197 N.W.2d 555, 564 (Iowa 1972). This Board has held on many occasions that, because extracurricular activities are not required of a student, the student agrees to comply with the local good conduct rule when s/he chooses to participate in one or more extracurricular activities. *E.g., In re Jon Francis*, 21 D.o.E. App. Dec. 251 (2003); *In re Sharon Ortner*, 16 D.o.E. App. Dec. 269 (1999); *In re Joseph Fuhrmeister*, 5 D.o.E. App. Dec. 335 (1988).

Against that legal backdrop, we first turn to the issue of whether Colby violated the District’s Good Conduct Rule. Unlike in a criminal proceeding where the standard of proof is “beyond a reasonable doubt,” the District here had to conclude that “a preponderance of the evidence” showed a violation had been committed by Colby. *See, In re Jon Francis, supra* at 256.

Principal Conner admitted that he prejudged Colby’s culpability before speaking to any witnesses, other than Mrs. Albang, because of prior experiences where Colby had been less than truthful. Inasmuch as the District did not choose to elaborate on any of these prior experiences, we give this little weight. However, we need not determine whether Mr. Conner made an unfair judgement regarding Colby because this hearing is *de novo* in nature. We judge for ourselves whether Colby uttered the profanity.

Although we are not required to give deference to a District's findings, we have previously recognized that local administrators and boards are "in a much better position to judge the guilt or innocence" of their students than are we. *In re Chris Gruhn, et al.*, 9 D.o.E. App. Dec. 265 (1992). Here, it is very telling that not one witness came forward to exculpate Colby. No one stated to either Mr. Conner or Mr. Torrence that Colby could not have been the one to voice the profanity because, e.g., "Student X said it." On the other hand, two students told Mr. Conner that Colby was the guilty party. Based on the circumstances of this case alone, we find by a preponderance of the evidence that Colby violated the Good Conduct Rule by directing the word "bitch" toward Mrs. Albang.

We next turn to Ms. Gibson's argument that Colby's "due process and constitutional" rights were violated when the District omitted the Student Assistance Team process enumerated in the student handbook.

In Iowa, as in a majority of jurisdictions, a student has no constitutional or statutory right to participate in extracurricular activities. *Brands v. Sheldon Community School*, 671 F.Supp. 627, 630-31 (N.D. Iowa 1987). Therefore, there is minimal legal process due to Colby. What legal process was due to Colby – notification of alleged violation, opportunity to tell his side of the story to the administration and then the local board – was fulfilled in this case. However, a school can, by its rules and policies, create expectations and rights where the law does not otherwise provide them. *Accord, Brands, supra* at 631 ("If any property interest of the [student] is involved in this case, it is a property interest created by the [district's] own Disciplinary Policy and Administrative Rules."). The District here, by the language in its student handbook regarding the Student Assistance Team, created an expectation that the process would be provided to Colby.

The District argues that numbered paragraph 2 of its Good Conduct Rule gives it a choice between convening the Student Assistance Team or having a violation determined by a coach or principal. Mr. Conner also added that the Student Assistance Team was not convened in Colby's case because the violation was "clear cut," implying that the Team was only convened in "close calls." However, that is not how the language in the student handbook reads. The provisions regarding the Student Assistance Team unambiguously state that a 5-step process (enumerated earlier herein) "will be followed." That process was not provided. Accordingly, we must now determine whether Colby was prejudiced by the District's failure to convene the Student Assistance Team.

As we have previously ruled in *In re Joseph Fuhrmeister*, 5 D.o.E. App. Dec. 335, 345 (1988) and *In re Jon Francis*, 21 D.o.E. App. Dec. 251, 255 (2003), a slight variation of the language of a good conduct rule from its implementation does not amount to a deprivation of due process. While this was more than a slight variation, there was no evidence here that the Student Assistance Team would have made a decision different

from the conclusion reached by Principal Conner. Any decision made by the Student Assistance Team could have been appealed to Superintendent Torrence, whose independent investigation led him to conclude that Colby violated the Good Conduct Rule. Omitting the Student Assistance Team step did not prejudice Colby and did not deprive him of the due process created by the District.

We make it clear that we do not endorse the confusion created by the contradictory provisions in the District's student handbook. We strongly urge the District to clarify when it intends to operationalize the Student Assistance Team, if indeed it opts to retain that process. However, we conclude that not following its own procedures in this case did not deprive Colby of any process due to him because the practical effect of the District's failure was that Colby merely appealed directly to his superintendent and then to his local board.

III. DECISION

For the foregoing reasons, it is recommended that the decision of the Board of Directors of the Lisbon Community School District made on April 23, 2003, finding that Colby Gibson violated the District's Good Conduct Rule, be AFFIRMED. There are no costs of this appeal to be assigned.

Date

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

It is so ordered.

Date

Gene E. Vincent, President
State Board of Education