IOWA STATE BOARD
OF EDUCATION
(Cite as 22 D.o.E. App. Dec. 175)

In re Jon and Josh Perry	:	
Mike and Sharon Perry,	:	
Appellants,	:	
	:	DECISION
vs.	:	
Southern Cal Community School District,	:	
Appellee.	:	[Admin. Doc. 4543]

The above-captioned matter was heard in person on August 13, 2003, before designated administrative law judge Carol J. Greta. Appellant, Mike Perry, was present on behalf of his sons, Josh and Jon, who were also present. Mr. Perry was represented by legal counsel, Thomas W. Polking. Appellee, the Southern Cal Community School District, was represented by legal counsel, Brian L. Gruhn. Also appearing on behalf of the Appellee were Superintendent Dwayne Cross, High School Principal Matt Patton, and School Board President Chuck Loeck.

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. 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 Perrys seek reversal of a decision of the local board of directors of the District made on April 24, 2003, finding that Josh and Jon had violated the District's good conduct policy and punishing them accordingly. They filed a timely appeal to this agency.

I.
FINDINGS OF FACT

This case and its companion case, *In re Marcus Kavanaugh*, 22 D.o.E. App. Dec. 147(2003), arise from incidents of illegal possession and consumption of alcoholic beverages by several students of the District at a West Des Moines hotel during the 2003 state wrestling tournament. The tournament took place in Des Moines on February 26 – March 1. The District's wrestling team qualified an unspecified number of individuals for the meet. The qualifiers, other members of the wrestling squad, wrestling cheerleaders, managers, and statisticians were all excused from school to attend the tournament. The District rented five or six rooms at the University Park Holiday Inn [hereinafter, "Holiday Inn"] in West Des Moines for these students and for the adult coaches. The breakdown of room assignments is as follows:

- Two rooms for the wrestlers, one for the qualifiers and a separate room for the other members who made the trip to Des Moines[1];

- One room for the cheerleaders;

- One room for the statisticians ["stat girls' room"]; and

- One or two rooms for the coaches

The week following the tournament the high school principal, Matt Patton, received a phone call from the parent of one of the students who had stayed at the Holiday Inn. The parent informed Mr. Patton that students had been drinking alcoholic beverages while at the hotel for the tournament. Mr. Patton immediately started an investigation into the allegations, eventually interviewing 35 students and school employees. Ultimately, 25 students were punished by the District for violations of the District's good conduct rule – nine students for consuming alcoholic beverages and the other 16 students for violation of the "mere presence" provisions of the good conduct rule. Josh and Jon Perry, as well as Marcus Kavanaugh, were among those found to be in violation of the mere presence rule. They are the only students of the 25 punished by the District who have appealed to this Board.

Not all of the students interviewed by Mr. Patton admitted their involvement in any illegal activity, nor did they implicate other students in such activities. When punished by the school administrators, however, none protested but for the Perry brothers and Marcus. The District did present several written statements signed by students that implicated Josh and Jon. The students' statements to Mr. Patton included the following assertions that are pertinent to the Perry brothers' case:

- Student A:

    - Admitted that she was drinking.

    - Saw several bottles of vodka in the stat girls' room.

    - Says that the Perry brothers were in the wrestlers' room but were not drinking.

[1] Those involved in this case consistently used the term "the wrestlers' room" to denote the room used by the non-qualifiers from the team. This room was the one assigned as sleeping quarters to the Perry brothers, Marcus, and others from the team. That term is similarly used throughout this decision.

- Student B:
    - Admitted that he was drinking.
    - Saw “lots of” beer in the cheerleaders’ room.
    - Says that the Perry brothers were in the wrestlers’ room for several hours while alcohol was present.
- Student C:
    - Admitted that she was drinking.
    - Saw “lots of” alcohol in cheerleaders’ room.
    - Saw students drinking wine coolers and beer in the cheerleaders’ room.
    - Saw Perry brothers in the wrestlers’ room Friday night while others were drinking in the room.
    - Saw several bottles of vodka and a bottle of rum in various rooms rented by the District at the Holiday Inn throughout the four days of the tournament.
- Student D:
    - Initially claimed he did not drink but approached Mr. Patton later on same day of his interview to admit otherwise.
    - Stayed in wrestlers’ room at the Holiday Inn.
    - Saw beer, Black Velvet, and vodka in the cheerleaders’ room.
- Student E:
    - Admitted that he was drinking vodka and Black Velvet in the wrestlers’ room on Thursday evening.
    - Claims the Perry brothers were not drinking but were present while he was consuming the alcohol in the wrestlers’ room.
    - Saw beer in the cheerleaders’ room; also drank some there.

- Student F:
    - Admitted that she was drinking.
    - Saw bottles of alcohol "sitting around" in wrestlers' room while Perry brothers were present Friday night.
    - Saw people drinking alcohol from pop cans in the stat girls' room (she was offered some and knows it was alcohol).
    - Saw several bottles of alcohol in stat girls' room.
    - Saw alcohol in cheerleaders' room.
    - Saw people come in and out of cheerleaders' room with bottles of beer in hand.

In the course of his investigation, Mr. Patton interviewed Josh and Jon separately, telling them that other students had told him that they were present at the Holiday Inn while illegal underage drinking was occurring. When questioned by Mr. Patton, Josh admitted to seeing beer in the cheerleaders' room, but denied seeing any other alcohol and denied seeing anyone drink illegally. Josh spent Wednesday through Saturday nights at the Holiday Inn, but slept Wednesday night in the cheerleaders' room and the other nights in the wrestlers' room. Jon, who spent each night in the wrestlers' room, acknowledged to Mr. Patton that he saw many students drinking from McDonalds cups and pop cans, and that they could have been drinking alcohol. Mr. Patton wrote in his notes of his interview with Jon that Jon reported that a specific student brought a bottle of vodka and that Jon had affirmatively seen another student drink alcohol. At hearing, Jon testified that he saw a bottle with clear liquid that could have been vodka, but Jon never read the label; other than that, he stated that he does not now remember what he told his principal.

Both Perry brothers stated that they are heavy sleepers and would not necessarily have known if a party was going on in their room. Their testimonies were consistent in that they stated that they watched the wrestling matches at Veterans Auditorium, returned to the Holiday Inn with the team around 9:00 – 9:30 each night, ate (at McDonalds, across the street from the hotel), swam, and went to sleep and did not awaken until the next morning. They stated they had no intention of attending a "party or function" while in Des Moines for the tournament. Josh and Jon also testified that periodic room checks were performed by the District's coaches. These coaches (wrestling and cheerleading) charged with supervising the students and performing room checks at the Holiday Inn claimed not to have seen any alcoholic beverages present or consumed by District students when interviewed by Mr. Patton.

Based on a preponderance of the evidence before it, the local school board determined that Josh and Jon were in violation of the mere presence portion of its good conduct 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.[2] 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.

School districts have the authority to promulgate rules for the governance of pupils. Iowa Code § 279.8 mandates that the board of directors of a school corporation "shall make rules for its own government [sic] and that of the … pupils … ." Districts can also govern out-of-school conduct by students involved in athletics and other extracurricular activities. *Bunger v. Iowa High School Athletic Assn.*, 197 N.W.2d 555, 564 (Iowa 1972). There is no dispute that Jon and Josh were covered by the District's good conduct policy.

The Perrys assert the procedural due process argument that they were given insufficient notice of the allegations against them. They also raise the substantive arguments that the mere presence language in the District's good conduct policy is unreasonable, overbroad, vague, and ineffective, and that the rule was unreasonably applied to them.

Procedural Due Process

Mr. Patton told both Perry brothers that he had statements from other students to the effect that they were present at the Holiday Inn during the time of the state wrestling tournament when other students were unlawfully consuming alcoholic beverages. Given that a federal court in Iowa has held specifically that there is no right of a student to participate in interscholastic athletics, and, therefore, little procedural process due to a student charged with a violation of a local good conduct policy (*Brands v. Sheldon Community School*, 671 F.Supp. 627, 630-631 (N.D. Iowa 1987)), Josh and Jon had sufficient notice of the allegations against them. They certainly had enough information

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[2] This section has been interpreted by the State Board as meaning that the hearing at this level is a *de novo* hearing. Therefore, although by mutual consent of the parties the transcript of both the evidentiary and deliberative portions of the hearing before the local board was provided to the undersigned, that part of the transcript with the local board's deliberations has not been reviewed by the undersigned or by any member of the State Board.

from what Mr. Patton told them to prepare a defense. There was no deprivation of procedural due process in this case.

Reasonableness of the Rule as Written

We discuss the reasonableness of the rule as written in *In re Marcus Kavanaugh*, 22 D.o.E. App. Dec. 147(2003). That discussion is incorporated fully by reference herein. For the same reasons recited in the *Kavanaugh* case, we conclude that the policy is neither vague, overbroad, nor unreasonable as written.

Reasonableness of the Rule as Applied

The primary argument of the Perrys in this regard appears to be that the young men were where they were supposed to be – in a hotel room assigned to them by the District – and therefore had no options available to them, assuming that they were aware that other students were drinking alcohol. Mr. Patton pointed out in his testimony that the brothers did have options. They could have gone to the coaches' room, gone to the front desk, called home, called the athletic director, called the superintendent, gone to a public area in the hotel such as the pool area or entry, or simply asked those drinking to leave. Going back to sleep is not removing oneself from the situation. To so hold would be to state that closing one's eyes to law breaking was acceptable. While it is not easy for a young person to stand up to his peers, a person involved in extracurricular activities is assumed to be, in the words of the Iowa Supreme Court, a "standout student." *Bunger, supra* at 564. The Court stated,

> 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 extracurricular activities.

Id.

"As long as a decision rests upon 'some evidence,' [substantive] due process may have been satisfied." *Brands, supra*, 671 F.Supp. at 632, quoting *Superintendent v. Hill*, 472 U.S. 445, 105 S.Ct. 2708, 86 L.Ed.2d 356 (1985). That evidence may be circumstantial; it may consist solely of hearsay. But, as long as a preponderance of the evidence points to the culpability of a student, he may be punished under the good conduct policy.

Here, it is reasonable for the District's board to have concluded that Josh and Jon violated the District's good conduct "mere presence" rule and to punish them accordingly. It is entirely reasonable to give credibility to the students who admitted their own guilt and implicated the Perrys and to discount the statements of the District employees. These students provided Mr. Patton with a picture of rampant underage drinking occurring at the Holiday Inn during the wrestling tournament. The students had no incentive not to be truthful about the conduct of their peers; their punishments were not dependent on what they said about others. On the other hand, the school personnel who were supposed to be supervising the students had their jobs on the line. We find that Josh Perry and Jon Perry violated the good conduct policy of the District by their knowing presence in the company of students who were consuming alcoholic beverages.

III.
DECISION

For the foregoing reasons, it is recommended that the decision of the Board of Directors of the Southern Cal Community School District made on April 24, 2003, finding that Josh Perry and Jon Perry violated the District's good conduct policy and punishing them accordingly, be AFFIRMED. There are no costs of this appeal to be assigned.

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

It is so ordered.

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Date Gene E. Vincent, President
State Board of Education