

IOWA STATE BOARD
OF EDUCATION
(Cite as 19 D.o.E. App. Dec. 127)

In re Andy Gower :

Richard & Carol Gower, :
Appellants, :

v. :
: DECISION

Paton-Churdan Community :
School District, :
Appellee. : [Admin Doc. #4213]

The above-captioned matter was heard on June 1, 2000, and June 30, 2000, before a hearing panel comprised of Donna Eggleston and Maryellen Knowles, consultants, Bureau of Administration & School Improvement Services; and Susan E. Anderson, J.D., designated administrative law judge, presiding. Appellants, Richard and Carol Gower, were present with their son, Andy Gower. The Gowers were represented by Attorney Joseph Halbur of Carroll, Iowa. Appellee, Paton-Churdan Community School District [hereinafter, “the District”], was present in the persons of Paul Sundholm, superintendent; Kevin Fitzpatrick, board president; and Mike Minnihan, high school principal and activities director. The District was represented by Attorney Rick Engel of Des Moines, Iowa.

An evidentiary hearing was held pursuant to Iowa Code chapter 290(1999) and departmental rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for this appeal are found at Iowa Code section 290.1(1999).

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.

Appellants seek reversal of decisions of the Board of Directors [hereinafter, “the Board”] of the District made on January 12, 2000, and June 16, 2000, suspending their son, Andy, from participating in athletics and band under the District’s good conduct policy.

**I.
FINDINGS OF FACT**

Mr. and Mrs. Gower are residents of the Paton-Churdan Community School District. Their son, Andy Gower, attends the District’s high school. At the time of the appeal hearing, Andy was 17 years old and had just completed his junior year. Prior to being suspended

from extracurricular activities, he participated in band, chorus, basketball and baseball. Andy is scheduled to graduate in the spring of 2001.

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Mr. Minnihan, high school principal and activities director, testified that he is the administrator in charge of applying the District's good conduct policy. He testified that the District's Student Handbook states, in pertinent part:

ACTIVITY ELIGIBILITY – It is the policy of the Paton-Churdan School District, that participation in any extra-curricular or co-curricular activity is a privilege. Therefore, certain areas of conduct shall be deemed inappropriate to the generally accepted standards subscribed to by the school district. It is further deemed important that participants before starting in the program, should be made clearly aware of its philosophy, opportunities, and set of policies and procedures under which they will be participating.

In view of the preceding statement, the Paton-Churdan Jr.-Sr. High School will enforce the following policies and procedures for participation in extra-curricular or co-curricular activities throughout the calendar year both in and out of school.

...

Article 3: Period of Suspension

1. Athletics

Suspension shall begin immediately if the activity is in season. If the period of suspension is longer than the remaining season, it will carry on to the next season or in the next activity that the student normally participates. If prior to the season, the suspension will begin on the first day of a scheduled contest. Students must continue to practice during the period of suspension.

2. Dramatics, Speech, Vocal and Band

Suspension will be [sic] immediately if practice has started. If practice has started, it will include at least one performance. If the violation occurs at a time that could make it impossible to prepare another student to fill the vacancy and would therefore force suspension of the play or contest, the suspension may be appealed and reviewed.

...

Article 5: Standards and/or Regulations

- A. All students who are found guilty of using, possessing, acquiring, delivering or transporting any controlled substance, drugs (other than prescription), alcoholic beverages, or tobacco shall be declared ineligible as follows:

...

2. Students participating in only athletics

a. alcohol

first offense – the student is suspended for ½ of the contests in his/her sport. Scrimmages and jamborees do not count as contests for a suspended athlete. Coaches may, at their discretion, allow a suspended athlete to compete in a scrimmage, but not in the West Central Conference Jamboree.

second offense – and all other subsequent offenses – the student will be suspended from all extra-curricular activities for one calendar year.

...

3. Students participating in the arts, clubs, organizations, and school sponsored activities

a. alcohol

first offense – nine weeks non-participation.

second offense – suspension for one calendar year from all co-curricular activities

...

- F. All violations and ineligibility penalties are considered on a 12-month calendar basis.

...

(Paton-Churdan Junior-Senior High School Student Handbook 1999-2000, Exhibit 8.)
Mr. Minnihan testified that he interprets “one calendar year” to mean 12

consecutive months.¹ He testified that Section F means that if a student goes for a

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twelve-month period with no violations, the student gets a clean slate and starts over with a first violation if another violation occurs. It is a chance to clear the record and start over.²

Mrs. Gower had signed forms from the District acknowledging that she had read and understood the Student Handbook rules for academic years 1998-1999 and for 1999-2000. The pertinent Student Handbook rules for 1998-99 were the same as the ones in 1999-2000.

Andy's first violation of the good conduct policy occurred on August 1, 1998, for consuming alcohol. Andy was suspended for nine weeks from participating in all school-sponsored activities during his sophomore year. This violation and suspension were not challenged on appeal.

Andy's second violation of the good conduct policy took place on or about July 1, 1999, also for consuming alcohol. This second violation in July of 1999 was within one year of the August 1, 1998, violation. Andy was suspended for a 12-month period that would have ended in July 2000. Andy, therefore, missed all of the basketball season and all of the baseball season during his junior year. He also missed three out of four band concerts in his junior year. The second violation and suspension were not challenged on appeal.

Andy's third violation of the District's good conduct policy, also for consuming alcohol, occurred in October of 1999. The Gowers had received no written notices of suspension for the first two violations and had not received a written notice concerning the third suspension. They were not told specifically when his suspensions would end. Mr. Minnihan testified that at the time of the October 1999 violation, he did not specify for the Gowers when Andy's suspension would end. On January 12, 2000, the Gowers appealed the third violation to the School Board, at which time the Board upheld Mr. Minnihan's verbal suspension for the third violation. The January 12 minutes simply state: "Motion by Tilley, seconded by Niles to deny appeals outstanding on the Good Conduct Policy. Motion carried unanimously on roll call vote 4-0." The minutes did not specify the time frame of Andy's suspension. The third violation itself is not being challenged on appeal. What is being challenged in this appeal is the length of the suspension from extracurricular activities as a result of the October 1999 violation.

On February 8, 2000, Principal and Activities Director Mr. Minnihan sent a letter to the Gowers stating as follows:

¹ In *In re Brett Lureman*, 18 D.o.E. App. Dec. 310 (2000), we concluded that this interpretation is reasonable. *Id.* at 317.

² Mr. Minnihan further testified that the District's good conduct policies have recently been substantially revised, but that those revisions won't go into effect until the 2000-2001 school year. In the State Board's decision of *In re Cory Carroll*, 18 D.o.E. App. Dec. 265 (2000), we decided that the same revisions were not required to be retroactive. Therefore, they are not relevant to this appeal.

Dear Mr. and Mrs. Gower,

Kevin Fitzpatrick informed me that you were unclear as to the length of Andy's suspension from extracurricular activities. All violations and ineligibility penalties are considered on a 12-month calendar basis. As we discussed at the August appeal's [sic] hearing, Andy's first violation occurred August 1, 1998; the second in July of 1999 causing a one year suspension from July of 1999. His third violation occurred in October of 1999 causing an additional one year penalty. Under the current policy, Andy will remain under suspension until the end of baseball season, 2001.

(Exhibit 4.)

The Gowers testified that they thought the third suspension was going to be completed in October of 2000. The Gowers disagreed with Mr. Minnihan's interpretation of the Board's January 12 decision. The Gowers argue that the one-year suspension relating to the October 1999 good conduct policy violation should expire in October 2000. They base their argument on the provision in Article 3 which states that suspensions shall begin "immediately". The District argues that Andy should serve a one-year suspension for the July 1999 violation and then, after that, an additional one-year suspension for the October 1999 violation. The District argues, therefore, that the suspension period should expire in July of 2001, which would mean that Andy Gower would not be allowed to perform in band contests, chorus or in any athletic contests for his entire senior year.

The Gowers appealed the January 12 decision to the State Board of Education. On June 1, 2000, the hearing began. The administrative law judge, after hearing part of the evidence, determined that the Paton-Churdan Board needed to clarify the length and expiration date of the third suspension, since it was unclear from its minutes of January 12, 2000. The Board subsequently met on June 16, 2000, and the minutes from that meeting provide, in pertinent part, as follows:

Motion by Killeen, second by Tilley that the good conduct sanction for the student discussed in closed session for a third violation of the good conduct rules be affirmed consistent with the Principal's interpretation, i.e. the third violation will involve a one-calendar year sanction and will begin after the end of the second violation sanction which also will run for one calendar year. Further, the sanction will also bar public performances at non-athletic events. Motion carried unanimous roll call vote.

Andy and his parents testified at the appeal hearing that Andy was convicted three times in criminal court for possession of alcohol. These three convictions corresponded chronologically with the three violations of the good conduct policy. As a result of the criminal convictions, Andy was on probation for six months and he lost his driver's license for four months. He successfully completed a four-month program with Alcoholics Anonymous program. He had stopped drinking alcohol with the supervision and support of his parents. At the time of the appeal hearing, Andy testified that he was focusing on a new set of friends, who don't drink alcohol, and on his academic studies.

II. CONCLUSIONS OF LAW

The State Board has been directed by the Legislature to render a decision that is "just and equitable." Iowa Code section 290.3(1999). 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 Iowa Administrative Code 6.17(2). The test is *reasonableness*. Based upon this mandate, a more precise description of the State Board's standard of review is this:

A local school board's decision will not be overturned unless it is
"unreasonable and contrary to the best interest of education."

In re Jesse Bachman, 13 D.o.E. App. Dec. 363, 369 (1996).

The question before us is whether the Board's decision under the District's good conduct policy language, to suspend Andy until July 2001 for his third and most recent violation, was a reasonable exercise of its authority. The Gowers maintain that the one-year suspension for the third violation should have begun "immediately" in October 1999 and that Andy's ineligibility should expire in October 2000. The District maintains that the two separate one-year suspensions should run end-to-end and that Andy's ineligibility should expire in July 2001.

We conclude that the Gowers' argument is unreasonable because it would mean that Andy would serve only a fraction of the 12-month ineligibility period for the October 1999 violation. We conclude that the District's argument is unreasonable because the District cannot reasonably expect a parent or student to understand what "all violations are considered on a 12-month calendar basis" means. We conclude that the reasonable application of the language of the Student Handbook to Andy's facts leads to a result that neither the Gower family nor the District advocates. We find that the reasonable application of the language leads to a result somewhere between the two positions as follows:

We note that the District's good conduct policy does not address whether or not suspension periods for separate violations within twelve months will run end-to-end. In the absence of that language, we apply the District's good conduct policy language to Andy's situation as follows: Section F of Article 5 provides that "all **violations** and ineligibility penalties **are considered on a 12-month calendar basis.**" (Emphasis added.) Andy's August 1998 violation and his July 1999 violation both occurred within the same 12-month period. However, the October 1999 violation did not occur during the same 12-month period as the first violation, so for the purposes of this appeal, the July 1999 violation should become, under the language in the Student Handbook, his first violation. Andy's penalty for the July 1999 violation as a first violation in that 12-month period would be one-half of the basketball contests for the 1999-2000 school year and nine weeks non-participation in band and choir during the 1999-2000 school year. The October 1999 violation is in effect the second violation in this 12-month period under the good conduct policy.

Under the language of the Student Handbook, the penalty for the October 1999 violation in terms of athletic suspension will be for 12 months, which will begin on the date when one-half of the basketball contests had taken place for the 1999-2000 basketball season. In other words, the twelve-month suspension period will begin running sometime in January of 2000 and end up sometime in January 2001 (the exact dates to be calculated by Mr. Minnihan after consulting his calendar for the 1999-2000 basketball season). Andy will then be eligible to compete in the remainder of the basketball season and in any other athletics thereafter during his senior year, assuming that he has no further violations of the good conduct policy during his senior year.

In terms of Andy's length of suspension from band and chorus, the July 1999 violation will be considered the first violation in this 12-month period. Andy would have been suspended for nine weeks from participating in band and choir during the 1999-2000 school year and his second violation is the October 1999 incident. Andy will therefore be suspended from participating in band and choir for one year from the date of completion of nine weeks of the 1999-2000 season for those activities (the exact dates to be calculated by Mr. Minnihan after consulting his calendar for the 1999-2000 academic year). In other words, Andy will be eligible to participate in band and choir sometime during November of 2000 for the rest of his senior year, assuming that he has no further violations of the good conduct policy during his senior year.

During the appeal hearing, Appellants' counsel offered into the record Proposed Exhibit 5. Appellee's counsel objected on the basis that it was irrelevant. Because the proposed exhibit consists of revised good conduct policy provisions which won't be in effect until the 2000-2001 school year, Appellee's objection is sustained.

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

**III.
DECISION**

For the foregoing reasons, the decisions of the Paton-Churdan Community School District Board of Directors made on January 12, 2000, and June 16, 2000, are hereby recommended for affirmance to the extent that they impose sanctions for violations of the good conduct policy. The same decisions are hereby recommended for reversal to the extent that they prohibit Andy Gower from participating in athletics, band and choir after the dates calculated by Mr. Minnihan consistent with the above Conclusions of Law. There are no costs to be assigned under Iowa Code Chapter 290.

DATE

It is so ordered.

SUSAN E. ANDERSON, J.D.
ADMINISTRATIVE LAW JUDGE

DATE

CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION