

**IOWA DEPARTMENT OF EDUCATION**

(Cite as 29 D.o.E. App. Dec. 036)

*In re: Good Conduct of O.D.,*  
B.D. and H.A., Parents,

Appellants,

vs.

DES MOINES INDEPENDENT  
COMMUNITY SCHOOL DISTRICT,  
Appellee.

AMENDED  
DISMISSAL OF APPEAL

[Admin. Doc. #5095]

An Appeal and Request for Expedited Review was received by the State Board on October 4, 2018, regarding the September 28, 2018, decision of the Des Moines Independent Community School District’s (“District”) Activities Appeal Committee (“AAC”) to deny O.D. athletic eligibility for the remaining portion of the 2018 swim season, including all post-season meets. On October 8, 2018, the Appellee filed a Motion to Dismiss for lack of jurisdiction. On October 9, 2018, the Appellant filed a Resistance to the Motion to Dismiss. On October 11, 2018, the Appellee filed a Reply.

Iowa Code section 290.1 provides:

“an affected pupil, or the parent or guardian of an affected pupil who is a minor, who is aggrieved by a *decision or order of the board of directors* of a school corporation in a matter of law or fact, or a *decision or order of a board of directors* . . . [may] appeal the *decision or order* to the state board of education.”

(Emphasis Added).

The District argues that the State Board has no jurisdiction under section 290.1 to hear an appeal from a decision that was not a decision of the District’s Board of Directors (“Board”). The Appellant’s argue that the Board issued a decision through its designee.

The District has clearly outlined its process regarding good conduct violations in its Good Conduct Policy. Appellee’s Exhibit 3. The policy provides that the initial decision regarding the violation will be made by the Activities Director. If the parties are not satisfied with the decision they have the option to appeal that decision to the AAC. This committee is made up of a principal or designee, a coach, and a sponsor. The decision of the committee is final and there is no further right to appeal.

In this case, the Roosevelt AAC determined that O.D. was ineligible for athletics for the remaining portion of the 2018 swim season, including all post-season meets for two violations of the District's policy. The Appellants attempted to appeal this decision further by sending an email to the Board. The appeal was referred to Jason Allen, the Director of District Activities. Mr. Allen responded to the email that he agreed the AAC took the appropriate action.

This appeal was never submitted to the Board for further review, it was not listed as an agenda item at a Board meeting, and it is clear from the record the Board never made a decision or order regarding O.D.'s athletic eligibility. This is not a case, as the appellant suggests, where the Board has reviewed a decision placed on their board agenda and then "refuse[d] to act upon a proposition in a meeting assembled." *See Iowa Op. Atty. Gen.* 1928 WL 60996. The evidence is clear that this was not on the Board's meeting agenda at all. Nor, is there any requirement in law or code that requires the local board to review good conduct decisions. School boards have broad discretion to make rules for their own government. Iowa Code § 279.8. Furthermore, students have no statutory or constitutional "right" to participate in extracurricular activities and thus, the amount of due process owed is minimal. *Brands v. Sheldon Community School District*, 671 F. Supp. 627, 630-631 (N.D. Iowa 1987). The Board's policy provides minimal due process to the Appellants, but it does not provide a right for further appeal to the Board.

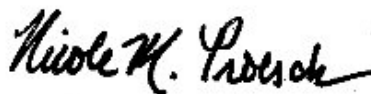
The State Board has held that compliance with the legal requirements of Iowa Code section 290.1 is necessary for jurisdiction over these appeals. *In re Edward Zaccaro, et., al.*, 13 D.o.E. App. Dec. 126, 128-29 (1996). Section 290.1 clearly requires a *decision or order of the board*. The undersigned, having reviewed the record, finds there was no decision or order rendered by the Board from which the Appellant may appeal pursuant to Iowa Code section 290.1. Nor, was there a refusal to act on a proposition in a board meeting.

WHEREFORE, the State Board has no jurisdiction to hear this appeal. As such, the other substantive issues raised by the Appellants likewise cannot be adjudicated. Accordingly, this matter is dismissed.

IT IS SO ORDERED.

10/18/2018

Date



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