

**IOWA STATE BOARD
OF EDUCATION**
(Cite as 18 D.o.E. App. Dec. 310)

In re Brett Lureman	:	
David Lureman,	:	
Appellant,	:	DECISION
v.	:	
Newton Community School District,	:	
Appellee	:	[Admin. Doc. #4225]

The above-captioned matter was heard on April 14, 2000, before a hearing panel comprised of Sandra Renegar, consultant, Bureau of Practitioner Preparation & Licensure; Ron Parker, consultant, Office of the Director; and Susan E. Anderson, J.D., designated administrative law judge, presiding. Appellant, David Lureman; his wife, Paula; and their son, Brett, were present and were represented by Attorney Lee Walker of the Walker, Knopf and Billingsley Law Firm, of Newton, Iowa. Appellee, Newton Community School District [hereinafter, “the District”], was present in the persons of Phil Hintz, superintendent; and Greg Davis, board president. The District was represented by Attorney Carol J. Greta of the Matthias, Campbell, Tyler, Nuzum, Greta and Rickers Law Firm, of Newton, Iowa.

An evidentiary hearing was held pursuant to 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.

Appellant seeks reversal of a decision of the Board of Directors [hereinafter, “the Board”] of the District made on March 15, 2000, that suspended his son, Brett, from participating in one-half of the spring soccer season for a second violation of the District’s good conduct policy.

**I.
FINDINGS OF FACT**

A transcript of the tape of the Board’s closed session on March 15, 2000, and District Exhibits 1 through 11 were stipulated to by the parties. Testimony to clarify portions of the transcript was given at the appeal hearing. The preponderance of the evidence from the transcript, the exhibits and the testimony showed the following facts:

Appellant, David Lureman, and his wife, Paula, are residents of the Newton Community School District. Their son, Brett, age 18, is a senior at the District's high school. He participates in athletics and is, therefore, subject to the District's good conduct policy. Prior to the events at issue in this appeal, Brett was found to have committed a first violation of the good conduct policy on March 22, 1999.

On Friday, January 28, 2000, word circulated at Newton High School that a party would be held that evening at the home of Amanda Manatt, who is also a student at Newton High School. Brett had been in the Manatt home approximately 40 times in the past three years. On three or four of those occasions, Amanda's parents were not at home and Brett observed alcohol being consumed by minors either in the basement or outside. He talked briefly to Amanda on those occasions and left after about five minutes.

On January 28, 2000, Brett had no prior knowledge of whether Amanda's parents would or would not be at home or whether alcohol would or would not be present. That evening, another individual drove himself and Brett to the Manatt home in Newton. They drove past the front of the house, where parking was available, and parked behind the home in a nearby subdivision. As they walked the short distance through the backyard to the home, Brett observed that the blinds on the basement windows were closed.

Several other students were inside the home. Between 11:00 p.m. and 11:15 p.m., he and the other individual entered the main floor of the home. Brett stayed in the kitchen area, talking to approximately seven other individuals. He did not observe any alcohol on this level of the home nor did he consume any. At approximately 11:35 p.m., Brett went to the basement, where he observed numerous beer cans and decided to try to find the person who had driven him there so that he could leave. The Manatt home is a few blocks away from Brett's home. Shortly thereafter, two Newton police officers arrived at the home. Brett remarked that the police took down the names of all those present and tested some for alcohol consumption. Brett was not tested.

On Monday, January 31, 2000, Bill Quick, a coach in the District, was informed by a Newton police officer of the party on January 28, 2000, and given the names of about 25 District students who had been there. Of these, 20 students were suspended under the District's good conduct policy from participating in extracurricular events for their presence at the party, and five were suspended from participating for consuming alcohol. Between six and eight students were at the party early in the evening and left immediately when they learned that alcohol was present. They were not suspended.

Mr. Quick met with Brett on February 3, 2000, and discussed his presence at the party. Mr. Quick concluded that Brett had committed a violation of the good conduct policy because he had not left the party immediately on learning that alcohol was present and being consumed. This was his second offense. His penalty was suspension from participating in soccer games until after April 27, 2000, approximately one-half of the soccer season. There is no dispute that Brett was aware of the good conduct policy's provisions.

The District's Student Handbook states, in pertinent part:

Extracurricular activities and the public appearing events of co-curricular activities in Newton Community School District are an integral part of the total education of students and are a privilege, not a right. Good conduct is an expectation of all students, but especially of those who represent the Newton Community Schools in public appearing events and activities.

Students who participate in extracurricular activities and the public appearing events of co-curricular activities serve as ambassadors of the school district whether at or away from school. Students who wish to have the privilege of participating in school extracurricular activities and public appearing events of co-curricular activities must conduct themselves in accordance with board policies pertaining to student conduct.

Therefore all students in grades seven (7) through twelve (12) whose actions, habits or conduct at any time (whether or not school is in session) would degrade or be detrimental to the ideals, principles or standards of the school and activities program shall, after careful consideration, be subject to being suspended from public appearing events by the building principal or the appropriate building level activity coordinator. Such actions, habits, or conduct shall include but not be limited to those described in the Good Conduct Rule Regulations (503.7R).

Students disciplined under the Good Conduct Rule shall receive appropriate due process in concert with the nature of the misconduct. It shall be the responsibility of the administration to maintain a record of violations of the Good Conduct Rule and supporting administrative regulations.

(Board Policy 503.7, revised June 27, 1994.)

The District's regulations governing good conduct identify prohibited conduct by students subject to the policy and the penalties for violations, as follows:

At the beginning of each school year students shall receive a written copy and explanation of the Good Conduct Rule and Regulations. Students who wish to participate in activities and the public appearing events of co-curricular activities must return a

form signed by them and their parents or guardians stating that they each have read and understood the Good Conduct Rule and Regulations. All coaches and sponsors of extracurricular activities and co-curricular activities which have public appearing events shall, at the beginning of their seasons, inform the students of the expectations of the Good Conduct Rule, their additional expectations, and the penalties for violating the rules. Students shall receive a written copy of the Good Conduct Rule and the additional expectations of their coaches and sponsors.

Prohibited Conduct

Students who participate in any extracurricular or co-curricular activity which has public appearing events will be subject to suspension from those activities if they violate the Good Conduct Rule at any time whether or not school is in session. Areas of violations which have pre-determined consequences include the following:

...

III. Alcoholic Beverages

- a. Acquiring, consuming or possessing (alone or with others) an alcohol product.
- b. Attending functions (without their parent or guardian supervision) where alcohol is present and being used, and not immediately leaving such functions.**

...

Consequences of Prohibited Conduct

...

III. Second Offense within one calendar year: Violations of Law, Tobacco Products, Alcoholic Beverages:

- a. Suspended from one-half of the public appearing events in each category of activity in which the student participates. The suspension shall be prorated to the next activity within each category if fewer than one-half of the total number of public appearing events remain in a given activity.

(Board Policy 503.7R, revised June 27, 1994.)(Emphasis added.)

The Luremans used the District's grievance procedure, Board Policy 502.9, revised September 26, 1994, to appeal the suspension decision made by Mr. Quick, maintaining that Brett intended to leave the party immediately upon learning that alcohol was present but was prevented from doing so by the Newton police. Gary Kirchhoff, Newton High School principal, investigated and denied the grievance on February 10, 2000. He ruled that Brett had adequate time to leave the party prior to the arrival of the police. The matter was then appealed to Phillip A. Hintz, the District's superintendent, who denied the grievance on March 1, 2000. He concluded that it was reasonable to assume that Brett knew alcohol was present and that he should have left the party immediately. His decision was appealed to the Board, which met in closed session on March 15, 2000, to hear testimony and discuss the issue. It then voted 6 to 0 in open session to suspend Brett from extracurricular activities for a second violation of the District's good conduct policy. This appeal to the State Board of Education followed.

II. CONCLUSIONS OF LAW

In appeals under Iowa Code chapter 290, the State Board has been directed by the Legislature to render decisions that are "just and equitable." Decisions also shall be based on the laws of the United States, the State of Iowa, and the regulations and policies of the Department of Education. *See* Iowa Code section 290.3(1999); 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).

School districts have the authority to promulgate rules for the governance of pupils. Iowa Code Section 279.8(1999) mandates that the board of directors of a school corporation "shall make rules for its own governance and that of its directors, officers, employees, teachers, and pupils ... and shall aid in the enforcement of the rules and require the performance of duties imposed by law and the rules." Districts can also govern out-of-school conduct by student athletes and those involved in extracurricular activities. *Bunger v. Iowa High School Athletic Assn.*, 197 N.W.2d 555, 564 (Iowa 1972). Extracurricular activities are not mandatory, and, by choosing to participate, students agree to abide by the terms of the good conduct policy. *See, e.g., In re Joseph Fuhrmeister*, 5 D.o.E. App. Dec. 335(1988). There is no dispute that Brett was covered by the District's good conduct policy.

Appellants asserted three basic reasons why the Board's decision to penalize Brett for a second violation of the good conduct policy should be reversed: 1) that Brett's due process rights to equal protection were violated because other students who were at the party were not penalized; 2) that he did not commit a violation because he attempted to leave the party as soon

as he discovered that alcohol was present; and 3) that even if he did commit a violation, it should be considered a first violation because of the language of the Board's policy. We shall examine each of these.

1. Whether there was due process.

The Appellant's contention that Brett was treated differently from other students at the party is not supported by the facts. In the transcript of the Board's closed hearing, District coach Bill Quick, who did the initial investigation, said, "There were about 6 to 8 who were not suspended." (Certified Transcript of Grievance Hearing, March 15, 2000, p. 3, line 15.) However, prior to that statement, he explained that these students were at the party earlier and left "right away" upon discovering that alcohol was present. *Id.*, lines 7-11. Of the 25 students present when the police arrived, he testified that 20 were suspended for "mere presence" and five for consuming alcohol. *Id.*, lines 29-37. There is no evidence that Brett was treated differently from the other students at the party. So long as the District acted uniformly with respect to students in the same situation, the District had the authority to apply its policy as it did. *In re Josh Burns*, 15 D.o.E. App. Dec. 350(1998).

2. Whether there was a violation of the policy.

The evidence showed that the Board spent almost two hours hearing testimony and discussing the facts of Appellant's appeal. The transcript shows that the discussion focused on whether Brett had in fact violated the good conduct policy and whether it should be counted as a first offense or a second offense. The following exchange illustrates the reasoning among the Board members:

GD Let's just determine did he or did he not violate the good conduct policy?

FC I believe he did. I believe that, my grasp of human nature is that all of the students who headed for the Manatt residence knew full well what was going on at the Manatt residence. That's just my judgment based on human nature.

GD I need to add something else. If Brett really respected the good conduct policy, he should have asked the minute he showed up if there was alcohol there.

FC If [sic] would agree with that.

GD He shouldn't have just expected it to fall out of the sky on him. If he really respected the good conduct policy, it's his obligation to ask and understand what environment he's going into.

Id., p. 36, lines 15-38.

Another Board member's statement supports that reasoning:

JM But everyone else [the other students] said they were aware of [the] time frame, they were aware of the alcohol and they chose to overlook it and stay. We only have one student who is claiming a time issue and that's Brett. And it's interesting that it all is hinged on his passion, if you will, for the sport that he believes he is not going to be allowed, or that he will be suspended from.

Id., p. 31, lines 41-45.

This situation differs from the situation in the State Board's recently decided decision of *In re Ryan Oelmann*, 18 D.o.E. App. Dec. 288 (2000). In *Oelmann*, the Ackley-Geneva District's good conduct policy language allowed the student no opportunity to leave the presence of alcohol. By contrast, the Newton District's good conduct policy contains language that gives the student an opportunity to leave immediately without suspension. In addition, the Newton District proved a "closer relationship between the student and the beer," as required by *Bunger v. Iowa High School Athletic Assn.*, 197 N.W.2d 555 (Iowa 1972). Brett had previously been to four other parties at the Manatt house where alcohol was present. He and his friend chose to park behind the Manatt residence and walk through the backyard instead of parking in the street or driveway. Brett was at the party for 20 to 35 minutes before the police arrived. Based on the evidence, the Board's unanimous conclusion that Brett had indeed violated the good conduct policy was reasonable.

3. Whether this was Brett's second violation.

Appellant's third reason to reverse the Board's decision is the contention that the term "calendar year" in the good conduct policy should be interpreted to mean January 1 to December 31. This definition, as applied to the facts of Brett's situation, would mean that a violation during the year 2000 would be considered a first violation since his previous violation occurred in 1999.

The transcript showed that the Board discussed the meaning of the term "calendar year" at some length. One Board member agreed with Appellant's position and said, "I think a calendar year, to me, is January to December." *Id.*, p. 34, line 16. Another dismissed the issue, saying, "... it's a technicality." *Id.*, p. 29, line 25.

The issue was also raised by another Board member:

JM In the past, it's been interpreted that the calendar year meant a twelve month time frame from the time of the first offense to the time of the second. Maybe we can't assume it, I'm just saying that's the way it's been interpreted in the past.

Id., p. 34, lines 22-24.

The State Board of Education has ruled previously on the definition of the term “calendar year.” In a case with similar facts, the State Board upheld the local board’s interpretation of the term as meaning 12 consecutive months. *In re Bruce Barg*, 2 D.P.I. App. Dec. 34 (1979).

Were the Board to interpret the term “calendar year,” as Appellant requests, it would be deviating from the intent of its policy and from its past practice. The result would be that Brett’s conduct would be penalized by a different, more lenient standard than the conduct of previous District students subject to the good conduct policy and the other students who attended the party on January 28, 2000. Such a result would be contrary to the best interest of education.¹

Appellant has failed to show that the Board’s decision was unreasonable and contrary to the best interest of education. There is no other basis on which to reverse it.

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

III. DECISION

For the foregoing reasons, the decision of the Newton Community School District Board of Directors made on March 15, 2000, that suspended Brett Lureman from participating in one-half of the soccer season for a second violation of the good conduct policy is hereby recommended for affirmance. There are no costs of this appeal to the 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

¹ The State Board nevertheless recommends that districts use the most specific language they can when drafting their policies.