

**IOWA STATE BOARD
OF EDUCATION
(Cite as 18 D.o.E. App. Dec. 288)**

In re Ryan Oelmann	:	
Gary & Katie Oelmann, Appellants	:	DECISION
v.	:	
Ackley-Geneva Community School District, Appellee	:	[Admin. Doc. #4221]

The above-captioned matter was heard on March 31, 2000, before a hearing panel comprised of Jim Tyson, acting chief, Bureau of Administration & School Improvement Services; David Morgan, consultant, Bureau of Practitioner Preparation & Licensure; and Susan E. Anderson, J.D., designated administrative law judge, presiding. Appellant Gary Oelmann was present and was unrepresented by counsel. Appellee, Ackley-Geneva Community School District [hereinafter, “the District”], was present in the person of Kirk Nelson, superintendent, and was also unrepresented by counsel.

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.

Appellants seek reversal of a decision of the Board of Directors [hereinafter, “the Board”] of the District made on March 13, 2000, that declared their son, Ryan, to be ineligible under the District’s good conduct policy for one-third of the competitive spring sports season.

**I.
FINDINGS OF FACT**

The preponderance of the evidence from the record in the appeal hearing and from the tape recording of the Board’s closed session showed the following facts.

Appellants, Gary and Katie Oelmann, are residents of the Ackley-Geneva Community School District. Their son, Ryan, is a junior at the high school. His birthday is July 2, 1982. At the time of this appeal, Ryan was 17 years of age.

The Ackley-Geneva District whole grade shares its high school students with the Wellsburg-Steamboat Rock Community School District. The Ackley-Geneva high school that Ryan attends has approximately 200 students, which includes grades nine through twelve.

Ryan is a good student and has been on the high school honor roll every semester beginning in his freshman year with an approximate 3.4 grade point average. He had no prior disciplinary record at school before the incident that is currently on appeal. This is the first time that Ryan has been charged with a violation of the District's good conduct policy. Ryan has never been in trouble with law enforcement officials. Ryan has competed on the high school varsity golf team since his freshman year. He was number two on the varsity team as a sophomore and he has already started practicing with the varsity team during his junior year. Practice started on March 21, 2000, and Ryan has been practicing with the team since then. The first golf meet is scheduled for April 10, 2000.

The undisputed evidence showed that Ryan is considered a good golfer and has already been contacted by some colleges interested in having him participate in their golf programs when he graduates at the end of the 2000-2001 school year.

On Friday evening, March 3, 2000, Ryan was socializing with classmates by riding around with them in cars as they "scooped the loop" of the town. Ackley's population is approximately 2,000 people. Ryan and his family live in Ackley, very near Main Street where most of the local businesses and city government offices are located. He had made tentative plans with two of his long-time friends who were also on the golf team. Those friends were Jesse Oelmann, who is also Ryan's cousin, and Vance Deneui, both of whom were 17 years of age and juniors at the high school.

Before Vance and Jesse met up with Ryan, they had been engaging in activities on their own without Ryan's knowledge. At approximately 6:00 p.m., they had gone to dinner with Vance's father at a restaurant by the name of Camp David, in Iowa Falls. At approximately 7:30 p.m., they returned to Vance's home, at which time Vance's father went to sleep. Jesse and Vance went to the basement of the home and consumed two to four beers each prior to 9:30 p.m.

During the early evening, Ryan had ridden around with other individuals. He returned home a couple of times to see if Jesse or Vance had called. At approximately 9:00 p.m., Ryan called Vance's home and made plans to drive around with Jesse and Vance in Vance's brother's car. They met at the Ford dealership on Highway 20 at approximately 10:00 p.m. At this point, Ryan parked his vehicle and got into the front seat on the passenger's side of Vance's car.

Jesse sat in the back seat with two 18-packs of beer, which were concealed underneath the winter coats of Vance and Jesse. Ryan, Jesse and Vance each independently stated at the Board's closed session meeting that Ryan did not know there was beer in the car. Jesse and Vance stated that they concealed the beer from Ryan when he entered Vance's vehicle. There were no open cans of beer in the vehicle when Ryan entered the car, nor were there any empty cans of beer lying in sight. Jesse was sitting in the back seat behind Vance, who was driving. The beer was concealed under the coats in the back seat directly behind Ryan.

As Ryan entered the car, he said he was thirsty and would like to buy a malt at the Big Chief Drive-In, which was across from the Ford dealership on Highway 20. Vance drove over to the drive-in and Ryan went inside to purchase his malt. The other boys waited in the car and Ryan then re-entered the vehicle. At this point, there were still no open cans of beer in the car, no empty cans of beer in the car, and the 18-packs of beers were still concealed under the coats in the back seat behind Ryan.

Vance drove the car south along Highway 20, which runs north and south through Ackley, turned east and drove approximately three blocks along a street which turns into Main Street. Main Street is another three-block length of street, carrying two-way traffic lined on both sides by local businesses. Main Street then becomes a one-way street that runs counter-clockwise around a triangular-shaped parcel of land on which city government buildings sit, including the Ackley Police Station. Once a car has driven around the triangle, it rejoins Main Street and becomes a two-way street back to Highway 20, where the "loop" is completed.

The boys had "scooped the loop" once and were again proceeding east on Main Street in front of the Pizza Ranch or the Ackley State Bank, when Jesse handed an unopened can of beer to Vance. Vance proceeded to open the can of beer as he was driving. At this point, Ryan immediately stated that he could not be in the car with the beer and asked to be taken back to his car. At that same moment, a local police officer pulled Vance's vehicle over to discuss an alleged incident that had occurred earlier in the day involving the vehicle. Less than thirty seconds elapsed between the time when Vance opened the can of beer and when the car was pulled over by the police officer. The vehicle had traveled less than one block during that time.

Patrolman Kameron Shugar had received a report from a local citizen that someone, driving a vehicle with a license plate which matched the plate on Vance's car, had been seen earlier picking up a soccer ball out of the street. The citizen reported the incident, thinking that the soccer ball could have been stolen. Patrolman Shugar had been instructed by the Police Chief to look for Vance's car. He had been unable to locate the vehicle until he saw it on Main Street.

Patrolman Shugar stated that he pulled the car over solely because of the citizen's report of a possible stolen soccer ball. When Vance saw Patrolman Shugar's car, he quickly tried to hide the newly opened can of beer between the car door and his seat. In this process, he spilled the beer onto the carpet, seat and/or door of the car. When Patrolman Shugar approached the driver's window, he immediately smelled beer and asked Jesse what was underneath the coats in the back seat. Patrolman Shugar reached into the car and removed the jackets with Vance's permission. At Patrolman Shugar's request, Vance went back to the police car as Patrolman Shugar put the two 18-packs of beer into the trunk of the police car.

Patrolman Shugar asked Vance if the boys had been drinking. Vance stated that both he and Jesse had been, but that Ryan had not. Vance indicated that there was one open beer can in the car. Patrolman Shugar then asked Jesse and Ryan to step out of the car. Jesse initially denied drinking, but then admitted to having had a couple of beers. Ryan denied drinking. Patrolman Shugar then administered a field sobriety test on Ryan. Ryan's test showed that he had not been drinking.

Patrolman Shugar asked Ryan to drive Vance's car to the police station. At the police station, all three of the boys were given breathalyzer tests. Jesse and Vance's breath tests indicated that they had been drinking. Ryan's test confirmed that he had not been drinking. Patrolman Shugar's statements from the closed session Board meeting showed that Jesse tested at .082; Vance tested at .052; and Ryan tested at .000. Ryan's parents were then contacted at their home. The Oelmanns' home is less than a block away from the police station. Mrs. Oelmann immediately walked to the station and Ryan was released. Mr. Oelmann met them on their way home.

No criminal charges have been filed against Ryan and the evidence showed that there will be no charges filed against Ryan in the future. At the time of the appeal hearing, it was still uncertain as to whether or not charges were pending against Jesse and/or Vance.

The next morning at 8:00 a.m., a Saturday, Ryan voluntarily went to the high school golf coach, Mr. Haimes, and reported the incident. Additionally, Mr. Oelmann telephoned High School Principal David Fox and reported the incident. On March 6 or 7, 2000, Mr. Fox wrote a letter to the Oelmanns informing them that Ryan was suspended under the District's good conduct policy for one-third of the golf season, or four golf meets, due to a violation of the policy. The District's good conduct policy includes, in pertinent part, the following language found on page 21 of the Student Handbook, under "Training Rules:"

Athletes are usually leaders in the school and are looked up to and emulated. With this leadership brings added responsibility since each athlete represents not only his coach and team, but depicts the character of the school. Because of this, we feel that an athlete must follow certain rules and regulations, and one of these is training rules. With this in mind, the following training rules will be enforced for all athletes at Ackley-Geneva:

- A. Any student whose habits and/or conduct both in and out of school during the school year or during the summer months, are such as to make him/her unworthy to represent the ideals, principles and standards of the Ackley-Geneva Schools shall be declared ineligible and will remain ineligible until the school administration reinstates him/her to eligibility.

- B. In the event that a student-athlete admits to or is found guilty of using or possessing or is *present where alcohol, tobacco, or dangerous drugs are being used*, the athlete shall be immediately declared ineligible for participation in interscholastic athletic participation. We feel that the above violations are not in the best interest of the athlete in regards to health, team discipline and bring dishonor to the Ackley-Geneva athletic program.

...

Id. (Underlining in original; italics supplied.)

In addition, the District's Board Policy Code No. 502.6, entitled, "Good Conduct Policy," Addendum to 1997-98 Student Handbook, adopted in 1998, includes, in pertinent part, the following language:

All students (whether involved in co-curricular activities or not) are subject to the following good conduct rules. These policies prohibit students to consume, acquire, deliver or transport alcohol, tobacco, or dangerous drugs and from *being present in illegal settings where they are present*. Students who admit to or are found guilty of using or being in the presence of the aforementioned chemicals, shall be declared ineligible. Athletes and students in the fine arts department will be dealt with according to the respective policies in this handbook.

Id. (Italics supplied.)

Therefore, the Board Policy includes language that students who are present in illegal settings where alcohol is present are in violation of the good conduct policy. The policy then refers directly to the Student Handbook for the offenses and penalties, including ineligibility for golf, on page 22, as follows:

- F. For the first offense, the length of ineligibility will be as follows:

...

Golf – The first four dates following the declaration of ineligibility, to include the State sets of meets.

Id.

It is undisputed that Ryan and his parents were familiar with the District's good conduct policy, including the above provisions. Under the Student Handbook provisions and

its Board policy, the Board met in closed session on March 13, 2000. The Board voted 3-2 to declare Ryan ineligible under the good conduct policy and suspended Ryan from competing in the first four golf meets of the season.

Superintendent Nelson testified that the District's reason for having the mere presence language is to discourage students from attending "keggers." The Board members stated in Ryan's presence before the vote that "Ryan Oelmann did all the right things and can hold his head high no matter what the outcome. We have a major snafu and a slippery slope because our policy's language prevents him from being present in illegal settings where beer is present. The only failing here was that his cousin and his friend did not tell him there was beer in the car."

It is clear from the tape recording of the Board's closed session that the directors were extremely reluctant to suspend Ryan, but that they felt obligated to apply the plain words of the existing good conduct policy. The Board, therefore, voted 3-2 to suspend Ryan for four golf meets. The Board also voted to suspend Vance and Jesse for four golf meets as well.

Ryan's parents appealed the Board's decision. They argue that the "mere presence" language of the good conduct policy is unreasonable because it does not allow for a student like Ryan to remain eligible even though he did not know, or have reason to know, that there was alcohol in the vehicle. Furthermore, once he became aware of the presence of alcohol, he immediately tried to remove himself from the situation. In the alternative, Ryan's parents argue that the Board's application of the good conduct policy's "mere presence" language to Ryan's situation was unreasonable.

II. CONCLUSIONS OF LAW

In appeals to the State Board under Iowa Code chapter 290, the State Board has been directed by the Legislature to render a decision that is "just and equitable" and "in the best interest of education". The decision 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 Ryan was covered by the District’s good conduct policy.

The Appellants asserted two basic reasons why the Board’s decision to suspend Ryan under its good conduct policy should be reversed: that the “mere presence” language is unreasonable in and of itself, and that the “mere presence” language was unreasonably applied to Ryan’s specific situation. We shall examine both of these reasons. We note that until this appeal, the State Board has never been presented with the reasonableness of a “mere presence” policy under the language set out by the Iowa Supreme Court in *Bunger*. *See In re Kristy Larson*, 17 D.o.E. App. Dec. 106, 108, n.1 (1999).

In 1972, the Iowa Supreme Court addressed a rule imposing ineligibility to participate in high school athletic events on a student who was in an automobile containing beer with knowledge of presence of the beer, when the beer was discovered by an officer. *Bunger v. Iowa High School Athletic Association*, 197 N.W.2d 555(Iowa 1972). The Court concluded that the rule was unreasonable. The Court’s opinion includes the following reasoning, which we believe controls our decision in this appeal:

It was plainly intended, therefore, that the management of school affairs should be left to the discretion of the board of directors, and not to the courts, and we ought not to interfere with the exercise of discretion on the part of a school board as to what is a reasonable and necessary rule, except in a plain case of exceeding the power conferred.

Id. at 563.

The first main principle involved in considering the validity of a school rule is that the rule must pertain to conduct “which directly relates to and affects management of the school and its efficiency.”

Id.

In a given case, the particular circumstances must be examined. The present case involves the advantages and enjoyment of an extracurricular activity provided by the school, a consideration which we believe extends the authority of a school board somewhat as to participation in that activity. 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.

Id. at 564.

The other main principle involved in considering the validity of a school rule is *reasonableness*. The general requirement that a rule promulgated by a governmental subdivision or unit be reasonable applies to school board rules.

Id.

This particular rule is not confined to the consumption of beer or even to the acquisition, disposition, possession, or transportation of beer. It imposes ineligibility for mere occupation of a car containing beer with knowledge of the presence of the beer, when the beer is discovered by an officer. School authorities may make reasonable beer rules, but we think this rule is too extreme. Some closer relationship between the student and the beer is required than mere knowledge that the beer is there. The rule as written would even prohibit a student from accepting a ride home in a car by an adult neighbor who had a visible package of beer among his purchases. We realize that the rule has been made broad in an effort to avoid problems of proving a connection between the student and the beer, but rules cannot be so extended as to sweep in the innocent in order to achieve invariable conviction of the guilty. We hold the rule in question is invalid as unreasonable.

Id. at 565.

The State Board is mandated to make decisions based on the laws of the State of Iowa. As the Iowa Supreme Court stated in *Bunger*: “We realize that the rule has been made broad in an effort to avoid problems of proving a connection between the student and the beer, but rules cannot be so extended as to sweep in the innocent in order to achieve invariable

conviction of the guilty.” We conclude that the Ackley-Geneva District’s “mere presence” language did just that in this case: it unreasonably swept in Ryan Oelmann. We therefore conclude that the rule is unreasonable.

We believe that leadership by standout students such as Ryan does bring additional responsibility and that Ryan did everything he could do in this case to fulfill that responsibility. The preponderance of the evidence showed that to suspend him for “mere presence” in this situation would be contrary to the best interest of education.

The Ackley-Geneva District’s good conduct rule imposed ineligibility even though Ryan did not know that there was beer in the car and even though he tried to exit the vehicle as soon as he became aware that he was in the presence of beer in an illegal setting. The rule is therefore unreasonable and contrary to the best interest of education. Since we conclude that the rule itself was unreasonable and contrary to the best interest of education, the Board’s application of it to Ryan’s situation was also unreasonable and contrary to the best interest of education.

The State Board of Education recognizes, as the *Bunger* case did, that school officials are constantly faced with the challenge of controlling and deterring alcohol use by students and athletes.¹ We support these efforts and encourage the use of reasonable good conduct rules. Although the issues facing school districts may be somewhat different in the year 2000 than they were in 1972 when *Bunger* was decided, we are not at liberty to depart from the Iowa Supreme Court’s precedent. It may be that the Legislature will choose to provide more contemporary guidance.

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

III. DECISION

For the foregoing reasons, the decision of the Ackley-Geneva Community School District Board of Directors made on March 13, 2000, declaring Ryan Oelmann ineligible to compete in the first four golf meets, is hereby recommended for reversal. There are no costs to the assigned under Iowa Code Chapter 290.

¹ The climate of alcohol and drug use has no doubt worsened during the three decades since *Bunger* was decided. “Drug and alcohol abuse in public schools is a serious problem today in every part of the country. (Indeed, to the extent any party thinks it necessary to do so, we take judicial notice of that fact.)” *Miller Ex Rel. Miller v. Wilkes*, 172 F.3d 574, 580-81 (8th Cir. 1999).

DATE

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

It is so ordered.

DATE

CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION