

**IOWA STATE BOARD
OF EDUCATION
(Cite as 18 D.o.E. App. Dec. 265)**

In re Cory Carroll	:	
Roberta K. Dennis, Appellant,	:	DECISION
v.	:	
Paton-Churdan Community School District, Appellee	:	[Admin. Doc. #4212]

The above-captioned matter was heard on April 20, 2000, before a hearing panel comprised of Joseph DeHart, consultant, Bureau of Planning, Research and Evaluation; Jim Tyson, acting chief, Bureau of Administration & School Improvement Services; and Susan E. Anderson, J.D., designated administrative law judge, presiding. Appellant, Roberta Dennis, was present and was unrepresented by counsel. 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 Engel Law Firm, 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.

Appellant seeks reversal of a decision of the Board of Directors [hereinafter, “the Board”] of the District made on January 12, 2000, that upheld the suspension of her son, Cory Carroll, from participating in athletics for one year for a second violation of the District’s good conduct policy.

**I.
FINDINGS OF FACT**

The preponderance of the evidence from the record in the appeal hearing showed the following facts.

Roberta K. Dennis is a resident of the Paton-Churdan Community School District, and her son, Cory Carroll, attends the District's high school. At the time of the appeal hearing, Cory was 17 years old and in the 11th grade. Prior to being suspended from participating, he participated in basketball and baseball; he would have also participated in football, but was prevented from doing so by an injury.

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 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.

(Paton-Churdan Junior-Senior High School Student Handbook 1999-2000, Appellee's Exhibit 1.)

Ms. Dennis acknowledged that she had read and understood the Student Handbook rules.

Cory's first violation of the good conduct policy occurred in October 1998. He and two other individuals were observed before school by a member of the public, who suspected that they were consuming alcohol and reported the incident to the school. When questioned, Cory admitted that he had been drinking beer. His penalty was suspension from participating in one-half of the basketball games for the 1998-1999 school year.

Cory's second violation of the good conduct policy took place on July 1 or July 2, 1999. He and three friends were driving from Missouri to Iowa, when they were stopped by law enforcement officials. The three passengers, including Cory, were found to have consumed alcohol. He was charged with possession of alcohol by a minor and was placed on six months' probation. The Decatur County Attorney's Office notified the District of this incident in early August 1999. Mr. Minnihan, the high school principal and activities director, then telephoned Ms. Dennis to tell her that this incident was Cory's second violation of the good conduct policy and that the penalty was suspension from participation in athletics for one year, beginning August 1, 1999.

Appellant disagreed with this decision and appealed to the Board. A closed session was held at the Board's August 11, 1999, meeting. Appellant told the Board that she was unaware that students' actions during the summer were subject to the good conduct policy and that she was unaware that the penalty for a second violation was a one-year suspension. She told the Board that she considered a one-year suspension to be too severe and asked that it be reduced. The Board discussed the issue, but made no decision concerning her appeal that Cory's penalty be reduced. At this meeting, the Board directed Mr. Minnihan and a Board member to form a committee to study the good conduct policy and to recommend any changes they considered necessary. The Board also voted to change its existing good conduct policy to allow students under one-year suspensions from athletics to participate in practices if they chose to do so. (August 11, 1999, Board Minutes.)

The committee appointed by the Board developed a revised policy governing eligibility for extracurricular activities. It will become effective August 17, 2000. The new policy provides up to 12 weeks of suspension from participating for a second violation. (Bd. Policy, "Student Eligibility for Extracurricular Activities," Appellee's Exhibit 3.) This is a

significantly lesser penalty than the one-year penalty in the current policy. The Board has been asked to make the new policy retroactive for Cory and other students serving one-year suspensions from participation. Kevin Fitzpatrick, board president, testified that it is his opinion that the Board does not support doing this.

The Board met on January 12, 2000. At that meeting, the Board approved the first reading of its new policy on eligibility for extracurricular activities. It also voted 4-0 to deny all outstanding appeals, including Appellant's, concerning the existing good conduct policy. (January 12, 2000, Board Minutes.) This appeal to the State Board of Education followed.

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)]; [Iowa Code section 282.18(18)(1999); and "in the best interest of education" [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 to uphold Cory's one-year suspension from participating in extracurricular activities was a reasonable exercise of its authority.

Appellant did not dispute the Board's authority to establish rules governing student behavior, nor did she claim that her son was treated differently from other students who committed the same offense. Rather, her claim is that a one-year suspension for a second offense is too severe and that the Board should retroactively apply its new policy to Cory.

The State Board has previously been asked to rule on the severity of penalties imposed for violations of good conduct policies. In *In re Bryce Ricklefs*, 16 D.o.E. App. Dec. 300 (1999), a student was found to have committed a second violation of the good conduct policy for possession of a tobacco product. The penalty was suspension from extracurricular activities for one year. Although it has expressed concern about good conduct policies that "focus more on 'sanctions' than on 'solutions'," the State Board concluded that a "one-year penalty is not 'unreasonable' per se." *Id.* The Board reached the same conclusion in the appeal of *In re Joseph Fuhrmeister*, 5 D.o.E. App. Dec. 335(1988). We must reach the same conclusion in this case.

We take note of the fact that the severity of the second-offense penalty caused the Board to re-evaluate its policy, to begin the process of adopting a new one with lesser penalties, and to modify its existing policy to allow Cory to practice with his teams.

Appellant has also asked the State Board to require the District Board to retroactively apply its new, more lenient good conduct policy to Cory. The State Board has previously ruled on this issue. In that earlier appeal, a student was ruled ineligible for participation in extracurricular activities for the remainder of her high school career for a fourth violation of the good conduct policy. The board of that district later revised its policy and lessened the penalties for violations. The board declined to apply its new policy retroactively to the student. Its decision was upheld by the State Board. Citing precedent from *In re Kristy Larson*, 17 D.o.E. App. Dec. 106, 110 (1999), the State Board stated:

It is well settled that a change in a penalty does not have to apply retroactively in order to comply with due process or equal protection under the law.

We must reach the same conclusion in this case. Appellant in this appeal 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 overturn it.

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

III. DECISION

For the foregoing reasons, the decision of the Paton-Churdan Community School District Board of Directors made on January 12, 2000, that upheld the one-year suspension of Cory Carroll from participating in extracurricular activities for a second violation of the good conduct policy, is hereby recommended for affirmance. 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