

**IOWA STATE BOARD
OF EDUCATION
(Cite as 17 D.o.E. App. Dec. 243)**

In re Justin Buehler :

Becky Buehler, :
Appellant, : DECISION

v. :

Oelwein Community School :
District, Appellee. : [Adm. Doc. #4100]

This case was heard on June 2, 1999, before a hearing panel comprising Steve Fey and Geri Sudtelgte, consultants, Bureau of Administration & School Improvement Services; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding. The Appellant, Becky Buehler, was "present" telephonically and was unrepresented by counsel. Appellee, Oelwein Community School District [hereinafter, "the District"], was "present" telephonically in the person of Terry Scherbring, associate principal and activities director at Oelwein High School. The District was represented by attorney A. Wayne Saur of the Saur and Saur Law Firm, Oelwein, 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 February 22, 1999, that suspended her son from extracurricular activities for one year for a third violation of the District's good conduct code.¹

**I.
FINDINGS OF FACT**

Appellant Becky Buehler and her husband are residents of the Oelwein Community School District. They have three sons. The oldest, Justin, age 16, is the subject of this appeal. At the time of the appeal hearing Justin had completed tenth grade at Oelwein High School, where he was a good student and had participated in extracurricular activities.

The Board has in place a policy governing the conduct of students who participate in extracurricular activities. The policy states in pertinent part:

¹ Counsel for the Appellee filed a Motion for Summary Judgement on May 28, 1999, alleging lack of jurisdiction. The administrative law judge ruled that a decision on the Motion could only be made after the Appellant's testimony was heard.

... It is also our belief that participation on all extra-curricular and co-curricular activities is a privilege. Therefore, conduct deemed inappropriate to the standards set forth by the school district may result in disciplinary action.

... Activities included, but not necessarily limited to the following: interscholastic athletics, musicals, variety shows, band, chorus, speech, student council, cheerleaders, publications, school-sponsored activities.

II. Good Conduct Violations

A. Examples of violations include, but are not limited to: stealing, possession, use or distribution of any tobacco product, alcohol or unlawful substance.

...

D. Consequence

3RD ANY [sic] ANY FOLLOWING OFFENSES = Ineligibility for one calendar year.

(Oelwein Community Schools Code of Conduct Code No. 503.10.)

The facts surrounding Justin's violations of this policy are not in dispute. The first two violations occurred in August 1998 and involved his possession and/or use of alcohol. Under the policy, he was suspended for playing in three baseball games for the first violation. For the second, he was suspended from three band performances and required to perform 35 hours of community service. On February 6, 1999, Justin was taken into custody by the police of Independence, Iowa, for possession of alcohol as a minor. The next day, Mrs. Buehler notified Mr. Scherbring, the associate principal and activities director at Oelwein High School, of this incident. The superintendent was notified by Juvenile Court Services of the First Judicial District of Iowa, according to provisions of Iowa Code section 123.47B(1999). The Buehlers were informed by Mr. Scherbring that this incident constituted Justin's third violation² and that the penalty, according to the policy, was ineligibility for all activities for one year, from February 7, 1999, to February 6, 2000. There is no dispute that Justin knew that possession and/or use of alcohol was prohibited by the policy and that he knew the consequences for violating the policy.

The Buehlers appealed the ineligibility penalty, according to the procedures detailed in the policy. The first appeal was heard by a committee of school staff, which upheld the penalty. The Buehlers next appealed to the superintendent, who presented the issue to the Board for a final decision. The Board held a closed hearing at its February 22, 1999, meeting and then voted to suspend Justin from all activities for one year, as provided in the policy.

² Justin committed a fourth violation, also involving possession and/or use of alcohol, during the weekend of March 13-14, 1999, after this appeal was filed. The penalty is an additional calendar year of ineligibility.

At the time of the appeal hearing, Justin was on six months probation and seeing a probation officer twice a month. He was also attending a substance abuse class weekly. There had been no incidents with alcohol since the one in March 1999.

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”. See, Iowa Code section 290.3(1999); 281 Iowa Administrative Code 6.11(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).

In applying the appropriate Standard of Review to the facts of this case, we must ask whether the Board’s application of its good conduct policy to Justin Buehler was a reasonable exercise of the Board’s authority.

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” 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 Justin was covered by the policy.

The Appellant asserted three basic reasons why the terms of the District’s good conduct policy should not be applied to Justin even though she conceded he has now committed four violations of it. We shall examine each of these.

The Appellant’s first reason is that Justin was not penalized by the criminal justice system for the first two violations in August 1998 and, therefore, he should not be punished by the District for these incidents. Were they not “counted,” he would have one violation and a much lesser punishment. The evidence shows, however, that the District acted in accordance with its policy in counting the August incidents as violations:

A finding that a violation has occurred is not dependent upon the outcome of any juvenile or criminal proceedings, nor is the school bound by the legal elements of the crime or standards of proof. Violations will be

determined by a high school administrator through information from staff members, law enforcement officials, courts, parents, self-admission or other students' testimony. The student will become ineligible if sufficient evidence is produced to establish a violation.

(Oelwein Community Schools Code of Conduct, Code No. 503.10.)

Appellant's second reason for reversing the Board's decision is that the policy has been inconsistently applied. No evidence was supplied for this assertion. The District, on the other hand, presented testimony from Mr. Scherbring, who has been activities director at Oelwein High School for two years. He testified that the good conduct policy has been applied fairly to all the students, in fact "followed to the letter". We find this testimony convincing, particularly in the absence of evidence to the contrary.

Finally, the Appellant asserts that it is in Justin's best interest to participate in extracurricular activities. We agree. However, it was Justin's own poor decisions -- in fact, three of them -- that resulted in his ineligibility. His unhappiness with the result of his decisions is insufficient reason to reverse a Board decision that complied with the law and was consistent with its own policy.

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

III. DECISION

For the foregoing reasons, the decision of the Board of Directors of the Oelwein Community School District's Board of Directors, made on February 22, 1999, to suspend Justin Buehler from extracurricular activities for one calendar year, is hereby recommended for affirmance. There are no costs of this appeal to be assigned.

DATE

It is so ordered.

ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

DATE

CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION