

**IOWA STATE BOARD
OF EDUCATION
(Cite as 17 D.o.E. App. Dec. 106)**

<i>In re Kristy Larson</i>	:	
Bob & Nancy Larson, Appellants,	:	
v.	:	PROPOSED DECISION
Shenandoah Community School District, Appellee.	:	[Adm. Doc. #4010]

The above-captioned matter was heard on July 17, 1998, before a hearing panel comprising Steve Fey, consultant, Bureau of Administration and School Improvement Services; Jane Heinsen, consultant, Bureau of Practitioner Preparation and Licensure; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding. Appellants, Bob and Nancy Larson, were present and unrepresented by counsel. Appellee, Shenandoah Community School District [hereinafter, "the District"], was also present in the persons of Superintendent Connie Maxson and was represented by Attorney Jeff Krausman of Belin Lamson McCormick Zumbach Flynn of Des Moines, Iowa.

An evidentiary hearing was held pursuant to the Rules of the Department of Education found at 281 Iowa Administrative Code 6. Authority for and jurisdiction of the appeal are found in Iowa Code section 290.1(1997).

Appellants filed an affidavit seeking review of a May 11, 1998, decision of the Board of Directors [hereinafter, "the Board"] of the District which adopted changes in the good conduct policy which would go into effect August 1998. Appellants objected to the decision of the Board that determined that their daughter, as well as other students currently serving a consequence under the former good conduct policy, would not be able to start over under the newly-adopted, more lenient policy.

**I.
FINDINGS OF FACT**

The administrative law judge finds that she and the State Board of Education have jurisdiction over the parties and the subject matter of the appeal before them.

Kristy Larson is a senior at Shenandoah High School. She has been ineligible to participate in extracurricular activities since the fall of her junior year. That is because in November 1997, Kristy received her fourth offense under the District's good conduct policy. That made her ineligible for extracurricular activities for the remainder of her senior high school career. The facts surrounding the fourth offense, when the ineligibility decision was made in November 1997, are not at issue here. Appellants did not appeal the application of the good conduct policy to Kristy at that time. What is at issue in this appeal is the District Board's subsequent adoption of a more lenient good conduct policy, coupled with the Board's decision that the adoption of the new policy would not "change the consequences for any student currently serving a consequence under the former good conduct policy." (Bd. Min. 5/11/98.)

Background:

Kristy participated in athletics throughout grade school and excelled in basketball, track and softball. In August 1994, Kristy was involved in a moped accident where she sustained a traumatic closed-head brain injury. Following brain surgery, she had extensive rehabilitation. She returned to 8th grade that fall with a shaved head and scars. Her father testified that she experienced a lot of problems with self-esteem after that. Mr. Larson testified that this accident seemed to set the stage for the following "bad choices" that Kristy began to make in high school.

Kristy's first offense under the good conduct policy occurred in May 1995, when she drank a wine cooler at a graduation party. Since she "self-reported" under the terms of the then-current policy, her suspension was reduced from 4 weeks to 2 weeks.

Her second offense occurred in July 1996. She was riding in a car that was stopped by police for running a red light. Beer was found in the car. All of the occupants were charged with possession of alcohol. Kristy served a 4-week suspension for this offense.

In August 1996, Kristy voluntarily went through some rehabilitation sessions. Then, in October 1996, her third offense occurred. She attended a homecoming party at a local hotel where alcohol was present. She was breathalyzed as positive. She served a six-month suspension for this third offense.

In December 1996, the parents requested an appeal hearing to the District Board. They asked that Kristy's suspension from extracurricular activities be reconsidered as provided by the policy. The Board voted to reinstate Kristy if she completed certain conditions involving alcohol treatment and rehabilitation. She was reinstated by the Board in March 1997, after completing the required sessions. Mr. and Mrs. Larson testified that the Board made it clear that should there be a fourth offense, Kristy would be ineligible for the remainder of her academic career. Mr. Larson stated that he was basically told "if that happens, you won't get another chance."

In November 1997, Kristy was a junior. She and her boyfriend were at a party where there was drinking. The police arrived and "busted" the party. Kristy and her friends were charged with possession. At her parents' request, Kristy took a test that proved that she had consumed no alcohol. Nevertheless, under the good conduct policy in effect at that time, "mere presence" at a party was sufficient to constitute a violation of the policy.¹ Since this was Kristy's fourth offense under the policy, she was rendered ineligible for participation in extracurricular activities for the remainder of her high school career. The parents did not appeal this decision.

The evidence showed that Kristy has been very successful in her recovery from alcohol abuse. Kristy presently serves as a youth representative on a steering committee in the Shenandoah Community's effort to deal with teenager drug and alcohol abuse. (Exh. B.)

In the spring of her junior year, the District Administration began the process of reviewing the good conduct policy. The superintendent, Connie Maxson, along with the high school principal, Chris Heslinga, and Richard Evans, the assistant principal, had all become Shenandoah administrators just prior to the 1997-1998 school year. All three came from schools with very different policies governing good conduct. As a result of their discussions with parents, board members and the community, it was decided that the good conduct policy should be revised to reduce the harshness of the penalties. Under the terms of the policy that was to become effective on August 1, 1998, "[i]f a third violation occurs within the twelve (12) months after the first and second violation [sic], the student shall be ineligible for a period of twelve (12) months." The revised policy did not provide for the "indefinite suspension" that had been imposed on Kristy in October 1997.

¹ The State Board has never addressed the validity of a "mere presence" policy under *Bunger v. Iowa State High School Athletic Assn.*, 197 N.W.2d 555 (Iowa 1972).

It was the testimony of Superintendent Maxson that both she and Principal Heslinga had favored letting Kristy and two other similarly situated students get a "fresh start" under the revised policy. However, the Board decided that it would not "change the consequences for any student currently serving a consequence under the former good conduct policy." (Bd. Min. 5/11/98.) This appeal followed that decision.

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], and "in the best interest of education" [281 IAC 6.11(2)]. The test is *reasonableness*. Based upon this mandate, a more precise description of the State Board's standard of review is:

A local school board's decision will not be overturned unless it is "unreasonable and contrary to the best of education."

In re Jesse Bachman, 13 D.o.E. App. Dec. 363, 369 (1996).

School districts do have the authority to promulgate rules for the governance of pupils. Iowa Code section 279.8 mandates that the board of directors of a school corporation "shall make rules for its government and that of its directors, officers, employees, teachers, and pupils ... and shall aid in the enforcement of the rules. ..." *Id.* Iowa Code section 279.9 requires a board to adopt rules that prohibit and punish students for the possession of tobacco or the use or possession of alcohol, beer, or controlled substances. However, Appellants do not question the authority of the Board to adopt the good conduct policy. Nor are the parents asking the State Board to review the validity of any of the four ineligibility decisions. In fact, Kristy's father frankly stated that the Larsons do not view this as a "legal" issue. But, instead, they see it as a common sense way of supporting a student's efforts at rehabilitation. The Larsons object to the District Board's decision not to let all students benefit from the more lenient provisions of the revised good conduct policy.

As persuasive and passionate as Appellants are in the support of their daughter, the State Board is still obligated to follow certain legal principles in reviewing the decisions of local boards.

In the present case, the relevant legal principles concerning due process and equal protection provide guidance on whether the District's denial of a "fresh start" for Kristy was a reasonable exercise of its discretion. Stated another way, do principles of due process require that Kristy Larson be treated differently than she is currently being treated by the District Board? Based upon the following case law, we believe the answer is no.

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. These cases come from the criminal context where penalties are harsher and the rights being denied are more fundamental. Participation in extracurricular activities is considered a privilege. Students have no rights or property interest in participation in extracurricular activities. *Brands v. Sheldon Comm. Sch. Dist.*, 671 F.Supp. 627, 42 Educ. L.R. 753 (N.D. Iowa 1987).

The case of *Murray v. Cowley*, 913 F.2d 832 (10th Cir. 1990), deals with an issue analogous to the present appeal. In dealing with a prisoner's request to have a new rule applied retroactively, the court noted that states are free to amend their sentencing laws and having done so, they are not required to apply them retroactively to persons who have been validly sentenced under the prior laws. In *Murray*, the prisoner had been given a prison term under the law that existed at the time of his conviction. He asked that his sentence be reduced as if he had been convicted under the new, more lenient law. The court ruled that the state's refusal to reduce the sentence did not violate due process.

In developing good conduct policies, a school board functions like a legislature. In *Frazier v. Manson*, 703 F.2d 30 (2nd Cir. 1983), the court held that a legislature may prospectively reduce the maximum penalty for a crime even though some one convicted before the effective date of the act would receive a longer term of imprisonment than those sentenced to a maximum term thereafter. *Accord, Niemann v. Paratt*, 596 F.2d 316 (8th Cir. 1979).

Relying on these cases, the decision of the District Board cannot be reversed on legal grounds. Nor is it possible to find the Board's action unreasonable or contrary to the best interest of education. The District Board had already given Kristy another chance when it reinstated her after her third offense upon completion of alcohol rehabilitation. For these reasons, the decision of the Shenandoah Community School District Board should be affirmed.

All 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 Shenandoah Community School District made on May 11, 1998, which determined that Kristy Larson would not be given a "fresh start" under the newly-adopted good conduct policy, is hereby affirmed. Costs of this appeal, if any exclusive of attorney fees, are to be assigned to Appellants pursuant to Iowa Code §290.4.

DATE

ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

DATE

CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION