IOWA STATE BOARD
OF EDUCATION
(Cite as 16 D.o.E. App. Dec. 300)

In re Bryce Ricklefs	:	
DeWayne Ricklefs,	:	
Appellant,	:	DECISION
v.	:	
Battle Creek-Ida Grove	:	
Community School District,	:	[Adm. Doc. #4050]
Appellee		

The above-captioned matter was heard on December 2, 1998, before a hearing panel comprising Vic Lundy and Lee Crawford, consultants, Bureau of Technical and Vocational Education; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding. The Appellants, DeWayne Ricklefs and his wife, Becky, were present and were represented by Attorney Patrick J. Hopkins of Austin, Gaudineer & Comito, Des Moines, Iowa. Appellee, Battle Creek-Ida Grove Community School District [hereinafter, "BCIG" or "the District"], was present in the person of Superintendent Joe Graves. The District was represented by Attorney Douglas Philips of Klass, Stoos, Stoik, Mugan, Villone & Philips, L.L.P., of Sioux City, Iowa.

An evidentiary hearing was held pursuant to Iowa Code chapter 290 (1997) and Departmental Rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for this appeal are found at Iowa Code section 290.1(1997).

Appellant sought reversal of a decision of the Board of Directors [hereinafter, "the Board"] of the District made on October 7, 1998, which affirmed the suspension of Bryce Ricklefs from all school-sponsored extracurricular activities for a period of one year. This was his second violation of the District's good conduct policy for possession of a tobacco product.

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.

I.
FINDINGS OF FACT

Bryce Ricklefs is an 18 year-old senior at BCIG High School. Bryce is third academically in a class of 75 students. He has applied to and been accepted by the University of Iowa. Prior to his suspension from participation, Bryce participated in football, basketball, baseball, golf, jazz band, band, speech, drama, and student government. The District's "Senior High School Student Handbook 1998-99" includes a "Sportsman and Good Conduct Policy" ["Good Conduct Policy"], which contains the following pertinent provisions:

A. <u>Violation of Policy.</u>

1. Violations shall include, but not be limited to, the use and/or *possession* of tobacco, alcoholic beverages, and controlled substances. Violations would also include, breaking the law (not including traffic citations). **Possession of alcohol and drugs would include being a passenger in a vehicle and/or being present at or on the premises where alcohol or drugs are being illegally served, present, or used.** Any student who commits an offense, and is placed under the supervision of juvenile court services, shall be considered in violation of the policy.
2. Violations will be determined by a school administrator or designee through information from staff members, law enforcement officials, courts, and self-admissions. The student will become ineligible for the specified amount of time if evidence is produced to establish a violation. However, students need not be involved in the court system to be considered in violation of the Good Conduct Policy.
3. Separate penalties shall be applied for athletics and non-athletics. A student will be ineligible for the specified number of performances in both athletics and non-athletics.
4. Any offense of the Good Conduct Policy committed after the completion of the eighth grade will be treated as a first offense.

B. <u>Consequences for Violations of Good Conduct Policy</u>

<u>*Counseling provision:*</u> If a student is found to have violated the school's Good Conduct Policy, that student will be required to meet with one of the school's guidance counselors, or an agency pre-approved by the school. If a student does not meet with one of these agencies, their ineligibility will be continued until they have fulfilled that obligation.

…

<u>FIRST OFFENSE</u>

There will be three levels of consequences for all first offense violations of the Good Conduct Policy. The consequences will be dependent upon the level of cooperation received by the alleged offender. The purpose of this is to encourage students to take responsibility for their actions. The number of performances/ games to be missed are outlined below, based upon the number of scheduled performances/games in a given year. The three levels will be:

a. **STUDENT CONFESSION WITHOUT BEING APPROACHED BY A SCHOOL OFFICIAL WITHIN 48 HOURS.** If a student voluntarily *and* within 48 hours makes a school administrator, coach, or sponsor aware of the fact that they have violated the Good Conduct Policy, the student will be suspended from competition for the next two scheduled contests.

b. **COOPERATIVE STUDENT AFTER AN ALLEGATION HAS BEEN MADE.** If a student cooperates with the principal or designee, he/she will be suspended from competition for 1/3 of the season's contests.

c. **UNCOOPERATIVE STUDENT AFTER AN ALLEGATION HAS BEEN MADE.** If a student is found guilty by a preponderance of evidence of violations [sic] the school's good conduct policy, he/she will be suspended for ½ of the season's contest.

2. **SECOND OFFENSE**
The consequence for all **second offense violations** of the Good Conduct Policy will be suspension for one year from all extra curricular activities. Serious consideration should be given to professional counseling.

3. **THIRD OFFENSE**
The consequence for all **third offenses** of the Good Conduct Policy will be suspension for the remainder of the student's high school career from all extra curricular activities.

(Exh. 1, pp.63-66.)(Emphasis in original).)

Bryce's eighteenth birthday was on July 5, 1998. According to Iowa Code section 453A.2(2), he was then of legal age to purchase tobacco products. On August 23, 1998, he entered the local Pronto convenience store and purchased a pack of cigarettes, which he then gave to a minor student. It is undisputed that Bryce never used the tobacco products himself. Word of the purchase got back to school officials through the football coach, and when Bryce was confronted about the incident, he admitted the purchase. On August 26, 1998, he was found in violation of the good conduct policy by high school principal Ken McKenna. Bryce was then suspended from participation in the next two scheduled extracurricular activities, pursuant to the provisions of the good conduct policy for his admitted purchase (possession) of a tobacco product. Bryce contended that he did not know that *the purchase* of tobacco was a violation of the good conduct policy.

Some time after August 26, 1998, and prior to September 16, 1998, a rumor started that Bryce had again purchased a tobacco product. On September 14, 1998, Superintendent Graves received a report from the Middle School Athletic Director that Bryce had again purchased tobacco at the Pronto store. On September 15, 1998, Graves forwarded this information to Principal McKenna. On September 16, 1998, McKenna interviewed Wanda Harrel, a school

district aide, who worked part-time at the Pronto store. Harrel told McKenna that she had sold a tobacco product to Bryce after the first offense. She knew the purchase was after the first offense because when Bryce entered the store, he asked her if it was safe to purchase tobacco. Ms. Harrel testified:

> Okay, one evening, Bryce came into Pronto, and he came in, and he came up to the counter, and he stood there, and he looked at me, and then he said, "Well, it is safe for me to buy in here now or not?" And I said, "I don't know. Did you see any teachers in the parking lot?" And he said, "I can't believe my coach would do that to me," and I said, "Bryce, it's my job to make sure you're old enough. I know you're 18 because I've carded you." I said, "I can sell you cigarettes. If you want to buy them, that's up to you ,"

Exh. 7, pp. 7-8.

> "Bryce didn't buy cigarettes, but a can of chewing tobacco of some kind."

Id. Ms. Harrel testified at the disciplinary hearing that she didn't intend to turn Bryce in. She felt that her job as a Pronto convenience store employee was separate from her job as a school employee. In the course of a conversation at a later date with a teacher, she mentioned the incident. She testified that the teacher felt obligated to report it to the administration. Exh. 7, p. 8.

As a result of the "rumors," Principal McKenna interviewed Ms. Harrel. He informed Bryce of the charge and Bryce denied it. Principal McKenna then re-interviewed Ms. Harrel and was satisfied that her statement was credible. On September 16, 1998, Principal McKenna sent a letter to Mr. and Mrs. Ricklefs, which stated:

> A staff member of BCIG CSD, who is also an employee of Pronto, has reported to me that Bryce had purchased a tobacco product from her at Pronto. Bryce denied this allegation. The staff member reports that the purchase was made after Bryce had violated the good conduct code for the first time for the same reason.
>
> Unfortunately, this is Bryce's second violation of the good conduct policy. The consequence for all second offense violations is suspension for one year from all extra curricular activities. Since Bryce is a senior, this would mean that he can no longer participate for the remainder of his high school career.
>
> Whenever a student violates the good conduct policy, they are also ineligible to act as an elected representative of the student body for one calendar year. These activities include, but are not limited to, homecoming court, student council, class officer, etc.

Exh. 3.

Mr. McKenna's letter also advised the Ricklefs of their right to appeal to the superintendent. After receiving the letter, Dwayne Ricklefs contacted Principal McKenna and asked him to reconsider his decision. McKenna declined. On September 17, 1998, Mr. Ricklefs appealed the principal's decision to Superintendent Graves.

Superintendent Graves then undertook to investigate the charge. Mr. Graves determined that Bryce's first violation on August 23, 1998, involved Bryce's purchase of cigarettes at the Pronto store for another BCIG student, who was a minor. Superintendent Graves again interviewed Wanda Harrel, who confirmed what she had told Principal McKenna in her two prior interviews. He also interviewed two other employees of the Pronto store, who both stated they had sold tobacco products to Bryce after his initial suspension.

Superintendent Graves also heard that several students in the jazz band had information about Bryce's purchase of tobacco products. The Superintendent spoke to seven students from the jazz band whose names he had been given by Principal McKenna. Two knew nothing about the situation, three had heard second-hand that Bryce was continuing to purchase tobacco products, and two stated that they had heard Bryce admit that after his suspension, he had continued to purchase tobacco for other students.

On September 18, 1998, the Superintendent issued a report upholding Bryce's suspension. Copies of the report were sent to the Ricklefs as well as to the School Board. The Ricklefs appealed Superintendent Graves' decision to the District Board. On September 21, 1998, the Ricklefs appeared with their attorney before the Board and asked for a hearing. The Board granted the request, and the Ricklefs' attorney agreed to a hearing before the superintendent as the hearing officer. The hearing was conducted on September 29, 1998. A complete transcript of the hearing was provided to the panel during the appeal before the State Board of Education.[1] At the September 29, 1998, hearing the Ricklefs called 13 witnesses and the District called 5 witnesses. Superintendent Graves then issued a second report in which he supplemented his findings, but again upheld Principal McKenna's decision.

At a school board meeting held on October 7, 1998, Superintendent Graves provided a copy of the report to the School Board and to the Ricklefs. The Ricklefs' attorney was then permitted to make argument. After considering the argument and the Superintendent's report, the Board voted 6-1 to affirm Bryce's suspension.

DeWayne Ricklefs asked the Board for reconsideration. He stated that the Board had not given him a full opportunity to present his side. Mr. Rickleffs had discovered that the convenience store continuously video-taped all customer transactions. However, these tapes are only kept for two weeks. After that, they are taped over. Sometime after Mr. Rickleffs was notified of the second violation, he tried to obtain the tapes. By that time, they had been taped over. He blames the district for failing to secure the tapes as soon as Mrs. Harrel was interviewed and indicated that they existed. We find that the district was under no obligation to obtain the tapes in this situation.

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[1] **This transcript was very helpful to the hearing panel in reaching its decision. It is much easier to review the reasonableness of the District Board's decision when the evidence upon which the District Board's decision was based is furnished to the hearing panel.**

The Board allowed Mr. Rickleffs to present additional arguments at a meeting in closed session on October 19, 1998. The Board came out of closed session and again affirmed the suspension.

This appeal followed. In his appeal, Mr. Ricklefs raised the following claims:

1) That Bryce was denied procedural due process by the District's following actions:
   a. The District's failure to provide written notice of the exact date of Bryce's alleged second violation;
   b. The District's failure to find Bryce guilty of the second violation by a "preponderance of the evidence" as required by the policy itself; and
   c. The District's failure to retrieve the surveillance tape from the Pronto store in a timely manner.

2) That the School District violated Bryce's substantive due process rights by punishing him for conduct that is otherwise lawful.

3) That the Good Conduct Policy is beyond the scope of the regulatory authority granted to the School District by Iowa Code section 279.8, which only gives a school district the power to prohibit the ***use*** of tobacco not the possession of tobacco.

II.
CONCLUSIONS OF LAW

Standard of Review

The Standard of Review exercised by the State Board of Education is established by the Legislature. Iowa Code chapter 256 creates the Department of Education which is to act through its State Board "in a policymaking and advisory capacity and to exercise general supervision over the state system of education." Iowa Code section 256.1. The State Board acts as a policymaker and advisor when it fulfills the duties mandated by sections 256.7(5) and 256.7(6). These are the duties of rulemaking and hearing appeals under Chapter 290, respectively. The Standard of Review governs what the State Board is required to do when it hears appeals. The Legislature tells us how that Review process should occur:

> At the time fixed for hearing, it [the State Board] shall hear testimony for either party … and it shall make such decision as may be just and equitable, which shall be final unless appealed from as hereinafter provided.

Iowa Code section 290.3(1997).

The State Board has been directed by the Legislature to render a decision that is "just and equitable" [section 290.3], "in the best interest of the affected child(ren) [section 282.18(20)] and "in the best interest of education" [section 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 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).

Due Process Claims

The Appellant alleges that his son has been treated unfairly by the District's administrative staff and Board of Directors. He contends that Bryce was excluded from extracurricular activities for his senior year without due process of law. Specifically, Mr. Ricklefs contends that Bryce was denied both procedural and substantive due process. Based upon the evidence before us, we do not agree.

One of the purposes of due process is to give a person accused of a violation of law or policy the opportunity to tell his or her side of the story to guard against "unfair or mistaken findings of misconduct … ." *Goss v. Lopez*, 419 U.S. 565, 569 (1975). Due process, it should be noted, is not required for every deprivation instigated by a public school district. It applies whenever the liberty or property interest at stake is more than "de minimus". *Id*. *See also*, *Brands v. Shelton Comm. Sch. Dist.*, 671 F.Supp. 627 (N.D. Iowa 1987). In constitutional terms, Bryce's deprivation from extracurricular activities would probably be deemed "de minimus" by the court in terms of the property interest at stake. "There is no constitutional right to participate in high school athletics." *McFarland v. Newport Special School Dist.*, 980 F.2d 1208, 1211 (8th Cir. 1992). *Gonyo v. Drake University*, 837 F.Supp. 989, 994 (S.D. Iowa 1993).

In his affidavit of appeal, Mr. Ricklefs lists six deficiencies in the pre-hearing procedure used by the District and three deficiencies in the hearing procedure itself, which he contends constitutes violations of due process. He based this contention on the principles of due process enunciated by the State Board in the cases of *In re Don A. Shinn*,14 D.o.E. App. Dec. 185(1997); *In re Isaiah Rice*, 13 D.o.E. App. Dec. 13(1996); and *In re Joseph Childs*, 10 D.o.E. App. Dec. 1(1993). The Appellant's reliance on these cases is misplaced.

The seminal case cited for the establishment of public school students' rights under the United States Constitution to "due process of law" as promised by the Fifth and Fourteenth Amendments is *Goss v. Lopez*, 419 U.S. 565, 95 S.Ct. 729 (1975). That case involved the suspension of students from public school for ten (10) days. In addition to guaranteeing that students facing "short-term suspensions of ten days or less" have the minimal right to notice (oral or written) of the charges against them and an opportunity to be heard prior to the imposition of the suspension, the Supreme Court strongly suggested in *Goss* that for longer exclusions more process may be required, including a hearing

before the board, the opportunity to secure counsel, to confront and cross-examine witnesses and to call witnesses on the student's behalf to verify the student's version of the incident. *Goss, supra* at 419 U.S. 584.

Following that case, the State Board established minimum guarantees for students facing *expulsion* (suspensions, longer than ten days) are:

1) no removal from school prior to a hearing, except in emergency circumstances;

2) a written statement of the alleged misconduct, sufficient to prepare a defense to the charges;

3) written notice of time, date, and place of the hearing;

4) notification of the right to be represented;

5) an opportunity for the student to be heard;

6) an opportunity for the student to examine documents and cross-examine witnesses;

7) a written decision outlining the facts upon which the decision is based; and

8) a verbatim record of the hearing.

In re Monica Schoor, 1 D.P.I. App. Dec. 136, 139 (1979).

In the 22 years since the *Monica Schoor* decision the State Board has had many additional opportunities to modify those requirements. A review of the cases suggests that only the final requirement, that a verbatim record of the hearing be made, is no longer deemed essential, for purposes of appeals to the State Board of Education because our review of school board decisions is ***de novo*** ("a new"). *In re Andrea Talley*, 1 D.P.I. App. Dec. 174, 176(1978); *In re Connie Berg, et al.,* 4 D.P.I. App. Dec. 150, 167(1986); *In re Joseph Childs*, 10 D.o.E. App. Dec. 1(1993); *In re Isiash Rice*, 13 D.o.E. App. Dec. 13, 21(1996).

Procedural due process rights have never been afforded to those deprived of participation in extracurricular activities. That is because due process is a flexible concept that varies with the particular situation. *Cinermon v. Burch*, 494 U.S. 113, 127(1990). Since the property interest in participation in extracurricular activities is considered constitutionally "de minimus" by the courts, and since there is "no constitutional right to participate in high school athletics", the due process rights afforded to students expelled for longer than ten days are not available to students suspended from participation in extracurricular activities. *See, Brandts v. Shelton Comm. School Dist.*, 671 F.Supp. 627 (N.D. Iowa 1987).

Appellant's assertion that the District's failure to provide written notice of the exact date of the charge constitutes a procedural due process violation would be fatal to the District's case if this was an expulsion case. Since it is not, the District could satisfy its preponderance-of-evidence standard by showing that it was "more likely than not" that Bryce had purchase a tobacco product at the Pronto store. The District's failure to prosecute the violation more quickly, thereby acting before the two weeks of video tapes were destroyed, does not rise to a level of a procedural due process violation. The more credible evidence showed that Ms. Harrel did not intend to turn Bryce in and didn't report him to the administration after his purchase of tobacco from her. It was her offhanded mention of this incident in a conversation with a teacher that started the investigation. The evidence showed that rather than failing to act, the high school principal commenced his investigation of the incident as soon as he had knowledge of it. The fact that it was after the tapes at Pronto had been erased, was not an intentional act.

In addition to the procedural due process claims, Appellant contended that by punishing Bryce for conduct that is legal under the Iowa Code, his substantive due process rights were violated. The State Board has already addressed the identical arguments in two cases and has found them to be without merit. *In re Jesse Bachman*, 13 D.o.E. App. Dec. 363 (1996); *In re Scott Martin*, 16 D.o.E. App. Dec. 252 (1999).

Appellant's final challenge is to the District Board's authority to promulgate a good conduct policy that deprives a student of eligibility for one year in extra curricular activities for the possession, not use, of tobacco products. In support of his proposition, Appellant cites *Bunger v. Iowa High School Athletic Assn.*, 197 N.W.2d 555 (Iowa 1972).

The first principle in considering the validity of the school rule is its scope. The rule must pertain to conduct "which directly relates to and affects the management of the school and its efficiency." *Bunger* at 563.

> Student misconduct in the classroom obviously affects the operation of the school; misbehavior of a child at home within the family clearly is beyond the concern of the school. Between those extremes lie the cases which more or less affect the operation of the school and the task is to determine on which side of the line particular conduct falls.

Id. at 564.

Is the connection between Bryce's conduct and affect upon the school too tenuous to come within the scope of the Board's authority? We think not. Although the District presented no evidence of a "nexus" between Bryce's purchase of tobacco and any affect on the operation and management of the school, a similar good conduct policy was upheld by the State Board when a similar argument was made in *In re Heather Kramme*, 13 D.o.E. App. Dec. 89 (1996). In that case, the District argued that there was a rational relationship between the conduct (purchasing tobacco) which the District sought to prescribe and its affect on the operation and management of the school:

> In the present case, the student's behavior took place during the school year and during the period of activity in which she desired to participate. The event occurred in a busy, convenience store frequented by numerous students and the general public. Non-enforcement of this rule would effectively condone the use of tobacco products when there is obviously substantial and direct relationship between the operation and management of the school and the student's behavior in possessing an unhealthy and unwholesome prohibited product. … The current national, state, and local emphasis in deterrent of tobacco use by youth as an unhealthy and immoral activity makes inherent the direct connection between this particular student's behavior the meaningful operation and management of the school.

Id. at 94.

In the *Kramme* case as in the present case, Appellant contended that because the student was 18 years old that her purchase and possession of a tobacco product on a Saturday, outside of school grounds, was not an illegal act. In response, the State Board stated "[w]hile that fact lessens the neglect impact of Heather's conduct, it does not remove it from the jurisdiction of the good conduct code. Iowa Code section 279.9 requires a school board to enact rules that prohibit "the use of tobacco … *by any student of the school*." *Id*. (Emphasis added.) A "student" is described as a "resident who is between the ages of 5 and 21 years who has not graduated from a four-year course in an approved high school or its equivalent". Iowa Code section 282.6(1997). Consequently, a school policy can prohibit certain conduct of a "*student*" involved in extracurricular activities even though the student's conduct maybe "legal" under civil statutes.

The important question concerns whether there is "nexus" between the prohibited conduct and its affect on the operation and management of the school; not whether the activity is illegal.[2] For these reasons, we are compelled to conclude that the rule prohibiting the purchase or possession of tobacco by Appellant's son is valid in its scope.

However, the second principle that must be addressed in determining the validity of a good conduct policy is its "*reasonableness*". *Bunger* at 564. More specifically, the inquiry in this case is whether the punishment fits the crime. While our intention is not to undermine the authority of the District Board to establish good conduct rules, we take issue with the harshness of the penalties imposed by this policy. The second offense "consequence" suffered by this student and by all second-offense violators of the good conduct policy, is *one-year suspension from all extracurricular activiti*es. There are no opportunities to mitigate this result as there are for the first offense violations. The consequences for all third-offense violations is *the suspension for the remainder of the student's high school career from all extracurricular activities.* (Exh. 1.) While good conduct rules generally have an escalating level of punishment for repeat offenders, this policy contains one of the *longest* periods of ineligibility for a second and third offense that we have ever seen. When the inquiry is whether the punishment fits the crime, it is

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[2] **Although the impact of the prohibited conduct on the management and operation of the school would certainly be great if the conduct was illegal, the conduct does not have to be illegal to be within the scope of the Board's policy.**

necessary to look at the consequence in relation to the conduct involved. When this is done, several things become apparent.

First, the policy "prohibits the use and/or possession of tobacco …". (Exh. 1., p. 64.) The "purchase of tobacco" is included in this prohibition by implication. That means that an 18-year old student who purchases a tobacco product for his/her parents, would be subject to the same penalties as a student who used methamphetamines. Is tarring both types of offenders with the same broad brush of the good conduct policy a reasonable use by the District Board? The State Board has previously said, "[t]his is the pitfall of having predetermined punishments. It means that everyone committing a violation will be treated the same – a worthy goal – but it does not take into consideration extenuating circumstances, contrition, mistake, or the subtly factual differences in every case." *In re Korene Merk,* 5 D.o.E. App. Dec. 270, 275(1987). The problem with the severity of the consequences in this good conduct policy is that it removes the element of rehabilitation for these students. The fact that a freshman could lose all future participation in extracurricular activities, with no chance of restatement, may be counterproductive to the schools' efforts to deter substance abuse for the remainder of the student's high school experience.

Good conduct policies which impose severe penalties and long-term exclusions from extracurricular activities are more punitive than instructive. The school's ability to withhold participation; in extracurricular activities for violations of drug and alcohol policies, give the school a unique opportunity to be proactive in the treatment of these problems. The better educational practice is for districts to promote treatment as a consequence for good conduct policy violations. In the context of appeals, the State Board has had the opportunity to review several good conduct policies that have taken this approach. *See, e.g., In re Josh Burns,* 15 D.o.E. App. Dec. 344, 346 (1998) (North Polk CSD); *In re Chad Chyma*. 14 D.o.E. App. Dec. 232, 237(1997)(South Tama CSD); *In re Chris Gruhn,* 9 D.o.E. App. Dec. 265, 266 (1992)(East Central CSD); *In re Brian Campbell and Craig McClure,* 9 D.o.E. App. Dec. 69, 71(1991)(Mt. Ayr CSD).

The finding of "*reasonableness"* is difficult when the penalty for purchasing tobacco for the second time, on a weekend, by an eighteen-year-old student, is exclusion from all extracurricular activities for one year. We are tempted to reverse the penalty imposed on Mr. Ricklefs as "unreasonable and contrary to the best interest of education". This is due, in part, to the State Board's desire to discourage the development of good conduct policies that focus more on "sanctions" than on "solutions".

Although we are tempted to do so, we are not going to reverse this district board. The one-year penalty for a second offense is not "unreasonable" *per se.* The factors that the State Board uses to judge the "reasonableness" of good conduct policies have been decided on a case-by-case basis. Under the provisions of the amended Administrative Procedure Act,[3] which becomes effective July 1, 1999, State Board guidelines for good conduct policies should be promulgated by rule. In this way, district boards will know *before* the development of a policy

[3] **H.F. 667 effective July 1, 1999, amends Iowa Code Chapter 17A.**

what is likely to be upheld as "reasonable" on appeal to the State Board. This is a more responsible way for the State Board to "act in a policymaking and advisory capacity and to exercise general supervision over the state system of education" as it is required to do under Iowa Code section 256.1.

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

III.
DECISION

For the foregoing reasons, it is recommended that the decision of the Board of Directors of the Battle Creek-Ida Grove Community School District made on November 7, 1998, affirming the administration's finding of ineligibility for participation in all extracurricular activities for a period of one-year for a second violation of the good conduct policy, be affirmed. There are no costs of this appeal to be assigned.

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DATE ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

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DATE CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION