



TERRY E. BRANSTAD GOVERNOR

DEPARTMENT OF EDUCATION
TED STILWILL DIRECTOR

STATE DEPARTMENT OF EDUCATION
(Cite as 16 D.o.E. App. Dec. 197)

<i>In re Petition by Daniel E. Curnyn</i>	:	
<i>for a Declaratory Ruling on Council</i>	:	DENIAL to REQUEST
<i>Bluffs Community School District</i>	:	FOR PETITION FOR
<i>IGDK: Eligibility for Co-Curricular</i>	:	DECLARATORY RULING
<i>and Extra-Curricular Activities</i>	:	

Mr. Dan Curnyn
221 South First St.
Council Bluffs, IA 51503

Dear Mr. Curnyn:

Your petition for Declaratory Ruling was filed on July 27, 1998, and posed the following questions

1. Does the school Board have the Authority under Iowa Code §§279.8 & 279.9 to govern the behavior of a child during the summer months?
2. The policy states that "[A] building administrator **may** declare a student ineligible to participate in an activity". Does that statement pass constitutional muster?
3. Is it legal to punish one child that happens to be in multiple activities with the loss of all activities when a student participating in one activity would only miss one activity?
4. Does the Board have the authority to penalize students for merely being present at a party where maybe a couple of people are drinking or smoking marijuana?
5. Is it legal to apply this policy to a person who at the time of an infraction may not have been enrolled in any activities? If the answer is yes, is it legal to keep the infraction hanging over one's head for years until s/he decides to join an activity?
6. Does the Board have the authority to compel students to complete community service for violation of this policy?
7. Is it permissible to punish a student under both the IGDK and the Code of Conduct, if the student violates both policies?

8. The policy states for the first offense, a student's appeal ends with the principal, second offense, the appeals end with the superintendent, and for the third offense, the appeal goes to the Board? Does this practice comport to constitutional due process and equal protection standards?
9. The policy states that “[S]pecial education and/or students under a 504 plan will be required to be making appropriate progress on their I.E.P. or individual 504 plan. Is the word “appropriate” ambiguous in the above application? What would happen if participation in the activity was written into the child's I.E.P. or 504 plan?
10. This policy suspends children from participating in the activities for a maximum of one calendar year. Does this policy conflict with the IDEA provision limiting suspensions to ten (10) days?
11. Does the requirement that transfer students who have not completed a period of ineligibility in their sending district, be required to finish the term in Council Bluffs— does this provision comport to equal protection and due process when the sending district's policies may not mirror Council Bluffs'?
12. Does the policy improperly enter the realm of family?
13. Does the definition of competition/performance as “a social activity (such as a dance sponsored by a club or elected group)” constitute an over broad and ambiguous definition?
14. Is the IGDK policy enforceable?

Pursuant to the provisions of 281 – Iowa Administrative Code 3.5, this agency may refuse to issue a declaratory ruling for good cause. The definition of “good cause” includes the following reason: “The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.” 281 – IAC 3.5(5). This reason constitutes good cause for the denial of this petition for declaratory ruling because the procedures for an appeal brought under Iowa Code §290 would more appropriately address the application of this policy in a factual context.

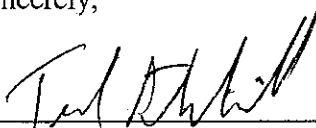
As you know, Department issued a Declaratory Ruling on the Storm Lake good conduct policy in October 1994. (*See*, Declaratory Ruling #48.) Although that declaratory ruling did not address each of the legal issues raised by your petition, that ruling may be relied upon as general guidance to the school districts concerning their authority to promulgate good conduct rules. Your specific questions regarding the due process protections which may coincide with the operation of this policy, are better addressed on a case-by-case basis. Often times, when the local district board is confronted with an appeal of its policy, it can correct any errors or issues of fairness before the appeal reaches the State Board. It is always preferable to have the local patrons question the policy initially at the local level where the development of the policy takes place.

If students are penalized under this policy and the parents have exhausted their remedies at the local level and appealed to the local board without satisfaction, they may appeal to the State Board of Education under the provisions of Iowa Code §290 within thirty (30) days of the local board's decision or order. In that situation, any or all of the issues you raised in your petition may be addressed in a ruling affirmed by the State Board of Education.

This constitutes final agency action for the purposes of Chapter 17A, Code of Iowa (1997).

Sincerely,

9/21/98
Date


Ted Stilwill
Director

TS:jmr