

**IOWA STATE BOARD
OF EDUCATION
(Cite as 15 D.o.E. App. Dec. 344)**

In re Josh Burns	:	
Bert Burns, Appellant,	:	
v.	:	DECISION
North Polk Community School District, Appellee.	:	[Adm. Doc. #3979]

This case was heard telephonically on April 20, 1998, before a hearing panel comprising Mr. Klark Jessen, Office of the Director; Ms. Marcia Sandvold, Budget & Finance Team; and Amy Christensen, J.D., designated administrative law judge, presiding. The Appellant, Mrs. Bert Burns, was present telephonically. She was unrepresented by counsel. The Appellee, North Polk Community School District [hereinafter, "the District"], was present in the person of Mr. Jim Matre, Superintendent. The District was also unrepresented by counsel.

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(1997).

Mrs. Burns seeks reversal of the disciplinary action taken against her son by the Board of Directors [hereinafter, "the Board"] of the District at its meeting on March 19, 1998.

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**

Josh Burns is a sophomore at North Polk Junior-Senior High School. He is 16. Josh participates in track, baseball, and football for North Polk. Josh has committed no prior violations of the good conduct code.

Josh lives in Huxley, Iowa. On Friday, February 20, 1998, Josh went to a party at a fellow student's house. The party was in Polk City, which is about 12 – 15 miles from Josh's home. A friend drove him to the party and dropped him off. He arrived at about 7:30 p.m. There were no parents or other adults present at the party. As soon as he got to the party, Josh learned that some students were drinking beer in a room in the front of the house. Josh knew there were cans of beer in the kitchen, but does not know whether they were in the refrigerator or a cooler. Josh could not leave, and could not call his parents.

Josh's mother was at the basketball game, and Josh's father was working. Josh was to be picked up from the party by another friend after the friend finished playing basketball. Josh did not drink alcohol, was not offered any beer, and spent his time at the party in a room in the back of the house. No students were drinking alcohol in the back room. The students who were drinking beer were in the front of the house. Josh left the party at about 9:30 p.m.

Mr. Gary Fjelland is the principal of North Polk Junior-Senior High School. He was at the game Friday evening. Some students told their coach about the above party, and the coach told Mr. Fjelland. Mr. Fjelland called the Polk City police, and asked them to investigate. He believes he made the telephone call before 7 p.m. At about 9:50, the Polk City police called him back, and reported that the only people present were the young lady who lived there and her boyfriend, and only one can of warm beer on a table. Principal Fjelland later learned that a student had called the house and warned the students there that the police were coming, so all the students left and returned later. However, Josh testified he did not know of the warning call, and did not leave the party or return after he left at about 9:30. Principal Fjelland testified he thought the time the students left and came back was earlier than 9:30, but he did not know for sure, and he testified it is very possible Josh's version of events is accurate.

On Saturday evening, February 21, 1998, there was another party. Josh admits drinking at this party. This party was at another student's house. Principal Fjelland believes this party was downstairs, and a nanny with younger children was upstairs. Again, there were no parents present. Mr. Fjelland did not find out about this party until Monday evening.

On Monday morning, Mr. Fjelland spoke with a number of students about Friday's party, including Josh. Josh admitted being at the party, and said he had not been drinking. Josh was open and honest with Mr. Fjelland about his participation in Friday's party. He did not tell Mr. Fjelland about the Saturday night party. Mr. Fjelland told Josh he was in violation of the good conduct policy, because he had not left Friday's party as soon as he knew of the beer, and said he would decide later about a penalty.

On Monday evening, Mr. Fjelland and Mrs. Burns learned there had been another party on Saturday night. Mrs. Burns confronted Josh at home that evening, and he admitted being present and drinking alcohol. The next morning, Josh and his father went to talk to Mr. Fjelland, and Josh told him he had been drinking at the party on Saturday. Mr. Fjelland again told Josh he was in violation of the good conduct policy, and that he would get back to him regarding the penalty to be imposed after he had talked with other students.

Mrs. Burns read the good conduct policy on Tuesday, and learned that it did not specifically say that being at a party with alcohol was a violation of the policy. Therefore, on Wednesday morning, she spoke to Mr. Fjelland about this, and told him she did not believe Friday should be counted as a violation. He told her he did not know the policy read that way, and he would have to check on it. The two also visited about the fact that

there were back to back parties, and the good conduct policy had not had a chance to work in between the two parties. On Thursday morning, Mr. Fjelland told Mrs. Burns that she was correct, and that the policy used to contain a specific provision that stated presence at a party with alcohol was a violation. He also told her they had not yet decided how to handle the situation.

The District has a good conduct policy, which applies to all students who participate in extracurricular activities. Josh is subject to the policy because he participates in track, baseball, and football. The good conduct policy is contained in the Student/Parent Handbook, which is distributed to all students and parents in the District. Until 1991-92, the good conduct policy included the following actions as violations of the policy:

1. Possessed alcoholic beverages with knowledge or intent, or control thereof.
This does include lockers, automobile and other personal belongings;
2. Consumed alcoholic beverages;
- ...
5. Been in attendance at a party or any social function (this includes riding in a car) where a minor was illegally in possession of or used alcohol or a controlled substance of any kind;

During the 1991-92 school year, the good conduct policy changed, and paragraph five was taken out of the policy. Superintendent Matre testified there was no Board action to do this, and it was removed by mistake, probably when the District changed computer systems. The policy has not included paragraph five since then, and only includes paragraphs one and two as violations related to alcohol.

The good conduct policy also lists sanctions for violation of the policy. The sanctions for a first violation are either “a. Six weeks of ineligibility from all activities,” or “b. Miss one to three events and perform up to 30 hours of community service plus a referral to an appropriate agency or counseling center for counseling and/or education.” The sanctions for a second violation are either “a. Eighteen weeks of ineligibility from all activities,” or “b. Miss six to nine events and perform up to 60 hours of community service, plus a referral to an appropriate agency or counseling center for counseling and/or education.” The student chooses whether to take option “a.” or option “b.”

The policy also includes a number of guidelines when establishing the appropriate penalty. One states: “If a student comes forward and admits a violation of the good conduct policy without first being confronted by any school personnel, they will receive the minimum punishment for the said violation.” Another states: “The administration will establish the number of events and the number of hours of community service for each violation according to the honesty of the student and the seriousness of the violation. This will not be an appealable item under this policy.”

Although the policy no longer expressly contains the paragraph regarding attendance at parties, Superintendent Matre testified that homeroom teachers tell students at the beginning of the year that if they go to a party where alcohol is present, they are to leave immediately. He also testified that most coaches have a preseason meeting at which they go over the good conduct policy and tell students to leave a party if there is alcohol. He also testified the District has consistently applied the policy the same way both before and after paragraph five was removed from the policy. He also believed Mrs. Burns as a coach herself has applied the policy in this way. Principal Fjelland also testified the policy has always been applied in the same way, and the District has always enforced a rule that students who do not leave a party with alcohol are in violation of the policy.

Josh testified that at the beginning of the school year his homeroom teacher discussed the good conduct policy with the students. Josh was told that if he went to a party and learned there was alcohol, he was to leave immediately. The teacher did not explain what the penalty would be if he did not leave the party. The track season started about five weeks prior to the hearing. Josh's track coach did not talk with Josh about the good conduct policy at the beginning of the season. Mrs. Burns testified she is a coach for the District. She testified she has not told her students that they must leave a party where there is alcohol. She testified that although the students would probably know they should not stay as a matter of good moral judgement, they would not necessarily know it was a violation of the good conduct policy. She also testified that until this happened, she did not interpret the policy in that way and know it was a violation for a student to be at a party with alcohol and not leave.

On Monday, March 2, the administration told Josh they had decided to consider Friday night as his first violation, and Saturday night as his second. Since Josh was honest in admitting his participation, Mr. Fjelland gave him the minimum number of events to miss for each violation. Josh chose the community service option, so his penalty included community service, counseling, and missing four events. Originally, the penalty would have included missing seven events (one for the first violation, and six for the second), but Mr. Fjelland reduced it to four events because the policy had not had a chance to work between the first violation and the second violation. Mr. Fjelland testified the goal of the policy is to have the student learn from the situation, not just punish the student. He felt it was not fair to impose the complete penalty for a second offense, because there had been no opportunity for the policy to work between Friday's party and Saturday's party. There were other students in the same position as Josh, and the policy was applied in the same way to them. As of the date of the hearing, Josh had already served ten hours of community service, gone to counseling, and missed one event.

The Burns decided to appeal to the building council, also called the Discipline Review Committee, because they could not understand how discipline could be imposed for an infraction not listed in the good conduct policy. On Friday, March 6, the Committee denied the Burns' appeal. The Committee held that being at a party where alcohol was present was a violation, because it was a violation of the possession paragraph. The Burns then appealed this decision to the School Board, which affirmed the decision of the Committee on March 19, 1998. Mrs. Burns then appealed to the Iowa Department of Education.

II. CONCLUSIONS OF LAW

Mrs. Burns questions how the District can punish Josh for something which is no longer stated to be a violation in the good conduct policy. She does not dispute the District's ability to punish Josh for the Saturday night party, since Josh admitted drinking at that party. The District's position is that even though presence at a party was taken out of the good conduct policy as a violation, the policy has always been interpreted as though it is a violation. The District believes that the paragraph making possession a violation is broad enough to include presence at a party with alcohol when the student does not leave as soon as he or she learns alcohol is present.

School districts have the authority to promulgate rules for the governance of pupils. Iowa Code section 279.8(1997); In re Joseph Anderegg, supra at 113. "Inherent in the notion of a good conduct policy is the idea that participants in extracurricular activities should be held to a higher standard than non-standout students Extracurricular activities are not mandatory. By electing to participate, the student agrees to abide by the terms of the good conduct policy even when school is not in session." In re Jesse Bachman, supra at 370.

In general, school discipline policies address student conduct that occurs on school grounds during the school day. This is because the school district's regulation of school conduct must bear some reasonable relationship to the educational environment. However, districts may also reach out-of-school conduct by student athletes and those involved in extracurricular activities. Because of the leadership role of these "stand-out" students, their conduct, even out of school, directly affects the good order and welfare of the school. Bunger v. Iowa High School Athletic Assn., 197 N.W.2d 555, 564 (Iowa 1972). The State Board has recently affirmed the ability of a district to impose sanctions on student athletes for the possession and consumption of alcohol during the summer. In re Jesse Bachman, 13 D.o.E. App. Dec. 363, 369 (1996). Josh participates in track, baseball, and football, and is therefore subject to the good conduct policy. Therefore, the District had the authority to regulate Josh's conduct according to the policy, even though it occurred off school grounds and after school hours.

Since Josh admitted drinking alcohol at Saturday night's party, and this was clearly stated to be a violation in the good conduct policy, the District had the authority to impose sanctions for this violation according to the policy. The District's action with respect to Friday night's party is far more troubling.

The good conduct policy states that it is a violation to possess alcoholic beverages with knowledge or intent, or control thereof. The policy says in the same paragraph that this includes lockers, automobiles, and other personal belongings. The District interprets this to include presence at a party with alcohol. It is difficult for us to find this interpretation to be reasonable when the policy formerly included such presence as a specifically stated separate violation. Furthermore, although Superintendent Matre and Principal Fjelland testified the policy had always been interpreted so that presence at a party with alcohol was a violation, this interpretation would not be clear to a parent or

student reading the policy. In fact, Mrs. Burns testified that she did not interpret the policy this way, and she is not only a parent, but also a coach for the District. The testimony showed that some coaches tell students they must leave a party where there is alcohol at the beginning of each season, and some do not. The testimony also showed that homeroom teachers tell students they must leave a party when alcohol is present, but it is not clear whether this is a matter of good moral behavior, or a potential violation of the good conduct policy with attached sanctions.

Even if presence at a party with alcohol were uniformly explained to be a violation of the good conduct policy, there is no way to know whether all students would be present to receive the message, and parents would not be there. Parents and students would look to the good conduct policy itself to learn what is prohibited conduct. The language of the policy itself must be clear. School boards have the authority to promulgate rules to govern their students. Iowa Code § 279.8(1997). Although school boards need not write rules which prohibit certain conduct "with the precision of a criminal code", the rules must be written "with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *In re Justin Anderson, et al.*, 14 D.o.E. App. Dec. 294, 299(1997), quoting *Fowler v. Bd. of Educ.*, 819 F.2d 657, 664 (6th Cir. 1987). In this case, it is not. An ordinary person reading the policy would not understand that mere presence at a party with alcohol was prohibited.

Additionally, the language of the policy cannot reasonably be interpreted to include Josh's behavior at the party Friday night. The policy states that possession with knowledge, intent, or control is the violation. Josh was in a room in the back of the house, and no students were drinking in the room where he was. He was not offered a beer, nor was he anywhere near the beer. The students who were drinking were in the front of the house. Josh did not have transportation to leave the party, there was no adult present who could have driven him home, and his parents were not home for him to call. The party was in a separate town 12 – 15 miles from his home. He did not learn of the presence of alcohol until he arrived at the party. Although we do not in any way condone Josh's presence at the party, we cannot find that he possessed alcohol according to the language of the policy.

"Applying the appropriate standard of review to the facts of this case, we must ask whether the District Board's action in upholding the discipline imposed by the administration, is a reasonable exercise of the Board's authority." *In re Joseph Anderegg*, 14 D.o.E. App. Dec. 107, 112 (1997). 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). With respect to the violation on Saturday night, the District acted according to the good conduct policy, and its actions were reasonable and in the best interest of education. With respect to the party on Friday night, the District's actions were not reasonable, and were not in the best interest of education. The policy formerly contained a paragraph that explicitly prohibited presence at a party with alcohol. This paragraph was in addition to the possession paragraph.

Given that this prohibition was inadvertently omitted from the current policy, and given the particular situation Friday night, the possession paragraph of the policy cannot reasonably be interpreted to include Josh's presence at the party on Friday.

The parties had some question as to whether the District could impose a sanction for a second violation when there was no time for the policy to work in between the first and second violation. Although we no longer have this situation, since we have held there was no violation on Friday night, we offer the following guidance. There is nothing in the policy or in Iowa law which would prevent the District from imposing punishment for a second violation in this type of situation. If Friday night had been a violation, there clearly would have been two separate events and two separate violations. The fact that the District did not know of the second violation, or have time to impose a penalty for the first violation, before the second violation occurred, does not prevent the District from imposing a penalty for the second violation. Additionally, so long as it acted uniformly with respect to students in the same situation, the District had the authority to reduce the penalty as it did because it felt imposition of the full penalty would be unfair under the circumstances.

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 North Polk Community School District made on March 19, 1998, is hereby recommended for reversal as to Friday night's party. The decision is affirmed as to Saturday night's party. The District is directed to consider Josh's behavior at Saturday night's party as a first offense, and impose appropriate penalties according to the policy, taking into consideration the penalties already served by Josh. There are no costs of this appeal to be assigned.

DATE

AMY CHRISTENSEN, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

DATE

CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION