In re Justin Anderson	:	
In re Joshua Grom	:	
Steve and Sandi Anderson &	:	
Phil and Diane Grom,	:	
Appellants,	:	
v.	:	DECISION
Rock Valley Community	:	
School District,		
Appellee.	:	
		[Admin. Doc. #s 3830-31]

The above-captioned matters were consolidated and heard on January 30, 1997,[1] before a hearing panel comprising Sharon Slezak, consultant, Office of the Director; Don Wederquist, consultant, Bureau of Community Colleges and Workforce Preparation; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding. Appellants Steve and Sandi Anderson and Phil and Diane Grom were present telephonically, and represented by Mr. Curtis R. Puetz of the Roos Law Office, P.C., Sioux Center, Iowa. Appellee, Rock Valley Community School District [hereinafter, "the District"], was present telephonically in the persons of Superintendent Les Douma; Principal David Meylink; and Board Secretary Randy Taylor. The District was represented by Michele M. McGill of McGill and McGill, Rock Valley, Iowa.

A mixed evidentiary and stipulated 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 chapter 290.1(1997). Appellants filed affidavits of appeal seeking review of a December 9, 1996, decision by the Board of Directors [hereinafter, "the Board"] of the District which sustained an earlier decision of Principal David Meylink. The Administration's decision imposed a 24-week-period of ineligibility on Justin Anderson and Joshua Grom for a third violation of the school's good conduct policy.

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.

[1] **The hearing was originally scheduled for January 14, 1997, and was continued upon a Motion by Appellants to January 30, 1997.**

I.
FINDINGS OF FACT

The Incident

This incident took place on a snowy, Sunday evening, November 24, 1996. A group of Rock Valley High School students drove their cars to the Felco Elevator parking lot. Apparently, this is the local gathering spot for many of the high school students. Both Joshua Grom and Justin Anderson were there, although they were not together.

Around 9:00 p.m., a classmate asked Josh if he wanted to "ride around town." He hopped into the back seat of his friend's car. There were three others already inside. According to Josh and his parents, the kids rode around town for awhile and then went down a gravel road by the bus barn. "The driver did a few donuts on the road and then all of a sudden started running over trees." (Exh. 6A - Grom Affidavit.) The trees had been recently planted on the high school grounds. Joshua maintained that he immediately told the driver to take him back to his car, and the driver obliged.

Justin Anderson's involvement began just after Josh was let out at the Felco parking lot. The driver of the "tree cruiser" got out of his car to check the front end for damage. After several minutes, as he was leaving, he asked Justin Anderson if he wanted to ride around. Justin got into the back seat in place of Josh Grom. The vehicle headed back to the high school and again the driver pulled off the road and drove over several trees. At this point, Justin stated that he asked to be let out of the car. The driver then did a "U" turn and retraced his route running over more trees. Justin was returned to his car at the Felco parking lot. (Exh. 6B - Anderson Affidavit; Exh. 1- Police Rept.) Neither student told their parents nor any school authorities about their involvement in this incident.

The Investigation

At approximately 9:45 p.m. that same evening, Officer Sam Oostra noticed that 21 young trees at the Rock Valley High School had been run over. Officer Oostra had left the same area at 9:15 p.m. on that same date and knew that there had been no tracks in the snow near the trees at that time. The following Tuesday afternoon, at approximately 3:45 p.m., Officer Dwayne Dykstra went to the scene and walked through the damaged area. In the snow between the trees he found pieces of black plastic that he thought had come from a license plate holder. In addition, he found a screw of the type used to mount the license plate to the bracket. After checking many cars in the area, he found a car that looked like the front license plate holder was damaged. He found the owner of the vehicle and asked if she and her son could meet with him at the Rock Valley Police Department.

The student driver of the vehicle admitted that he was the driver of the vehicle on Sunday evening and that he may have hit a few of the trees. He also gave officers the names of the other passengers in his car. On Friday, November 29th, the parents of Justin Anderson and Joshua Grom were contacted and interviewed by the police.

Although the police report detailed the discussions between the police and the parties involved, there is no mention that either Josh Grom or Justin Anderson reported that they had objected to the vandalism or asked to be returned to their vehicles on the night in question. (See, Exh. 1.)

During the week following the incident, Principal David Meylink had also been trying to "get to the bottom of this." Although he contacted many students about rumors he had heard, he was unable to substantiate anything. It was the week of Thanksgiving so school was out on Thursday, November 28th and Friday, November 29th. At 8:30 a.m. on the Monday morning after Thanksgiving, Principal Meylink was met by the parents of the drivers of two of the vehicles involved as well as one of the passengers in the vehicle. The students gave their accounts of the vandalism and reported the names of other passengers who were involved. Principal Meylink then contacted the police to corroborate what he had been told. The principal was advised that all of the students would be charged with criminal mischief so he decided not to contact the students until the charges had been filed. By this time, the one-week period for self-reporting or "admittance" under the District's good conduct policy had already passed. (Exh.3 - Principal's Chronology of Events.)

Officer Oostra reported that during the course of his investigation he met with Justin Anderson and his father on November 29, 1996. Officer Oostra asked Justin if he told the driver to stop and Justin said "No." According to the officer's notes, he advised Justin to tell the school that he had been a passenger in the car. (Exh. 4.) On December 2, 1996, the officer met with Josh Grom and his father. According to the officer's chronology, Josh was asked if he told the driver to stop driving over the trees. Josh answered "No." Once again, the officer advised Josh to report his involvement to the school. (Exh. 4.) The officer's chronology also reflects the fact that in his discussion with the assistant county attorney, he was told that although the passengers could "be legally charged," the county attorney thought it would be a waste of time and would probably not file charges. (Exh. 4.)

When Principal Meylink learned from Officer Oostra that the passengers would not be charged, he called the three students into the office to advise them that they would be subject to sanctions under the District's Good Conduct Policy. The Principal's meeting with the three students was tape recorded and presented as evidence at the appeal hearing. (Exh. 7.) In the course of the meeting between the Principal and the students, Mr. Meylink asked each student individually whether they had been involved when a number of trees had been run over on school property on Sunday evening, November 24, 1996. Each of the students responded, "Yes, I was in the car." The students were then told that their involvement fell under the provision prohibiting "vandalism or other serious offenses that make the student unworthy to represent the ideals and standards of the Rock Valley Community School … ." (Exh. F - Good Conduct Policy; Exh. 7.) Each student was asked if they understood and each student responded, "Yes." The students were also advised that their failure to "admit" their involvement during the week following the incident which allowed a student to come forward, would result in a double penalty. At this point in the tape, apparently Josh had begun to laugh or smirk because Principal Meylink asked Josh what he thought was so funny. Principal Meylink then asked the students if they had any questions about "this process," and

each student answered "No." Finally, each student was asked whether they had had previous violations of the Good Conduct Policy and both boys answered that this was their third offense. In closing, Principal Meylink asked "Is there anything else you'd like to say before you're dismissed?" None of the students had any further comments. (Exh. 7.)

The Policy

Principal David Meylink described the "Eligibility Policy and the Good Conduct Rule." The policy at issue in this appeal was adopted on April 8, 1996, at a school board meeting after it had recently been reviewed by an Eligibility Committee. In the prior policy, there was no way to be reinstated after a third violation. Ineligibility could be imposed for a minimum of one year and possibly for an indefinite length of time. An Eligibility Committee was established to serve as a sort of "probation" review board. Under the policy, the committee meets quarterly and considers whether a student who has been in violation of the Good Conduct Policy three times should be reinstated or not. According to Principal Meylink, the message is intended to be: "Hey, we want to give you an additional chance, we want to provide this opportunity for you." (Tr. at 13.) The provision of the "self-reporting" or "admittance" policy which doubled the penalty was not introduced with the latest revision of the policy. Mr. Meylink testified that prior to the revision the District had an admittance policy. So this was not new to the students. Principal Meylink testified that the purpose of the "admittance" policy is to help young people take responsibility for their actions and to come in and talk to the Administration about their mistakes without coercion. (Tr. at 13.)

Since this was both Justin's and Josh's third violation of the Good Conduct Policy, and since they did not come in and volunteer their involvement in the incident under the "admittance" policy, they were subject to a minimum of 24 weeks of ineligibility. However, their status will be reviewed each quarter at a meeting of the Eligibility Committee. (Exh. F.)

The Appeal

Mr. Andersons testified that they appealed the Board's decision because they didn't think the punishment fit the crime. Since Justin got into the car not knowing that the driver intended to run down the trees, and since Justin got out of the car as soon as possible, he should not have been punished so severely. The "double punishment" for failing to self-report or admit to the infraction was too harsh since "we weren't told to report it to the school or anything like that." (Tr. at 4.) In addition, the Appellants contend that the policy was not properly applied. It was their position at the appeal hearing that when Principal Meylink interviewed the boys, he violated the provision of the policy which states: "The Eligibility Policy Committee will consider each possible violation of the Good Conduct Rule" (Tr. at 8, Exh. F at 40).

After a description of the consequences for offenses of the Policy, there is a section entitled, "CRITERIA FOR POSSIBLE REINSTATEMENT OF THIRD OFFENSE STUDENTS." (Exh. F at 41.) Principal Meylink testified that it has always been his position to administer discipline – to make the decision about whether the Policy has

been violated. (Tr. at 17.) The Eligibility Committee is not involved in this initial determination. The Committee's purpose is to review the reinstatement of students who are serving a period of ineligibility because of a third offense. Id.

A hearing panelist asked Mr. Anderson to describe the nature of his son's two prior violations of the Good Conduct Policy. He responded that the first incident involved shoplifting a 12-pack of beer, but that this was done at the request of a 40-year-old neighbor woman for whom Justin had been working. The second offense occurred when Justin was riding in a car that was stopped by police. Beer was found in the car, although Justin denied drinking. (Tr. at 6.)

The attorney for the Andersons contended that the Good Conduct Policy is too vague. He maintained that it was difficult for Justin to know that he had done anything wrong since no one informed the Andersons that both the driver and his passengers would be held equally culpable. Appellants contended that without knowing he had done anything wrong, how could Justin "admit" to a violation of the policy? (Tr. at 8.)

The Groms' appeal is based on the same grounds proffered by the Andersons. Mr. Grom testified that "we feel [Josh] is being penalized for 20 seconds of the driver's stupidity and he is facing an unfair and unjust sentence on something that he did not have control over." (Tr. at 9.)

In response to questioning from the hearing panel, Mr. Grom described Josh's prior two infractions of the Good Conduct Policy: the first involved a calculator that was taken by a friend of his and placed in Josh's locker. The Principal said that he wouldn't count this as an "infraction" unless Josh committed another one. Josh did commit another one. After a football game, Josh and some others were walking down an alley and Josh broke out a window. The police were involved in that incident as well. (Tr. at 10-11.)

CONCLUSIONS OF LAW

The Appellants have questioned the substantive due process issue of the reasonableness of the punishment as applied to their sons' conduct. They do not question the authority of the school board to adopt rules which punish the conduct of their sons; but they do attempt to minimize the seriousness of the conduct.

School districts have the authority to promulgate rules for the governance of pupils. Iowa Code §279.8 mandates that the board of directors of a school corporation "shall make rules for its own government and that of its directors, officers, employees, teachers, and pupils … and shall aid in the enforcement of the rules. …" Id.

In general, school discipline policies address student conduct which occurs on school grounds during the school day. This is because the school district's regulation of student conduct must bear some reasonable relationship to the educational environment. This principle was enunciated over 100 years ago in the case of Lander v. Seaver, 32 Vt. 114(1859). Districts can 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 parents have challenged the District's application of its Good Conduct Policy to the circumstances of their sons' "passive" involvement with the vandalism to the trees on school property. In reviewing the actions of the local district board, the State Board is guided by the following standard of review which states:

> A local school board decision will not 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 appeal, we must ask whether the application of the sanctions of the Good Conduct Policy to the behavior of these students was a reasonable exercise of the Board's authority.

We think that it was. "Rules applied to athletes are generally subject to the same standards of reasonableness and rational relationship to a legitimate purpose as are other rules." (Rapp, Education Law, (Matthew Bender)[3.09(7)(a)](1997).

In the present situation, the parents contend that even if this Good Conduct Policy is reasonable, it is invalid as applied to their sons because it is too vague. Under the vagueness doctrine a rule, "proscribing certain conduct must be drafted 'with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.'" Fowler v. Bd. of Educ., 819 F.2d 657, 664, 39 Educ. L.R. 1011(6th Cir. 1987)(Supreme Court citations omitted).

Vagueness arguments are often rejected because the conduct engaged in would be clearly prohibited anyway. Brands v. Sheldon Comm. Sch. Dist., 671 F.Supp. 627, 42 Educ. L.R. 753 (N.D. Iowa 1987). Since there is no constitutional right to participate in high school athletics, school boards are not required to draft Good Conduct policies with the precision of a criminal code. See, Brands, supra at 671 F. Supp. at 631.

In accordance with this precedent, we must reject the parents' claims that the rule of the Good Conduct Policy which prohibited vandalism was insufficient notice to the boys that what they were involved with was wrong. If this was truly and simply a case of two boys being held captive in the wrong place at the wrong time, surely they would have protested their involvement to the police, or Principal Meylink. Although the extent of the boys' protests to get out of the car is disputed, we tend to believe the evidence which was gathered closer to the time of the incident rather than the time of the appeal. (See, Officer Osstra's Rept., Exh. 4; Principal Meylink's audio tape interview with the students, Exh. 7.) The evidence relied upon by the Administrative Law Judge in rendering a decision must be "reliable, probative, and relevant." 281—IAC 6.8(2)(o)(1).

At first blush, it may seem harsh to uphold the enforcement of the Good Conduct Policy against these boys because they were "mere passengers" in the car. On the other hand, is it unreasonable for a school community to send a message to its "standout" students that involvement in vandalism goes beyond actually driving the car that damages the trees, or wielding the baseball bat that dents a vehicle, or being the person who actually throws the brick through the window? Where is the line crossed between bystander and accomplice? It is not a line that can be drawn by students after the fact when they realize they have been caught and it is their third violation.

The facts that weighed most heavily in the conclusion that the District's action was not unreasonable were these: These students were no strangers to trouble under the Good Conduct Policy. If this had been their first violation, if they had told their parents and principal about their involvement instead of letting the police do it over a week later; if they had protested to Principal Meylink that they had tried to stop the vandalism, or *immediately* demanded that the car stop to let them out; this appeal might have been decided differently. But then, if all of those things *had* happened, Principal Meylink might have made a different recommendation for discipline. At least under the District's revised Good Conduct Policy, the students' ineligibility can be reviewed a second time.

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

III.
DECISION

For the foregoing reasons, the decision of the Rock Valley Community School District's Board of Directors made on December 9, 1996, is hereby recommended for affirmance. That decision was to uphold the recommendation of the Administration imposing a period of ineligibility for 24 weeks against Justin Anderson and Joshua Grom for their involvement with vandalism to school property. There are no costs of this appeal to be assigned.

_____ _____

DATE

ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

_____ _____

DATE

CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION