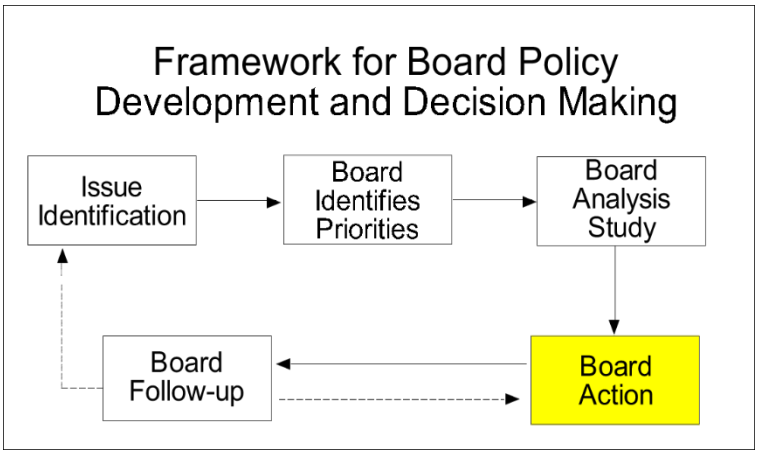
Iowa State Board of Education

Executive Summary

(Date)



Agenda Item: Appeal 5160: In Re Challenged Student Club at Johnston High School (Appeal of Proposed Decision)

State Board Priority: Creating a Safe, Healthy, and Welcoming Learning Environment

State Board Role/Authority: Iowa Code section 290.1 authorizes the State Board to decide this appeal

Presenter(s): Representatives of Appellants
Representatives of Johnston Community School District
Jordan Esbrook, Assistant Attorney General

Attachment(s): Five

Recommendation: It is recommended that the State Board hear and decide this appeal of a proposed decision.

Background: Appellants challenged the decision of the Johnston Community School District to recognize a local chapter of Turning Point USA as a student group. The proposed decision affirmed the District's decision (attached). The appellants exercised their right to appeal the proposed decision (attached) under Iowa Administrative Code chapter 281—6. The parties have briefed the issues (attached). The parties have an opportunity for oral argument before the Board.

BEFORE THE IOWA DEPARTMENT OF EDUCATION

(CITE AS ____ D.o.E. App. Dec. ____)

In re Student Club Approval,	)	
	)	
K.S. et al.,	)	
	)	
Appellants,	)	Docket 5160
	)	
vs.	)	
	)	PROPOSED DECISION
Johnston Community School District,	)	
	)	
Appellee.	)	

This matter came before the undersigned for hearing on August 15, 2022. Four appellants,[1] three of whom are parents of Johnston High School students, challenge the decision of the Johnston Community School District Board of Directors ("School Board") to approve the application for recognition of a student group at Johnston High School. After lengthy discussion over several meetings, the School Board approved the application on April 25, 2022.

The Appellants timely filed affidavits of appeal on May 13, 2022. The undersigned and the State Board have jurisdiction of the parties[2] and the subject matter. Iowa Code § 290.1 (2022).

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[1]One of the appellants died during the pendency of this action. By request of the Appellants and consent of the Appellee, her name remains in the caption of this matter.

[2]The undersigned set a deadline for any interested party, such as the student group at issue, to intervene. No petition for intervention was received.

After considering the evidence presented[3] and the arguments of the parties and counsel, the undersigned recommends that the School Board's decision be AFFIRMED.

FINDINGS OF FACT

The record made by the Appellants is lengthy and thorough; however, the operative facts are briefly summarized.

On August 31, 2021, L.G., a student at Johnston High School, applied for recognition of "Turning Point USA at Johnston High School" as a student club. The application described the club's activities as "holding teachers and students accountable, helping stop the spread of a biased agenda, socialism, critical race theory, and big government." The application stated that meetings will be at members' households. After substantial dialogue, including e-mail exchanges, with Dr. Nikki Rourda, who is the District's associate superintendent, and feedback received at school board meetings, L.G. submitted a revised application.

The revised application provided that the club would serve "as the place for students to open a line of communication for students who have felt that their political beliefs have not

[3]The undersigned reserved ruling on Appellee's objections to certain exhibits offered by the Appellants. Understanding the broad standard for admitting evidence at administrative hearings, *see* Iowa Admin. Code r. 281-6.12(2)"*o*", the exhibits are hereby admitted, with the further understanding that the weight that they deserve is a separate question from their admissibility.

been heard in the school setting." The club is "open to all, but especially conservative-minded students who want a place to be supported."

The revised application for recognition does not include language purporting to give the club the power to hold others "accountable" and states that meetings will occur in a Johnston High School classroom. The revised application also included a revised local constitution, which included that membership shall be determined without regard to protected characteristics listed in state law and School Board policy, including race, religion, sexual orientation, gender identity, or disability. The constitution also provides the following:

> Turning Point USA at Johnston High School abhors acts of oppression, [such as] the denial of freedom of expression, discrimination in its various forms of sexism or racism, or intolerance of religion, age, sexual orientation, or political beliefs; or harassment of any member of the JCSD community.

The constitution provided that the club will be "independent in its decision-making."

The club was requested to provide a copy of the national Turning Point USA "constitution and by-laws," pursuant to School Board policy 504.2. That policy also provides: "If an organization does not have a constitution, it must submit a written statement of purposes to the administration for consideration." L.G. did not submit documentation from the

national organization, but did provide a mission statement. Dr. Roorda informed the School Board that they could not find a Turning Point USA constitution, only a sample constitution, and that bylaws were not available.

Appellants presented news articles and social media posts about Turning Point USA, including controversial statements made by Turning Point USA officers and employees, at Turning Point USA events, or on Turning Point USA social media channels. Appellants characterize some of this content, such as content on "replacement theory," as hateful. Appellants provided evidence alluding to the control Turning Point USA would have over student chapters, including membership lists and use of Turning Point USA branding and social media requirements.

Appellants note that three School Board members publicly advocated in favor of recognizing this club, including on social media and involvement with a group called Moms For Liberty. For example, Moms For Liberty held an August 2021 event in a local city park, where it was recruiting student members for the proposed club. Appellants allege these activities violated the School Board's policy 203 (conflict of interest) and policy 204 (Code of Ethics). Policy 203 provides, in relevant part: "It will also be a conflict of interest for a board member to engage in any outside employment or activity which is in conflict with the board member's official duties and responsibilities."

Policy 204 provides, in relevant part: "I will recognize that to promise in advance of a meeting how I will vote on any proposition which is to be considered is to close my mind and agree not to think through other facts and points of view which may be presented in the meeting."

Appellants and other members of the public requested that the three board members recuse themselves. The Board members did not, and the club's application for approval passed on a 5-2 vote.

CONCLUSIONS OF LAW

In *Gabrilson v. Flynn*, our supreme court recognized "the broad deference" given "to discretionary decisions of school boards." 554 N.W.2d 267, 275 (citing *Board of Directors v. Green*, 259 Iowa 1260, 1265, 147 N.W.2d 854, 857 (1967)). In *Green*, our supreme court stated: "It is also understood that where a school board has acted pursuant to law, the action taken must be regarded at least as *prima facie correct*." *Id.* at 1266, 147 N.W.2d at 857 (emphasis added).

The State Board has summarized its deferential review in prior decisions:

> The State Board in reviewing appeals under Iowa Code section 290.1 has been given broad authority to make decisions that are "just and equitable." Iowa Code § 290.3 (2013). The standard of review in these cases requires that the State Board affirm the decision of the local board unless the local board decision is "unreasonable and contrary to the best interest of

> education." *In re Jesse Bachman*, 13 D.o.E. App. Dec. 363 (1996). Thus, the test is *reasonableness*.

In re Expulsion of Student A., 27 D.o.E. App. Dec. 726 (2016) (emphasis in original). The State Board does not sit as a "'super school board' substituting its judgment for that of the elected board officials." *Sioux City Cmty. Sch. Dist*, 7 D.o.E. App. Dec. 137, 141 (1987). The State Board will affirm a local board decision unless the local board's decision is a product of a "total absence of reason." *Id.* at 142. The School Board's decision in this matter is not beyond review or insulated from review; rather, the State Board reviews local decisions in a narrow and deferential manner.

Appellants have the burden of proving the unreasonableness of the School Board's action. *See, e.g., In re GEER II Mental Health Schools Grant*, 30 D.o.E. App. Dec. 159, 160 (2021). The standard of proof is whether the School Board's decision is supported by a preponderance of the evidence. *In re Jesse Bachman*, 13 D.o.E. App. Dec. at 363.

A. Constitution and By-Laws. The Appellants first attack the failure of L.G. to provide the national organization's constitutions and by-laws. The Appellants assert this is disqualifying under policy 504.2. The Appellants do not read the complete policy. The policy does not require constitutions and by-laws where none exist. In the absence of those

documents, the policy requires a mission statement, which L.G. provided. The School Board complied with policy 504.2.

The Appellants assert forcefully that those documents do, in fact, exist. According to meeting minutes, this belief is shared by the two dissenting School Board members. The School Board heard information from Dr. Roorda that they were unable to locate the documents. The School Board is entitled to give that information credence as it weighs the information before it, and the undersigned is obligated to do so as well. "Moreover, we accord deference to the agency's decision on witness credibility." *Clark v. Iowa Dep't of Rev. & Fin.*, 644 N.W.2d 310, 315 (Iowa 2002) (Cady, J.). Additionally, under the current posture of this case, it is not the responsibility of the School Board to prove the documents do not exist: it is on the Appellants to prove that they do. *In re GEER II Mental Health Schools Grant*, 30 D.o.E. App. Dec. at 160. The Appellants have given no reason to overturn the School Board decision on this point.

Since the undersigned finds the record shows the School Board complied with policy 504.2, there is no need to address the alternative arguments compellingly advanced by the School Board to defend its decision, such as the federal Equal Access Act, *see* 20 U.S.C. § 4071.

B. Alleged Conflict of Interest. The Appellants allege three School Board members acted in violation of policies 203 and 204. The undersigned discerns no error by the Board.

As to policy 203, it is clear that the three School Board members did not act in a manner that violated policy 203's prohibition on outside employment or activity. None of the School Board members engaged in any of these three activities.

> 1. The outside employment or activity involves the use of the school district's time, facilities, equipment and supplies or the use of the school district badge, uniform, business card or other evidence of office to give the board member or member of the board member's immediate family an advantage or pecuniary benefit that is not available to other similarly situated members or classes of members of the general public. For purposes of this section, a person is not "similarly situated" merely by being related to a board member.
>
> 2. The outside employment or activity involves the receipt of, promise of, or acceptance of money or other consideration by the board member or a member of the board member's immediate family from anyone other than the state or the school district for the performance of any act that the board member would be required or expected to perform as part of the board member's regular duties or during the hours in which the board member performs service or work for the school district.
>
> 3. The outside employment or activity is subject to the official control, inspection, review, audit, or enforcement authority of the board member, during the performance of the board member's duties of office or employment.

Policy 203 (quoting and paraphrasing Iowa Code § 68B.2A). Rather, the activities are advancement of specific issues, which is what would be expected of members of an elected board. To

sustain the Appellants' argument on this point, the undersigned would need to conclude that keeping a campaign promise or acting in accordance with a platform or position, without the financial benefit of obtaining a contract, the benefit of one's employer, or the benefit of using public resources, is an impermissible conflict of interest. Policymakers may permissibly have policy preferences that they bring to policymaking activities. Those preferences do not violate Iowa Code section 68B.2A or policy 203. *See generally Iowa Farm Bureau Fed'n v. Env't Prot. Comm'n*, 850 N.W.2d 403 (Iowa 2014).

Likewise, the undersigned discerns no violation of policy 204. This "Code of Ethics" is phrased as mandatory ("Each board member shall follow the code of ethics stated in this policy."); however, many of the individual items in the Code of Ethics are advisory or aspirational. The undersigned cannot conclude the members' statements in support of approving the student club is a violation of policy 204 to the extent that the School Board's actions must be set aside. In fact, during the three meetings about this club, the three Board members at issue listened to arguments (the first of their duties under policy 204) and engaged in discussion in an open manner. Additionally, granting relief based on the theories offered by the Appellants would deter future school board candidates from truthfully informing the voting public about their platforms or priorities. The

undersigned is unable to interpret and apply policy 204 in a manner that would chill information available to future voters.

The Appellants have not proven they are entitled to relief on this ground.

C. Appellants' Concerns About the Club as a Whole. The Appellants make a broad spectrum attack on the club and Turning Point USA. The Appellants allege that the national organization is a harmful, hurtful organization. When asked about this at a School Board meeting, L.G. stated, according to School Board minutes, "it would be unfair to hold every organization responsible for things that happened nationally." The undersigned takes note that L.G. and others substantially revised the club's constitution to be inclusive, including incorporating the law's protected characteristics. Turning Point USA is not under review here; the local affiliate at Johnston High School is. When considering the record as a whole, the undersigned concludes the Appellants failed to show the School Board's evaluation of this student club's application was based on a "total absence of reason." *Sioux City Cmty. Sch. Dist*, 7 D.o.E. App. Dec. at 142.

The Appellants also argue that the club will be under the control of the national organization and that the club is not, in effect, student initiated. L.G. stated repeatedly that the organization would be independently run by students. The School

Board was entitled to credit his statements, *see Clark*, 644 N.W.2d at 315, and the record would not support an inference that - let alone conclusion that - L.G.'s statements and requests were not authentically his.

The Appellants argue L.G. should have brought forward a different conservative student organization. The undersigned need not consider whether this would ever be appropriate relief, because the Appellants have not demonstrated the entitlement to any relief at all.

CONCLUSION

Neither the undersigned nor the State Board "sit as a super school board." *Sioux City Cmty. Sch. Dist*, 7 D.o.E. App. Dec. at 141. The undersigned and the State Board may only consider whether the Appellants rebutted the presumption of reasonableness and correctness of the School Board's decision. *Green*, 259 Iowa at 1265, 147 N.W.2d at 857. Having failed to do so, the decision of the School Board must be

AFFIRMED.

PROPOSED ORDER

The undersigned has considered all evidence and issues presented, whether or not specifically discussed in this decision.

It is recommended that the April 25, 2022, decision of the Board of Directors of the Johnston Community School District in this matter be AFFIRMED.

There are no costs to tax.

This proposed decision will be presented to the State Board of Education at its regularly scheduled meeting on November 16, 2022. The State Board will review this proposed decision based on the record made and the post-hearing briefs. The parties are able to present arguments during the public comment period on the Board's agenda. The Board's presiding officer may also allow oral argument during its deliberations. If oral argument is allowed, the Appellants are alloted seven minutes, thirty seconds in total and the Appellee is allotted seven minutes, thirty seconds.

If either party desires additional proceedings pursuant to the Department's chapter 6, the party or counsel may notify the undersigned and this matter will be rescheduled for later State Board consideration.

Done on November 8, 2022.

/s/ Original Signed
Thomas A. Mayes
Administrative Law Judge

Copies to: Parties
Carrie Weber, Counsel for Appellee
Danielle Haindfield, Counsel for Appellee

IOWA DEPARTMENT OF EDUCATION
(cite as _____ D.o.E. App. Dec. ____)

In re Student Club Approval,	)	
	)	
K.S. et al.,	)	
	)	
Appellants,	)	Docket 5160
	)	
vs.	)	
	)	FINAL DECISION
Johnston Community School District,	)	
	)	
Appellee.	)	

After due consideration by the State Board of Education, the proposed decision in this matter is

_____AFFIRMED.

_____ OTHER:

This is final agency action in a contested case proceeding.

Any party that disagrees with the Department's decision may file a petition for judicial review under section 17A.19 of the Iowa Administrative Procedure Act. That provision gives a party who is "aggrieved or adversely affected by agency action" the right to seek judicial review by filing a petition for judicial review in the Iowa District Court for Polk County (home of state government) or in the district court in which the party lives or has its primary office. Any petition for judicial review must be filed within thirty days of this action, or within thirty days of any petition for rehearing being denied or deemed denied.

Dated: November 16, 2022

Iowa State Board of Education, by:

John Robbins, President

BEFORE THE IOWA DEPARTMENT OF EDUCATION

In re Student Club Approval	*	Appeal No. 5160
	*	
K.S., et al.,	*	
	*	
Appellants,	*	
	*	NOTICE OF APPEAL
vs.	*	OF PROPOSED DECISION
	*	
Johnston Community School District,	*	
	*	
Appellee.	*	

Pursuant to Iowa Administrative Code Chapter 6, Section 281-6.17(4), Appellants file this Notice of Appeal of the Proposed Decision in the above captioned matter dated November 8, 2022.

The parties initiating the appeal are:

1. Kaycee J. Schippers, [redacted]
2. Sara Hayden Parris [redacted]
3. Andrea McIlwee, [redacted]

The Proposed Decision subject to this appeal is Docket 5160, In re Student Club Approval, K.S., et al., v. Johnston Community School District. The Proposed Decision is dated November 8, 2022.

The undersigned Appellants take exception to the following conclusions:

1. The presiding officer determined that policy 504.2 does not require bylaws where none exist and placed the burden of proving that the documents exist on Appellants. By law, as a 501(c)3 non-profit corporation, Turning Point USA has bylaws.

Turning Point USA is also obligated by federal law to provide the bylaws to any member of the public who requests them. Appellant did not provide detailed statutory law to "prove" the existence of the bylaws because the existence is not in dispute. The board did not comply with policy 504.2 because the policy requires production of bylaws. There is no question that Turning Point USA's bylaws exist, so the board did not comply with its policy.

2. Appellants did not provide "alternate arguments" regarding the Equal Access Act. Even if the board complied with policy 504.2, it separately was required to consider whether the club was subject to the Equal Access Act and the presiding officer should have separately considered this argument.

3. With regard to the Conflict of Interest, the Proposed Order does not properly apply the facts of this case to Policy 203 or Policy 204 or Iowa Code 68B.2A and fails to even address several of the actions taken by board members that are in direct violation of the policies. The board members' actions go far beyond informing the voting public about their platforms and priorities. Further, the Proposed Order cites the entirety of Policy 203 but does not correctly apply the policy provision that Appellants cited.

Appellants seek the following relief:

1. Reconsideration of the effect of the failure to provide bylaws in view of the indisputable fact that they do exist. The board did not comply with policy 504.2 and the order should analyze the unmistakable failure to comply with policy under Iowa law and prior Department of Education precedent.

2. As Appellants' arguments with respect to the Equal Access Act are independent of the policy arguments, the Proposed Order needs to address the merits of all independent arguments. The current Proposed Order fails to address all of Appellants' arguments even though any one of them would provide a separate basis for overturning the boards' decision. The Proposed Order ignores the *student-initiated* and *no outside control*, etc. language of the Equal Access Act.

3. With regard to the conflict-of-interest arguments, the Proposed Order fails to address the facts of the matter presented in view of the specifics of the Conflict of Interest Policy and the Code of Ethics. The Proposed Order does not address the most egregious conduct of the board members. Reconsideration of this decision in view of the facts presented is requested. Further, the Proposed Order does not correctly analyze the language of Policy 203.

If the facts and law of this case were properly considered in their entirety, Appellants contend that the board's decision would have been overturned. Thus, Appellants seek reconsideration of the Proposed Decision and a new order overturning the board's decision.

Appellants submit that the following grounds for relief apply. The Proposed Order contains multiple errors of law and misstatements of fact that create the basis for the findings. In addition, Iowa Administrative Code r. 281-6.17(2) states that the decision shall be in the best interest of education, and the Proposed Order does not meet that standard.

Appellants will submit a written brief describing in detail the errors of law and fact in the Proposed Order within fifteen days of the filing of this notice of appeal.

Respectfully submitted,

/s/ Kaycee J. Schippers
Kaycee J. Schippers
Sara Hayden Parris
Andrea McIlwee
APPELLANTS

Copies to:

Appellees
Carrie Weber
Danielle Haindfield
Thomas A. Mayes
Naiki Adams

CERTIFICATE OF SERVICE

The undersigned certifies that on November 28, 2022, the foregoing document was served via electronic mail upon all parties to the above cause and to each of the attorneys of record herein at their respective email addresses disclosed on the pleadings.

By: */s/ Kaycee J. Schippers*

BEFORE THE IOWA DEPARTMENT OF EDUCATION

In re: Challenge to Approval of Student Club,	)	Appeal No. 5160
K.S., et al.,	)	
Appellants,	)	APPELLEE'S REPLY BRIEF TO APPELLANT'S BRIEF IN SUPPORT OF APPEAL OF PROPOSED DECISION
v.	)	
Johnston Community School District,	)	
Appellee.	)	

COMES NOW the Appellee Johnston Community School District ("District") and submits the following Reply to Appellant's Brief in Support of Appeal of Proposed Decision 5144. In submitting the following, Appellee's also incorporate in full their previous Post-Hearing Brief.

I. Appellant's Brief Exceeds the Applicable Scope of Review

This appeal concerns the decision of the Johnston Community School District Board of Directors ("Board") to approve the application of former student Lucas Gorsh, on behalf of himself and other high school students, to form a student chapter of Turning Point USA (TPUSA) at the Johnston High School. ***This approval occurred on April 25, 2022.*** Despite there being no regulatory or statutory authority allowing expansion of the record at this stage of the proceedings, Appellants have both submitted additional evidence concerning the substantive issue that was before the Johnston Board on April 25 and additional factual circumstances that occurred well after the Board's approval. *See* 281 Iowa Admin. Code r. 6.17. Appellee's respectfully request that this additional evidence and argument outside the relevant timeline of this appeal not be considered.

The Proposed Order fairly considered the issues and evidence presented. The Proposed Order should be fully adopted and affirmed.

II. The Proposed Order Fairly Addressed the Bylaws Issue and Should be Affirmed

Appellants criticize the Proposed Order because it was premised on an "incorrect finding that the bylaws [of the national TPUSA organization] did not exist." Appellee's review and

interpretation of the Proposed Order differs from Appellants. First, the Order acknowledges that Appellants, along with two Board members, believed that the national TPUSA organization must in fact have by-laws, as required by general regulations applicable to 501(c)(3) non-profit organizations. But importantly, student applicant Lucas Gorsh and Assistant Superintendent Dr. Nikki Roorda both informed the Board that they were unable to locate a national constitution or by-laws. Instead, Mr. Gorsh submitted a statement of purpose for the local group as part of the application, a constitution for the local group, and the mission statement of the national TPUSA. *See* Dist. Ex. 7 at 41-48. The Proposed Order notes: "The School Board is entitled to give that information credence as it weighs the information before it … ." Accordingly, the Proposed Order's conclusions based not on a "faulty" premise that the national organization's bylaws didn't exist, but rather that the Board was entitled to accept information from the applicant about their availability.

It was reasonable for the Board to accept the statement of Mr. Gorsh that he attempted to obtain the national documents but was unable to do so. *See, e.g.*, *In re GEER II Mental Health Schools Grant*, 30 D.o.E. App. Dec. 159, 160 (2021). That the Board may have had other reasonable options, such as tabling the decision for a second time, is irrelevant. The State Board may only overturn a local board's decision if such decision was made with "total absence of reason." *Sioux City Cmty. Sch. Dist.*, 7 D.o.E. App. Dec. 137, 141 (1987). The State Board cannot substitute its own judgment, or the judgment of the Appellants, for that of the local board.

In the absence of the constitution or bylaws of the national TPUSA organization, Board Policy 504.2 allows proposed groups to instead submit a written statement of purpose. This was provided. There is nothing in Board Policy 504.2 that requires the Board to second-guess the representations of the student applicant with respect to what information exists. The Board's decision complied with Board Policy and was reasonable; the Proposed Order should be affirmed by the State Board.

III. Equal Access Act

The Proposed Order does not make specific findings with respect to the Equal Access Act, accordingly Appellee's rely primarily upon the law and arguments presented in their Post-Hearing Brief with respect to the analysis of the Act. However, Appellees do note that they have not "conceded" that the club is not student-initiated as alleged in Appellant's appeal brief at page 6. Appellants go on to describe at length factual circumstances that occurred *after* the Board approved this student organization on April 25, 2022. Appellees do not admit that any of the alleged events are presented accurately or in a fair context. As noted above, Appellees believe that this information is irrelevant as it was not available at the time the Board made its decision, and thus has no bearing as to whether that decision was reasonable. The section of Appellant's appeal brief titled "The Club's Current School Year Activities" should be disregarded entirely as it is outside the scope of review for this matter.

The Proposed Order should be affirmed.

IV. The Proposed Order's Findings regarding Conflict of Interest and the Code of Ethics should be Affirmed

Appellants argue that certain Board members have an unlawful conflict of interest because of their personal support of the student group. This argument focuses primarily on Iowa Code § 68B.2A(1)(c), which prohibits board members from "outside employment or an activity that is subject to the official control, inspection, review, audit, or enforcement authority of the person, during the performance of the person's duties of office or employment." It is inevitable that school board members will be active and engaged members of their community, and that they may have personal opinions on the issues that come before the Board. The Proposed Order noted that in supporting the TPUSA student group certain Board members acted in accordance with their policy platforms or positions, "without the financial benefit of obtaining a contract, the benefit of one's employer, or the benefit of using public resources" as prohibited by Iowa Code § 60B.2A. The Proposed Order appropriately notes that without more, Iowa Code § 68B.2A is not implicated.

Appellants' arguments regarding the Board's Code of Ethics are equally unavailing. Appellant argues repeatedly that two Board members provided a "benefit" to the student applicant. They allege that the Board members "leveraged" their roles to garner publicity and support for the TPUSA student club. Notably, Mr. Gorsh and the TPUSA student organization were not given any advantage or benefit in the approval process. Mr. Gorsh was asked to make changes to his application materials in order to comply with Board policy, which delayed approval of the group. Approval of the student group was also tabled so that Mr. Gorsh could inquire with the national TPUSA organization about its bylaws or constitution. As Board President Katie Fiala testified, this was MORE scrutiny than previous student groups with national affiliations received. In fact, it was presented into the record at the hearing that prior national organizations had not been required to submit bylaws when seeking to become a student club.

The Board followed its policies. No members of the Board or any private individual received a financial benefit or any other type of benefit simply because some members of the Board supported the student group publicly. The Proposed Order should be affirmed.

V. Conclusion

It is apparent that Appellants passionately believe the Board's decision was incorrect. However, such disagreement with the Board's decision is best resolved through the ballot box, not through exhaustive legal challenges to policy decisions that are squarely within the purview of the Board. Here, the Board's policy allowed for alternative documentation in lieu of the national TPUSA's constitution or bylaws; the past practice of the Board confirms that national bylaws or constitution have not always been submitted prior to the approval of similarly situated student organizations. The decision of the Johnston School Board on April 25, 2022 complied with Board Policy and was reasonable given all the circumstances at issue. The State Board can require no more. The Proposed Order must be affirmed.

Respectfully submitted,

/s/ Carrie Weber
Carrie Weber (AT0012015)
Danielle Haindfield (AT0003167)
AHLERS & COONEY, P.C.
100 Court Avenue, Suite 600
Des Moines, Iowa 50309-2231
Telephone: 515/243-7611
Facsimile: 515/243-2149
E-mail: cweber@ahlerslaw.com
ATTORNEYS FOR RESPONDENTS

Copy to:
Kaycee Schippers
Kaycee.schippers@gmail.com
APPELLANT

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings, on this date: December 22, 2022.

By U.S. Mail ☐ Fax

☐ Hand Delivery ☐ Private Carrier

X Other: e-mail

Signature /s/ *Carrie Weber*

BEFORE THE IOWA DEPARTMENT OF EDUCATION

In re Student Club Approval	*	Appeal No. 5160
	*	
K.S., et al.,	*	
	*	
Appellants,	*	
	*	APPELLANTS' BRIEF
vs.	*	IN SUPPORT OF APPEAL
	*	OF PROPOSED DECISION 5144
Johnston Community School District,	*	
	*	
Appellee.	*	

Pursuant to Iowa Administrative Code, Chapter 6, 281-6.17(6)(a), Appellants submit this brief in support of its Notice of Appeal filed November 28, 2022.

I. Introduction

This Appeal in the matter of *In re Student Club Approval, K.S. et al. v. Johnston Community School District* addresses Appellants' exceptions to several conclusions in the Proposed Order dated November 8, 2022. The Proposed Decision in its entirety is based on a fundamental mistake of law and misstatement of the record in front of the Presiding Officer. If this Proposed Order is entered, the Order will set dangerous precedent that will allow school boards to ignore basic principles of law and instead rely on the legal determinations of students.

Further, the Proposed Order fails to address the entirety of the evidence and arguments presented in support of Appellants' appeal and creates an inaccurate public impression of the facts of the case. Appellants submit this brief to create a very clear public record of the actual facts presented to the Presiding Officer and to ensure that the entirety of the Appellants' arguments are addressed in the context of the findings of the Proposed Order.

In addition, the entire basis of the Proposed Order relies on an argument not presented to the Presiding Officer by either Party. Appellants, who are not represented by counsel, were under the apparently mistaken impression that the Presiding Officer was limited in ruling based on the arguments presented by the Parties in briefs and/or during the evidentiary hearing. As the Proposed Order is based on the incorrect finding that Turning Point USA's bylaws do not exist, which was not argued by either Party, Appellants will present their response to that finding in this Brief. Appellants were not aware during the evidentiary proceedings that this was even a question and were quite confused that this was the entire crux of the Proposed Order.

After the Proposed Order was published with the Agenda of the November 16 , 2022 Board Meeting, Appellants were contacted by several members of the media. To date, Appellants have provided no comments, but it is important that the Proposed Order be read in the context of the full and complete record in front of the Presiding Officer to understand the full extent of the mistakes and omissions, so this Brief will be provided to those who have previously asked for comment so that they can have a complete picture of the evidence presented and the mistakes and selective omissions in the Proposed Order.

II. Bylaws

Section A of the Conclusions of law states that Appellants do not read the complete policy 504.2 and that "the policy does not require constitutions and by-laws where none exist. In the absence of these documents, the policy requires a mission statement, which L.G. provided. The School Board complied with policy 504.2." The Proposed Order also states that under the current posture of the case, it is the Appellants' burden to prove that they do exist.

First, Appellants will admit their confusion at this finding. Appellee never argued nor suggested that Turning Point USA does not have bylaws. Instead, Appellee admitted in its Pre-Hearing Brief that the Board unanimously voted to delay the vote on the TPSUA Club in order to seek the constitution and bylaws, and that the student applicant did not submit bylaws or a constitution of the national organization at the subsequent meeting. In its Post-Hearing Brief, Appellee is more cloudy in its position, stating that Board Policy 504.2 was "ambiguous"[1] with respect to whether a statement of purpose was sufficient in the absence of both bylaws and a constitution for the outside affiliate and describing that this was a "topic of conversation" at the April 11 and April 25 meetings. Specifically, Appellee states that Associate Superintendent Roorda and L.G. looked for the documents but they could not be "located." Nowhere in this argument is it stated that the board was taking the position that the bylaws did not exist, only that they were not located.

Instead of addressing the plain language of the policy and whether the board was reasonable in its open disregard for that language, the Proposed Order instead invents the argument that Turning Point USA's bylaws do not exist, and are therefore not required by policy. Appellants did not believe that was at issue, so did not take the steps to offer the required "proof." Further, Appellants did state in their Post-Hearing Brief that "bylaws are a mandatory legal requirement in order to obtain non-profit status and are publicly available. Thus, bylaws <u>are always available</u>." Why were these assertions in Appellents' prior filing ignored and the determination made instead that the bylaws don't exist and thus the board complied with policy?

Appellants will now provide such "proof". See **Exhibit AA-1** for the Bylaws of Turning Point USA. Bylaws are a required attachment to IRS Form 1023 Application for Recognition of Exemption that must be completed to obtain 501(c)(3) status. Once Appellants reviewed the Proposed Order and realized that the basis of the opinion was the incorrect finding that the bylaws did not exist, Appellants reviewed the IRS website for FAQs on bylaws and nonprofits, did a simple Google search for "IRS Form 1023" and Turning Point USA and found a website with Turning Point USA's entire 1023 application, including bylaws, within five minutes. The website with a copy of the 1023 form states that the information has been available on that webpage since July 15, 2021.

Appellants assert that they have satisfied the burden described in the Proposed Order, so the Proposed Order must be rewritten in view of this.

Appellants also believe it is important to point out the frankly absurd findings about deference the Presiding Officer gave to the agency's decision on witness credibility in the Proposed Order. During its consideration of TPUSA, the board received a lot of information about bylaws. At the April 11th meeting:

- Kevin O'Connor informed the board during public comments that the application did not meet the requirements of Policy 504.2 because the students did not submit the Constitution and bylaws.

[1] The use of the word "ambiguous" to describe the bylaws requirement is a stretch, and all of the witnesses at the hearing testified that they were required by the policy. The plain language of the policy will be addressed below.

- Board President Katie Fiala stated: "So tonight our 504.2 policy was brought to our attention, in more detail. It does say for clubs that are affiliated with an off-campus organization, we need to have the constitution and bylaws of the off-campus organization…so with that, I offer a motion to postpone the vote on this request to the next regular board meeting on April 25th to have time to receive and review the bylaws and constitution for the off campus organization."
- The board voted unanimously to postpone the vote on Turning Point USA until the next meeting so that they could receive the documents required by Policy 504.2.

Nothing that occurred during the April 11th meeting gave any indication that the board thought that bylaws did not exist, or that they were not required by the policy.

At the April 25th meeting:

- Kevin O'Connor again spoke during public comments and informed the board that bylaws could be obtained by filling out a one-page form with the IRS and that the bylaws were mandated by Policy 504.2.
- Jason Arnold also provided public comments stating that the club did not submit the bylaws as mandated by Policy 504.2, and that if the board were to proceed without the bylaws, it would be going against its own policy and setting a horrible precedent. He indicated that getting the bylaws is a simple task and that he was surprised that the students applying for the club hadn't been able to obtain them from their paid TPUSA field rep. He also provided specific information about options that the district had for obtaining the bylaws, including contacting the organization itself, or by using IRS form 4506-a. He again reiterated that the bylaws are a requirement per district policy.
- Two board members specifically stated that the bylaws are a legal requirement. Board member Soneeta Mangra-Dutcher told L.G.: "I'm just telling you—when an organization applies for 501(c)(3) status, they have to submit bylaws." Board member Jennifer Chamberland stated (referring to bylaws): "it's required by law for an entity to have bylaws." When speaking to L.G.: "It's a legal document when organizing an entity—it's required by law."

Appellants cannot find any instance in the record that was in front of the board where an adult indicated that bylaws might not exist. There was, however, one student that stated that they did not exist: L.G.. Specifically, L.G. told the board the following on April 25th:

- "Uh, so, last board meeting ok, I was told we needed a national constitution submitted from the organization, correct?[2] Today I get here and I'm told we need bylaws. That's two things. You know, Turning Point USA does not have national by-laws. They have a mission statement that I submitted. That was all that was asked of me. And I did it."
- Board member Soneeta Mangra-Dutcher specifically asked L.G. if he asked his Turning Point field rep for the national bylaws and he responded: "Yes. There was no bylaws. I am telling you, that from the people that work at Turning Point USA, that I have contacted, they have told me

[2] For the sake of clarity, the board actually indicated that it needed the constitution and bylaws, as required by Policy 504.2.

that there is no bylaws. They have provided me a mission statement that I have submitted to you guys. That's all I have."[3]

The record also reflects that the board was in frequent contact with its attorneys regarding Turning Point USA's application. It is not clear if the board asked its attorneys if bylaws are a legal requirement for 501(c)(3) nonprofits, but if it did, the answer was surely yes, as this is a basic principle of corporate law.

All of the preceding information is made of record to demonstrate the absurdity of the Proposed Order. According to the Proposed Order, a board should be given deference on witness credibility regarding the law such that if a student gives his completely mistaken opinion on the law, the board can rely on it even if board members and credible adults (and presumably legal counsel) say otherwise. The precedent that this sets is dangerous: a board can do whatever it wants even if it is in violation of its own policy and is contrary to law so long as one person tells it what it wants to hear.

Appellants want to make one additional fact clear for the record. Appellants obtained the TPUSA bylaws because it located TPUSA's IRS Form 1023 Application for Exemption. By law, the entirety of Form 1023, including attachments (e.g., bylaws), must be provided **by the 501(c)(3) entity** to any member of the public that requests it. So, TPUSA was legally obligated to provide its bylaws to L.G., a member of the public who testified that he asked TPUSA for them. Why should the school board approve a club if the outside entity violates federal law by refusing to provide its bylaws to the same student that is trying to get the club into the school? Again, this isn't complicated law. TPUSA was legally obligated to provide its bylaws to L.G. (and/or the board). It did not, and even apparently told L.G. that they didn't exist.

Because the entirety of the finding that the board was in compliance with Policy 504.2 was premised on a fundamental mistake, Appellants ask that the findings regarding the board's actions regarding the policy be reconsidered. Specifically, the plain language of Policy 504.2 (as in force on April 25, 2022) requires that student applicants provide the bylaws of any affiliated outside organization. The entire board understood the plain language of the policy on April 11, 2022 when it voted 7-0 to postpone the vote until the students provided the required documentation (including bylaws). All of Appellee's witnesses testified at the hearing that bylaws were **required** pursuant to Policy 504.2 . The plain language of the policy is clear: bylaws are required to be submitted by the student applicant. They were not.

As Appellants have argued in prior filings, the failure to follow school board policy is grounds for reversal. See *In re Jennifer Stock*, 17 D.o.E. App. Dec. 333. According to the DOE, "school boards are required to adopt policies for at least two reasons: first, to put the district and all constituencies on notice as to the board's general views on a given subject, and second, to guide the board in its decision making." *In re Joshua James Hakes*, 13 D.o.E. App. Dec. 332, 345 (1996).

The board failed to follow its own policies, including the Student Organizations policy 504.2 and the policy 209.4. Under the *Joshua James Hakes* case, this alone is grounds for reversal.

Appellants will also repeat the case law it cited in its earlier filings. According to *Thompson v. Parkersburg*, 10 D.O.E. App. Dec. 195, unless a school board consciously suspends its policy, it is bound

[3] It is difficult to reconcile L.G.'s opening statement to the board that he was only told by the board that he needed to get a mission statement with his comments that he specifically asked TPUSA for their bylaws. If he didn't understand that he needed to get the bylaws, why did he ask his TPUSA field rep for them?

by it until such time as it votes to change it. Board policies and the regulations adopted to implement the policies are the "laws" of the school district. The policy manual serves both as notice to a district's students, parents, and employees of the school board's position on various subjects, and as a guide for its own governance so that decisions are not made monthly on an ad hoc basis. The Board did not suspend its policy, so it was bound by it until it voted to change it. The policy manual serves as a notice to the district's students, parents and employees. In this case, the policy served exactly that purpose: multiple parents cited the exact text of the bylaws requirement to the Board during public comments. These parents cited the explicit "laws" of the district to the Board and the Board threw those laws out the window.

Appellants also point out a simple reasonable resolution: the board could have postponed the vote to allow L.G. to provide the required documentation. The board did exactly that at the prior meeting, recognizing that the application was not complete. There was no reason (other than L.G.'s impatience and impending graduation) to vote to approve the club while openly acknowledging that it was ignoring its own policy. Voting to postpone would have been reasonable; the action that the board took was not.

As the bylaws of Turning Point USA most definitely exist, and there is no dispute that policy 504.2 (as in force and effect on April 25, 2022) required the student applicants to submit the national organization's bylaws to the board, the allowance of the club must be reversed. Appellants respectfully request revision of the Proposed Order to find that the board's acknowledged failure to comply with the black letter of board policies 504.2 and 209.4 (boards may **in extreme emergencies of a very unique nature** suspend policy but shall document the reasons in board minutes) violated established DOE, was unreasonable, and requires reversal of the board's decision.

III. The Equal Access Act

The Proposed Order did not actually reach any findings regarding Appellants' arguments regarding the Equal Access Act, referring to these arguments as "alternative." They were not alternative arguments. Even if the board had complied with board policy, (for example if L.G. had provided bylaws to the board), the Equal Access Act still provided an independent basis for the appeal. Board policy does not somehow override federal law. The board can comply with a policy and still violate the law. Accordingly, the Proposed Order contains a mistake in law in that it doesn't address Appellants' arguments on the Equal Access Act. Of course, if the Proposed Order is revised to find that the board violated its own policy and overturns the board's approval of TPUSA on that basis, the Proposed Order does not need to address the Equal Access Act.

As the Proposed Order strongly suggests that the Presiding Officer agrees with Appellee's position on the EAA ("compellingly advanced by the School Board"), Appellants once again want to make a clear record on the actual facts presented to the Presiding Officer.

Appellee's defense for permitting TPUSA to become an official school club is the Equal Access Act. Certain board members, including Derek Tidball, repeatedly said that the club had to be allowed because the Equal Access Act requires it. Anyone who complained that it was not appropriate to allow TPUSA into the school was met with statements about the Equal Access Act. And Appellee is correct about certain portions of the Equal Access Act that it cites to in order to justify its decision: the Equal Access Act prohibits schools from denying student clubs access based on viewpoint. Gay-Straight student clubs, black student unions, and religious clubs have all been appropriately allowed into schools regardless of viewpoints. TPUSA's viewpoints, however, are not the basis of Appellants' legal theory. Instead, Appellants have repeatedly pointed out that regardless of viewpoint, the EAA does not afford protection to clubs that are not student-initiated or student controlled.

Appellee has never addressed the entirety of the Equal Access Act, at least not in a way that fairly or accurately represents the record. The EAA provides specific instances where clubs are not afforded its protection. As repeatedly argued previously, the EAA's protection does not extend to clubs that are not student-initiated, and, in a separate provision, its protections does not reach clubs who have non-school persons directing or controlling the club. Appellants refer the Presiding Officer to its prior filings which provide its detailed position on the EAA. The following argument clarifies the record and is intended to supplement its prior filings.

Student-Initiated

The EAA requires protected student clubs to be student-initiated. As made abundantly clear during the evidentiary period, there is no question that this club was not. The Moms for Liberty member, Jenn Turner, who decided to insert the club in the school told the board exactly what she did and why she did it: she wanted a conservative club in the school so she worked with Jordyn Landau (Turning Point USA Field Rep) to recruit a student to get the club in the school. L.G., as he also admitted to the board, was the Moms for Liberty and Turning Point USA's recruit to get Turning Point USA into the school.

Appellants refer the Presiding Officer to its prior filed briefs for full analysis of this point, but will again highlight the following. The legislative history of the Equal Access Act dictates how the student- initiated provision should be interpreted:

> *Student initiated again means that it is not initiated by some outside organization, some outside forces, or individuals, that it is not initiated by the school principal, or the school teachers or the school employees; it is not initiated by parents, it is not initiated by cousins or aunts or uncles, it is not initiated by labor leaders, or political leaders, or religious leaders, whatever. Student initiated, voluntary.*
>
> –Senator Hatfield (R-OR). Cong. Rec S.19231 (1984).

It is also important to note that Board policy 504.2, as in place during April of 2022, also required the organization to be "student-initiated." The club did not meet the district's own policy either and the board should have rejected the application on the basis of non-compliance with board policy as well.

Appellee never provided any rebuttal to this at all. Instead, Appellee focuses on the separate provision of the EAA regarding control. In the absence of argument from Appellee on the "student-initiated" prong, it seems that Appellee has conceded that the club is not student-initiated and cannot be afforded the EAA's protections.

Outside Control

With regard to the non-school direction and control, Appellee's papers are misleading and do not fairly state what happened during the board meetings. And, contrary to its claims, the board did not receive legal advice regarding the student-initiated and control, direction issues before voting to approve the club. Appellants will address each of these points in turn.

Appellants will again highlight the relevant facts and the misleading presentation of the record made by Appellee's attorneys. In Appellee's Post-Hearing Brief, it states that the board sought assurances from the TPUSA group that it would be free from outside influence. According to the Brief, the board received the following assurances:

1. On March 7, L.G. stated that the group "would be independently run by students" with a field staffer to assist as needed.

2. On April 25, 2022, L.G. was asked by Katie Fiala whether the group's speakers would have to be approved by the national organization and L.G. stated "no, [the group] is an independent organization."

Based on these two statements, the board was apparently satisfied that the club was not controlled by an outside organization. Appellants are a bit taken aback by Appellee's presentation of point 2 above, which omits the critical part of L.G.'s statements to the Board that the national organization does in fact have to approve outside speakers. L.G. did state to Katie Fiala that the club would not have to get approval of the national organization in the context of **student speakers**:

Katie Fiala: So I'm also interested in this issue of control—

L.G.: Yeah, go for it.

Katie Fiala: --since this is a student club, so I got a couple of questions—

L.G.: Yeah, for sure.

Katie Fiala: Um, so tell me about this approval of speakers. What as a student organization would this club be able to make its own choices on who they invite to guest speak at meetings.

L.G.: Yeah. I mean well here's the thing, we would have meetings, I believe it's Tuesday and Friday, in our constitution I do believe, and essentially what that's going to say is we are going to have meetings and then we will have people apply to speak and at that next meeting they will be approved to speak.

Katie Fiala: Who makes the approval?

L.G.: That would be the board, essentially kind of what you guys have here. And we have officers, seven officers of us, if you need names I can give them to you, uuuuh of us, I'm the president, Gallagher's vice president, and Spencer Meyer happens to be vice chair, so we've got—we've got people that would be in position to let others speak. And again we're, we want opposition to come to our meetings, but, we can't even have meetings yet…

Katie Fiala: So your board votes on these speakers—

L.G.: Yeah.

Katie Fiala: Does that have to be approved by your national organization?

L.G.: No. It'll be, yeah, we are independent from the national organization. We will be making decisions for Johnston High School and for Johnston High School only.

This exchange is undoubtedly about the club allowing students to be "speakers," as L.G. indicates that he is referring to having people apply to speak and then be approved to speak.

Outsiders would not apply to speak at a student club meeting. This exchange only makes sense if it is understood that L.G. is talking about letting students speak at meetings. This becomes very clear in a different exchange that Appellee conveniently omitted. Board member Jennifer Chamberland asked L.G. for further information about the speaker approval issue:

> *Jennifer Chmberland [asking about the requirements of the contract that the students signed with TPUSA national]: Number three: TPUSA activism hubs may never host a speaker without approval from the TPUSA's national headquarters. The application to host a speaker can be found at tpusa.com/requestaspeaker.*
>
> *L.G.: I'd say if we're talking about a speaker outside the club, like outside of the club and outside of the school district. That's what we're talking about. It's talking about an individual outside the school district not outside the club itself. So if a student would want to come they are more than welcome it has to be approved by the board that's Turning Point USA. That's uh, that's like if we wanted Ben Shapiro to come talk,* ***they'd have to be approved by Turning Point nationally*** *and obviously be approved by you guys.*

Board member Alicia Clevenger then sought to clarify the outside speaker v. student speaker issue with L.G.:

> *Alicia Clevenger: So you were saying, when you talked about speakers that will come and speak, you were talking about within the club.*
>
> *L.G.: Within the club or just students that are in the school—*
>
> *Alicia Clevenger: Yeah.*
>
> *L.G.: Like if, if, if, a student of an idea that doesn't agree with us wants to come up and open our minds and just open up that line of communication, I talked about coming on two months ago, maybe it was even more than that, I can't remember, um, we want that. But it has to be approved by the board that's in Turning Point.*
>
> *Alicia Clevenger: So you mean internal speakers not external speakers.*
>
> *L.G.: Yes. 100%.*

L.G. literally and explicitly told the board that Turning Point national has to approve outside speakers, yet Appellee wants the Presiding Officer to believe that L.G. assured it of the opposite. Appellee's misleading presentation of the record is part of its Post Hearing Brief, which left Appellants no opportunity to respond. Appellee's framing of the record in its brief feels like bad faith or exploitation of the fact that Appellants are not represented by counsel.

Further, Appellee doesn't even address L.G.'s other admissions regarding outside control, including his admission that Turning Point USA national does in fact have the school club's social media passwords. With regard to the other contractual obligations that grant the national organization control over the club, including the requirements to organize at least one event per semester and provide frequent reports to the field agents, L.G. did not provide any information. Thus, the record reflects the following:

- TPUSA national must approve any outside speakers;
- TPUSA national currently has the club's social media passwords;
- The club must provide frequent reports to the field agent; and
- The club has to hold an activism event each semester in order to remain an affiliated club.

These facts are not in dispute. All of these facts are examples of the ways that the national organization directs and controls the student club. These are not hypotheticals; they are all factors that are contractual requirements between the national organization and the student club. Appellants have unequivocally demonstrated that this is not a student-controlled club. There is no interpretation of these facts that the board was reasonably assured that the club was independent.

Appellee has also stated that it sought legal counsel with respect to the requirements of the Equal Access Act. This is also not a complete representation of what Appellants have discovered to be the scope of the advice that Appellee actually obtained. Board member Jennifer Chamberland stated at the April 25 meeting that "I requested legal advice on certain issues - we went back and forth a couple times. The clarifying issue that I had, which was brought up by constituents over and over and over again on the control issue, that I did not get clarification prior to this meeting and that was not the fault of anyone - it was a time issue. So for me, I have not received legal opinion on that matter and whether or not it applies, so I'll just leave it at that."

Ms. Chamberland also exchanged emails with Kevin O'Connor on May 10, 2022 stating that she never did receive advice from counsel on the control/direction issue: "I (previously) specifically asked for the legal opinion for the #5 issue ["nonschool persons may not direct, conduct, control or regularly attend activities of student groups"], but was not given a clear response. I did not receive a reply to my follow up request." **(Exhibit RB.O).**

While the board may have sought advice on the Equal Access Act, it does not appear that it ever received advice about the crux of the issues that it knew were in front of it, namely the EAA requirements of student-initiated and student controlled/directed. It is not reasonable to state that the EAA required them to approve the club when they didn't even receive complete advice in order to make an educated decision. Blindly going into the vote without understanding the entirety of the law is not reasonable.

In addition, TPUSA's tax exempt application that Appellants obtained along with the bylaws also contains information demonstrating that TPUSA pulls the strings when it comes to its high school chapters. For example, TPUSA included a "Narrative Description of the Organization" in its Form 1023 filing. This Description states that "to carry out exempt purposes, Turning Point USA **operates** chapters on high school and college campuses across the country." See **Exhibit AA-2**, page 52. In addition, "Turning Point USA supports grass-roots level **dissemination** of its educational materials through local chapters at high schools." See **Exhibit AA-2**, page 52. Turning Point USA "**accomplishes its mission through educating people, empowering them** to use their knowledge gained for good." See **Exhibit AA-2**, page 53. In regard to its future plans, TPUSA stated to the IRS that its "fiscal principles have spread quickly to high school and college campuses all across the country….Turning Point USA has empowered and educated hundreds of thousands of students. Turning Point USA seeks to continue its successes to empower and enlighten every young person in America." See **Exhibit AA-2**, pages 59-60.

In a Letter from the Founder that was included in the tax-exempt application, Charlie Kirk stated "Turning Point USA will work tirelessly towards an informed electorate, by establishing chapters in high schools." See **Exhibit AA-2**, Page 64.

These are just a few examples from TPUSA's tax exempt application (which is 102 pages long) demonstrating its clear intention to insert itself in high schools and disseminate its materials. The tax-exempt application literally relies on its "educational" activities in high schools to make the case that it should be granted exempt status. There is no reasonable interpretation that Turning Point national is a separate organization that has no involvement with its school clubs. Literally the entire point of the organization is to gain access to high school and college students to disseminate its materials.

Based on the record, there is nothing reasonable about the board's determination that the club was not controlled or directed by the national organization. By its silence, Appellee has conceded that the club is not student-initiated. Its position on the control/direction issue contains material omissions of the facts and misstates the information that L.G. provided to it.

Because the EAA's protections should not have been extended to the club, and this is a separate issue from the board's failure to follow policy, the Proposed Order should be revised to actually analyze this independent reason that the board's decision should be overturned.

The Club's Current School Year Activities

Before turning to the conflict-of-interest violations, Appellants also want to address Appellee's statements in its post hearing brief that policy 504.2 contains mechanisms to rescind approval of the club if concerns arise after approval. Appellants understand that this is not presently before the Presiding Officer, so the following information is not part of Appellants' basis for the Notice of Appeal but wants to make the record on what's happened since the club has been approved. As a reminder, Appellee took a wait-and-see approach with regard to the control issue (even though it was clear that the national organization already had power over the club's activities). At the evidentiary hearing, however, the district's witnesses testified that the district administrators and the board do actually track club activities. The district has no mechanism for tracking what types of communications the club leadership has with the field agents, no way to track speaker approvals, and no way to know what type of student personal data or other district information is being sent to the field agent. There is literally no protocol or process for monitoring any of this.

Accordingly, Appellants have sought and received some information about the club's activities to date. With the little amount of information that Appellants have been able to collect using FOIA, the club clearly did not understand that outsiders are not allowed to be involved in club activities and Appellants have identified some extremely poor judgment on behalf of the club's teacher sponsor.

First, the student president apparently did not get the memo that the field agents are not supposed to be involved in club activities, even though that was a focus during the approval process. On August 29, 2022, Kaden Long (club president for the 2022-23 school year) emailed Principal Ryan Woods asking for the club's field representative to be a speaker at the first meeting to tell students more about what the national organization is about. Mr. Woods rejected K.L.'s request, citing board policy regarding non-curriculum related organizations and stating "the goal of our clubs is to be run by students for students. While we do allow occasional speakers, we do not allow them on a regular basis. That would defeat the purpose of a student run club." See **Exhibit AA-3**. K.L. also requested that his field agent come into the school during lunch to have a table set up in the student commons for a voter registration drive, which was also rejected. See **Exhibit AA-3**. While Appellants appreciate Mr. Woods' recognition that bringing in the field agent is not appropriate, the fact that K.L. sought to bring in the field agent at the club's very first meeting of the year and into the school building during school hours in view of the debate

over the club a few months earlier raises questions about K.L.'s understanding of **student** clubs and whether they are a conduit for outsiders to get access to the school premises and the students.

Appellants have also discovered interactions between K.L. and the club's teacher sponsor that are both alarming and merit removal of the teacher from her role as club sponsor. The exchange described below was in regard to an email that Ms. Lehman, the club's teacher sponsor, received on August 23, 2022 from a JHS parent in which the parent inquired about TPUSA.[4] This parent specifically asked how many members were in the group, when the meetings take place, what's their agenda and then expressed concerns about the Johnston school board members that are now on TPUSA's "watch list." The parent indicated that he/she welcomed Ms. Lehman's thoughts, understanding and perspective. The following summarizes email exchanges between Ms. Lehman and K.L. regarding this parent's email.

K.L. emailed Ms. Lehman on August 25, 2022 to introduce himself as the new club president and to ask if the club could use her room for club meetings. Ms. Lehman responded by stating that she was about to reach out to him. She had received an email asking questions about TPUSA and she wasn't sure if the person who sent the email was a random person or if she was with TPUSA. Ms. Lehman indicated to K.L. that there were "haters" out there that she might not want to engage in conversation with. Ms. Lehman provided K.L. with the person's name.

K.L. responded to Ms. Lehman, stating that his two contacts at TPUSA are Hayley Senne and Jordyn Landau, and that he talks to these reps **daily**.[5] He indicated that he would ask them about the name and get back to her. He further stated that "I'm glad your [sic] being careful because lots of people do try and act neutral with some agendas behind there [sic] personas."

Next, K.L. emailed Ms. Lehman again, stating that he and his field agents believe that the emailer "could be apart [sic] of the many groups trying to silence and get us removed." He recommended giving very little if any information at all if she responded. "We will be doing some more digging and let you know if anything come [sic] up."

Shortly after, K.L. again emailed Ms. Lehman, and stated: "I can confirm [he/she] is against the TPUSA organization i [sic] would ask you not respond to her as i [sic] believe she is trying to silence out [sic] group. We have a couple speculations what they could do with information so please don't share anything. Could you by chance show me that email?"

Ms. Lehman responded to K.L., stating that she was under no obligation to respond to this person and said "I'll forward the email to you just so you can see what she said." Ms. Lehman immediately forwarded the parent email to K.L.

K.L. then responded to Ms. Lehman with their findings: "I can confirm she is not a reporter and is most definitely against our group at the school!" See **Exhibit AA-4**

To summarize the above exchange:

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[4] When Appellants received the emails referenced here in response to a FOIA request, Appellants recognized the name of the person who sent the email as a JHS parent. Appellants are not sure how to handle the fact that the parent who sent the email is obviously not involved with this appeal and Ms. Lehman's correspondence with K.L. about this parent's email puts the parent at risk. Appellants are very uncomfortable stating this person's name.

[5] What legitimate purpose would there be for this student to be in contact with two TPUSA field agents **daily**? Daily correspondence between the student president and outside agents certainly suggests an inappropriate level of involvement by the national organization.

- A parent emailed Ms. Lehman to inquire about the status of TPUSA in the school and express concerns about the fact that Johnston is now on the TPUSA watchlist.
- Instead of responding to the parent, Ms. Lehman sent the parent's name and the email itself to the student club president, referring to the parent as a possible TPUSA "hater."
- K.L. provided TPUSA field agents with the parent's name (and presumably the email) and indicated to the teacher that they were going to do some "digging."
- The "digging" apparently discovered that the parent is against the organization and may be trying to silence TPUSA.

Not to point out the obvious, **but the parent emailed Ms. Lehman about his/her concerns about the TPUSA watchlists and Ms. Lehman's response was to give the parent's name and email to the student who then sent the information to TPUSA national field agents**. Appellants don't have the words to express how absolutely appalling it is to see a teacher working with a student in such a manner.

This behavior on the part of the teacher sponsor is reprehensible and should not be tolerated within the Johnston School District. Appellants sincerely hope that now that this behavior has been brought to the attention of Administration, the teacher's lack of sound judgment and failure to act in good faith will be dealt with according to policy.

IV. Conflict of Interest

The "Alleged Conflict of Interest" section of the Proposed Order also does not accurately state Appellants' position and omits material facts that should have been addressed.

With regard to the Conflict of Interest policy, the relevant portion states that an unacceptable conflict of interest is created if a board member engages in outside activity where "the outside employment or activity is subject to the official control, inspection, review, audit, or enforcement authority of the board member, during the performance of the board member's duties of office or employment." The Proposed Order states that none of the Board members engaged in any of these activities. That statement is plainly wrong.

Board members Evans and Davis engaged in "outside activities" related to the Turning Point USA club. Both members attended and spoke at the Turning Point USA kickoff event which occurred after the club had submitted its application but before the vote had occurred. Board member Evans even offered advice to the applicants on how to get the club approved and accepted. Attending events and providing advice to students certainly qualify as "outside activities." These outside activities were related to a matter that was subject to the official control of the board member in performance of the board member's duties.

Policy 203 states that if the outside activity falls under the language cited above, the board must publicly disclose the existence of the conflict **and refrain from taking any official action or performing any official duty that would detrimentally affect or create a benefit for the outside activity. Official action or official duty includes participating in any vote.**

Assisting student applicants in promoting their club and providing feedback on how to get the club approved are not activities that fall under a board member's official duties. Providing these services to these students while the matter was pending before the board creates a benefit for the student club applicants that is not afforded to other clubs. This is not a matter of the members having a personal viewpoint in support of the club that carried over to their vote. Instead, these members personally

provided active assistance to the student applicants outside of the board's consideration of the club. Policy 203 explicitly dictates that if performing an official duty creates a benefit for the outside activity, the board member must refrain from that official duty, including participating in any vote. Under the plain language of Policy 203 and Iowa Code 68B, Davis's and Evans's participation in the kickoff event, including speaking and providing advice to the students about getting the club approved mandated that they not participate in voting for or against the club.

On this topic, Appellants also submit an additional piece of information that it acquired after its last briefs were filed via a FOIA request from the West Des Moines school district. Superintendent Kacer complained to other area superintendents that certain board members were "helping students try to get a Turning Point chapter in Johnston."[6] See **Exhibit AA-5**. Board member's official duties do not include "helping students" get a club approved by the board. Instead, these members were engaged in outside activities that created a benefit for the club. They should have recused themselves from the vote.

Code of Ethics

As the Proposed Order notes, Policy 204 provides a **mandatory** code of ethics that members "shall" follow. The Proposed Order generally states that the undersigned cannot conclude that the member's statements in support of approving the club is a violation of policy 204. For the sake of clarity of the record, Appellants again state that these members' activities go far beyond publicly supporting the club. This is not a matter of board members providing their viewpoints during board meetings. Instead, their activities violate the black and white code laid out in Policy 204. While the Proposed Order states that the code of ethics contains provisions that are "advisory or aspirational," the provisions that Appellants cite are not mere suggestions. For example, number 5 of the *As A School Board* section ("I will not use the school district for the advantage of my supporters") and number 5 of the *In Meeting My Responsibility to My School District Community* section ("I will represent the entire district") are mandates as signaled by the word "will." The finding that a board's Code of Ethics is aspirational or advisory is frightening.

As described above, Davis and Evans provided a benefit to the student applicants by attending and speaking at the kickoff event. This event was not public, so there is no record of what Evans and Davis told these students behind closed doors. Davis and Evans were board members when they attended this private event and their presence and comments certainly could be construed to be affiliated with the district. Number 4 in the Code of Ethics states that "I will not use the school district or any part of the district program for my own personal advantage or for the advantage of my friends or supporters." There was no way for these members to shed their role as school board members at the door of the kickoff event. Instead, they attended as visible school board members to show their support and provide assistance to a group of their supporters. It was no secret that the club was controversial and had the support of only a limited number of people (including Moms for Liberty and Turning Point USA national). By appearing and speaking at the kickoff event, these members were leveraging their roles as board members to garner publicity and support for getting the club allowed into the school.

Mr. Evans went a step further. In an interview with the Des Moines Register where he was identified as a "Board Member", Evans provided a detailed description of his support of the club and the advice he gave the applicants for succeeding. This also violates number 4 of the Code of Ethics, as he

[6] This email was not provided by the district in response to any of Appellants' prior FOIA requests. It's existence was only uncovered when it was provided by the West Des Moines School District.

was again using his position as a board member to provide an advantage to his supporters and number 7 regarding promising a vote in advance of a meeting.

The Proposed Order addresses the promise of a vote tangentially in saying that board members, including the three members at issue, listened to arguments and engaged in a discussion in an open matter during the board meetings. While there certainly was discussion at board meetings, which are the public forums in which the board can appropriately express opinions pursuant to number 11 of Policy 204, neither Mr. Evans nor Ms. Davis expressed any opinions about the club itself. Mr. Evans certainly did not share his thoughts that he separately provided to the Des Moines Register. Neither of them made mention of speaking at the kickoff event and certainly did not share with the public the comments that they made to the club behind closed doors. Ms. Davis and Mr. Evans did not openly engage in a discussion about why they were supporting the club or what they shared with the students at the kickoff event.

The Proposed Order does not even mention Ms. Davis's most egregious behavior. Ms. Davis is a member of the private Moms for Liberty—Polk County Facebook group along with Gavin Gallagher, one of the students applying for the club. First, Appellants cannot identify any reason that it is appropriate for a board member to be involved with students in private social media groups. But Ms. Davis took it even further. Mr. Gallagher complained in this private group about the way his application was being received by the public: "These parents put TPUSA students at risk". Ms. Davis, a known school board member, supported Mr. Gallagher's complaints by "liking" his comments. See **Exhibit B**, p. 11. This exchange occurred while the matter was pending before the board. In what world is it ethical or appropriate for a sitting school board member to privately interact with a student that has a matter pending before that board member?

Finally, there is one additional critical point that must be addressed. Board members certainly do have thoughts and views about any number of matters that come before the board. Everyone comes into such a role with personal experiences and perspectives. This particular matter, however, came with federal law attached to it that dictated that the board members must act at arms-length and not involve themselves with the student club while the club's approval was pending before the board. These board members repeatedly told anyone who asked that the Equal Access Act mandated that the club be approved. In other words, their hands were tied by federal law and they had no choice but to let the club in. All the while, Evans and Davis were actively "helping" (as described by Superintendent Kacer) get the club into the school. As described previously, the EAA only applies to clubs that are student-initiated. Procuring board members' assistance in getting the club approved also takes the club outside the realm of "student-initiated." These board members cannot proclaim that the EAA mandates that the club be approved while their own actions were taking the club outside of the protection of the EAA.

Appellants want to be very clear. The Proposed Order sets the following precedent:

- It is acceptable for board members to privately help students who have matters pending before the board.
- It is appropriate for board members to use their visibility as board members to provide an advantage to their supporters on matters that they have voting authority over.
- Board members do not have to represent the entire school district and instead can lend their assistance to individual groups, including politically motivated dark money groups.
- It is appropriate for board members to privately interact on social media with students, including regarding matters that the student has pending before the board.

Appellants assert that the Proposed Order gives school board members free reign to disregard Code of Ethics and Conflict of Interest policies, which are supposed to have the force and effect of law. Appellants request that the Proposed Order be revised in view of the actual behavior of the board members and that it find that these board members were obligated to recuse themselves.

V. Conclusion

There is a common theme with all of the issues that arose during the district's consideration of the Turning Point USA Club: the Johnston School Board does not follow its own policies and believes it can selectively apply portions of federal law while ignoring other provisions. The board openly acknowledged that it was ignoring the plain language requirement of the Student Organizations Policy 504.2. The board picked portions of the EAA to say it was required to accept the club while ignoring the explicit provisions that took the club outside of the EAA's protections. And, in continuing the theme of picking and choosing words that suit them even when they are misleading, the district (through its attorneys) completely misstated L.G.'s testimony to the Presiding Officer to advance its position that the club was not controlled by the outside organization. Further, while the Code of Ethics and Conflict of Interest provisions are board policies that also have the force of law, board members can ignore them at will with no repercussions.

While open disregard of board policy is apparently standard operating procedure for the Johnston School District as evidenced by the entirety of the way it handled the Turning Point USA application, the Proposed Order puts the State of Iowa's imprimatur on this behavior and sets the precedent that school boards don't need to follow their own policies or federal law, and can treat conflict of interest laws and ethics codes as mere suggestions that could be followed but don't need to be. The conduct of the board throughout the consideration of Turning Point USA was not reasonable and the Proposed Order needs to be revised accordingly. The State Board will not be sitting as "super school board" substituting its own judgment for that of elected officials if it once again reiterates its precedent that board policy has the force of law and shall be followed, and that boards are required to abide by federal law. The State Board would merely be reinforcing its own precedent. Revision of the Proposed Order is respectfully requested. Appellants also request oral arguments in accordance with IAC 6.17(6)(d).

Respectfully submitted,

Kaycee J. Schippers
Sara Hayden Parris
Andrea McIlwee
Appellants

BEFORE THE IOWA DEPARTMENT OF EDUCATION

In re Student Club Approval	*	Appeal No. 5160
	*	Appeal of Decision 5144
K.S., et al.,	*	
	*	
Appellants,	*	
	*	APPELLANTS' REBUTTAL
vs.	*	BRIEF IN RESPONSE TO
	*	APPELLEE'S REPLY BRIEF
Johnston Community School District,	*	
	*	
Appellee.	*	

Appellants submit the following as a response to Appellee's Reply Brief filed December 21, 2022.

I. Scope of Review

Appellee complains that Appellants have inappropriately submitted additional evidence concerning the substantive issue before the School Board on April 25, 2022 and additional factual circumstances that occurred well after the Board's approval of the club, generally citing 281 Iowa Admin. Code. r. 6.17. Nothing in the cited code section prohibits a party from providing additional evidence during the appeal of a proposed decision. Further, as stated in Appellants' Appeal Brief, the Proposed Decision contains several factual errors that must be addressed.

With regard to the bylaws, the Proposed Order explicitly states that "under the current posture of this case, it is not the responsibility of the School Board to prove the documents do not exist: it is on the Appellants to prove that they do. The Appellants have given no reason to overturn the School Board Decision on this point." As Appellants did not believe that the existence of the bylaws was ever in question because Appellees did not actually raise that issue as an open question, Appellants took the initiative to search for the bylaws themselves, a step which should have been taken by the student organization and/or the Board, and easily obtained said document within minutes. Appellants have provided the bylaws at this time in response to this explicit statement in the Proposed Order. Further, this statement in the Proposed Order places the burden on Appellants in the context of this matter pending before the Board, which is obviously taking place after April 25, 2022. If Appellants had provided the bylaws in the context of its Statement of Appeal, would Appellee's have objected because the bylaws were provided after the April 25, 2022 vote? The Proposed Order inappropriately placed the burden to prove the existence of the bylaws on Appellants. Appellants have met that burden.

II. Response to Appellee's Arguments Regarding the Bylaws

Appellants stand by its interpretation of the Proposed Order, which explicitly states:

> The Appellants first attack the failure of L.G. to provide the national organization's constitution and bylaws. The Appellants assert this is disqualifying under policy 504.2. The Appellants do not read the complete policy. The policy does not require constitutions and bylaws **where none exist**. In the absence of those documents, the policy requires a mission statement, which L.G. provided. The school board complied with policy 504.2.

Appellants believe that these statements are clear: according to the proposed order, if constitutions and bylaws **do not exist**, the policy does not require them to be provided. This is not the case that was in front of the Board. The bylaws do in fact exist. Accordingly, L.G. was required to provide the bylaws "prior to consideration by the board." He did not provide this mandatory part of the application, so the Board should not have considered his application. The Board's ignorance of the IRS requirements of a 501(c)(3) corporation to have bylaws does not nullify this requirement.

Appellants also point out that they did not argue that the failure to provide the constitution was disqualifying under policy 504.2 because the policy addressed the situation where an organization does not have a constitution: a written statement of purpose may be used to substitute for a **constitution**. The fact that this statement does not also explicitly state that the statement of purpose can substitute for bylaws is extremely telling. Read as a whole, it is clear that the policy required submission of bylaws under any and all circumstances. There was no substitute for bylaws.

Appellee again provides an incorrect analysis of the actual question that the Board faced on April 25, 2022. The Board had an explicit policy that **required** any student organization applying for official recognition that affiliated with an off-campus organization to provide the bylaws of the outside organization: "Prior to consideration by the Board, ***the proposed organization*** **must** submit to the associate superintendent a list of members as designated contacts, staff, its constitution and bylaws and **the constitution and bylaws of any off-campus organization with which it is affiliated.**" The policy further stated "if an organization does not have a **constitution**, it must submit a written statement of purpose to the administration for consideration." This sentence - in fact, this entire paragraph - is referring to "the proposed organization" (the proposed school club). It is NOT referring to "any off-campus organization with which it is affiliated." Any substitution of documents is only intended for the proposed school club. In addition, the policy **did not provide for an alternative to bylaws**. Thus, the policy clearly and unequivocally mandated that the student group submit the national organization's bylaws. *See* Board Policy 504.2 attached as **Exhibit CC**.

As Appellants argued in their prior submissions, there is no record that anyone other than L.G. believed that TPUSA's bylaws did not exist. The two board members that discussed the bylaws with L.G. made a clear record that bylaws are a legal document required for an organization like TPUSA to exist.

The Board was not operating under a reasonable belief that the bylaws did not exist. Two weeks before, the Board voted 7-0 to postpone the vote until the bylaws were provided. At the April 25 meeting, two school board members informed L.G. that bylaws are a mandatory

legal document in order for an organization to obtain 501(c)(3) status with the IRS. None of the remaining five board members expressed any opinion about whether bylaws existed.

L.G.'s statements that he contacted the national organization and was told that the bylaws did not exist were given great weight in the Proposed Order ("the school board heard information from Dr. Roorda that they were unable to locate the documents. The School Board is entitled to give that information credence as it weighs the information before it, and the undersigned is obligated to do so as well"). In view of the fact that the bylaws did in fact exist, L.G.'s statements could be interpreted at least a couple of different ways. First, in view of the fact that not one board member contended that TPUSA's bylaws did not exist and two stated that they had to exist, it would be reasonable to question whether L.G. actually asked the national organization for them. Alternatively, if L.G. did, in fact, contact the national organization and was told that the bylaws did not exist, the Board should have had great concerns about the national organization lying to L.G. Lastly, L.G. provided conflicting statements during questioning: first he stated he was told he only needed the national organization's constitution (ONE document) and he was just finding out during the April 25 meeting that he should have produced TWO (constitution AND bylaws), but within minutes he says he did try to obtain the bylaws from his field representative. Those two statements are contradictory. All of this could have been addressed by postponing the vote in order to sort out the issue of the bylaws. There was no emergency on April 25, 2022 that mandated the vote take place that night. Postponing the vote a second time because L.G. failed once again to meet the requirement was the only reasonable option.

Instead of acting reasonably, the Board knowingly violated policy 504.2 and voted on the club even though the policy dictated that the district needed the national organization's bylaws prior to consideration of the club. School Board Policy 200.3 states "As a policy making body, the board has jurisdiction to enact policy **with the force and effect of law** for the management and operation of the school district." *See* **Exhibit BB** attached. And again, the district's policies also provide a mechanism for suspending policy. As stated in Policy 209.4: "the board, and only the board, may, **in extreme emergencies of a very unique nature**, suspend policy….Reasons for suspension of board policy will be documented in board minutes." *See* **Exhibit DD** attached. If there was an emergency of a unique nature, the Board could have used policy 209.4 to ignore the bylaws requirement **but only if it documented the emergency in the Board minutes**. No such documentation or board discussion exists. Instead, the Board acknowledged that it didn't have the required bylaws and voted to approve the club anyway. If this decision by the Board is upheld, it sets a precedent that school board policies do not have to be followed. If school board policies do not have to be followed by the Board, one could reasonably argue that school board policies do not have to be followed by anyone, rendering school board policies unenforceable.

There is nothing reasonable about the Board blatantly ignoring the plain language of two of its own policies. Noncompliance with policy is grounds for the decision of the Board to be overturned.

III. The Equal Access Act

Appellants will not repeat the same arguments it has provided many times during this appeal. Appellants will, however, point out that Appellee once again misstates Appellants'

arguments. In Appellee's brief, Appellee notes that it has not conceded that the club is not student-initiated and then states "Appellants go on to describe at length factual circumstances that occurred *after* the Board approved this student organization on April 25, 2022." That is not at all what Appellants' brief states. Appellants' prior brief explains that Jenn Turner–a Johnston parent who *has never had a child at the Johnston High School*– **told the Board** that she acted to insert the club in the school because she wanted a conservative club there, so she recruited L.G. and connected him with Turning Point USA. L.G. himself told the board that parents (not his own) approached him about starting this club. It is abundantly obvious that these events occurred prior to April 25, 2022. Appellants are unclear on what portions of the factual record it has set forth related to the "student-initiated" prong of the EAA occurred after April 25, 2022. Appellee once again plays fast and loose with the record. And, it should be noted that Appellee's brief fails to set forth any argument in response to the "student-initiated" prong of the EAA. Appellee has never tried to justify how Jenn Turner's actions satisfy the "student-initiated" requirement. As it has never provided an argument, it has conceded that Appellants' position is correct.

Appellee's brief also is silent with regard to the control/direction arguments that Appellants have set out repeatedly in detail. Appellants will once again remind everyone reviewing this brief that the student-initiated (subsection (c)(1)) and control/direction (subsection (c)(5)) provisions of the EAA are separate. Appellee has apparently conflated these provisions. They must be considered separately; if either provision is not met, the Equal Access Act does not protect the club.

Appellee also states that the entire section of Appellants' brief entitled "The Club's Current School Year Activities" should be disregarded entirely as it is outside the scope of review for this matter. As Appellants stated in that section of its brief: "Appellants understand that this is not presently before the Presiding Officer, so the following information is not part of Appellants' basis for the Notice of Appeal." Appellants understand why Appellee would want the Presiding Officer and Department of Education to ignore this section, as it must be embarrassing for the district to be exposed for not following through on its "wait and see approach" when the club and its sponsor are acting reprehensibly. In arguing in its Post-Hearing Brief that each of the District's witnesses testified that if concerns arose after the club was approved, there was a mechanism in Board Policy 402.5 to rescind the approval of the club, Appellee did open the door for a response about whether the district was actually doing what it said it would do. It is clearly not monitoring the club and has no interest in ensuring that the club is complying with school policy and the law. Appellants were thus compelled to gather information about the club's activities after board approval to further demonstrate the recklessness of the district's decision.

IV. Conflict of Interest and Code of Ethics

Appellee endorses the approach of the Proposed Order which conflates all of the provisions of Iowa Code Section 68B.2A(1)(c) and finds that the board members' behavior was acceptable because the Presiding Officer could not conclude that the members were acting "without the financial benefit of obtaining a contract, the benefit of one's employer, or the benefit of using public resources."

Appellants do not believe that this is a correct reading of Iowa Code Section 68B.2A(1)(c). An unacceptable conflict of interest includes participating in outside activities that are su*bject to the official control* of the person during the performance of their duties of office. This section does not require "the financial benefit of obtaining a contract, the benefit of one's employer, or the benefit of using public resources." These board members participated in the kickoff event, did not make clear that they were attending as private citizens, and privately provided comments to the students and adults in attendance. These comments were not shared with the public at any board meeting, which is the *appropriate* venue for providing feedback on a matter *before the Board*. The Des Moines Register published an article with the title "Johnston School Board Members Support Forming Turning Point USA High School Chapter" which described "Johnston school board member Deb Davis" as appearing on Johnston's Instagram page at a Turning Point event with high school students and included comments from Clint Evans confirming that he spoke at the event and expressing his support for the club. These members *spoke as board members at this private event*, providing open support for the club before the vote had occurred. The meeting was literally and unequivocally about a matter that was pending before the Board. Attending private events about getting a club approved is outside of the responsibilities of board members and gives an appearance of impropriety as it confers a benefit to the club that is not equally afforded to other groups with matters pending before the Board.

Appellee asserts that this club application received more scrutiny than other organizations in the past, and the Board President states that other clubs with national affiliations had not been required to submit bylaws prior to approval. Appellants will first point out that this Director has been a board member since 2019 and thus cannot attest to club applications that came before the Board prior to her time. Appellants are uncertain as to why Appellees are so eager to confess to a long history of operating in violation of its own policies, but do not believe that a culture of incompetence and lack of accountability are compelling reasons to continue to circumvent board policy.

V. Conclusion

Appellants agree with Appellee's statement that they passionately believe the Board's decision was incorrect. Appellants do not, however, appreciate the condescending sentiment that if we are in disagreement with the Board's decision, we should resolve the differences at the ballot box. The integrity of the Johnston School District is being eviscerated by the presence of Mr. Evans, Ms. Davis and Mr. Tidball on the Board. Unfortunately, Iowa law does not provide any mechanism for recalling these members, so the district will have to endure their presence for the next several years. As parents who want the best for our children from the Johnston School District, we have no other recourse than to force the district to do its job in abiding by its own policies and the law. Whether it is banning books, supporting private school vouchers to the detriment of our public schools, or inserting right-wing propaganda groups into our buildings, we will be holding the Board accountable by any mechanism we have at our disposal, including "exhaustive" legal challenges when they are necessary. As stakeholders in the Johnston district, the Board is accountable to us. Being elected to a board does not give board members free license to ram their political agendas into our schools. We will continue to ensure that our fellow parents are aware of what is going on in our district.

Based on the disdainful tone in Appellee's filings and by Appellee's counsel during the December 21 scheduling call, it is apparent that Appellee wishes Appellants would not continue to pursue this appeal. There has always been a resolution to this that would render Appellants' appeal moot. Instead of digging in its heels and complaining that Appellants should not be allowed to submit evidence or arguments, and continuing to misstate the record in an attempt to muddy the waters and mislead the State Board, Appellee could simply revisit the approval of the club now, which it insists is the mechanism by which such matters should be resolved after an organization is approved. Now that Appellants have provided evidence of the club's sponsor inappropriately forwarding an email from a parent inquiring about the club to the club president (A STUDENT) for use by TPUSA national, Appellants fully expect that the Board will suspend the club pending an investigation. The teacher sponsor's behavior is reprehensible and her affiliation with the club must be terminated immediately. The club must find a new sponsor and, in view of the significant problems with the initial approval process, reapply for approval. The actions outlined here would render this appeal moot; instead, the district is demanding that the State Board pretend that the bylaws don't exist, and abdicating its responsibility to deal with the consequences of its own actions.

Contrary to Appellee's frequent assertions that board policy allowed for alternative documentation in lieu of the national organization's bylaws, the policy very clearly and explicitly did not. This was not an instance where the bylaws did not exist. Accordingly, the club was **required** to provide the bylaws with its application. It did not, yet the Board knowingly went ahead and voted anyway. This is a clear violation of the black letter of the board policy, and thus the Board's decision must be reversed. A reasonable board would have simply postponed the vote until the club's required paperwork was in order.

In addition, a reasonable board would have obtained legal advice about the entirety of the EAA, especially in view of the ***many*** stakeholders the Board heard from specifically about the student-initiated and student-controlled prongs of the statute. Instead, **the Board used the EAA as its justification for approving the club, even though the district's counsel did not provide any legal advice about the very sections of the EAA that were at issue**. The Board cannot use the advice of counsel as a shield when the record very clearly reflects that the district's attorneys did not actually ever get back to the Board about the specific provisions of the EAA at issue. This is not an instance where privilege protects the conversations between the attorneys and the client. Instead, the client publicly stated that the district's attorneys did not provide any response about specific questions related to the EAA's protections.

The district's attorneys also want the State Board to believe that this case is about discrimination against unpleasant viewpoints. Appellants have repeatedly made clear that the legal basis for its complaint has nothing to do with viewpoint. The analysis would be the same if the club was a liberal club, a chess club, or an equity club. If outsiders initiate the club and control it, it does not belong in our schools. Repeatedly arguing and citing the law on viewpoint discrimination is a distraction and should be disregarded.

This case is about (1) the failure of the Board to follow policy, (2) the inapplicability of the EAA based on the fact that this is not a student-initiated or student-controlled club, and (3) the conflicts of interest and ethical violations of board members. Accordingly, Appellants ask that the Johnston School Board's decision to approve this club be overturned.

Respectfully submitted,

Kaycee Schippers
Sara Hayden Parris
Andrea McIlwee
Appellants