

**IOWA STATE BOARD
OF EDUCATION**
(Cite as 14 D.o.E. App. Dec. 232)

In re Chad Chyma

Debbie & Paul Chyma, Appellants,

v.

DECISION

South Tama Community
School District, Appellee.

:

[Adm. Doc. #3829]

The above-captioned matter was heard on May 30, 1997, before a hearing panel comprising Mr. Morris Smith, consultant, Bureau of School Administration, Instruction, and School Improvement; Mr. Don Wederquist, consultant, Bureau of Community Colleges; and Amy Christensen, J.D., designated administrative law judge, presiding. The Appellants, Mrs. Debbie and Mr. Paul Chyma, were present. They were represented by Attorney Mr. Barry Kaplan. The Appellee, South Tama Community School District [hereinafter, "the District"], was present in the person of Mr. Clarence Lippert, superintendent. The District was represented by Attorney Mr. Peter Pashler.

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

The Chymas seek reversal of a decision of the Board of Directors [hereinafter, "the Board"] of the District made on December 9, 1996, which upheld the decision of the administration to bar Chad Chyma from extracurricular and other school-sponsored activities for a period of twelve (12) months beginning September 27, 1996, pursuant to the District's good conduct policy.

The administrative law judge finds that she and the State Board of Education have jurisdiction over the parties and subject matter of the appeal before them.

**I.
FINDINGS OF FACT**

Chad Chyma is a junior at South Tama High School. He turned 18 in November 1996. Chad is a good athlete, and participates in football and wrestling for South Tama. This is his third year of participation in activities at the high school.

On October 25, 1995, Chad was chewing tobacco in class and was reported by his teacher, Mr. Jim Planz. Mr. Planz was also a football coach at the school. On October 26, 1995, Athletic-Activities Director Mr. Kolpin wrote a behavioral contract and met with Chad regarding the incident the day before. Mr. Kolpin wrote the behavioral contract pursuant to the school's athletic handbook. As a part of the behavioral contract, Chad agreed to perform 10 hours of community service. Mr. Kolpin told Chad to take the behavioral contract home and show it to his parents. Because he was afraid his parents would be angry and would ground him, Chad did not show the contract to his parents. He also did not perform the community service as required by the contract. No one from school called Mr. or Mrs. Chyma regarding this first incident. There are signature lines on the behavioral contract form for the student, parent, and athletic-activities director to sign. This contract was signed only by Chad and Mr. Kolpin. It is not required that the student or his parents sign the contract.

In first offenses of the student code of conduct, the school usually does not call parents. Rather, it asks the student to bring home the behavioral contract and show it to his or her parents. It is hoped that the student will behave responsibly, show the contract to his or her parents, and that the parents may then become involved in the consequences of the violation and/or have the option to challenge an alleged violation. Unfortunately in this case, because Chad did not inform his parents, they did not have the opportunity to do either.

During the spring of 1996, sometime prior to June 14, 1996, Chad was arrested and charged with possession of alcohol. The charge was adjudicated by the juvenile authorities. As a part of this charge, Chad was assessed and had to complete a substance abuse Early Intervention class. He successfully completed the class. School officials learned of the juvenile court adjudication. Ordinarily, the school calls the parents when there has been a second offense, and this was done in this case. On June 14, 1996, school authorities met with Chad and his parents regarding this incident, and a second behavioral contract was written. This contract was signed by Chad, Mr. Chyma, and Mr. Kolpin. At that meeting, Mr. and Mrs. Chyma learned that this was Chad's second violation of the Student Code of Conduct. They also learned that Chad had not completed his community service for the first offense. For the second violation, Chad's first community service was combined with community service required for the second violation. Chad cleaned up at school after football games for his community service, and completed the required community service, after having been granted an extension of time by Mr. Kolpin. The behavioral contract stated specifically that this was Chad's second offense. It also stated "If he has another Code of Conduct offense before December he will be declared ineligible for an entire calendar year." Everyone agrees that the December reference is in error, and the third offense had to occur within twelve months of the first offense. This consequence was discussed at the meeting, and Mr. and Mrs. Chyma and Chad knew the consequence if Chad committed a third violation within the year's time. At that meeting, it was learned that Chad had not successfully completed coursework during the spring

semester. Mr. Kolpin arranged for Chad to take summer school so he would be academically eligible for the fall semester. Chad completed everything which was required by the contract. Mr. and Mrs. Chyma did not appeal this second behavioral contract. Mr. Chyma testified he did not know he could appeal, and that is why he did not appeal. The athletic handbook at page 11 tells parents of their right to appeal. Mr. Chyma testified he never read the handbook until the third offense.

Although Mr. Chyma testified at the hearing he does not believe either the first or the second offense happened, the appellants are not contesting whether the offenses occurred at this hearing. Therefore, for the purposes of this decision, it will be assumed that both offenses did occur and were handled as described above.

On September 27, 1996, the high school principal observed Chad lying on the floor in the media center during study hall, chewing tobacco, and spitting the juices into potted plants. Both the high school principal and the athletic-activities director were new at the beginning of the 1996-97 school year. They did not know of Chad's prior violations. Therefore, they treated this incident as if it were a first offense, and a behavioral contract was written with Chad being assigned ten hours of community service. Chad and Mr. Gary Long, the new athletic-activities director, signed this contract. Within a few days, Mr. Long discovered that this was not Chad's first violation, and sent a letter to Mr. and Mrs. Chyma and Chad on September 30, 1997. This letter informed the Chymas that Chad would be ineligible to take part in activities at the high school for a period of one calendar year, effective September 27, 1996.

The Chymas appealed Mr. Long's decision. A review panel was convened according to the athletic handbook due process policy. The review panel recommended affirmance, and School Principal Stephen Burr affirmed Mr. Long's decision. The Chymas appealed to the South Tama County School Board. Pursuant to the policy in the athletic handbook, a two member panel of the Board considered the evidence, and affirmed the decision. On December 9, 1996, the full Board affirmed the decision. (The two members of the Board who had served as the panel did not participate in the final Board decision.) The Chymas then appealed to the State Department of Education.

As a member of the football and wrestling teams, Chad was subject to the District's good conduct rule and the South Tama County Student Code of Conduct. It is disputed when Chad learned of and received a copy of the Student Code of Conduct which is contained in the District's athletic handbook. Chad testified he knew of the good conduct rule only after the first incident, and was shown the handbook at the first meeting with Mr. Kolpin. Superintendent Lippert testified each student athlete receives a copy of the athletic handbook each year he or she participates in athletics, and that the terms of the Student Code of Conduct are reviewed at the beginning of each athletic season by the athletic director. We find the testimony of Superintendent Lippert to be credible, are convinced that Chad was given a copy of the athletic handbook at the beginning of each year he participated in athletics, and that the Student Code of Conduct was reviewed in

his presence by the athletic director each year he participated in athletics. Chad's junior year was the third year he participated in school activities. We make no findings whether or not Chad read the handbook or showed it to his parents. In any case, as of June 14, 1996, Mr. and Mrs. Chyma and Chad were clearly informed of the good conduct rule, the Student Code of Conduct, and the athletic handbook. In addition, the application of these rules to Chad and his behavior and how they affected his eligibility to participate in sports was clearly explained to Mr. and Mrs. Chyma and to Chad at the meeting on June 14, 1996. The Chymas were told at that meeting that if Chad committed another violation of the Student Code of Conduct before December, he would be declared ineligible for an entire year. Both Chad and Mr. Chyma signed the Behavioral Contract on that date.

The terms of the good conduct policy and the Student Code of Conduct at issue in this appeal are quoted below.

Board Policy 502.12, the Good Conduct Rule, provides

Students who participate in extra-curricular activities serve as ambassadors of the school district throughout the calendar year whether at or away from school. Students who wish to have the privilege of participating in school extra-curricular activities and other school sponsored activities, must conduct themselves in accordance with board policy, 'Student Conduct' throughout the school year.

Students disciplined under the good conduct rule shall receive appropriate due process in concert with the nature of the misconduct.

It shall be the responsibility of the superintendent, in conjunction with the principals, to develop administrative regulations regarding conduct for each school activity. (See Student Handbook and Activities Handbook).

The Athletic Handbook contains the Student Code of Conduct. The Code of Conduct was last revised in July 1993. Relevant portions of the Code of Conduct are quoted as follows.

Participation in extra-curricular and co-curricular activities at South Tama County Schools is voluntary and a privilege. These activities have adopted guidelines to assure that students represent themselves and their school in a responsible and commendable manner. These guidelines are designed to exemplify these standards of sportsmanship and to encourage responsible citizenship among students. These guidelines demonstrate concern for the health of students in areas of safety and the long-term physical and emotional effects of chemical use. They provide assistance to students who desire to resist peer pressure directing them toward the use of tobacco and mood-altering chemicals.

In view of the above statements, the South Tama County Schools will enforce the following policies and procedures relative to standards for participation in extra-curricular and co-curricular activities throughout the calendar year. (Including summer months.) The following activities would be included: Athletics ... Football ... Wrestling

II. Violations of Local, State or Federal Laws

Any South Tama student that admits or is found guilty of violating a local, state or federal law (other than minor traffic violations) will be ineligible to represent the school in any extra-curricular event, ... for the minimum periods as outlined below:

III. Substance Involvement

Because of the adverse effects of tobacco in any form, alcohol and controlled substances without a prescription, no student shall procure for his/her use, be in possession of, or use any of these substances. Violations shall result in the student being declared ineligible to represent the school in any extra-curricular activity, event, scheduled contest, program or trip for the minimum periods as outlined.

First Offense

South Tama students may choose between Option A and Option B. Option A may be exercised only if the student notifies the school within three school days of the infraction, or upon inquiry, the student admits to a violation of the policy. (Honesty policy).

Option A

The student may make a commitment to the community and/or school for ten hours of service and must be in agreement of the student, parents, guardians, activity sponsor-coach, athletic-activities director and principal or his designee. This will be administered through a Behavioral Contract outlining the specific duties and the time limit of those commitments. For infractions involving alcohol and/or drugs the student and parents

(guardians) shall be referred to a local substance abuse agency for an intake interview. All requirements of the agency will be met by the student. The student will pay all costs or fees, but will not miss any activities. When a student cost or fee is involved, financial assistance is available to those who qualify.

Option B

The student will be ineligible for twelve calendar weeks. For infractions involving alcohol and/or drugs the student and parents (guardians) shall be referred to a local substance abuse agency for an intake interview.

Second Offense

South Tama students may choose between Option A and Option B. Option A may be used only if the student notifies the school within three school days of the infraction, or upon inquiry, the student admits to a violation of the policy.

Option A

With the agreement of the student, parents (guardians), activity sponsor-/coach, athletic-activities director and principal, or his designee, a student may make a commitment to the community and/or school for twenty hours of service. This will be administered through a Behavioral Contract outlining the specific duties and the time line on those commitments. For infractions involving alcohol and/or drugs, the student and parents (guardians) shall be referred to a local substance abuse agency for an intake interview. All requirements and obligations of the agency will be met by the student. The student will pay all costs or fees but will not miss any activities. When a student cost or fee is involved, financial assistance is available to those who qualify.

Option B

The student will be ineligible for eighteen calendar weeks. For infractions involving alcohol and/or drugs the student and parents (guardians) shall be referred to a local substance abuse agency for an intake interview. All requirements of the agency will be met by the student.

Third Offense

If a third offense occurs within twelve calendar months of the first offense, the student will be ineligible to participate in any contests or performances

for one calendar year. For infractions involving alcohol and/or drugs the student and parents (guardians) shall be referred to a local substance abuse agency for an intake interview. All requirements of the agency will be met by the student. The student will pay all costs of fees. When a student cost or fee is involved, financial assistance is available to those who qualify.

IV. Special Considerations:

Violations will accumulate beginning with the first infraction and continuing for the next twelve months. If ineligibility cannot be completed during the current season, it shall be carried over and completed during the next activity season.

VI. Determination of Violations

Student is said to have violated any of the above if the student:

- A. is found guilty by a court of law;
- B. admits to violating one of the standards;
- C. is witnessed breaking one of the standards by one or more staff members;
- D. is determined guilty of committing a violation after the matter is thoroughly investigated by the activities director, principal or designee, and supervisor/coach of that activity.

BEHAVIORAL CONTRACT

The concept behind a "Behavioral Contract" stems from the belief that it is better and more conducive for students to participate in activities than to not participate because of "ineligibility". We hope to encourage better student awareness of the responsibilities they must assume in becoming an adult. Students need to know that the school, parents (guardians) and teachers are serious and are concerned about actions that are not in their best interests. To accomplish this, we ask for parental involvement in the development and management of the "Behavioral Contract." We ask that the students and parents (guardians) take positive steps to correct a problem.

DUE PROCESS

Whenever a student is declared ineligible by standard of this policy, the following shall apply:

(A) The student and his/her parent(s)/guardian(s) shall be invited to the school for a conference. At that time, the length of the period of ineligibility and specific requirements (behavioral contract) will be drawn up.

(B) Should the student and his/her parent(s)/guardian(s) feel the penalty is unjustified or unfair, they may appeal **within three days in the following manner:**

(1) A three-member panel shall review the case. The review panel shall be appointed by the principal **within two (2) days** of the appeal and consist of three (3) disinterested school staff members. One of these three (3) staff members may be chosen by the student if desired.

(2) The student and his/her parent(s)/guardian(s) shall be notified when and where the review panel will meet, and they shall be allowed to appear before the review panel. **The panel shall meet within a period of three (3) days of their appointment by the principal.**

(3) The review panel shall consider the circumstances and evidence and make its findings and recommendation in writing to the student and parent(s)/guardian(s) and to the school principal **within two (2) days**. Responsibility for the decision rests solely and finally with the building principal.

(4) Following the decision, the student and/or his parent(s)/ guardian(s) shall be given three (3) days to file an appeal with the Board of Education. A committee of two board members shall hear the appeal at filing of the appeal.

(5) **All time limits in this policy shall consist of school days except that when an appeal is submitted after the last calendar day of the year, the limit shall consist of all week days, Monday through Friday.**

(6) During the appeal procedure, the student will be ineligible.

II. CONCLUSIONS OF LAW

The Chymas make the following argument: since Mr. and Mrs. Chyma never learned of the first offense until the meeting regarding the second offense, since Chad did not show them the first Behavioral Contract, and no one from the school called or wrote them to tell them of the violation, the first violation should be thrown out and this third violation should be treated as a second violation. They therefore assert the District erroneously imposed the one-year period of ineligibility. They assert that the terms of the good conduct policy and the Student Code of Conduct required that the school notify them of the first offense directly, without relying on Chad to bring home the Behavioral Contract. They also assert that the Behavioral Contract form requires a parent signature, and this was not obtained in the first offense. They point to numerous places in the Student Code of Conduct which contemplate parental involvement in the process of imposing consequences for violations of the Code of Conduct. They assert that the District did not follow the terms of its own Student Code of Conduct when it dealt with Chad's first violation. For these reasons, they assert, the first violation should be thrown out and the third violation treated as a second violation.

"Applying the appropriate standard of review to the facts of this case, we must ask whether the District Board's action in upholding the discipline imposed by the administration, is a reasonable exercise of the Board's authority." In re Joseph Anderegg, 14 D.o.E. App. Dec. 107, 112 (1997). A local school board's decision will not be overturned unless it is "unreasonable and contrary to the best interest of education." In re Jesse Bachman, 13 D.o.E. App. Dec. 363, 369(1996).

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

In general, school discipline policies address student conduct which occurs on school grounds during the school day, such as the use of chewing tobacco by Chad in school in the first and third offenses. This is because the school district's regulation of school conduct must bear some reasonable relationship to the educational environment. However, districts may also reach out-of-school conduct by student athletes and those involved in extracurricular activities, such as Chad's alcohol violation in the second offense. Because of the leadership role of these "stand-out" students, their conduct, even out of school, directly affects the good order and welfare of the school. Bunger v. Iowa High School Athletic Assn., 197 N.W.2d 555, 564 (Iowa 1972). The State Board has recently affirmed the ability of a district to impose sanctions on student athletes for the possession and consumption of alcohol during the summer. In re Jesse Bachman, 13 D.o.E. App. Dec. 363, 369 (1996).

The athletic director explained the operation of the Student Code of Conduct to student athletes at the beginning of each year or season, and gave a copy of the handbook to each athlete each year. Thus, Chad had opportunities to learn of the requirements before the first offense. At the meeting regarding the first offense, the requirements were again explained to him, and he was shown the handbook. Mr. Kolpin told Chad to take the Behavioral Contract home to his parents. The key issue is whether it was reasonable and in the best interest of education for the school to rely on Chad to carry the Behavioral Contract home to his parents. We find that it was. The District intentionally tries to promote responsibility of its students involved in first offenses by giving them the opportunity to tell their parents what happened. The fact that in some cases the student does not act responsibly does not make the attempt unreasonable. An important part of a student's education is to accept the consequences of his mistakes and to learn from them. Providing a student such as Chad who has made a mistake involving use of tobacco with the opportunity to accept the consequences of his first mistake by telling his parents of the mistake is not contrary to the best interest of education.

The Chymas assert that the Student Code of Conduct required the school to call them or contact them directly in some way when the first offense occurred. A fair reading of the Code does not require this. Obviously the Code contemplates parental involvement, and this is what the District would prefer. Parental involvement could have been available had Chad acted responsibly and shown the first Behavioral Contract to his parents. However, the school did not act unreasonably when it expected Chad to take the Contract home, and nothing in the Code required the school to call or write the parents directly. The Code does not require a parent and student signature on the Behavioral Contract. As Superintendent Lippert testified, if a student refuses to sign the Contract, it does not eliminate the consequences. This is also not unreasonable or contrary to the best interest of education.

In summary, the District acted according to the Student Code of Conduct, and its actions were reasonable and in the best interest of education. There is no reason to throw out the first offense as the Chymas would like.

Furthermore, even if there were some problem with notification of the first offense, there is no question Mr. and Mrs. Chyma and Chad were informed of the first offense at the conference in June 1996 regarding the second offense. The school called Mr. and Mrs. Chyma directly when they learned of the alcohol offense, which is typically done in second offense cases. The District does not rely on students to carry home the message in second offense cases. Consequences were imposed at the meeting on the second offense which included service for both the first and second offenses. Chad fulfilled these requirements as well as the substance abuse requirements. He fulfilled the academic requirements which were worked out at the meeting. We applaud him for accomplishing this. Mr. and Mrs. Chyma and Chad did not appeal this second Behavioral Contract. If they were going to make any argument that the school acted unreasonably with regard to

the first offense, that was the time to appeal. They did not. Although Mr. Chyma testified he did not know he could appeal after the second offense, this does not matter. A basic principle of law is ignorance of the law is no excuse.

In summary, the actions of the school authorities and the District were a reasonable exercise of their authority. They followed the Code of Conduct, including the due process requirements, in disciplining Chad for his violations of the Code.

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

III. DECISION

For the foregoing reasons, the decision of the Board of Directors of the South Tama Community School District made on December 9, 1996, is hereby recommended for affirmance. There are no costs of this appeal to be assigned.

DATE

AMY CHRISTENSEN, J.D.

ADMINISTRATIVE LAW JUDGE

It is so ordered.

DATE

CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION