

IOWA STATE BOARD  
OF EDUCATION  
(Cite as 14 D.o.E. App. Dec. 107)

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*In re Joseph Anderegg* :

Gene Anderegg, :  
Appellant, :

v. : DECISION

Charles City Community :  
School District, Appellee. : [Adm. Doc. #3828]

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The above-captioned matter was heard on January 23, 1997, before a hearing panel comprising Dr. Paul Hoekstra, consultant, Bureau of Administration, Instruction and School Improvement; Mr. Lee Crawford, consultant, Bureau of Technical and Vocational Education; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding. Appellant, Gene Anderegg, was present "telephonically," unrepresented by counsel. The Appellee, Charles City Community School District [hereinafter, "the District"], was also present on the telephone in the person of Dr. Marty Lucas, superintendent; Ned Sellers, high school principal; and David Stover, director of athletics and associate high school principal. Appellee was represented by Attorney Judith O'Donohoe of Eggert, Erb, O'Donohoe, Frye & Von Ah, P.L.C., Charles City, Iowa.

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).

Appellants seek reversal of a decision of the Board of Directors [hereinafter, "the Board"] of the District made on November 25, 1996, which upheld the decision of the administration to bar Joseph Anderegg from extracurricular and co-curricular activities for a period of twelve (12) months 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**

The incidents giving rise to this appeal occurred in August 1996, just before Joseph Anderegg began his senior year in high school. Up to that time, Joseph had never been in trouble. According to his father, he was fifth in his class with a cumulative grade point average of 3.85. He had held a job at Hy-Vee for the past two years and paid for his own car and insurance. He played baseball on the Charles City team.

As a member of the baseball team, Joseph was subject to the District's good conduct policy. It is undisputed that Joseph received a copy of the policy as part of the student handbook; that the AnderEGGs received a copy of the policy as evidenced by their signature in the school records; and that the policy was reviewed at the beginning of each athletic season by athletic director, David Stover. (Bd. Findings at par. 7, November 25, 1996.)

The terms of the good conduct policy at issue in this appeal are quoted below:

**II. PROHIBITED CONDUCT.** A student participating in an extracurricular or co-curricular activity shall not engage in the following conduct, in school or out of school, at any time during the calendar year.

A. Violation of any local, state or federal law ... [except violations of certain Code provisions which would be simple misdemeanors if committed by an adult].

...

C. Possession, procurement and/or use of tobacco, alcoholic beverage or a controlled substance ... [except beer or wine given or dispensed to a student within a private home in the presence and with the knowledge and consent of the student's parent].

...

**III. CONSEQUENCES OF PROHIBITED CONDUCT.** Any student who has engaged in prohibited conduct shall immediately be ineligible to participate in any extracurricular and/or co-curricular performance, scheduled contest, program, or trip until reinstated.

A. Minimum lengths of ineligibility shall be as follows:

1. First offense: Four weeks commencing with the week of the next performance, scheduled contest, program or trip in which the student is eligible to participate.
2. Second offense: Eight weeks commencing with the week of the next performance, scheduled contest, program or trip in which the student is eligible to participate.
3. Third offense: Eighteen weeks commencing with the week of the next performance, scheduled contest, program or trip in which the student is eligible to participate.
4. Fourth and subsequent offenses: One year suspension commencing with the week of the next performance, scheduled contest, program or trip in which the student is eligible to participate.

...

**IV. ALTERNATIVE TO INELIGIBILITY.** Any student, not suspended from school, desiring to reinstate his/her eligibility prior to expiration of the period of ineligibility imposed, may propose a restitution contract in lieu of the remainder of his/her ineligibility.

A. A student's eligibility may not be reinstated by approval of a restitution contract until the student has missed at least one extracurricular or co-curricular performance, scheduled contest or trip as a result of a determination that the student has engaged in prohibited conduct.

1. A student who admits or is found guilty of prohibited conduct is ineligible to participate in the next extracurricular or co-curricular performance, scheduled contest or trip in which the student would otherwise participate.

2. If the determination that the student engaged in prohibited conduct is based upon information voluntarily provided by the student, the student's parent, step-parent or guardian, or another student, prior to an arrest or referral to Juvenile Court, observation of prohibited [sic] conduct by a school staff member, or accusation of prohibited

conduct by a citizen, this section will not apply and the student's eligibility may be reinstated before he/she has missed an event.<sup>1</sup>

**V. DUTY TO NOTIFY.** It is the duty of each student to notify his/her building principal, or staff member designated by the principal for that purpose, if the student has engaged in prohibited conduct.

A. A student who is charged with prohibited conduct, or referred to Juvenile Court for alleged prohibited conduct, by a law enforcement officer, must notify his/her building principal or designated staff member within one week of that event.

1. This notification will not be considered an admission to prohibited conduct by the student or determination of guilt.

2. An administrative investigation may be commenced on the basis of the notification.

B. A student who has entered a guilty plea or been found guilty in District Court or Magistrate's Court, or who has been adjudicated delinquent or entered into an informal adjustment agreement in Juvenile Court, must notify his/her building principal within one (1) week of that event.

C. FAILURE TO NOTIFY A BUILDING PRINCIPAL AS REQUIRED IN PARAGRAPHS A AND B [OF THIS] SECTION WILL RESULT IN INELIGIBILITY FROM ALL EXTRA-CURRICULAR OR CO-CURRICULAR ACTIVITIES FOR 12 CALENDAR MONTHS FROM THE DISCOVERY OF THE [SIC][FAILURE] TO NOTIFY AND THE ALTERNATIVE TO INELIGIBILITY OF ENTERING INTO A RESTITUTION CONTRACT WILL NOT BE AVAILABLE.

(Appellee's Exh. 1, *Charles City High School Student Handbook 1995-96*, pp. 28-30.)

On August 7, 1996, Joseph and two other Charles City athletes were stopped by a policeman in Waverly, Iowa, and found to be in possession of alcohol. As a result, Joe was referred to

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<sup>1</sup> The rest of this section of the policy describes in detail the requirements of a restitution contract and how it is approved.

the Office of Juvenile Court Services on a complaint of possession of alcohol under the legal age in violation of Code section 123.46. Although the date of the actual incident was August 7, 1996, the date the written report was received and file stamped by the Juvenile Court office was August 13, 1996.

According to the terms of the good conduct policy, Joseph had engaged in "prohibited conduct" on August 7, 1996. This triggered the "duty to notify" requiring that "[a] student who is charged with prohibited conduct, or referred to juvenile court for alleged prohibited conduct, by a law enforcement officer, must notify his/her building principal or designated staff member within one week of that event." (Exh. 1, V.(A).) Failure to notify a building principal or other designated staff member as required results "in ineligibility from all extra-curricular and co-curricular activities for 12 calendar months from the discovery of the [sic] [failure] to notify and the alternative to ineligibility of entering into a restitution contract will not be available." (Exh. 1, V.(C).)

Joe failed to notify anyone as required. As a result, even though this was Joe's first violation of the policy, he was punished by ineligibility for one calendar year. His two friends reported their offenses to Mr. Stover within two or three days of August 7<sup>th</sup>. Even though Joseph attended an athletic picnic for the Charles City baseball team on August 8<sup>th</sup>, he failed to mention his violation of the policy to anyone - including the coach who was attending the picnic.

David Stover, the athletic director, testified that when the other two athletes reported their August 7<sup>th</sup> violations to him, he advised them to "let anyone else who was picked up with them know that they needed to report the offense ... no later than seven days after August 7, 1996." Joseph acknowledged that the boys had given him this message. (Bd. Findings, par. 6.) He stated at the District Board hearing that he had gone to the school once and asked for Mr. Stover. He was told that Mr. Stover was home and was given the home number. Joe then stated that he had called Mr. Stover "three times a day for six days." However, Joe could never reach Mr. Stover. Id. This contrasts sharply with Mr. Stover's version of events. He testified that if he was not taking phone calls at home, his answering machine was always operating. Mr. Stover further testified that during the week following August 7<sup>th</sup>, his wife took no messages from any individual identifying himself as Joseph Anderegg, and his wife is the only other occupant of his household.

On August 16, 1996, high school principal, Ned Sellers, received notification from the Second Judicial District Juvenile

Court Services that Joseph Anderegg had been picked up for possession of alcohol. After receiving this notice, Mr. Sellers informed Todd Forsyth, the Charles City coach, of the notice. Mr. Forsyth, on his own initiative, contacted Joseph Anderegg and advised him to contact Principal Sellers to advise him of this violation. Joseph Anderegg then contacted Mr. Sellers in his office at the high school nine days following the incident. When he talked with Mr. Sellers, Joseph indicated that he had tried to get a hold of Mr. Stover "two or three times" and was unable to do so. That was his excuse for not notifying the school within the seven-day period. (Bd. Findings, par. 10.)

Appellant, Gene Anderegg, raises two issues on this appeal: (1) that Joe did comply with the duty to notify within seven days of the "referral" to Juvenile Court authorities; and (2) that the punishment does not fit the crime.

## II. CONCLUSIONS OF LAW

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. 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). Appellant Anderegg has objected to the District's action on two grounds:

- (1) That the District Board did not properly interpret its own policy regarding "referral" to juvenile court for alleged prohibited conduct. Appellant maintains that the student is not "referred" to juvenile court until the date the written report of the incident is actually received by the juvenile court office. Since the report was not received until August 13, 1996, by the juvenile court office, Appellant maintains that Joe's duty to notify ran from August 13, 1996, instead of the date of the incident on August 7, 1996. (See, Exh. D, supra.)
- (2) Appellant also objects to the District's action on substantive due process grounds. He maintains that the punishment does not fit the crime. His argument is that if a student violates other provisions of the good conduct policy, like committing vandalism or engaging

in drug abuse, all the student has to do is admit the infraction and the student will be given a second chance.

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However, when his son violated the notification policy, there was no second chance. Appellant sees this as patently unfair. Especially since Joe has never had a previous violation of the policy.

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

In general, school discipline policies address student conduct which occurs on school grounds during the school day. This is because the school district's regulation of school conduct must bear some reasonable relationship to the educational environment. This principle was enunciated over 100 years ago in the case of Lander v. Seaver, 32 Vt. 114 (1859). But districts can also reach out-of-school conduct by student athletes and those involved in extracurricular activities. Because of the leadership role of these "stand-out" students, their conduct, even out of school, directly affects the good order and welfare of the school. Bunger v. Iowa High School Athletic Assn., 197 N.W.2d 555, 564 (Iowa 1972). The State Board has recently affirmed the ability of a district to impose sanctions on student athletes for the possession and consumption of drugs or alcohol during the summer. In re Jesse Bachman, 13 D.o.E. App. Dec. 363, 369 (1996).

Dave Stover testified that he has been director of athletics since 1969. The "notification" policy has been part of the good conduct code for the past 15 years. Mr. Stover personally explained the operation of the policy and how it would be enforced at student meetings which he conducted six times during the school year. The primary purpose of the notification requirement is to promote honesty in the administration of discipline. In other words, student self-reporting is a more reliable source of information about drug or alcohol infractions than waiting to receive reports of the infractions from law enforcement officials. Eligibility decisions can be made more fairly if they are not contingent upon the reports of these other agencies. The punishment for failing to report is severe, but that is the District's way to ensure that students will take their obligation seriously. If they do, the ability to enter into a restitution contract may

virtually negate all of the negative consequences of their conduct.

This does not appear to be an unreasonable exercise of the District Board's control of student conduct which is given to them under Iowa Code section 279.8. Especially when the students are given ample notice of how the policy works, as they were in

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this case. In terms of reasonableness, the hearing panel was left wondering why Joseph Anderegg failed to notify the appropriate school personnel about the August 7<sup>th</sup> incident, even after he had been reminded of this obligation by his friends. It would have been much easier for him to avoid the consequences of the policy with a phone call to his principal than by an appeal to the State Board of Education. Unfortunately for Joseph, this valuable lesson will not restore his eligibility to participate in extracurricular activities during his senior year in high school.

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 Charles City Community School District made on November 25, 1996, is hereby recommended for affirmance. There are no costs to this appeal to be assigned.

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DATE

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ANN MARIE BRICK, J.D.  
ADMINISTRATIVE LAW JUDGE

It is so ordered.

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DATE

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CORINE HADLEY, PRESIDENT  
STATE BOARD OF EDUCATION