

**IOWA STATE BOARD
OF EDUCATION
(Cite as 13 D.o.E. App. Dec. 100)**

In re Cory Grant	:	
	:	
Cindy Grant, Appellant,	:	
	:	
v.	:	DECISION
Ankeny Community School District, Appellee.	:	
	:	[Admin. Doc. # 3714]

The above-captioned matter was heard telephonically on February 19, 1996, before a hearing panel comprising Dr. Ron Riekema, consultant, Bureau of Food and Nutrition; Roger Foelske, administrative consultant, Bureau of Technical and Vocational Education; and Ann Marie Brick, J.D., legal consultant and administrative law judge presiding. Appellant Cindy Grant was "present" by telephone, unrepresented by counsel. Appellee Ankeny Community School District ["the District"] was also "present" on the telephone, in the persons of Superintendent Ben Norman; High School Principal Gary Ratigan; Athletic Director Fred Smith; Elaine Brazelton, resource teacher; and Assistant Principal Dennis Shaltanis. The District was represented by Mr. Jeffrey Krausman, of Belin Harris Lamson McCormick Law Firm in Des Moines, Iowa.

A hearing was held pursuant to departmental rules found at 281--Iowa Administrative Code Chapter 6. Appellants sought reversal of a decision of the Board of Directors [hereinafter called "the Board"] of the District made on December 4, 1995, which approved the administration's recommendation that Cory Grant receive 15 weeks athletic ineligibility for possession of chewing tobacco in the school building.

Authority and jurisdiction for the appeal are found in the Code Chapter 290 (1995).

**I.
Findings of Fact**

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

Cory Grant is currently a tenth grade student at the Ankeny High School. He participates in the extracurricular activities of track, cross-country and baseball. Because of his involvement in these activities, Cory is subject to Student Policy #503.60 -- Secondary Extracurricular Activities [hereinafter "the Good Conduct Code"]. In addition, Cory is also subject to Policy #502.20 [hereinafter "the Tobacco Policy"] which applies to all students in the district.

The District's "tobacco policy" prohibits the use or possession of tobacco in any form by any student on any district property" For students in grades 10-12, as Cory is, the first offense of the tobacco policy will result in an in-school suspension for a period of three days. The incident giving rise to this appeal was Cory's first offense of the tobacco policy.

In addition, however, Cory is subject to the "good conduct policy." That policy states that a student who participates in interscholastic athletics and related programs will be in violation of this policy if, among other things, the student violates "Board policy #502.20 -- use of tobacco and/or Board policy #502.30 -- alcoholic beverages and controlled substances at any time or any place". *Id.* #503.60 If the student is found in violation of these policies, the student will be declared ineligible to represent the District for the following periods:

1. First violation, if voluntarily admitted, three weeks of competitive events.
2. First violation, if not voluntarily admitted, substantiated by school investigation and/or found guilty in a court of law (five weeks of competitive events.)
3. Subsequent violation(s) fifteen weeks of competitive events.

A hearing was held on December 4, 1995 and the Board affirmed the administration's recommendation that Cory be found in a "first offense" violation of the tobacco policy and serve an in-school suspension for a period of three days. Additionally, the Board found that Cory had violated the extracurricular activities policy for the second time because of an earlier alcohol infraction. Therefore, he would be ineligible to represent the District in extracurricular activities for a period of fifteen weeks as provided by the "good conduct policy."

The incident giving rise to the finding of Cory's violation of both policies occurred on November 20, 1995, and the facts are

in dispute. The pertinent facts are as follows:

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Cory's Version

Cory was running late for school on November 20, 1995, and was literally jogging down the hall to his first period class. There were students standing in the hall as well as the classrooms because the bell had just rung. As Cory turned the corner from a main hall to one of the side halls, a fellow student and friend J.M. saw Cory and threw a can of chewing tobacco at him. Cory stated that it was a reflexive action to catch it rather than to let something hit him in the chest. So he caught the tobacco can, walked up to his friend and "just handed it back to him." The can was closed.

He then went into his classroom and headed toward the back to pick up an assignment because he had been absent from school the day before. Just then his friend J.M. came up to him and was very agitated. J.M. stated that a teacher had seen Cory "give the tobacco back." About the same time the teacher referred to by J.M., came into the first period class and stated to Cory's teacher that "one of your students needs to accompany me to the assistant principal's office. His friend, J.M., immediately stood and left the room. The teacher then came back into the room and said that another student would also need to come and that is when Cory got up and left the room to accompany J.M. and the teacher to Assistant Principal Shaltanis' office.

Mr. Shaltanis asked for the can of tobacco which J.M. handed to him. Both boys were sent to the in-school suspension room across the hall. Cory stated Mr. Shaltanis didn't check to see if either boy was chewing or had any tobacco in his mouth. Mr. Shaltanis stated that they had been in possession of the tobacco and were in violation of the school's policy and the administration would talk to the boys later about ineligibility.¹

About an hour later, Cory and his friend went back into Mr. Shaltanis' office to discuss the matter further. Cory told Mr. Shaltanis that he did not have "possession" of the tobacco since he had simply caught it rather than let it hit him in the chest and then returned it to J.M. within a few seconds. Mr. Shaltanis then asked Cory if he had touched the can and he said "yes". Cory stated that the teacher did not see everything that happened. In addition, Cory testified that J.M. had given two or three differ-

¹J.M. is also in extracurricular activities. He goes out for track, baseball, and football. Since this was J.M.'s first violation of the good conduct policy, he received only three weeks of ineligibility.

ent versions of what had happened both to his parents and to the athletic director. Cory stated that when J.M. told the story to his parents, he put Cory in J.M.'s position and put J.M. as the person who "simply caught the tobacco," so that he would not get in trouble with his parents.

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District's Version

Elaine Brazelton is a special education resource teacher at the high school. She is required to go to different locations within the building to assist students. On November 20, 1995, she was walking toward the science rooms in the main hallway. The bell had already rung and the hallway was empty. She testified that she didn't see anybody going down the hallway in front of her as she followed the same course that Cory described. She did see Cory and J.M. standing in the hallway in front of one of the science rooms, which door is adjacent to the door where she was going. She walked behind the boys and saw Cory hand the tobacco can to J.M. She tried to recall whether the can was open or closed and it was her impression that it was open.

Ms. Brazelton testified that she walked past the students before she realized what she saw. She walked into the other room and commented to the science teacher that "those students had tobacco!" She then walked into Cory's first hour science room and told the teacher that there were two students who should accompany her to Mr. Shaltanis' office. Ms. Brazelton testified that both the boys immediately got up and were very compliant as they accompanied her to the office. She entered the room only once, not twice, as Cory had testified.

Mr. Shaltanis, as the vice-principal, handles disciplinary matters. Ms. Brazelton reported to Mr. Shaltanis what she had seen. She told him that the students had tobacco and then she immediately went back to her class because she was late. Later that day, Mr. Shaltanis called Ms. Brazelton back to his office and asked her to recount exactly what she had seen. She believed she saw an opened can because she recalled seeing the "rich black color," but had seen no evidence that either boy had used the tobacco.²

The District's position is that both boys were found in possession of tobacco within the meaning of the policy. As a result, both boys were given and have served a three-day in-school suspension. The differing ineligibility that applied to

²There was a lot of testimony regarding whether the can was black on the bottom and could have been closed and appeared open and so forth. These facts are not relevant to a finding of the violation since the policies prescribe possession as well as use of the tobacco products.

J.M. and Cory resulted from the fact that Cory had had a previous violation of the good conduct policy.

Ms. Grant brought this appeal because she felt that her son was treated unfairly. This was based on the fact that the teacher who testified before the Board could not have seen everything. In addition, Ms. Grant objected to a statement made

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by a Board member which occurred after the hearing, but before the vote to the effect that "the Board needs to back their own no matter what." Ms. Grant took this to mean the teacher would be believed over the student.

II. CONCLUSIONS OF LAW

Pursuant to the grant of authority provided by Iowa Code chapter 279, all school districts have adopted rules to govern the conduct of their students. Section 279.8 grants the school board authority to make rules "for its own government and that of the pupils. ..." Section 279.9 requires boards to adopt rules that prohibit and punish students for the possession of tobacco or the use or possession of alcohol, beer, or controlled substances. Iowa Code §§ 279.8, 279.9 (1995). However, two Iowa Supreme Court cases suggest that it is implicit that a school board's authority is generally limited to the times, places, and persons over which it has jurisdiction, specifically school hours, school activities, and school grounds. See, Bd. of Dir. of Indep. Sch. Dist. of Waterloo v. Green, 259 Iowa 1260, 1267, 146 N.W.2d 854, 859 (1967); Bunger v. Iowa High School Athletic Assn., 197 N.W.2d 555, 563-64 (Iowa 1972). There is an exception to this general principle and this exception has been the subject of considerable litigation over the past 20 years nation-wide. This exception is the "good conduct code" which refers to school rules that attempt to govern out-of-school conduct as well as in-school conduct by students who are engaged in extracurricular activities.³

There has been no challenge to the authority of the Board to adopt these policies or to implement them for the violations that have been found to occur.⁴ Appellant's contention on appeal is

³See, Bartlett, Larry D., The Court's View of Good Conduct Rules for High School Student Athletes, 82 Ed. Law Rep. 1087 (July 29, 1993). This commentary presents a review of 17 court decisions involving good conduct rules adopted in 12 states, involving students in several different sports and activities.

⁴In contrast to the penalties for violation of the Good Conduct Code recently reviewed in In re Heather Kramme, 13 D.o.E. App. Dec. 89 (1995), the Ankeny Code appears eminently reasonable on its

that the facts from her son's perspective, conflict with the facts as found by the Board. It is her belief that the Board adopted an incorrect version of the facts to the detriment of her son.

We disagree. We find that the District's version of the facts is more credible under the circumstances. The version of the facts as reported by Ms. Brazelton has never varied from the time it was first reported to Mr. Shaltanis to the testimony she

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gave before the hearing panel on appeal. The boys' versions have varied considerably. Their versions have not only varied between the District's, but between each other as well. There is a good reason why they might want to provide a more self-serving fact situation than that presented by Ms. Brazelton. However, as a resource teacher who did not even work with these students, she would have no motivation to report anything but what she observed. Given the fact that there is sufficient evidence to find that Cory "possessed" the tobacco on school premises in violation of both the tobacco policy as well as the good conduct policy, we have no choice but to recommend that the Board's decision be affirmed.

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

III. DECISION

For the foregoing reasons, the December 4, 1995, decision of the Board of Directors of the Ankeny Community School District, to uphold the administration's recommendation that Cory Grant be found in violation of the School's tobacco and good conduct policies is hereby recommended for affirmance. There are no costs of this appeal to be assigned.

DATE

ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

DATE

BETTY DEXTER, VICE-PRESIDENT
STATE BOARD OF EDUCATION