

IOWA STATE BOARD
OF EDUCATION

(Cite as 13 D.o.E. App. Dec. 89)

In re Heather Kramme :
David Kramme, :
Appellant, :
 :
v. : DECISION
 :
Rockwell City-Lytton :
Community School District, :
Appellee. [Admin. Doc. # 3724]

The above-captioned matter was heard on March 13, 1996, before a hearing panel comprising Don Helvick, consultant, Bureau of School Administration and Accreditation; Klark Jessen, consultant, Office of Director; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding. Appellant David Kramme and his wife, Sandi, were present in person, represented by James L. Sayre, Esquire, of Des Moines. Appellee, Rockwell City-Lytton Community School District [hereinafter "the District"], was present in the person of Dwayne Cross, Superintendent and was represented by David D. Gidel of Gray & Gidel, Rockwell City, Iowa.

An on-the-record form of hearing (stipulated facts and oral argument) was held pursuant to Department of Education rules found at 281 Iowa Administrative Code 6. Appellant seeks reversal of a decision of the board of directors [hereinafter "the Board"] of the District made on February 7, 1996, which found their daughter guilty of violating the District's "good conduct" policy and rules prohibiting the possession of tobacco products by students. Briefs were filed by counsel for both parties. Authority and jurisdiction for the appeal are found at Iowa Code § 290.1.

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.

Heather Kramme is currently a twelfth-grade student at the Rockwell City-Lytton Community District. She turned 18 on

October 10, 1995. Heather is a good student involved in the extracurricular activities of speech and drama; band and golf. Because of her involvement in these activities, Heather is subject to the "good conduct code" which was disseminated to all students as part of the **1995-96 Rockwell City-Lytton High School Parent/Student Handbook**. The conduct code contains the minimum standards affecting all extracurricular activities and remains in effect for "a 365-day-year-round period of time." Id. at 18. This code provides in pertinent part as follows:

If a student:

- A. pleads guilty to, or is found guilty of, or
- B. admits to an officer of the law or school personnel, or
- C. *is seen by a coach, teacher, or other school personnel, or*
- D. is placed on formal or informal probation for any of the reasons stated below:
 - 1. knowingly performs illegal acts, except minor traffic violations, or performs illegal acts against school employees or their possessions
 - 2. *possession or use of any form of tobacco,*
 - 3. possession, use, or being under the influence of alcohol,
 - 4. illegal possession or use of controlled substances as defined by the Iowa Code, and possession of drug paraphernalia including, but not limited to pipes, 'bongs,' 'coke spoons,' etc., said student shall be considered ineligible to represent the school district for a period of time as described below.

FIRST OFFENSE CONSEQUENCES: After a student meets any of the criteria of a through d above and the declaration of ineligibility by the Principal, the student will be ineligible for 70 calendar days (10 weeks) of activities. Additionally, if the student fails to comply with the NCARF Counselor's (or approved alternative) recommendations, he/she must miss an additional one week of activities.

Id. at 19.

The second, third, and fourth offenses provide for progressively more severe restrictions: "168 calendar days (24 weeks); 730 calendar days (2 years)" and permanent disbarment from representing the School District for the 4th offense respectively.

At approximately 10:05 p.m. on Saturday, January 27, 1996, Mr. Dennis Simon, a high school instructor, was waiting in the check-out line behind Heather Kramme at the Casey's General Store in Rockwell City, Iowa. He saw Heather purchase a smokeless tobacco product commonly referred as "Skoal" or "Redman." Mr. Simon reported this to High School Principal Randy Martin. Principal Martin advised Heather's parents in writing, on February 1, 1996, that in his opinion, Heather's behavior violated the conduct code. He further stated that the School District would implement the first offense provisions of the conduct code beginning that day. As a result, Principal Martin further advised Appellants that Heather would be ineligible to represent the District in public performances for a period of seventy (70) calendar activity days and that she needed to enroll in and complete a substance abuse evaluation course. At that time, Heather Kramme was involved with band, speech contest, and drama. Because of her infraction of the good conduct policy, Heather was informed that she would be ineligible to represent the District in these activities from February 1, 1996, through April 10, 1996.

David Kramme appealed the imposition of the "first offense consequences" to the District Board on February 7, 1996. After a meeting in closed session, the District Board upheld the ineligibility imposed by Principal Randy Martin on February 1, 1996, through April 10, 1996.¹

On February 13, 1996, Appellant filed an affidavit of appeal with the Iowa Department of Education "contesting the priority and legality of the determination of his daughter's ineligibility." In particular, his affidavit of appeal seeks the following relief:

- (1) The ineligibility for extracurricular activities be immediately lifted,
- (2) The student record be expunged of the incident and the Appellant be made whole,
- (3) In addition, the Appellant seeks assurances to be free from retaliation from school administration and/or faculty for exercising the rights of appeal.

Id. (Appellant's Affidavit of Appeal).

¹In the one-page summary of the District Board's Meeting on February 7, 1996, the Board Secretary wrongly reported that there was no action taken by the Board when they came out of the closed session. Both parties agreed that the Board President came out of closed session and stated that the decision of Principal Martin would not be disturbed. The Hearing Panel, however, was concerned that the Board did not follow its own written appeal procedure which states "the Board shall consider the evidence presented, including statements by the Appellant's legal counsel, if any, make written findings of their decision within five (5) days of the hearing and mail a copy to said Appellant. Student Handbook at 20. Since the tape of the closed session provided by the District was practically unintelligible, written findings of fact were even more important to assist the Hearing Panel in determining the Board's position on these facts.

By the time this appeal could be heard on March 13, 1996, Heather Kramme had missed performing in the school play and was ineligible to participate in a major speech contest. Her next immediate concern is that she not be prevented from competing in the "large group band contest" which is scheduled to occur on March 23, 1996.

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. § 279.8 grants the school board authority to make rules "for its own government and that of the pupils. . . ." § 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, Board of Directors 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.²

The Iowa Supreme Court has decided what has been described as the leading court decision on the issue of the legal authority of schools to promulgate good conduct rules.³ According to Bunger v. Iowa High School Athletic Assn., 197 N.W.2d 555 (Iowa 1972), there are two principles which must be examined. The first is whether the rule in question is invalid as beyond the permissible scope of school rules and the second principle is whether the rule is reasonable. Id. at 564 (emphasis in original).

²See, Bartlett, Larry D., The Courts' 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.

³82 Ed. Law Rep., supra at 1089.

A. SCOPE

The first principle involved in considering the validity of the school rule is its scope. The rule must pertain to conduct "which directly relates to and affects management of the school and its efficiency." Bunger at 563.

A student misconduct in the classroom obviously affects the operation of the school; this behavior of a child at home within the family clearly is beyond the concern of the school. Between those extremes lie the cases which more or less affect the operation of the school, and the task is to determine on which side of the line particular conduct falls.

Id. at 564.

As far as school board policies and rules that reach beyond school grounds, school hours and school activities, the Court in Bunger had this to say:

The present case involves the advantages and enjoyment of an extra-curricular activity provided by the school, a consideration which we believe extends the authority of the board somewhat as to participation in that activity. The influence of the students involved is an additional consideration. Standout students, whether in athletics, forensics, dramatics, or other intra-scholastic activities, play a somewhat different role from the rank and file. Leadership brings additional responsibility. These student leaders are looked up to and emulated. They represent the school and depict its character. We cannot fault a school board for expecting somewhat more of them as to eligibility for their particular activities.

We have no doubt that school authorities may make a football athlete ineligible if he drinks beer during the football season. No doubt such authorities may do likewise if the player drinks beer at other times during the school year, or if he then possesses, acquires, delivers, or transports beer. Probably a player shown to have actually violated beer laws drinks summer on vacation, whether convicted in criminal court or not, can be rendered ineligible by school rule. All of these situations have direct bearing on the operation of the school, although the bearing becomes progressively less direct.

...
 In dealing with ineligibility for extra-curricular activities as contrasted to expulsion from school altogether, and with the students who represent the school in interscholastic activities as contrasted to less active students, school rules may be broader and still be reasonable.

Bunger, 197 N.W.2d at 564-65. (Emphasis added.)

The Court thereafter disapproved the rule in that case as unreasonable and beyond the permissible scope of school rules on the basis that the connection between the school and Bunger's situation was too tenuous. It was "... outside of football season, beyond the school year, no illegal or even improper use of beer. We cannot find a 'direct' effect upon the school here. Id. at 564.⁴

Is the connection between Heather's conduct and its effect upon the school too tenuous to come within the scope of the Board's authority? We think not. We are persuaded by Appellee's argument that there is a "nexus" or rational relationship between the conduct (purchasing tobacco) which the School District seeks to prescribe and its affect on the operation and management of the school:

In the present case, the student's behavior took place during the school year and during the period of activity in which she desired to participate. The event occurred in a busy convenience store frequented by numerous students and the general public. Non-enforcement of this rule would effectively condone the use of tobacco products when there is an obviously substantial and direct relationship between the operation and management of the school and the student's behavior in possessing an unhealthy and unwholesome prohibited product. ... The current national, state and local emphasis in deterrent of tobacco use by youth as an unhealthy and immoral activity makes inherent the direct connection between this particular student's behavior and the meaningful operation and management of the school.

Appellee's Memorandum at 3.

⁴But see, In re Joseph Fuhrmeister v. W. Liberty Comm. Sch. Dist., 5 D.O.E. App. Dec. 335 (Fuhrmeister's loss of eligibility upheld because of criminal conduct which occurred during football season and involved convictions for the illegal possession of beer.)

Appellant contends that because Heather is 18 years old that her purchase and possession of the tobacco product on a Saturday, outside of school grounds, was not an illegal act.⁵ While that fact lessens the negative impact of Heather's conduct, it does not remove it from the jurisdiction of the good conduct code. Iowa Code §279.9 requires a school board to enact rules which prohibit "the use of tobacco ... by any student of the schools." ... Id. (emphasis added). A "student" is described as a resident who is between the ages of five and twenty-one years who has not graduated from a four-year course in an approved high school or its equivalent. Iowa Code §282.6 (1995). Consequently, a school policy can prohibit certain conduct of a "**student**" involved in extracurricular activities even though the student's conduct may be "legal" under civil statutes.

The important question concerns whether there is a "nexus" between the prohibited conduct and its effect on the operation and management of the school; not whether the activity is illegal.⁶ The rule violation occurred (1) during the scheduled season of the student's proposed extracurricular activity; (2) the prohibited activity applied only to those students who elected to exercise the privilege of extracurricular participation; (3) the student admitted the prohibited conduct; (4) the prohibited conduct involved conduct which is universally recognized as unhealthy and unwholesome to the extent that the condoning of such conduct would have a direct effect upon efficient and meaningful development of student character and example to younger students.

For these reasons, we are compelled to conclude that the rule prohibiting the purchase or possession of tobacco by Appellant's daughter on a weekend, off school premises, is valid in its scope.

B. REASONABLENESS

The second principle that must be addressed in determining the validity of a good conduct rule is its "reasonableness." Bunger at 564. More specifically, the inquiry in this case is whether the punishment fits the crime. While our intention is not to undermine the authority the School Board to establish good conduct rules, we take issue with the harshness of the penalties imposed by this policy. The first offense "consequence" suffered by this student for purchasing a tobacco product is 70 days or 10

⁵See, Iowa Code §453A.2: "A person under 18 years of age shall not smoke, use, possess, purchase, or attempt to purchase any tobacco, tobacco products, or cigarettes."

⁶Although the impact of the prohibited conduct on the management and operation of the school would certainly be greater if the conduct is illegal, the conduct does not have to be illegal to be within the scope of the Board's policy.

weeks of ineligibility. While good conduct rules generally have an escalating level of punishment for repeat offenders, this policy contains one of the longest periods of ineligibility for a first offense that we have seen. "It is common to have a short period of ineligibility for the first offense, such as six weeks, a longer period for a second offense, such as one year, and ineligibility for the rest of the school experience for a third offense." Bartlett, supra 82 at Ed. Law Rep. at 1089.

We agree with Appellant that the ten week period of ineligibility is unduly harsh under the circumstances of this case. Under this policy, the same penalty (as far as extracurricular ineligibility is concerned) would apply to the student who smokes marijuana in the school rest room, or is seen by a teacher buying chewing tobacco in Disneyland. As the State Board has previously said, "[t]his is the pitfall of having predetermined punishments. It means that everyone committing a violation will be treated the same -- a worthy goal -- but it does not take into consideration extenuating circumstances, contrition, mistake, or the subtle factual differences in every case." In re Korene Merk, 5 D.o.E. App. Dec. 270, 275 (1987).

The finding of "reasonableness" is difficult to determine in the abstract. Ten weeks may not be unreasonable in every case, but under these facts, we find that it is. Heather is being deprived of extracurricular activities that impact on her academic opportunities for college, such as speech and music. As of March 13, 1996, the date of this hearing, Heather has served six weeks of ineligibility and has been deprived of participation in a school play and a major speech contest. Under these circumstances, we find it unreasonable to require another four weeks of ineligibility.

Therefore, we conclude that the imposition of ten weeks of ineligibility for the first offense of the good conduct policy is unreasonable and requires immediate reinstatement of Heather Kramme to eligibility for all extracurricular activities effective March 14, 1996.

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

III. DECISION

For the foregoing reasons, the decision of the Rockwell City-Lytton Community School District's board of directors made on February 7, 1996, upholding Principal Randy Martin's finding

of ineligibility for a first offense of the District's good conduct policy is hereby affirmed in part and reversed in part. The decision to find Heather Kramme in violation of the good conduct policy is recommended for affirmance; but the first offense "consequence" is recommended for reversal. Any evidence or documentation of the incident or the sanctions imposed should be expunged from Heather Kramme's school records. Costs of this appeal, if any, under chapter 290, are hereby assigned to Appellee District.

3/15/96
DATE

Ann Marie Brick
ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

3-15-96
DATE

Corine A. Hadley
CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION