IOWA STATE BOARD
OF EDUCATION
(Cite as 9 D.o.E. App. Dec. 69)

In re Bryan Campbell and Craig McClure	:	
Mr. and Mrs. Bob Campbell and Mr. and Mrs. Joel McClure, Appellants,	:	DECISION
v.	:	
Mt. Ayr Community School District, Appellee.	:	[Admin. Doc. #3124]

The above-captioned matter came on for hearing on July 2, 1991, before a hearing panel comprising Billie Jean Snyder, consultant, Bureau of School Administration and Accreditation; Milt Wilson, consultant, Bureau of School Administration and Accreditation; and Kathy L. Collins, legal consultant and administrative law judge at the designation of the Director of Education. Appellants were present in person and were represented by Mr. Montgomery Brown of Cook, Gotsdiner, McEnroe & McCarthy, Des Moines. Appellee Mt. Ayr Community School District [hereafter the District] was present in the person of Superintendent Philip Burmeister and was represented by Mr. Jeffrey Krausman of Belin Helmick Lamson McCormick, P.C., Des Moines.

A mixed evidentiary and on-the-record hearing was held pursuant to departmental regulations found at 281 Iowa Administrative Code 6. Jurisdiction for the appeal lies in Iowa Code chapter 290.[1] Appellants seek reversal of a decision of the board of directors [hereafter the Board] of the District made on April 8, 1991, finding their sons guilty of violating the District's "good conduct" policy and rules prohibiting the possession of alcohol by students. Briefs were filed by counsel for both parties following the hearing.

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.

In January, 1991, juniors Bryan Campbell, Craig McClure, and two other students were in rehearsal for a one-act play entitled Inner Circle, in preparation for performance at state speech contest. They were under the supervision of Ms. Betsy Jones, speech and drama teacher at Mt. Ayr High

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[1] Appellants also cite Iowa Code ch. 17A as a basis for jurisdiction in this case; however, that chapter ("Iowa Administrative Procedures Act") applies only to action by state agencies, not governmental subdivisions and municipalities such as school boards. See Iowa Code §17A.2(2)(1991); Board of Dir. v. Banke, ___ N.W.2d ____ (Iowa 1991).

School. The script called for a surprise gift of a bottle of liquor (of any variety). The students were in charge of obtaining their own props for speech contest. The cast (particularly Craig and Bryan) did not like the looks of the "big, gaudy champagne bottle" in the prop room, so the two boys went to the McClure home and asked Mr. McClure if they could use a bottle for the play. He gave them an older, but opened, bottle of vermouth.

The students used the vermouth bottle as a prop in at least one rehearsal, and in contest performances at Creston and Council Bluffs. They never told Ms. Jones that the bottle contained real vermouth, and she never asked or checked the bottle.[2] The judge of the contest at Creston talked to the students about the propriety of using a vermouth bottle after the contest, but no one asked or volunteered that the bottle contained alcohol.

Ms. Jones did not attend the Council Bluffs contest as she was ill, but sent a substitute supervisor, Mr. Dodge, an English teacher. The same bottle was used. When they returned to the high school late that evening, Bryan and Craig left the bottle along with other props in the auditorium stage area because Mr. Dodge did not have a key to the prop room. They forgot all about the bottle until February when a pops concert was held at school. The boys saw the bottle again backstage during a school rehearsal and decided to move it so no one in the band would drink or otherwise tamper with it. (The reason they didn't just take it back to the McClure residence was that Ms. Jones was contemplating having the cast perform Inner Circle for the entire student body in the spring.) Instead of taking the bottle to the prop room, Bryan climbed the ladder backstage and placed the bottle on the catwalk, just over the edge. Again, apparently, the boys forgot about the bottle.

On or about March 8, Ms. Jones was in the auditorium rehearsing the spring play, Vanities, with her three-member cast. She recalls a problem with the lighting which caused her to climb the ladder to the catwalk area. After she unlocked the grid cage and as she stepped over the edge and onto the catwalk, she tripped and fell over an open box. The cardboard box (approximately 1 1/2 feet by 1 foot deep) tipped over and its contents spilled onto the catwalk, a 5-feet wide overhead walkway over the stage. Ms. Jones discovered the bottle of vermouth, a partial bottle of wine, and two six-pack "stringers" of beer, one full (not cold) and one with some empties and some still full. There was also a fur piece on the catwalk, part of the costuming for another play presumably.

Because the box tipped over, Ms. Jones was unable to determine later whether the vermouth bottle had been in the box with the other alcohol. Bryan Campbell testified that when he put the bottle on the catwalk, he just reached up and set it over the edge. Bryan is 6'3" and would not have had to unlock the grid to reach over the edge to place the bottle there. He was unaware of any box or anything else on the walkway.

Ms. Jones opted to hand the bottle of vermouth down to a student who was on the sound crew of Vanities and who was backstage. Ms. Jones asked her to take the bottle and put it under her coat. Although Ms. Jones

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[2] In previous productions, especially where the liquid was to be poured (here it was not), Ms. Jones had replaced the liquor or filed an empty liquor bottle with ginger ale, cola, or colored water.

opted not to bring down anything else with her, the student testified that Ms. Jones remained in the catwalk area for another five to ten minutes. She also testified that the grid was locked prior to Ms. Jones going up the ladder to the catwalk.

During rehearsal, Bryan Campbell came into the auditorium and, having heard somehow of her discovery, allegedly remarked to Ms. Jones that he was aware she had found "our bottle." Ms. Jones reportedly said, "Oh, is that yours?" Bryan Campbell replied affirmatively.

Following the rehearsal, at about 11:30 or 11:45 p.m., Ms. Jones went back up the ladder to the catwalk. At this time she could not locate the full six-pack of beer, but she did find the partially empty six-pack and the bottle of wine. In taking those items down the ladder, she testified, Ms. Jones dropped the bottle of wine, breaking it and spilling the contents which she cleaned up herself. She asked another staff member in the building what she should do about her discovery, and it was suggested she talk the situation over with Mr. Ron Scott, the guidance counselor. This she did the next day, Saturday.

On Monday, Ms. Jones and Mr. Scott confronted Bryan Campbell who admitted that the bottle contained vermouth, but reminded Ms. Jones that it had been used for the play. He told them the whole story of how he and Craig had brought the bottle from Craig's home with Mr. McClure's knowledge and assistance, and that he had hidden the bottle on the catwalk to keep other students from it. Bryan denied any knowledge or awareness of other alcohol. Ms. Jones and Mr. Scott called in the principal, Mr. Carroll Taylor, and the process was apparently repeated. Thereafter all three of the staff met with Craig McClure who confirmed Bryan's account and who also denied any knowledge of the beer and wine.

Based upon the boys' admissions related to the vermouth, Mr. Taylor found Bryan and Craig to be in violation of Board policy 505.9, the "good conduct" rule, regarding students in possession of alcoholic beverages. The rule reads as follows, in pertinent part:

> . . . Any student in grades 7-12, including a graduating senior, who is observed and reported by a staff member or a law enforcement official, or admits to, or at a judicial or administrative proceeding is found guilty by substantial evidence to have:
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> 1. possessed alcoholic beverages with knowledge, intent and control thereof. . . is in violation of the Good Conduct Rule.
>
> . . .
>
> A student who has been found to have violated the Good Conduct Rule shall be penalized as follows:
>
> FIRST OFFENSE:
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> The student shall be given the choice of:
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> 1. seeking professional/educational counseling . . . . No suspension from extracurricular activities will occur.
>
> 2. being suspended from all extracurricular activities from 4-6 weeks. . . .

Appellee's Exhibit A.[3] Due process procedures are stated to be

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[3] The two boys opted for the drug education program, which they both completed prior to this hearing.

afforded, but without specifying where an appeal is taken following an initial determination of a violation.

In this case, Mr. Taylor, the principal, wrote letters to Craig and Bryan's parents on March 18 after initially informing them on March 11 of the violation. His letter stated in part, "As you know, Miss Jones brought to Mr. Scott's and my attention the fact that there was a cardboard box on the 'catwalk' in the Auditorium containing vermouth, beer, wine, and some empty beer cans." Appellant's Exhibit 4. Both sets of parents then began a concerted effort to determine exactly what the boys were accused of possessing. A follow-up letter from Mr. Taylor dated March 20 to Mr. and Mrs. McClure reiterated the scenario, but discussed further the implication from his first letter that the "box . . . contained" vermouth and other liquor. Appellant's Exhibit 5. Mr. Taylor acknowledged in this letter that Ms. Jones was unable to determine at the time of her discovery whether the box had in fact "contained" the vermouth. Id.

At some point, Superintendent Burmeister affirmed the finding by Mr. Taylor of the boys' violation of the Good Conduct Rule, and both sets of parents sought review by the Board. Many calls were made and letters written back and forth. Superintendent Burmeister wrote a memorandum to the directors on March 27 relaying the request and summarizing the facts of the situation. The wording of the letter further upset Appellants. Specifically, Mr. Burmeister wrote

> . . . The parents[']interpretation that the district must prove the students did not intend to cosume [sic] the alcohol goes beyond state law, board policy or good judgement [sic]. The act of bringing to school a considerable amount of alcohol is sufficient to act on the good conduct standard. (The boys knew it was wrong or would not have taken the effort to hide the vermouth.) Other alcohol was found with the bottle of vermouth that had been consumed. Neither of the boys admitted any knowledge of the other alcohol even though it was found with the bottle of vermoth [sic].

Appellant's Exhibit 8 at p. 1. Appellants viewed this communication as exacerbating the nature of the accusations. It was apparent to the hearing panel that all Appellants wanted the administration to do at the time was to cease making references to the other alcohol Ms. Jones says she found and stick to the vermouth bottle and whether the boys' admission that they brought it to school and later hid it on the catwalk constituted a violation of the rule. However, each communication continued to include the reference to other alcohol -- implying (from Appellants' viewpoint) that their sons had a problem with alcohol and were lying about the beer and wine. As Mr. Campbell testified, he believes the discussion of the additional alcohol impacted on the Board's decision; he argues it was prejudicial. As Mrs. Campbell testified, she supported the enforcement of the rule initially, but took a more defensive posture "when the implications and insinuations came in."

To make matters worse, Ms. Jones complained of unexplained incidents of vandalism and harassment which began to occur in the spring. The occurrences appeared directed at Ms. Jones. Although no formal

accusations were made that Bryan and Craig were responsible, their parents felt that many were making this assumption or connection. During this time also, nominations and selections for National Honor Society took place. Neither of the boys was elected into NHS, a process that usually involves teacher recommendation or negative recommendation, commonly referred to as "blackballing."

Appellants' request for an open hearing at a board meeting was honored on April 8, 1991. Appellants were present without legal representation, but the boys did not attend. The Board's attorney, Mr. Jim Pedersen, was present. Superintendent Burmeister presented the administration's evidence, allowing oral statements from Mr. Scott (counselor) and Mr. Taylor, principal. At the hearing Appellants attempted to prove their sons were not guilty of intent to consume the alcohol and that other play productions (Annie particularly) had utilized banned substances, specifically a cigarette and a cigar. The possession of tobacco would be a violation of the same Good Conduct Rule.[4] (Ms. Jones testified before this hearing panel that in those instances, she had made the decision to use the real (tobacco) product because rubber cigars and candy cigarettes did not look real; therefore, she had "approved" the use of contraband for the play production. Appellants point out that the rule does not exempt possession "if a staff member approves" or "possession for purposes of school-sponsored speech or drama productions.")

Ms. Jones did not appear at the Board hearing. Her version of events was related by Mr. Scott and Mr. Taylor. Superintendent Burmeister presented the arguments for the District. (Taped Exhibits of April 8, 1991 meeting.) It is noteworthy that the "facts" as related at the open Board meeting by Scott, Taylor, and Superintendent Burmeister differed somewhat from the facts as delivered under oath by Ms. Jones at this hearing. (For example, Superintendent Burmeister made several references to the fact that the alcohol on the catwalk had been covered up by a costume, stating that someone apparently took great pains to hide the liquor because they must have gotten the costume from the costume room and made a special trip to cover up the alcohol. There was literally no evidence suggesting that occurred. In fact, Ms. Jones could not state with any degree of certainty when she had last been on the locked catwalk. That fur robe could have been there for months. The warm beer and wine could have been there for a long time as well.)

Following the presentation of arguments by both sides at the Board meeting, the Board voted to go into closed session. The minutes do not reflect the provision of the Iowa open meetings law that was relied upon in going into executive session. The Board's attorney was present with the directors in closed session. After 50 minutes, the Board came back into open session and Board President Mike Warin read a prepared statement: "After deliberation it is the position of the Board of Education to uphold the administration in the application of the Good Conduct Rule regarding the possession of the alcohol by Bryan Campbell and Craig McClure and the appeal is denied." Previous Record, Board Minutes

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[4] Another rule also prohibits specifically the possession of tobacco, alcohol or controlled substances on school grounds. Appellee's Exhibit A, under "Penalties," referenced "Code 502.3." This rule was not invoked against the students in this case. The penalty would have been suspension or expulsion. Id.

of April 8, at p. 2. The directors did not take a voice or hand vote on the appeal; no motion was made. Findings of fact and conclusions of law were written and signed by the Board president on April 26, and were mailed to Appellants.

Appellant Jan McClure, mother of Craig, is a member of the Board. Appellant Teri Campbell, mother of Bryan, is a Spanish teacher at the District high school. Both felt, understandably, extraordinarily awkward in their challenge to the actions of the administration and the Board. Craig McClure is likely in the top ten percent of his class with a 3.91 grade point average. He is also active in a number of school activities. Bryan Campbell had a 3.7 grade point average as a junior last spring, and is also active in sports, music, and plays. He has no history of disciplinary problems and testified that he does not have a problem with alcohol. Craig McClure was not present at this hearing due to working out of state.

We specifically find as fact that Bryan and Craig possessed a bottle of vermouth with knowledge but with no intent to consume. We also find no evidence to support a finding or even an allegation that the boys possessed any other alcohol, even as the term "possessed" is used in the Rule.

II.
Conclusions of Law

Iowa law requires school boards to adopt rules that prohibit and punish students for the possession of tobacco or the use or possession of alcohol or beer or any controlled substances. Iowa Code §279.9 (1991). It is implicit that this duty extends to school grounds and school activities off school grounds, although that limitation is not stated. Schools can also adopt reasonable rules that deny participation in extracurricular activities for students whose off-school-grounds or on-school-grounds conduct does not make them worthy of representing the school and the respect of other students who often look up to those standout students. Bunger v. Iowa High School Athletic Ass'n, 197 N.W.2d 555, 572 (Iowa 1972); In re Joseph Fuhrmeister, 5 D.o.E. App. Dec. 335 (1988).

In this case, the administration had three options: enforce the on-school-grounds ban on possession (with the severe consequences of suspension or expulsion); enforce the Good Conduct Rule, as they did; or do nothing because these circumstances do not cry out for enforcement: the boys admitted the possession of the vermouth bottle solely for the purposes of the speech contest.

The policy and Rule were written specifically without "intent to consume" language. There is both a legal and practical reason for this. From the practical perspective, proof of intent to use or consume contraband substances is difficult whether the accuser is in a criminal court setting or sitting in the principal's office. Consequently, the law allows for proof of knowledge and intent to be drawn by inference from the facts and circumstances surrounding the incident.

One of the purposes of due process is to give a person accused the opportunity to tell his or her side of the story to guard against "unfair

or mistaken findings of misconduct . . . . ." Goss v. Lopez, 419 U.S. 565, 569 (1975). Due process, it should be noted, is not required for every deprivation instigated by a public school district. It applies whenever the liberty or property interest at stake is more than "de minimus." Id. See also Brands v. Sheldon Comm. School Dist., 671 F.Supp. 627 (N.D. Iowa 1987). Procedural due process can, however, be extended by the school even in situations where the Constitution would not require it. In such cases, the school cannot forego the notice and adequate opportunity for hearing before an impartial decision maker once it has been extended. The point of this discussion is to say that, in constitutional terms, Craig and Bryan's deprivation would probably be deemed "de minimus" by the courts in terms of their property interest in facing a loss of four to six weeks of eligibility. (This is certainly not true of facing a suspension from school for like duration, or an expulsion.) However, the District in its rules and regulations promised due process in the application of the Good Conduct Rule. Thus, the District is bound to give it.

What we believe is really at stake in this case is not a property interest but rather the students' liberty interest. This has been defined as one's interest in his or her own good name and reputation which may be implicated if a governmental entity significantly besmirches one's character such that future deprivations or losses (such as the ability to get into college or to be considered for employment) are likely. Board of Regents v. Roth, 408 U.S. 564 (1972). The nature of Appellants' statements regarding their reluctant acceptance of the violation based on possession of the vermouth but indignation at the implication that the boys were responsible for the wine and beer or the harassment and vandalism allegedly directed to Ms. Jones, convinces us that this hearing would not likely have been sought except for Appellants' concern over their sons' good names and characters.

Is an admission sufficient to activate the rule? Or should the administration have taken into consideration the proffered reason for the possession, if believable? Frankly, the hearing panel is squarely facing a dilemma -- as perhaps the Board faced in its decision making. There is an expression in jurisprudence that "hard cases made bad law." It means that in our system of justice -- in the courtroom or in quasi-judicial administrative proceedings in the board room -- we try to be as blind as possible to who violated the law/rule, or for what reason. We try to apply the law consistently. This is the doctrine of stare decisis; once a precedent is announced, we follow it unless we have good reason to deviate from it. If we were to take every case separately and apply the rule of law as it fit the peculiar circumstances, there would be no general rule of law. The "hard cases" like this one, if decided on the basis of emotion, would make "bad law" or bad precedent.

The expectant father who speeds down the street racing to the hospital with his wife in labor may legitimately be stopped by the police. Some law officers might ticket the driver, applying "the letter of the law" irrespective of justification. Others might issue a warning under the same circumstances. Others might lead the car to the hospital with lights and sirens, permitting continued speeding with active encouragement. In any event, the anxious father broke the law. The first call belongs to the police officer. If the officer issues a ticket, the driver can later appeal to the court. Can there be an abuse of the court's discretion in finding the man guilty of speeding in the face of an admission to that effect? Our reviewing courts say no. As long as there is evidence to support a finding of guilt, there is no abuse of discretion.

This we as a panel are constrained to hold in this case. The boys used poor judgment in bringing real alcohol to school. While they may have exhibited a sense of responsibility in hiding the bottle on the catwalk to avoid band students taking it for some less legitimate purpose than that for which it was brought to school, they fell short of taking full responsibility when they failed to take it home or advise Ms. Jones of the need to put it in the prop room, or of its actual contents. Unfortunately, we conclude that the finding of a violation of the Good Conduct Rule does not constitute an abuse of discretion as it is based on substantial evidence -- the boys' admission. We would hold the same in other circumstances such as a very young student unwittingly bringing a weapon to school for "show and tell." If the rule means anything, it should be enforced consistently. In the alternative, a school district could choose to exempt possession in cases of staff permission, or for theatrical purposes, but they did not do so in this appeal. As to the students' liberty interest at stake in this case, we also find that their reputations have not suffered the type of damage that warrants reversal. See generally Moore v. Hyche, 761 F.Supp. 112 (N.D. Ala. 1991)(Student had no due process liberty or property interest in membership of "Beta Club," akin to National Honor Society).

Does our conclusion mean that there were no errors or mistakes on the part of the District? No. Initial responsibility for supervision by Ms. Jones would have eliminated this situation entirely. Although the students in speech contest activities are more independent of their teacher than those in all-school productions, the sponsor's authority and responsibility is not reduced merely because students are required to obtain their own props. Ms. Jones abdicated that responsibility when she failed to ascertain the contents of the bottle. (Moreover, from a dramatic perspective, as Mr. Wedemeyer the contest judge pointed out, a bottle of vermouth would hardly be a very appropriate surprise gift suitable for drinking a toast. The students, given their alcohol naivete, should have been advised that another form of liquor or wine would be a more appropriate surprise gift for toasting purposes.)

Second, should Ms. Jones have questioned Craig Campbell further on the night she found the bottle and he acknowledged its being "ours"? Would she have dismissed it entirely or perhaps with only an admonition if there had been no other alcohol on the catwalk? While we can answer these questions in our own minds, we cannot fault Ms. Jones for her concern, a concern that spread to the guidance counselor, school administration and Board, about students and alcohol. Hindsight would perhaps dictate that the boys did not intend to consume it, flaunt it around school, or otherwise abuse it. But it was her call to make in the the first case. In that respect she is not unlike the officer who opted to give the expectant father a speeding ticket. She could have issued a warning, or she could have taken it to the prop room after emptying it, but she didn't. It seems obvious to us her reason for not doing so is due to the presence of the other alcohol. It clearly made the situation appear more serious.

Following Ms. Jones' decision to present the facts to Mr. Scott and ultimately the principal, Mr. Taylor could also have exercised discretion in not finding the boys in violation of the policy because of the circumstances under which it was brought to school. He did not. It appears clear from the testimony on the record before us that no one exercised much discretion after that. The superintendent supported the

principal's decision, and the Board supported administration. It may have been due to the positions held by the parties (one teacher, one Board member, two outstanding students), or perhaps because the case involved alcohol. This we cannot know. Our own "bottom line" could have been the Board's and administration's as well: the students violated the letter of the rule. Sometimes it doesn't seem fair, but the alternative (a rule prohibiting possession with intent to consume) would not send the same strong anti-alcohol and anti-drug message to the students, and would be much more difficult to enforce. See In re Amy A. Cline, 2 D.P.I. App. Dec. 16 (1979)("possession" must include knowledge of the nature of the thing possessed and knowledge of being in possession, but need not include intent to use or consume).

We do fault District officials in one respect and that is their frequent referrals in writing and orally (in the superintendent's presentation to the Board at the April 8 hearing) to the other alcohol found. As we stated above, there is not only insufficient evidence to support a finding that the beer and wine were Bryan's and Craig's, but also there was insufficient evidence to make an allegation of that nature. Often innuendos are perceived as allegations. If the boys' admission of possession of vermouth was enough evidence on which the Board could conclude a violation occurred, other extraneous material was patently unnecessary. Again, had that reference or insinuation not occurred repeatedly (along with allusions to the harassment of Ms. Jones for which there was also no evidentiary basis to presume a connection) we do not believe the Appellants would have gone to the Board, let alone appealed to the State Board of Education.

Other concerns raised by the panel members lead to our advice that Ms. Jones, Mr. Scott, and Mr. Taylor should have conferenced on how to deal with this issue before confronting the boys or at least before reaching a decision. These kids were come down on by three or perhaps four individuals. Is enforcement of the Good Conduct Rule the initial responsibility of the activity sponsor or the building administrator? Secondly, has the school determined that the alcohol education program in which the boys participated is appropriate for youth? Finally, we wondered whether, in light of past use of tobacco products in dramatic productions, the District should make an exception for the stage. If not, clearly Ms. Jones or her successor should be consistent in her reading of the policy.

The Appellants raised four issues in their appeal which we shall address briefly.

1. The Board's final order occurred in violation of the open meeting requirements of Iowa Code chapter 21.

2. The previous, unpunished stage use of contraband (tobacco) leads to the conclusion that the District and Board have engaged in "selective prosecution" in violation of Fourteenth Amendment guarantee of due process of law.

3. The "enlargement" of the allegations against Craig and Bryan resulted in a due process violation.

4. Due process was also violated in that the Board was not an impartial decision maker due to ex parte communications between the superintendent and some of the directors or officers of the Board.

As to Appellant's first contention, the State Board is powerless to enforce or find any violations of Iowa's open meetings laws. See Iowa Code §21.6(1)("Suits to enforce this chapter shall be brought in the district court for the county in which the governmental body has its principal place of business."). We do note, for the benefit of the Board and Board secretary in the future, that Iowa law requires "[t]he vote of each member on the question of holding the closed session and the reason for holding the closed session by reference to a specific exemption under this section shall be announced publicly at the open session and entered in the minutes." Iowa Code §21.5(2)(1991)(emphasis added).

With respect to Appellant's second argument, selective enforcement, we find an insufficient basis on which to conclude intentional selective enforcement occurred. Testimony evidenced the fact that administration was not even aware of previous violations of the Good Conduct Rule during play rehearsals and productions until the facts were presented during the course of the Campbell and McClure appeal. It appears, moreover, that with the exception of Inner Circle, Ms. Jones had been careful to use non-alcoholic beverages in plays calling for alcohol, at least where the script called for pouring and drinking the beverage.

As to Appellant's third argument, there is simply no proof that the references to the additional alcohol served as the basis for the Board's decision. We know the Board heard the additional evidence, but there was no proof -- only speculation -- that it played a part in its decision. To connect the fact to the conclusion Appellants urge would be for us to engage in the very same behavior they object to by the administration.

Finally, we wholehandedly reject the argument that a school board's chief executive officer is prohibited from communicating with the Board ex parte (without the other party to the case being present) orally or in writing prior to the conducting of a hearing. While we have already indicated our displeasure with the Superintendent's including the extraneous evidence of other alcohol (and yet found it doesn't rise to the level of a due process violation), we still cannot conclude that the pre-hearing communications from Superintendent Burmeister to the Board or individual directors results in an unconstitutional combination of functions ("prosecutor" of the case and advisor to the Board/decision maker) in violation of due process. See Keith v. Community School Dist. of Wilton, 262 N.W.2d 249 (Iowa 1978). See also Swab v. Cedar Rapids Comm. School Dist., 494 F.2d 353, 354 (8th Cir. 1974)(A claim of impartiality requires a showing of actual rather than potential bias.); Hibbs v. Board of Educ. of Iowa Central Comm. College, 392 F.Supp. 1202 (N.D. Iowa 1975)(Knowledge of the situation in advance of the hearing does not raise a presumption sufficient to support a finding of partiality.).

We thank the parties and their attorneys for a well presented case and briefs. Any motions or objections not previously ruled upon are hereby denied and overruled.

III.
Decision

For the foregoing reasons, the decision of the Mt. Ayr Community School District board of directors made on April 8 and reduced to writing on April 26 is hereby affirmed. Costs of this appeal under Iowa Code section 290.4 are hereby assigned to Appellants. Appeal dismissed.

10-11-91
DATE

Ron McGauvran
RON McGAUVRAN, PRESIDENT
STATE BOARD OF EDUCATION

October 1, 1991
DATE

Kathy L. Collins
KATHY L. COLLINS, J.D.
LEGAL CONSULTANT
AND ADMINISTRATIVE LAW JUDGE