IOWA STATE BOARD
OF EDUCATION
(Cite as 9 D.o.E. App. Dec. 265)

In re Chris Gruhn, Mick House, Kurt Levetzow, Chad Miller, Mike Frahm, Marc Luett, and Pat Brentley	:	
Mr. & Mrs. Gruhn, Mr. & Mrs. Richard House, Mr. & Mrs. Bob Levetzow, Mr. & Mrs. Dale Miller, Mr. & Mrs. Robert Frahm, Mrs. Jodi Luett, Mr. & Mrs. Bill Bentley, Appellants,	:	
v.	:	DECISION
East Central Community School District, Appellee.	:	[Admin. Doc. #3182]

The above-captioned matter was heard on May 15, 1992, before a hearing panel comprising June Harris and Paul Hoekstra, consultants, Bureau of Instruction and Curriculum; and Kathy L. Collins, legal consultant and administrative law judge as designated by Dr. William L. Lepley, director of education. Appellants were present in person, except for Mr. Bill Bentley, as were their sons, except Mike Frahm and Marc Luett, and they were not represented by counsel. Appellee East Central Community School District [hereafter the District] was present in the persons of Superintendent James House, High School Principal Warren Amman, basketball coach Tom Hamrick, and Alyce Bales, board member.

Appellants sought review of a decision of the board of directors [hereafter the Board] of the District made on February 20, 1992, to impose athletic eligibility sanctions on the above-named students for violation of the school's "Good Conduct" rule for athletes.

A mixed evidentiary and on-the-record hearing was held pursuant to departmental regulations found at 281 Iowa Administrative Code 6. Authority and jurisdiction for the appeal is found at Iowa Code chapter 290.

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 the appeal before them.

The District Board has a policy that outlines its expectations of students who represent the school in activities:

> Policy 502.6 - GOOD CONDUCT RULE -
> Students who participate in extracurricular 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 extracurricular activities and other school-sponsored activities, must conduct themselves in accordance with board policy, "Student Conduct" throughout the calendar year.
>
> Students disciplined under the good conduct rule shall receive appropriate due process in concert with the nature of the misconduct.
>
> . . .
>
> A. The possession, use, delivery, transfer, or sale of alcoholic beverages, tobacco, or controlled substances, or possession of drug paraphernalia by students while in school or at school-sponsored events, is expressly forbidden.
>
> . . .

Appellant's Exhibit 2, Student Handbook, at p. 14.

Penalty for a first offense [1] by a student "found to have violated" the good conduct rule is four weeks of ineligibility. The penalty may be reduced to two weeks if the student agrees to meet with the Student Assistance Program Coordinator/Team and to attend a diversion group carried out by a certified alcohol or drug abuse counselor or, in the case of tobacco violations, agrees to 40 hours of school or community service. Id. at p. 15.

The Appellants' sons were all members of the District's varsity basketball team. In February, some two weeks before the end of the basketball season, Coach Tom Hamrick received information from a third party that implicated members of his team in drinking alcoholic beverages, specifically beer, during the season and even prior to a

[1] The handbook covers first, second, and third offenses but fails to state whether the offenses are cumulative over one's 7-12 or 9-12 school career, or only within one school year.

game. This third party also gave the coach a list of names of students purportedly involved. On Monday, February 10, following practice Coach Hamrick began individually questioning the boys whose names appeared on the list given to him. The coach wrote down his questions so that each student would be asked the same thing. He spoke to eight members of the quad.

Two seniors admitted drinking before a game. Six of the eight denied the accusation; three of those six also initially denied ever having drunk alcohol but later changed their answers to yes. One student consistently denied any involvement with alcohol but shortly thereafter quit the team anyway. Seven players, sons of Appellants, lost their eligibility for having been found to have violated the good conduct rule. Their parents were contacted by phone on Tuesday and Wednesday and informed of the violation and penalty.

The District and Appellants are in basic agreement with the above stated facts. Their disagreement arises over what questions were asked and, of course, over the fairness or unfairness of applying the penalty in the absence of admissions by the players. They also question whether the students should lose eligibility for having consumed alcohol at any time in their lives.

Coach Hamrick testified that he doesn't routinely interrogate his players regarding alleged good conduct rule violations, but when presented with something more concrete than a mere rumor, he will investigate. In this case, when the third party gave him the information, including a written list of names, he felt he had a sufficient basis to look into the allegation. He also testified that the individual who gave him the list was credible and, as for improper motives, that the person also was not in a position to profit or benefit from the students' ineligibility.

One of the boys admitted to drinking during the season and told his coach that he believed there was beer on the bus before the game against Olin. Another boy denied drinking "before the Marquette game." Others denied drinking before a game but were not able to deny having consumed alcohol. Coach Hamrick stated under oath that his two questions to the boys were specific: "Have you ever drunk alcohol prior to a game?" and "Have you ever drunk alcohol during the season?" Several of the boys testified that the second question was devoid of a specific time reference. Consequently, as the lips of some of them had touched alcohol at some point in their lives, they eventually answered yes.

Carol Frahm's son Mike is on heart medication for a condition known as Wolf-Parkinson-White syndrome. After taking the medicine, his system is affected negatively by alcohol, caffeine and sugar. Mrs. Frahm believes that Mike, knowing the potentially dangerous effects of alcohol to his body while he's taking his medicine would not drink, although she knows he has drunk caffeinated beverages while on the medication.

Chris Gruhn was one of the students who initially denied any use of alcohol when first questioned. However, when he shared with his parents the conversation he had with his coach, including his recollection that the second question was "Have you EVER drunk alcohol?", they decided together that Chris must answer truthfully yes because he had taken a sip of his father's beer when he and his dad were working in the garage once, and he had also consumed alcohol with the family at Christmas on one or more occasions. He denies ever drinking with his friends or in any situation outside those mentioned with his parents' knowledge.

Mick House testified that Mr. Hamrick called him in and told his about the list, then asked if he'd been drinking before a basketball game. Mick said no. Mick then testified that Coach Hamrick's next question was, "Are you telling me that you've never had a drink?" to which Mick replied, "No. I can't really say that." Mick swore at hearing that he has never had more than a sip of beer.

In response to questions from the hearing panel, Coach Hamrick stated that some of the parents of his players have not been happy with the basketball program for the past two or three years. He also testified that this incident was not the first time he had been advised that his team, or some of them, had been drinking prior to a game. Perhaps three years ago, someone in the crowd approached him before tipoff and said that rumors were flying in the stands that some of the players had been drinking before the game. He then individually had each player breathe into his face. He could detect no odor of alcohol from any of them. Some of these students were on that team at the time.

Only two of the seven students who lost two weeks of eligibility returned to finish the season. Two more came for practice during their ineligibility period then quit the team, and the balance quit the team after the investigation and served their ineligibility in other sports.

In sum, the testimony and evidence revealed that two students admitted drinking before a game and four of the other five admitted to some involvement with alcohol but apparently were not sure of what they were admitting.

The good conduct rule is in effect in the District all year. Appellant's Exhibit 2 at p. 16 (Item I.D.). Because of this fact, we view as relatively inconsequential the question of whether the coach specified "during the season" or "at any time" in his investigation.

II.
Conclusions of Law

Appellants have raised four issues. First, they collectively contend that the policy and rule applied to the good conduct expectations of student athletes require verification, and that there was no verification as to several of the students. As expressed by Appellant Don Gruhn in his opening statement, "There was no violation, so there could be no 'verification' of a violation."

Second, there was no parental involvement; specifically Appellants object to coach's and administration's questioning of their sons without notifying the parents. Third, they contend the boys' due process rights were violated. Fourth, an issue of self-incrimination was alluded to, presumably because Appellants are firm in their belief that the second question posed to each boy was open-ended and covered their entire lives to that point. Appellants also take issue with Coach Hamrick's consistent refusal to produce the list of names or reveal the identify of the list's author.

A student facing disciplinary charges in the public schools has some constitutional rights. Goss v. Lopez, 419 U.S. 565 (1975).

Specifically, for short-term (two weeks or less) exclusion from the right to attend school, a student is entitled to "oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story." Goss, supra, at p. 581.

Since Goss was decided, the courts have had several opportunities to determine whether the same constitutional procedural guarantees are due a student facing a loss of athletic participation. The current trend is that the student does not. This is due to the fact that a loss of school attendance right is wholly different from the loss of the conditional right or privilege of participating in extracurricular activities.

For example, the court in Brands v. Sheldon Comm. School wrote,

> ...The critical question is whether the [student] has a legitimate claim that he is entitled to participate and not a "mere expectation" that he will be permitted to do so. ...
>
> A clear majority of courts addressing this question in the context of interscholastic or intercollegiate athletics has found that athletes have no legitimate entitlement to participate.

Brands v. Sheldon Community School, 671 F.Supp. 627, 630-31 (N.D. Ia 1987)(citations omitted)(emphasis in original).

A school can of course go beyond the lack of constitutional requirements and offer due process, which the District has promised by its Handbook statement. Accord Brands, supra at 631 ("If any property interest of the [student] is involved in this case, it is a property right created by the [school district's] own Disciplinary Policy and Administrative Rules.") It is then bound to provide "due process." See Hewitt v. Helms, 459 U.S. 460, 471-72 (1983).

Appellants were not specific in their allegation that the District failed to provide due process, but the record is clear that procedural due process was followed. Each boy was called in and asked one or more questions regarding his involvement with alcohol. Whenever a boy denied such involvement, he was told of the list and given an opportunity to speak to the charge before the penalty was imposed. This is all that the District promised by its assurance that the students would receive due process.

Perhaps Appellants believe "due process" requires that each student's parent be contacted prior to the investigative interview. Such is not the law of public schools, although the police must contact a minor's parent or surrogate before interrogating him or her for purposes or criminal charges being filed. Perhaps Appellants believe the boys should have had a full-blown trial with attendance rights of counsel, cross-examination, or the opportunity to produce witnesses in their own behalf. Again, such is not the law of the public schools.

More likely Appellants object to the failure of Coach Hamrick to identify his "informant" or produce the list for Appellants and their son to examine. The courts that have addressed this issue are in near unanimity that even a student facing expulsion from school, with the loss of credit, social activities, and stigma carried with expulsion, does not have a right to demand that the school produce an unidentified informant. See, e.g., Paredes by Koppenhoefer v. Curtis, 364 F.2d 426 (6th Cir. 1988). This is particularly true when the witness or informant is a student. Cooper, D.J., and Strope, Jr., John L., "Long-Term Suspensions and Expulsions After Goss," 57 Ed. Law Rep. 29, 36 (Jan. 18, 1990); Brewer by Dreyfus v. Austin Indep. Sch. Dist., 779 F.2d 260, 263 (5th Cir. 1985). The law does not impose a requirement that school officials, the coach in this case, produce witnesses or a copy of the information that led to the investigation, the list in this case.

Clearly, some of the Appellants are concerned that although their sons denied the primary accusation (consuming alcohol prior to a game), and either denied or hedged on the second question (either whether they had drunk alcohol during season or ever), they were still subjected to a loss of eligibility. We know of no legitimate source for their expectation that if a student denies an accusation, the student cannot be punished. Surely each Appellant, as parent, has confronted his or her child with evidence of some household offense and was met with denial. Except for Bil Keane's ghostly "Family Circus" character "Not Me," we can't imagine a parent satisfied that "no one" dented the car fender, drank the last of the milk, broke the vase, lost the remote control, failed to feed the dog, or stayed out past curfew. In the criminal and civil context, if a denial meant no punishment could be imposed, defendants would never plead guilty and no plaintiff could ever win a damage award.

Some of the Appellants seemed to take the position that the boys were found in violation of the rule on the basis of the list alone. That is simply not true. The list launched the investigation, it was not the end of the investigation.

As to the boys' claims now that they were answering "yes" to a question of whether or not they had ever in their lives drunk alcohol, there is a problem with that version of events. These young men were not held to a one word "yes" or "no" response. By their answer they could indicate the circumstances under which they had consumed beer or other alcoholic beverages. Or they could have asked a clarifying question of the coach or principal. It is simply not reasonable for a student to feel that he or she could not clarify an answer. "Sure, my dad offered me a sip of his beer in the garage last summer. Is that what you mean?" or "At Christmas, my parents allow me a glass of wine with dinner." Coach Hamrick testified that he feels confident that the players whom he questioned knew exactly what he was asking.

Moreover, the way the policy is written, the coach need not have limited his question to consumption before a game or during season. The policy is in effect all year. Clearly the coach and principal would have had a tough call if they were convinced that the only alcohol a student athlete had consumed was in the privacy of his own home with his parents' knowledge, or in a ceremonial context such as a champagne toast at a family wedding. However, the policy and rule do not provide exceptions for alcohol supplied by a student's parent. This fact may make some decisions tough, but it is probably a wise policy considering the number of ill-informed or unenlightened parents who believe it's o.k. to throw a party for their minor children and their friends and supply a keg or other alcoholic beverages.

The role of determining whether an accused is guilty of the charge falls on the decisionmaker, in this case Coach Hamrick and Mr. Amman, the principal. Their jobs entailed assessing the credibility of the students and the evidence against the students. This same role is ours in this appeal. Assessing a person's credibility or believability, in conjunction with a review of the circumstances, includes assessing the possible motives of the persons providing the information and the motives of the accused students in their responses. Coach Hamrick testified that the third party who offered the information and list had nothing to gain by coming forward. Certainly kicking seven or eight members off his team was not in the coach's best interests, so his motive to manufacture evidence or be predisposed to believe his players were lying to him in their denials is missing.

On the other hand, an accused person usually does have a motive for denying the truth of the accusation: avoidance of penalty. Certainly the two students who readily admitted their guilt of the violation are to be commended for their honesty. In practice, the District rewards those persons who admit to a violation by reducing the penalties.

Frankly, Coach Hamrick and Mr. Amman were in a much better position to judge the guilt or innocence of the team members than are we. They know who is close friends with whom, who are the partying or experimenting types of kids, and to a certain extent who are the

trustworthy and unfailingly honest students. If these school officials chose to believe the accuser and not the accused, their findings are worthy of deference.

Certainly mistakes can be made. Who among us has never been punished for something a sibling or friend or enemy did? It happens. The purpose of an investigation is not to eliminate all mistakes but to reduce the likelihood that misjudgments are made by gathering the facts and looking, listening, and assessing the circumstances as a whole. Parents are understandably often biased to believe their children's version of events, but simply because the student denies an accusation and the parents believe their children does not lead to the conclusion that someone else might disbelieve them, or that they are not guilty.

Our role on appeal is to correct obvious errors. We will not overturn a board decision absent proof that the decision was made arbitrarily, capriciously, without basis in fact, upon error of law, without legal authority, or unless it constitutes an abuse of discretion. In re Jerry Eaton, 7 D.o.E. App. Dec. 137, 141 (1989). We find none of these circumstances to be present here.

A good conduct rule, increasing the board's scope of authority over students who represent the school, is a permissible exercise of school board power. Bunger v. Iowa High School Athletic Assn., 197 N.W. 2d 555 (Iowa 1972); In re Jason Clark, 1 D.P.I. App. Dec. 167 (1978); In re Joseph Fuhrmeister, 5 D.o.E. App. Dec. 335 (1988). Prohibiting the use of alcohol or other drugs, including tobacco, by student athletes is a valid subject for a good conduct rule. It not only emphasizes the school's expectations that its standout students are good role models for others, its validity has roots in health and safety concerns as well as consistency with the school's educational mission to discourage drug experimentation, use, or abuse by students.

The "finding" of a violation implies the very circumstances that occurred in this case. The student need not be "convicted" nor even arrested for an alcohol, tobacco, or other drug offense. The term "finding" denotes some type of investigation leading to a conclusion by the fact-finder or decision maker.

Parental involvement is always encouraged between the school and the home, but Appellants' expectations that they should have been contacted before their sons were questioned is not only unrealistic but also inconsistent with the proper function of school officials in disciplinary matters. Appellants were notified, as is their right under the policy, in due course, either the day following the initial questioning (Tuesday) or Wednesday.

In sum, there is no basis, save the parents' belief in the innocence of their sons, for reversing the decision in this case. While it is possible that one or more students were wrongly accused, no amount of additional process can cure the human element inherent in decision making.

III.
DECISION

For the foregoing reasons, the decision of the East Central Community School District board of directors made on February 20 upholding the imposition of sanctions and ineligibility for Appellants' sons is recommended for affirmance. Costs of this appeal, if any, are hereby assigned to Appellants pursuant to Iowa Code section 290.5.

August 11, 1992
DATE

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

It is so ordered. Appeal dismissed.

August 20, 1992
DATE

Ron McGauvran
RON MCGAUVRAN, PRESIDENT
STATE BOARD OF EDUCATION