



TERRY E BRANSTAD GOVERNOR

DEPARTMENT OF EDUCATION  
AL RAMIREZ, ED D DIRECTOR

DECLARATORY RULING

(Cite as 5 D.o.E. Dec. Rul. #48)

October 14, 1994

Mr. Thomas J. McClinton  
529 College  
Storm Lake, IA 50588

Dear Mr. McClinton:

On May 18, 1994, the Department of Education received your Petition for Declaratory Ruling which you filed "first, as a parent of a son who is a junior at Storm Lake Community Schools and second, as a board member ... ."

Your request concerns the validity of a student activities code<sup>1</sup> adopted by the Storm Lake Community School District Board of Directors.<sup>2</sup> You stated that your primary concern was whether the District could enforce a student conduct code as broad in its application as this one.

I.  
QUESTIONS PRESENTED

In order to comport with the applicable facts and law, your concerns were distilled and rephrased, as follows:

**Does a school board have the authority under Iowa Code § 279 to promulgate a "student activities code" ("good conduct rules") which:**

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<sup>1</sup>503.7 was adopted by the Storm Lake Community School District Board of Directors after three readings on February 14, 1994.

<sup>2</sup>Petitioner waived all standard timelines associated with the Declaratory Ruling in the correspondence which accompanied his petition on May 18, 1994.

1. provides the same penalties for student participants as it does for student spectators of student activities<sup>3</sup>;
2. applies equally to in-season and off-season activities during the academic year and summer months; and
3. provides as a penalty suspension from participation or attendance in all extracurricular activities. (Emphasis added.)

The student activities code adopted by the Storm Lake Community School District Board of Directors provides in pertinent part as follows:

#### STATEMENT OF PURPOSE

The Student Activities Program has been established in the Storm Lake Community School District for the purpose of providing educational experiences that are not normally gained in the traditional classroom. "Student Activities Program" shall be defined to include, but is not limited to, the following activities: athletics, cheerleading, dance squad, intramurals, music groups, speech activities, dramatics, club and organization public events and dances/parties.

Student participants involved in the activities program are expected to maintain high academic and social standards as representatives of our school and community. A student participant shall be defined as a student who is currently involved in any of the programs associated with the Student Activities Program. Participation in any of the programs associated with the Student Activities Program shall be defined to include, but is not limited to, the following: member of a performing group, spectator, member of an auxiliary group or event worker. With the privilege of participation in our activities programs comes the responsibility of meeting certain criteria. We want the best students/citizens representing our school/community. The Code has been established to enable the student to make informed choices in order to maintain standards set forth by the school district. The ultimate outcome

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<sup>3</sup>"Student Activities Program" shall be defined to include, but is not limited to, the following activities: athletics, cheerleading, dance squad, intramurals, music groups, speech activities, dramatics, club and organization public events and dances/parties.

is the development of appropriate self discipline. The Board of Education believes inappropriate student conduct causes material and substantial disruption to the school environment, interferes with the rights of others or presents a threat to the health and safety of students, employees and visitors on school premises. (Emphasis added.)

#### REGULATIONS

The following regulations for the Student Activities Program have been adopted by the Board of Education of the Storm Lake Community School District and shall apply to in-season and off-season activities during the academic year and summer months. Each student involved in the Student Activities Program must, as a participant, meet the eligibility requirements set forth by the school and will be subject to the penalties of the Code when he or she has violated the Code or does not meet the requirements of eligibility. Students who are of the legal age (18 or older or graduated) are not exempt from the conditions outlined in this Code. Administration of the Code will be based on the purposes and intention of the Code. (Emphasis added.)

#### VI. Penalties for Code Violations

##### Option A

First Offense - twenty-eight (28) calendar days suspension from participation in all extra-curricular activities, beginning on the day that the student informs the school administration of their choice of Option A or B.

\*Second Offense and any offense thereafter - fifty-six (56) calendar days suspension from participation in all extra-curricular activities, beginning on the day that the student informs the school administration of their choice of Option A or B.

\*Applies if second offense and any offense thereafter occurs within a twelve (12) month period after a first offense.

##### Option B

First Offense -

A. Seven (7) days suspension and

- B. Agrees to obtain an immediate professional assessment from a school approved treatment/counseling agency and agrees to follow the recommendations of the assessment counselor and signs release of information forms between the school and the assessment agency.

Second offense and any offense thereafter within a twelve (12) month period after the first offense.

- A. Twenty-eight (28) days suspension and
- B. Agree to obtain an immediate professional assessment from a school approved treatment/counseling agency and agrees to follow the recommendations of the assessment counselor and signs release of information forms between the school and the assessment agency.

VIII. Special Provisions

- D. If it becomes knowledge to school officials that a student has participated in school activities after he or she has knowingly been found in violation of the Code, that student may be declared ineligible for a twelve (12) month period with the beginning date on the day that the suspension is finalized.

VII. Rules for Those Deemed Ineligible

- B. All students are subject to the penalties for violating the Code. Students involved in more than one activity simultaneously lose eligibility for all activities which occur during their time of ineligibility. (Participation in all extra-curricular activities whether they be athletic, music, speech, dances, etc.)

II.  
DISCUSSION

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 (1993).

The most prevalent rules which have been the subject of considerable litigation over the last 20 years are the so-called "good conduct rules."<sup>4</sup> These "good conduct rules" usually refer to school rules that attempt to govern out-of-school conduct, as well as in-school conduct by students who are engaged in extra-curricular activities. Id.

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.<sup>5</sup> 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 second is whether the rule is reasonable. Id. at 564 (emphasis in original).

To be within the scope of the local school board's authority, a valid school rule must pertain to conduct that has a direct relationship to the management and operation of the school. Id. at 563-64. The Court observed that a rule regarding student conduct in the classroom clearly impacted the operation of the school, but that misbehavior in the child's home was a family, not a school concern. The issue of good conduct rules fell somewhere between the two. Id. at 564. That is because:

School authorities operate in a narrower area than do, say, city councils. The latter may ordain laws covering a variety of acts in the community. The former [school officials] are only concerned, however, with the school and its proper operation, and their authority is correspondingly more circumscribed. [C]onduct outside school hours and school property may subject a pupil to school discipline if it directly affects the good order

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<sup>4</sup>See, 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 and students in 12 different sports and activities.

<sup>5</sup>82 ed. Law Rep. 1089, supra.

and welfare of the school. [T]he connection between the prohibited acts and the discipline and welfare of the school must be direct and immediate, not remote or indirect.

In re Bryan Campbell and Craig McClure, 9 D.o.E. App. Dec. 69; In re Joseph Fuhrmeister, 5 D.o.E. App. Dec. 335, 339-40, citing Bunger v. Iowa High School Athletic Assn., 197 N.W.2d 555, 563-64 (Iowa 1972).

The rule at issue in Bunger was adopted by the State Boys' Athletic Association. The rule prohibited the use or "transportation" of alcoholic beverages, and an interpretation of the rule broadened "transportation" to include knowingly being in a vehicle carrying alcoholic beverages. Although the rule was adopted by the Iowa High School Athletic Association, it was the local school officials who were required by Association by-laws and constitution to enforce the rule. Bunger at 557.

During the summer months, William Bunger, a 16 year-old outstanding football player, and three other minors were stopped by a highway patrolman who discovered a case of beer in the car. Although the other minors pled guilty, Bunger pled not guilty and the charges against him were dropped. When school authorities learned of the incident, Bunger was declared ineligible for the first six weeks of the football season. Id. at 558-59.

Bunger challenged the authority of the Association to promulgate the "beer rule". The Court in Bunger held that though local school boards had the legal authority to adopt good conduct rules, they did not have the power to delegate their rulemaking authority to a state athletic association. Id. at 559-61. As a result, the rule was declared invalid because it was adopted by the state athletic association, not the school board. The Court could have disposed of the case on this issue without reaching the merits of the good conduct rule. However, the parties asked for more guidance in the promulgation of these types of rules and the Court obliged. Id. at 563.

In the process of offering its guidelines to school boards for the promulgation of good conduct rules, the Court reaffirmed the statutory powers of local school authorities to control the conduct of their students.

And here it may be suggested that the court should hesitate to interfere with the regularly constituted school authorities in their management of the scholars which are placed under their charge. The Legislature is expressly authorized to provide for the educational interests of the state in such manner as shall seem best and proper. See Article 9 of Section 15 of the State Constitution. And in

the exercise of this power school districts have been created, authorized to have exclusive jurisdiction in all school matters over their respective territories. Code § 2743. It is further provided that the affairs of each school corporation shall be conducted by a board of directors. Code § 2745. And the directors are, as already indicated, expressly authorized to make and enforce rules. It was plainly intended, therefore, that the management of school affairs should be left to the discretion of the board of directors, and not to the courts, and we ought not to interfere with the exercise of discretion on the part of the school board as to what is a reasonable and necessary rule, except in a plain case of exceeding the power conferred.

Bunger at 563, citing Kinzer v. Directors of Independent School District of Marion, 129 Iowa 441, 444-445, 105 N.W. 686, 687. The Court quickly emphasized, however, that judicial intervention would occur "if the action of school officials involves 'a plain case of exceeding the power conferred.'"

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 on summer 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.<sup>6</sup>

The Bunger guidelines make it clear that athletes can be held to a higher standard of behavior, at least as far as eligibility for activities is concerned, than students not involved in activities. Bunger at 564. It would appear that students who are not active in school activities cannot be reached by such

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<sup>6</sup>But 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.)



rules because their conduct would not have an effect on the operation and management of the school. See, Bunger at 565. Other courts have agreed with Iowa in accepting the concept that the status of being a "standout" student through participation in extracurricular activities extends the student's responsibility beyond regular school hours. Courts also agree that standout students can be held to a higher standard of conduct than "rank and file" students. See e.g., Schail v. Tippecanoe County School Corporation, 864 F.2d 1309, 1320-21 (7th Cir. 1988).

Applying the foregoing guidelines to the Storm Lake Student Activities Code, your questions will be answered in the order in which they were presented.

**Does a school board have the authority under Iowa Code Chapter 279 to promulgate a "student activities code" which provides the same penalties for student participants as it does for student spectators of extra-curricular activities?**<sup>7</sup>

The answer to your question is: "No." The fatal flaw in the student activities code "Statement of Purpose" is the District's interpretation that all students of the District are participants of the activities program and therefore subject to the same rules and penalties associated with Policy 503.7.<sup>8</sup>

"A student participant shall be defined as a student who is currently involved in any of the programs associated with the student activities program. Participation in any of the programs associated with the student activities program shall be defined to include, but is not limited to, the following: member of a performing group, spectator, member of an auxiliary group or event worker. With the privilege of participation in our activities programs comes the responsibility of meeting certain criteria. . . ."

Student Activities Code #503.7, Statement of Purpose.

The Board's Statement of Purpose is well-intentioned, but it reaches far beyond the permissible scope of school rules.

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<sup>7</sup>As described in Footnote 3, supra, student activities are defined to include, but are not limited to, athletics, cheerleading, dance squad, intramurals, music groups, speech activities, dramatics, club and organization public events and dances/parties.

<sup>8</sup>See Statement of Purpose, reproduced in part at page 2 herein.

Although a student's "inappropriate" conduct may cause "material and substantial disruption to the school environment," not all student conduct affects the school equally; nor do all students engaging in the same conduct affect the school to the same degree. The law requires a direct relationship between the student's behavior and the operation and management of the school. Bunger, 197 N.W.2d at 564. Any "inappropriate" student conduct subject to regulation by these rules must have the "direct effect" described by the Bunger guidelines. In other words, as the visibility of the student and the magnitude of the infraction escalate, so does the degree of impact on the school as well as the authority of the school board to mitigate that impact.

This rule makes no distinction between the "standout" student and the rank and file student; the athlete or performer as opposed to the spectator. School Board Policies and rules become more limited once they extend beyond the classroom, school grounds and school hours.

**Does a school board have the authority under Iowa Code chapter 279 to promulgate a "student activities code" which applies equally to in-season and off-season activities during the academic year and summer months?**

**and**

**provides as a penalty suspension from participation or attendance in all extracurricular activities?**

Since these two questions require a similar analysis, they will be answered together; and the answer is "no". Such a rule is overbroad in its scope. This is especially apparent when the Student Activities Code defines "activities" to include athletics, cheerleading, dance squad, intramurals, music groups, speech activities, dramatics, club and organization public events and dances/parties. Student Activities Code 503.7, Statement of Purpose.

In order to be valid, a good conduct rule cannot extend into the sphere of the home or the civil authorities. Bunger at 564. Before a rule can deny a student participation in a school activity, the relationship between the prohibited conduct and the school activity must be substantial.

The rules at issue here make no such distinction. There is no distinction between the conduct of the standout student who's involved in extra-curricular activities and the rank-and-file student who merely attends these activities. There is no distinction between student conduct which occurs on school premises, outside of the community, during summer vacation, or during the extra-curricular activities themselves. These rules purport to

govern the conduct of students even though they may be over age 18 or graduated. "Students who are of the legal age (18 or older or graduated) are not exempt from the conditions outlined in this Code."<sup>9</sup>

Additionally, section G of VIII, Special Provisions, provides for an additional twelve (12) month period of ineligibility "[i]f it becomes knowledge to school officials that a student has participated in school activities after he or she has knowingly been found in violation of the Code . . . ." <sup>10</sup>

As a result of the application of these rules, a rank-and-file student could be prohibited from attending a dance held during the summer by a school organization. Then if the student attended the dance in spite of the prohibition, he or she could be "banned" from attendance at all other school activities for one additional year.<sup>11</sup> Under the Bunger guidelines, the coverage of these rules would render them not only overbroad in scope, but unreasonable as well.

Although it is understandable that a school board would want to hold all of its students to the same high standards of conduct, it does not have blanket authority to ban students from school-sponsored public events. Any rule which penalizes all students (not just student athletes or extracurricular participants) this way is invalid.<sup>12</sup> This invalidity is not cured by the fact that the school board was pressured into "doing something" to control student behavior by subjecting all students to the same penalties as the athletes and performers.<sup>13</sup>

### III. RULING

For the reasons discussed above, a student activities code which provides the same penalties for student participants as it does for student spectators; applies equally to in-season and

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<sup>9</sup>See Regulations, reproduced in part at page 3 herein.

<sup>10</sup>Reproduced in part at page 4 herein.

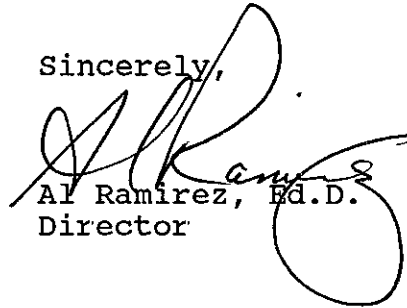
<sup>11</sup>Id.

<sup>12</sup>In re Joseph Fuhrmeister, 5 D.o.E. App. Dec. 335, 340 n. 1.

<sup>13</sup>In Brooks v. East Chambers Cons. Indep. Sch. Dist., 730 F.Supp. 759 (S.D. Tex. 1989), the court noted that a small group of parents had pressured the school into adopting a drug testing program for athletes. "The school district is responding . . . to a perceived public demand that schools 'do something' about the general societal problem of substance abuse." Id. at 760-61.

off-season activities during the academic year and summer months and provides as a penalty suspension from attendance at all school-sponsored public events, is invalid as overbroad and unreasonable. Such sweeping attempts to control student behavior go beyond the grant of authority provided by sections 279.8 and 279.9, Code of Iowa (1993).

Sincerely,

A handwritten signature in black ink, appearing to read "Al Ramirez", is written over the typed name. The signature is fluid and cursive, with a large loop at the end.

Al Ramirez, Ed.D.  
Director

ALR:jmr