IOWA STATE BOARD OF
PUBLIC INSTRUCTION

(Cite as 4 D.P.I. App. Dec. 242)

In re Chad Buhrow	:	
	:	
Edward and Lilla Shirk, Appellants	:	
		DECISION
v.	:	
Green Mountain Independent School District, Appellee	:	[Admin. Doc. 842]

The above-captioned matter was heard on March 21, 1986, before a hearing panel consisting of Dr. James Mitchell, deputy commissioner of public instruction and presiding officer; Mr. Virgil Kellogg, director, Field Services and Supervision Division, and Mr. Doug Reynolds, consultant, Area Schools Division. An evidentiary hearing was held under Iowa Administrative Code chapter 670—51, applicable to appeals filed under chapter 290 of the Iowa Code. Appellant Lilla Shirk was present and not represented by counsel. Appellee Green Mountain Independent School District (hereinafter, the District) was present in the person of Mr. Robert J. Michals, president of the district board of directors, (hereinafter, the Board) and not represented by counsel.

Mrs. Shirk sought review of a decision of the Board made on January 9, 1986, denying her son the opportunity to participate in extracurricular activities for nine weeks and removing his privilege to accompany the senior class on its annual summer trip, for a violation of Board policies.

I.
Findings of Fact

The hearing panel finds that it and the State Board of Public Instruction have jurisdiction over the parties and subject matter.

Prior to November 4, 1985, the District had no conduct or academic prerequisites for seniors to be allowed to take a senior class trip; graduating students needed only to provide the Board with written permission from their parents. In October, Superintendent Dick Hessenius became concerned because of student behavior at a dance, and recommended to the Board that they amend the policy relating to the senior class trip to address expected conduct by seniors as a condition to going on the trip.

Mr. Hessenius met with senior students' parents on the evening of November 4 to share with them his proposed guidelines for senior conduct. Following that meeting, the Board addressed the proposal and entertained discussion from attending parents. As a result of the exchange of ideas, the proposed policy was amended and then unanimously adopted by the Board upon proper motion. The adopted policy reads in pertinent part as follows:

Student Policies for the Senior Class Trip

7. The Senior Class can take a senior trip after they have graduated and their sponsors are free, with no time restrictions, or can take one school day during the year in conjunction with normal holidays.

   b. [sic] A letter of consent and responsibilities must be signed by the parent and student before going on the class trip.

   c. A student becomes a senior when school is out in the spring.

   d. Any senior who has been determined to be using alcohol or illegal drugs, under the influence of alcohol or illegal drugs, or has alcohol or illegal drugs in their possession at a school function or on the school grounds, shall not be allowed to go on the senior trip.

      (influence means on their breath)
      (possession also means being in a car where there is liquor)

      1. To determine the above, it must be by at least two adults, one of which must be a member of the professional staff

   e. Any senior who is found guilty of, or admits to, or is placed on official or unofficial probation status whether it be voluntary or not for a crime, vandalism, shoplifting, theft, or use of alcohol or illegal drugs, shall not be allowed to go on the senior class trip.

   f. If a senior has several occurences [sic] of undersirable [sic] behavior such as cheating, dangerous useage [sic] or misuse of an object, fighting, malicious mischief, physical attack, assault and battery, bully-type behavior (verbal or physical), open defiance or willful disobedience, skipping school, smoking, use of tobacco products, threats to students or teachers may result in the senior not being allowed to go on the senior trip.

   g. If the trip is ever cancelled, all money in the class treasury, after expenses, will go toward senior scholarships that year. Either the Hach or Student Council scholarship committees could administer these scholarships. The class would vote on which one they would prefer.

   h. There shall be at least one sponsor for every five students or part thereof. These sponsors shall be either teachers and their spouses or parents. There should be an even number of male and female sponsors. If an odd number is required, the extra sponsor should be determined by whether there are more boys or girls in the class.

Previous Record at p. 8 (emphasis original). Following the Board's action, Superintendent Hessenius met with senior students, gave them a copy of the new policy and discussed it with them. The finalized policy was also mailed to all parents.

In addition to this policy, the District also has a School Conduct Code which reads, in pertinent part, as follows:

12. School Conduct Code: Any student who is found guilty of, or admits to, or is placed on official or unofficial probation status whether it be voluntary or not for a crime, vandalism, shoplifting, theft, drinking or use of illegal drugs will be handled as outlined below.

1. If the offense occurs off the school grounds or not at a school sponsored activity, the student will be ineligible to participate in any school sponsored extra-curricular activity for a period of 9 weeks. For a second offense the ineligibility will last for one semester. If a third offense occurs, the board will consider expulsion from school.

2. If the offense occurs on school property or at a school sponsored activity the student will be ineligible to participate in any school sponsored activity for a period of one semester. For the second offense, the ineligibilty will last for one year. If a third offense occurs, the board will consider expulsion from school.

Any student who is found guilty of, or admits to, or is placed on official or unofficial probation status, whether it be voluntary or not, for pushing or selling any drugs, in or out of the school, will be brought before the board for consideration of expulsion from the school.

Previous Record at p. 9.

Chad Buhrow is a senior at Green Mountain. He was involved in student council and athletics. On December 3, Chad was returning to school with the basketball team on a school bus. The team stopped at Burger King in Marshalltown. Some small posters or signs were stolen from the restaurant, and the school was contacted. The Burger King employee who notified the school concluded that the District students had to have been responsible since they were the only patrons in the establishment at the time the signs disappeared. Chad and another senior boy admitted having taken the signs. The signs were returned and no charges were filed.

Pursuant to the two policies delineated above, the two boys were informed by the administration that their actions constituted theft and that they were subject to loss of eligibility from all extracurricular activities for nine weeks (pursuant to the Student Conduct Code) and would be excluded from the senior class trip (pursuant to the new policy).

Mr. and Mrs. Shirk asked the Board to reconsider the punishment. The Board unanimously denied the request and this appeal followed.

II.
Conclusions of Law

Immediately prior to the hearing in this case, the District presented the hearing panel and Appellant with a Motion to Dismiss, which questioned Appellants' compliance with the Iowa Code section 290.1 requirement that notice of appeal be made "by affidavit." Although the definition and characteristics of an affidavit are not addressed in Chapter 290, Iowa

Code section 622.85 defines an affidavit as "a written declaration made under oath, without notice to the adverse party, before any person authorized to administer oaths within or without the state."

The District asserts, "While the letter appears to include the signature of a notary public, it is not a sworn statement, is not made under oath and does not indicate that it was signed and sworn to before the notary public." Appellants' Brief and Argument at p. 1. No evidence was offered to support this allegation.

This is not the first time we have been called upon to decide this issue. A 1977 contested case resolved a similar motion by holding, "While the documents filed may not contain all the exactness that might be required in a court of law, the Hearing Panel feels that the document of appeal filed in this case was in substantial compliance with the requirements of an affidavit . . . . When the sufficiency of an affidavit is challenged in the future, it will be held to a test of substantial compliance. . . . " In re Lee Creveling, Quentin V. Anderson, Ivan Sterling, et al., 1 D.P.I. App. Dec. 132, 132-33.

Applying that test to the affidavit filed in this case, we conclude that the notorized statement of appeal in this case is in substantial compliance with the elements of an affidavit. The letter is a statement made to one authorized to administer oaths (Notary Public Wanda Shrader), is properly notorized, and contains the requisite claim of aggrievement to invoke jurisdiction under chapter 290. Consequently, we overrule Appellee's Motion to Dismiss. Accord, In re Clarence Anderson, 4 D.P.I. App. Dec. 208 at 215-16. We now proceed to decide this case on its merits.

A. Severity of the Punishment

Appellants Shirk have addressed the substantive due process issue of the reasonableness of the punishment as applied to their son's conduct. Mrs. Shirk did not question the Board's authority to adopt the rules at issue in this case, but only whether, as written, the rules should have such a harsh result. She analogizes to the criminal code of Iowa, noting that degrees of theft are recognized therein and punishments meted accordingly. See Iowa Code § 714.2 (2)-(5) (1985). Her son was not convicted, nor even prosecuted under the Code of Iowa, but had he been, he could have been found guilty of Theft Fifth because the value of the stolen items was under $50. Mrs. Shirk urged the Board and argued to the hearing panel that the District policy should take into consideration the degree of culpability or guilt of the individual and the nature of the offense. We disagree.

School districts have the authority to promulgate rules for the governance of pupils. Iowa Code § 279.8 (1985). A school board has the authority to exclude pupils, or to suspend or expel pupils for their conduct. Iowa Code §§ 282.3 - .5 (1985). The rules in question properly addressed student conduct while in school or on a school sponsored activity. The District can also reach out of school conduct by student athletes and those involved in extracurricular activities when the conduct

directly affects the good order and welfare of the school. Bunger v. Iowa High School Athletic Association, 197 N.W.2d 555, 564 (Iowa 1972). Therein it was stated:

> The present case involves the advantages and enjoyment of an extracurricular activity provided by the school, a consideration which we believe extends the authority of a school 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 interscholastic 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 extracurricular activities.

Id. at 564.

In this case, the incident occurred while the boys were en route home from an extracurricular contest. They were representatives of their school, and their actions reflected on their district. Whether the boys took cardboard signs valued at $1.79, or food valued at $5.15, or the contents of the cash register is and was immaterial to the Board. One form of conduct they sought to prohibit in the two policies was theft, regardless of legal degree. Mrs. Shirk would urge us that Chad is somehow "less guilty" because of the insignificant value of the signs taken. But theft, the "taking possession of property belonging to another," is theft, regardless of the amount.

We do not feel that the punishment in this case was too severe. We recognize the fact that to a high school senior the loss of eligibility is a serious occurrence. We also recognize that the punishment meted out in this case was not as severe as it could have been. Chad could have lost extracurricular participation for an entire semester under existing policy. See School Conduct Code at 2. Nine weeks of time to contemplate the foolishness of an act taking less than one minute is not, in our estimation, unduly harsh, in light of the lesson taught to Chad and to all students who might contemplate some form of shoplifting. Nor do we believe a school district is required to create rules which mirror the criminal code and consider and punish for different degrees of culpability.

B. Discriminatory Nature of the Senior Class Policy

Appellant also raises the issue of discrimination in the adoption of the class trip policy in that it is directed only toward seniors. In essence, she argues that if a junior boy did the same thing Chad did, he would not lose the privilege of the trip in his senior year. Therefore, she concludes, the policy is discriminatory. Her claim loosely raises principles of equal protection.

First, it is important to note that all differentiations between "classes" of citizens do not rise to the level of constitutional violations of equal protection as guaranteed under the fourteenth

amendment. As the Iowa Supreme Court has stated, "Mere differentiation is not enough to constitute a denial of equal protection. In fact, statutes and school board rules often create classifications which are valid and enforceable. It is only invidious discrimination which offends constitutional rights." Board of Directors v. Green, 259 Iowa 1260, 147 N.W.2d 854, 860 (1967).

When faced with a claim of denial of equal protection, the threshold inquiry is whether the challenged classification impinges upon the exercise of a fundamental right or operates to the disadvantage of a suspect class of individuals. Massachusetts Board of Retirement v. Murgia, 427 U.S. 307 (1976). In this case, a "fundamental right" is not at issue; participation in extracurricular activities is a privilege extended by the school to its student population. The United States Supreme Court has refused to recognize education itself as a fundamental right. San Antonio Indep. School Dist. v. Rodriquez, 411 U.S. 1 (1973). As extracurricular participation is not a right it cannot, therefore, be fundamental. Nor are seniors in high school a "suspect class" in the same sense that blacks and other minorities, women, and aliens have been held to be suspect classes of persons. See, e.g. Craig v. Boren, 429 U.S. 190 (1976).

If neither a fundamental right is being impinged, nor a suspect classification is involved, the test then becomes whether there is a rational basis for the different treatment in the policy. Rodriquez, supra.

Mr. Michals, Board president, testified that the unusual nature and concomitant responsibilities of a school-sponsored senior trip to Colorado demand that seniors meet expected levels of conduct. While it is true that the guidelines for the trip include the sponsor's ability to send home a teen who drinks or causes other problems while on the trip, we do not think the sponsor or school is required to take a student who has exhibited undesirable characteristics in the months of school immediately prior to the trip. The trip is, after all, a reward or privilege extended to seniors. Those seniors may have the privilege taken away for violations of school rules. It would make far less sense to remove the privilege when the trip is one, two or more years in the future. A junior has time to "rehabilitate" himself or herself, or to prove that he or she is not worthy of the privilege between the junior and senior years. We conclude that the rule is not discriminatory but is rationally related to the result it seeks to obtain. Only graduating seniors go on the trip; only conduct occurring in one's senior year is cause for loss of that privilege.

C. Relief Sought

Appellant filed the affidavit of appeal on January 27, 1986. The nearly two month delay before the hearing was due to scheduling difficulties. Chad's nine-week loss of eligibility has expired and consequently cannot be restored to him. Mrs. Shirk testified that she is not asking the State Board to overturn the local Board's decision with regard to Chad's attendance on the senior trip. However, we feel that this statement was made due to pressure from community members.

One letter, written anonymously and sent to the Appellants (Exhibit 1) illustrates the type of pressure being applied to the Shirks. It stated, cruelly and with obvious malice, "I bet you 10 to 1 that if you win the appeal, the board will cancel the senior trip. . . . That should really make you happy. . . . If you ruin the trip for all the seniors I just hope in some way you are paid back. [signed] A Parent." Exhibit 1.

We are greatly dismayed by the insensitive attitude of the person responsible for this childish activity, and we are most sympathetic with the Shirks and Chad for what they have been through in the community and at school. Had we found the requisite error or violation of law or policy by the Board we would not have hesitated to order Chad's senior class privilege reinstated, and would have entertained a timely appeal challenging a subsequent Board decision to cancel the trip. By appealing, the Shirks have exercised their statutory (and constitutional) right to due process and review of decisions of lower tribunals, and it saddens this panel that they are meeting with such an attitude by members of the community. We have no doubt that Chad has suffered the remorse and alienation that his temporary foolishness brought to bear. The news was no less disappointing to his parents. Nevertheless, each individual in our democratic society has the guarantee to be free from harassment in the exercise of constitutional rights.

Having rescinded her request for reversal of the trip decision, Mrs. Shirk modified her original request for relief to include the return of a portion of the money Chad raised over the last few years which was applied toward the senior class trip. The Board responded that all monies raised by individuals acting on behalf of the school belong to the school. We agree with the Board. Reading several of the school laws in pari materia, we find the Board has jurisdiction over all funds raised in the name of the District. See Iowa Code §§ 274.1, 279.8, and 291.13; see 1967 Class of Pekin High School v. Tharp, 154 N.W.2d 874 (Iowa 1967). Compare Senior Class Trip policy, supra, at g. Since Chad has no personal property interest in the funds he helped raise, and the funds were commingled with all other students' monies, he is not entitled to receive a proportionate share. We therefore deny the relief sought by Appellant here.

D. The Clarity of the Board Policy

In passing, we would be remiss if we did not comment on the problems we envision potentially arising from the Board policies at issue. School rules and regulations adopted under the authority of Iowa Code section 279.8 carry a presumption of validity. Board of Directors v. Green, supra, at 857. The burden is on the person challenging the rule to prove it invalid. Id. School rules need not be drawn with legal precision, but we should not have to wonder about their intent or scope.

The policies involved in this case could have been far more articulate and exacting in the language employed. The Board would be wise to take more than a few minutes to examine and think through the implications of its policies before adoption. While it is true that such policies can be amended at any time, unanticipated results may obtain in the interim. Mrs. Shirk's point regarding whether speeding would be a "crime" under the senior trip policy is well taken. What about an overtime parking ticket? Is this the activity contemplated by the Board in adopting a regulation

which would deny a student a trip long anticipated? If not, thoughtful revision is in order.

All motions or objections not previously ruled upon are hereby denied. We wish to take this opportunity to thank and congratulate the parties on their organized, articulate presentations.

III.
Decision

For the reasons discussed above, the decision made by the Green Mountain Independent School District Board of Directors made on January 9, 1986, is hereby affirmed.

April 17, 1986
DATE

Lucas J. DeKoster

LUCAS J. DEKOSTER, PRESIDENT
STATE BOARD OF PUBLIC INSTRUCTION

April 10 1986
DATE

James E. Mitchell

JAMES E. MITCHELL
DEPUTY COMMISSIONER OF
PUBLIC INSTRUCTION, AND
PRESIDING OFFICER