IOWA STATE DEPARTMENT
OF PUBLIC INSTRUCTION

(Cite as 2 D.P.I. App. Dec. 34)

In re Bruce Barg	:	
	:	
	:	
Bruce Barg, Appellant	:	DECISION
v.	:	
	:	
Emmetsburg Community School District Appellee	:	[Admin. Doc. 487]

The above entitled matter was heard on June 15, 1979, before a hearing panel consisting of Dr. James Mitchell, deputy state superintendent and presiding officer; Mr. David Bechtel, administrative assistant; and Mr. Gayle Obrecht, director, administration and finance division. Dr. Mitchell served as presiding officer pursuant to Section 257.22, The Code 1979. The hearing was held pursuant to the authority of Chapter 290, The Code 1979, and Departmental Rules, Chapter 670--51, Iowa Administrative Code. The Appellant was represented by Attorney Roger A. Berkland and the Emmetsburg Community School District (hereinafter District) was represented by Attorney Stephen F. Avery. The Appellant appealed a decision of the District Board of Directors regarding his athletic eligibility.

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.

The facts of this matter are not contested. In April of 1978, the Appellant, while in the ninth grade, confessed to the possession and consumption of an alcoholic beverage in violation of a District policy prohibiting such possession and consumption by students involved in athletics and other extracurricular activities. He was disciplined under the policy by being made ineligible for extracurricular activities for a period of time. On January 10, 1979, the Appellant was observed in possession of an alcoholic beverage in the District's high school parking lot during an official school activity. He later discussed the circumstances with the District's high school principal and admitted the offense. Following the discussion, the Appellant was suspended, under District policy, from extracurricular activities for one year. His period of ineligibility commenced on January 31. The relevant part of the District policy reads as follows:

> B. Second Offense
> For a second offense within a given calendar year, the student will be suspended from all participation for a period of one calendar year with the beginning date of the suspension defined as the date on which the suspension is finalized. (emphasis added)

In developing the policy, the District utilized a model policy statement which contained the phrase "twelve calendar months" in the second offense provisions of the policy. The record does not disclose any particular reason for the choice of language as finally drafted. No student has previously been disciplined under the second offense provisions, and no interpretation of the phrase, "calendar year" has been developed.

On April 9, 1979, the Appellant appeared before the District Board and requested that the Principal's determination of ineligibility be overturned. After discussing the matter in closed session with Appellant and his attorney present, the Board returned to open session. The record disclosed that "After returning to regular session the decision to leave it as it is was reached." No other description of the specific action taken by the Board was included in the record.

II.
Conclusions of Law

The Appellant has requested that the District Board action in this matter be overturned. We are not inclined to do so.

The Appellant's most telling argument involves the definition of the phrase "calendar year" in the District's policy for second offense infractions. His argument is premised upon the fact that the violations of policy occurred in two different calendar years, 1978 and 1979. While we agree that one commonly accepted usage of the phrase "calendar year" is twelve consecutive months running between January 1 and December 31, we do not feel that is the only logical meaning and certainly not what the District Board intended. The second time "calendar year" is used in the same sentence of the policy statement, it is used in conjunction with the commencement of a suspension of eligibility on the date a suspension is finalized. Since it is highly improbable that all second offense eligibility suspensions will be finalized on January 1, and run through December 31, it is obvious that the District Board had a definition in mind other than that which the Appellant argues. The Board obviously meant that second offense eligibility suspensions are to run for twelve consecutive months after suspension is finalized. We think, that while the District Board could have been more selective in its choice of words for its policy, the policy provision, read as a whole, is sufficiently clear as to the policy's meaning of a second offense in one "calendar year."

When considered on the law and the facts of this matter, we do not consider the other points raised by the Appellant to be of significant merit. The Appellant's argument that the penalty goes beyond athletics, into the academic area, was not established on the facts, and we do not feel that the policy is unconstitutionally void for vagueness. It is commonly understood that school rules do not have to be as precisely drawn and defined as criminal statutes. See Esteban v. Central Missouri State College, 415 F.2nd 1077, 1087-89 (8th cir., 1969). Neither do we feel that the penalty is unduly harsh. Participation in extra-curricular activities is not considered a right, but a mere privilege. The State Board has upheld the appropriateness of such rules on several previous occasions. See In re Jason Clark, 1 D.P.I. App. Dec. 168, and In re Mark Schmahl, 2 D.P.I. App. Dec. 26.

III.
Decision

The action of the Emmetsburg Community School District Board of Directors in the above entitled matter is hereby affirmed.

July 12, 1979
DATE

Jolly Ann Davidson
JOLLY ANN DAVIDSON, PRESIDENT
STATE BOARD OF PUBLIC INSTRUCTION

June 22, 1979
DATE

James E. Mitchell
JAMES E. MITCHELL
DEPUTY STATE SUPERINTENDENT
AND