IOWA STATE DEPARTMENT
OF PUBLIC INSTRUCTION

(Cite as 2 D.P.I. App. Dec. 26)

In re Mark Schmahl	:	
	:	
	:	
Adolf G. Schmahl, Appellant	:	DECISION
v.	:	
Glenwood Community School District, Appellee	:	
	:	[Admin. Doc. 475]

The above entitled matter was heard on April 25, 1979, before a hearing panel consisting of Dr. Robert Benton, state superintendent and presiding officer; Dr. LeRoy Jensen, associate superintendent, administration; and Mr. David Bechtel, administrative assistant. The Glenwood Community School District (hereinafter District) was represented by Attorney Roderic A. Pearson, and Adolf Schmahl was represented by Attorney Clarold E. Rogers. The parties agreed to a hearing based upon the previous record in the matter. The hearing was held pursuant to Chapter 290, The Code 1979, and Departmental Rules, Chapter 670--51, Iowa Administrative Code. The Appellant appealed a District Board of Director's decision regarding the athletic eligibility of Mark Schmahl. The parties requested additional time to submit briefs, but none were received in the time allotted.

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.

On January 22, 1979, at approximately 10:15 p.m., Mark Schmahl was observed by a local law enforcement officer driving north in the southbound lane of a Glenwood city street. Mark continued driving for about two blocks before responding to the officer's request to pull over to the side of the street. Mark exited from his car and was asked by the officer to take a field sobriety test. He refused. The officer detected an odor of alcohol on Mark's breath and observed that his eyes were bloodshot and watery. The officer assisted Mark to a police cruiser and took him to the police station. The officer testified at a hearing before the District Board that he had intended to arrest Mark for operation of a motor vehicle while under the influence of alcohol, but later, because of his youthful age and the severe ramifications of such a charge, charged him only with reckless driving. Mark continually denied to the officer that he had been drinking.

At the police station, Mark again refused to consent to a sobriety test. While there, he was observed by a second officer who testified at the District Board hearing that he also detected the odor of alcohol on Mark's breath, Mark was unsteady on his feet, his eyes were bloodshot and glossy and that his speech was slurred and difficult to understand.

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The arresting officer alleged that while at the police station he overheard Mark admit to his father that he had been drinking. Mark and his father later denied the allegation.

Later in the same week, Mark's basketball coach heard rumors regarding an arrest for an alcohol-related offense and asked Mark about the accuracy of the rumors. Mark denied that he had been involved with alcohol.

On January 26, Gene Schatz, athletic director and assistant principal of the District High School, summoned Mark to his office to discuss the incident. Mark denied any wrongdoing. Mr. Schatz asked Mr. Robert Blasi, the high school principal, and the two law enforcement officers involved in Mark's arrest to join them from an adjoining room. The officers then related what they had observed regarding the incident and their police training regarding identification of intoxicated persons. They also left signed statements regarding the incident.

After the officers left, Mr. Schatz and Mr. Blasi continued to discuss the matter with Mark. Mr. Blasi later recalled in writing that a portion of the conversation went as follows:

> Mr. Blasi - Mark, the arresting officer said you admitted to him at the police station that you had been drinking.
> Mark - that is a white lie - I did not admit it to him
> Mr. Blasi - who did you admit it to
> Mark - one person
> Mr. Blasi - who was that
> Mark - my father
> Mr. Blasi - you are sure the officer was not in the room when you admitted drinking to your father
> Mark - no, he was not.

At the conclusion of the discussion, the school administrators decided to suspend Mark from extracurricular activities for six months under the school District policy which provides such a penalty for second offense violations. In September, 1978, Mark had been observed after a dance with alcohol on school grounds, and suspended from eligibility for six weeks under the same policy. The relevant portion of the District Policy reads as follows:

> (3) Any student who is found guilty, or admits during a hearing to consumption, possession, acquiring, delivering or transporting of alcoholic beverages or illegal drugs, will be ineligible to participate in any of the Activity Group events until reinstated. (The policy will be six weeks or remainder of the activity season for the first offense and six calendar months for the second.)

On the next Monday, January 29, after investigation, District Superintendent Eugene Nasalroad reviewed the matter and affirmed the previous decision. Mark then appealed the decision to the District Board which heard the matter on February 2. After the taking of evidence and deliberation, the Board of Directors affirmed the previous action of the District's administrators who were involved.

II.
Conclusions of Law

The Appellant contends that the District policy at issue here requires a finding of guilt in a court of law or an admission of guilt during a hearing, and because neither has occurred, Mark should not be disciplined under the policy. We do not agree. There is much evidence in the record on the question of whether Mark did, in fact, tell his father in the presence of a police officer that he had been drinking and that he told Mr. Blasi that he had told only his father that he had been drinking. We think that there is sufficient evidence in the record for a reasonable person to conclude that Mark did admit to the consumption of an alcoholic beverage. Be that as it may, we do not agree that a finding of guilt in a court of law must preceed discipline under the District's policy. It is clear on the record that the school has previously interpreted a finding of guilt to be a finding on the part of the school administration. Such obviously occurred here. While there appears to be nothing in the record in written form which expressly stated that Mark was guilty of the alleged misconduct, we do not feel that such is necessarily required. Had Mr. Schatz, Mr. Blasi and Mr. Nasalroad not found Mark guilty of the offense as charged, he would not have had his eligibility suspended and there would have been no need for the appeal to the Board of Directors. The record as a whole shows quite clearly that District officials found Mark guilty of the alleged offense under the District's eligibility policy.

The Appellant also claims that Mark was deprived of his rights under the due process provisions of the Fourteenth Amendment to the United States Constitution because he was not afforded time to prepare a defense after receipt of notice of the allegations against him. Again, we do not agree. While the State Board of Public Instruction found in In re Jason Clark, 1 D.P.I. App. Dec. 168, that suspension of eligibility involves a liberty interest protected by the Due Process provisions of the Fourteenth Amendment, it also found that the rudimentary hearing envisioned in the decision of Goss v. Lopez, 419 U.S. 565, 95 S.Ct. 729 (1975) would suffice. It is clear from a reading of Goss, that notice of the alleged misconduct may be given at the time of the hearing. The Supreme Court said at page 582:

> There need be no delay between the time "notice" is given and the time of the hearing. In the great majority of cases the disciplinarian may informally discuss the alleged misconduct with the student minutes after it has occurred.

The hearing, in fact, need be only an informal discussion between the student and administrator during which the student is informed of the allegations against him or her and is given an opportunity to respond with his or her own version of the facts. Good educational practice demands no less.

We feel the District has complied with the minimum educational and legal practices of procedural due process in this matter. Mark had an opportunity to respond to the allegations against him and to give his side of the story on several occasions. During the hearing before Mr. Schatz and Mr. Blasi and before the Board of Directors, he was given the opportunity to face and question his two primary accusers, the law officers. Mr. Nasalroad apparently conducted his own inquiry into the facts before affirming Mr. Schatz and Mr. Blasi's decision.

The Appellant has also raised the question of lack of de novo hearing before the Board of Directors. In light of the facts involved here we are somewhat puzzled by the allegation. The tape recording of the hearing before the Board shows quite clearly that the Appellant had full opportunity to examine the District's wintesses, call his own witnesses and bring facts before the Board. The many questions raised by the Board Members at the hearing before them shows us they did not consider their role as mere

reviewers of the matter without giving it full consideration.

We have been shown no sufficient reason, in fact or law, to overrule the District Board's decision in this matter.

III.
Decision

The decision of the Glenwood Community School District Board of Directors in this matter is hereby affirmed. Appropriate costs under Chapter 290, if any, are hereby assigned to the Appellant.

June 6, 1979
DATE

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

May 29, 1979
DATE

Robert D. Benton
ROBERT D. BENTON, Ed.D.
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
AND
PRESIDING OFFICER