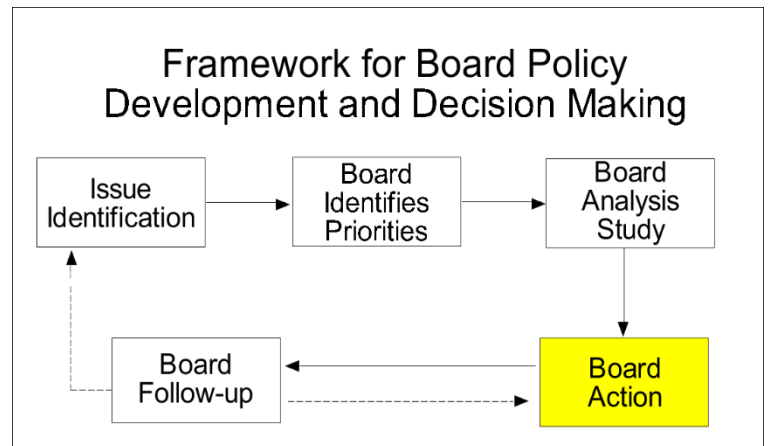


# Iowa State Board of Education

## Executive Summary

November 16, 2022



**Agenda Item:** Appeal 5160, In re Challenged Student Club by Johnston Community School District, Appellee

**State Board Priority:** Creating a Safe, Healthy, and Welcoming Learning Environment

**State Board Role/Authority:** The State Board hears contested cases under Iowa Code section 290.1.

**Presenter(s):** Thomas A. Mayes, Presiding ALJ  
Parties and counsel

**Attachment(s):** One

**Recommendation:** It is recommended that the decision of the Johnston Community School District to recognize a student club be affirmed.

**Background:** Parents of high school students at Johnston High School challenge the recognition of a student chapter of Turning Point USA by the Johnston Community School District Board of Directors. After a contested case hearing, the presiding ALJ recommends the State Board find and conclude that the appellants failed to prove they are entitled to relief from the State Board based on a violation of school board policy or any other reason.

BEFORE THE IOWA DEPARTMENT OF EDUCATION

(CITE AS \_\_\_\_\_ D.o.E. App. Dec. \_\_\_\_\_)

In re Student Club Approval, )  
 )  
K.S. et al., )  
 )  
Appellants, ) Docket 5160  
 )  
vs. )  
 ) PROPOSED DECISION  
Johnston Community )  
School District, )  
 )  
Appellee. )

This matter came before the undersigned for hearing on August 15, 2022. Four appellants,<sup>1</sup> three of whom are parents of Johnston High School students, challenge the decision of the Johnston Community School District Board of Directors ("School Board") to approve the application for recognition of a student group at Johnston High School. After lengthy discussion over several meetings, the School Board approved the application on April 25, 2022.

The Appellants timely filed affidavits of appeal on May 13, 2022. The undersigned and the State Board have jurisdiction of the parties<sup>2</sup> and the subject matter. Iowa Code § 290.1 (2022).

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<sup>1</sup>One of the appellants died during the pendency of this action. By request of the Appellants and consent of the Appellee, her name remains in the caption of this matter.

<sup>2</sup>The undersigned set a deadline for any interested party, such as the student group at issue, to intervene. No petition for intervention was received.

After considering the evidence presented<sup>3</sup> and the arguments of the parties and counsel, the undersigned recommends that the School Board's decision be AFFIRMED.

#### FINDINGS OF FACT

The record made by the Appellants is lengthy and thorough; however, the operative facts are briefly summarized.

On August 31, 2021, L.G., a student at Johnston High School, applied for recognition of "Turning Point USA at Johnston High School" as a student club. The application described the club's activities as "holding teachers and students accountable, helping stop the spread of a biased agenda, socialism, critical race theory, and big government." The application stated that meetings will be at members' households. After substantial dialogue, including e-mail exchanges, with Dr. Nikki Rourda, who is the District's associate superintendent, and feedback received at school board meetings, L.G. submitted a revised application.

The revised application provided that the club would serve "as the place for students to open a line of communication for students who have felt that their political beliefs have not

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<sup>3</sup>The undersigned reserved ruling on Appellee's objections to certain exhibits offered by the Appellants. Understanding the broad standard for admitting evidence at administrative hearings, see Iowa Admin. Code r. 281-6.12(2)"o", the exhibits are hereby admitted, with the further understanding that the weight that they deserve is a separate question from their admissibility.

been heard in the school setting." The club is "open to all, but especially conservative-minded students who want a place to be supported."

The revised application for recognition does not include language purporting to give the club the power to hold others "accountable" and states that meetings will occur in a Johnston High School classroom. The revised application also included a revised local constitution, which included that membership shall be determined without regard to protected characteristics listed in state law and School Board policy, including race, religion, sexual orientation, gender identity, or disability. The constitution also provides the following:

Turning Point USA at Johnston High School abhors acts of oppression, [such as] the denial of freedom of expression, discrimination in its various forms of sexism or racism, or intolerance of religion, age, sexual orientation, or political beliefs; or harassment of any member of the JCSD community.

The constitution provided that the club will be "independent in its decision-making."

The club was requested to provide a copy of the national Turning Point USA "constitution and by-laws," pursuant to School Board policy 504.2. That policy also provides: "If an organization does not have a constitution, it must submit a written statement of purposes to the administration for consideration." L.G. did not submit documentation from the

national organization, but did provide a mission statement. Dr. Roorda informed the School Board that they could not find a Turning Point USA constitution, only a sample constitution, and that bylaws were not available.

Appellants presented news articles and social media posts about Turning Point USA, including controversial statements made by Turning Point USA officers and employees, at Turning Point USA events, or on Turning Point USA social media channels. Appellants characterize some of this content, such as content on "replacement theory," as hateful. Appellants provided evidence alluding to the control Turning Point USA would have over student chapters, including membership lists and use of Turning Point USA branding and social media requirements.

Appellants note that three School Board members publicly advocated in favor of recognizing this club, including on social media and involvement with a group called Moms For Liberty. For example, Moms For Liberty held an August 2021 event in a local city park, where it was recruiting student members for the proposed club. Appellants allege these activities violated the School Board's policy 203 (conflict of interest) and policy 204 (Code of Ethics). Policy 203 provides, in relevant part: "It will also be a conflict of interest for a board member to engage in any outside employment or activity which is in conflict with the board member's official duties and responsibilities."

Policy 204 provides, in relevant part: "I will recognize that to promise in advance of a meeting how I will vote on any proposition which is to be considered is to close my mind and agree not to think through other facts and points of view which may be presented in the meeting."

Appellants and other members of the public requested that the three board members recuse themselves. The Board members did not, and the club's application for approval passed on a 5-2 vote.

#### CONCLUSIONS OF LAW

In *Gabrilson v. Flynn*, our supreme court recognized "the broad deference" given "to discretionary decisions of school boards." 554 N.W.2d 267, 275 (citing *Board of Directors v. Green*, 259 Iowa 1260, 1265, 147 N.W.2d 854, 857 (1967)). In *Green*, our supreme court stated: "It is also understood that where a school board has acted pursuant to law, the action taken must be regarded at least as *prima facie correct*." *Id.* at 1266, 147 N.W.2d at 857 (emphasis added).

The State Board has summarized its deferential review in prior decisions:

The State Board in reviewing appeals under Iowa Code section 290.1 has been given broad authority to make decisions that are "just and equitable." Iowa Code § 290.3 (2013). The standard of review in these cases requires that the State Board affirm the decision of the local board unless the local board decision is "unreasonable and contrary to the best interest of

education." *In re Jesse Bachman*, 13 D.o.E. App. Dec. 363 (1996). Thus, the test is *reasonableness*.

*In re Expulsion of Student A.*, 27 D.o.E. App. Dec. 726 (2016) (emphasis in original). The State Board does not sit as a "'super school board' substituting its judgment for that of the elected board officials." *Sioux City Cmty. Sch. Dist.*, 7 D.o.E. App. Dec. 137, 141 (1987). The State Board will affirm a local board decision unless the local board's decision is a product of a "total absence of reason." *Id.* at 142. The School Board's decision in this matter is not beyond review or insulated from review; rather, the State Board reviews local decisions in a narrow and deferential manner.

Appellants have the burden of proving the unreasonableness of the School Board's action. *See, e.g., In re GEER II Mental Health Schools Grant*, 30 D.o.E. App. Dec. 159, 160 (2021). The standard of proof is whether the School Board's decision is supported by a preponderance of the evidence. *In re Jesse Bachman*, 13 D.o.E. App. Dec. at 363.

*A. Constitution and By-Laws.* The Appellants first attack the failure of L.G. to provide the national organization's constitutions and by-laws. The Appellants assert this is disqualifying under policy 504.2. The Appellants do not read the complete policy. The policy does not require constitutions and by-laws where none exist. In the absence of those

documents, the policy requires a mission statement, which L.G. provided. The School Board complied with policy 504.2.

The Appellants assert forcefully that those documents do, in fact, exist. According to meeting minutes, this belief is shared by the two dissenting School Board members. The School Board heard information from Dr. Roorda that they were unable to locate the documents. The School Board is entitled to give that information credence as it weighs the information before it, and the undersigned is obligated to do so as well. "Moreover, we accord deference to the agency's decision on witness credibility." *Clark v. Iowa Dep't of Rev. & Fin.*, 644 N.W.2d 310, 315 (Iowa 2002) (Cady, J.). Additionally, under the current posture of this case, it is not the responsibility of the School Board to prove the documents do not exist: it is on the Appellants to prove that they do. *In re GEER II Mental Health Schools Grant*, 30 D.o.E. App. Dec. at 160. The Appellants have given no reason to overturn the School Board decision on this point.

Since the undersigned finds the record shows the School Board complied with policy 504.2, there is no need to address the alternative arguments compellingly advanced by the School Board to defend its decision, such as the federal Equal Access Act, see 20 U.S.C. § 4071.



*B. Alleged Conflict of Interest.* The Appellants allege three School Board members acted in violation of policies 203 and 204. The undersigned discerns no error by the Board.

As to policy 203, it is clear that the three School Board members did not act in a manner that violated policy 203's prohibition on outside employment or activity. None of the School Board members engaged in any of these three activities.

1. The outside employment or activity involves the use of the school district's time, facilities, equipment and supplies or the use of the school district badge, uniform, business card or other evidence of office to give the board member or member of the board member's immediate family an advantage or pecuniary benefit that is not available to other similarly situated members or classes of members of the general public. For purposes of this section, a person is not "similarly situated" merely by being related to a board member.

2. The outside employment or activity involves the receipt of, promise of, or acceptance of money or other consideration by the board member or a member of the board member's immediate family from anyone other than the state or the school district for the performance of any act that the board member would be required or expected to perform as part of the board member's regular duties or during the hours in which the board member performs service or work for the school district.

3. The outside employment or activity is subject to the official control, inspection, review, audit, or enforcement authority of the board member, during the performance of the board member's duties of office or employment.

Policy 203 (quoting and paraphrasing Iowa Code § 68B.2A).

Rather, the activities are advancement of specific issues, which is what would be expected of members of an elected board. To

sustain the Appellants' argument on this point, the undersigned would need to conclude that keeping a campaign promise or acting in accordance with a platform or position, without the financial benefit of obtaining a contract, the benefit of one's employer, or the benefit of using public resources, is an impermissible conflict of interest. Policymakers may permissibly have policy preferences that they bring to policymaking activities. Those preferences do not violate Iowa Code section 68B.2A or policy 203. See generally *Iowa Farm Bureau Fed'n v. Env't Prot. Comm'n*, 850 N.W.2d 403 (Iowa 2014).

Likewise, the undersigned discerns no violation of policy 204. This "Code of Ethics" is phrased as mandatory ("Each board member shall follow the code of ethics stated in this policy."); however, many of the individual items in the Code of Ethics are advisory or aspirational. The undersigned cannot conclude the members' statements in support of approving the student club is a violation of policy 204 to the extent that the School Board's actions must be set aside. In fact, during the three meetings about this club, the three Board members at issue listened to arguments (the first of their duties under policy 204) and engaged in discussion in an open manner. Additionally, granting relief based on the theories offered by the Appellants would deter future school board candidates from truthfully informing the voting public about their platforms or priorities. The

undersigned is unable to interpret and apply policy 204 in a manner that would chill information available to future voters.

The Appellants have not proven they are entitled to relief on this ground.

*C. Appellants' Concerns About the Club as a Whole.* The Appellants make a broad spectrum attack on the club and Turning Point USA. The Appellants allege that the national organization is a harmful, hurtful organization. When asked about this at a School Board meeting, L.G. stated, according to School Board minutes, "it would be unfair to hold every organization responsible for things that happened nationally." The undersigned takes note that L.G. and others substantially revised the club's constitution to be inclusive, including incorporating the law's protected characteristics. Turning Point USA is not under review here; the local affiliate at Johnston High School is. When considering the record as a whole, the undersigned concludes the Appellants failed to show the School Board's evaluation of this student club's application was based on a "total absence of reason." *Sioux City Cmty. Sch. Dist*, 7 D.o.E. App. Dec. at 142.

The Appellants also argue that the club will be under the control of the national organization and that the club is not, in effect, student initiated. L.G. stated repeatedly that the organization would be independently run by students. The School

Board was entitled to credit his statements, see *Clark*, 644 N.W.2d at 315, and the record would not support an inference that - let alone conclusion that - L.G.'s statements and requests were not authentically his.

The Appellants argue L.G. should have brought forward a different conservative student organization. The undersigned need not consider whether this would ever be appropriate relief, because the Appellants have not demonstrated the entitlement to any relief at all.

#### CONCLUSION

Neither the undersigned nor the State Board "sit as a super school board." *Sioux City Cmty. Sch. Dist*, 7 D.o.E. App. Dec. at 141. The undersigned and the State Board may only consider whether the Appellants rebutted the presumption of reasonableness and correctness of the School Board's decision. *Green*, 259 Iowa at 1265, 147 N.W.2d at 857. Having failed to do so, the decision of the School Board must be

AFFIRMED.

#### PROPOSED ORDER

The undersigned has considered all evidence and issues presented, whether or not specifically discussed in this decision.

It is recommended that the April 25, 2022, decision of the Board of Directors of the Johnston Community School District in this matter be AFFIRMED.

There are no costs to tax.

This proposed decision will be presented to the State Board of Education at its regularly scheduled meeting on November 16, 2022. The State Board will review this proposed decision based on the record made and the post-hearing briefs. The parties are able to present arguments during the public comment period on the Board's agenda. The Board's presiding officer may also allow oral argument during its deliberations. If oral argument is allowed, the Appellants are allotted seven minutes, thirty seconds in total and the Appellee is allotted seven minutes, thirty seconds.

If either party desires additional proceedings pursuant to the Department's chapter 6, the party or counsel may notify the undersigned and this matter will be rescheduled for later State Board consideration.

Done on November 8, 2022.

*/s/ Original Signed*  
Thomas A. Mayes  
Administrative Law Judge

Copies to: Parties  
Carrie Weber, Counsel for Appellee  
Danielle Haindfield, Counsel for Appellee

IOWA DEPARTMENT OF EDUCATION  
(cite as \_\_\_\_\_ D.o.E. App. Dec. \_\_\_\_\_)

In re Student Club Approval, )  
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vs. )  
) FINAL DECISION  
Johnston Community )  
School District, )  
)  
Appellee. )

After due consideration by the State Board of Education, the proposed decision in this matter is

\_\_\_\_\_ AFFIRMED.

\_\_\_\_\_ OTHER:

**This is final agency action in a contested case proceeding.**

**Any party that disagrees with the Department's decision may file a petition for judicial review under section 17A.19 of the Iowa Administrative Procedure Act. That provision gives a party who is "aggrieved or adversely affected by agency action" the right to seek judicial review by filing a petition for judicial review in the Iowa District Court for Polk County (home of state government) or in the district court in which the party lives or has its primary office. Any petition for judicial review must be filed within thirty days of this action, or within thirty days of any petition for rehearing being denied or deemed denied.**

Dated: November 16, 2022

Iowa State Board of Education, by:

John Robbins, President