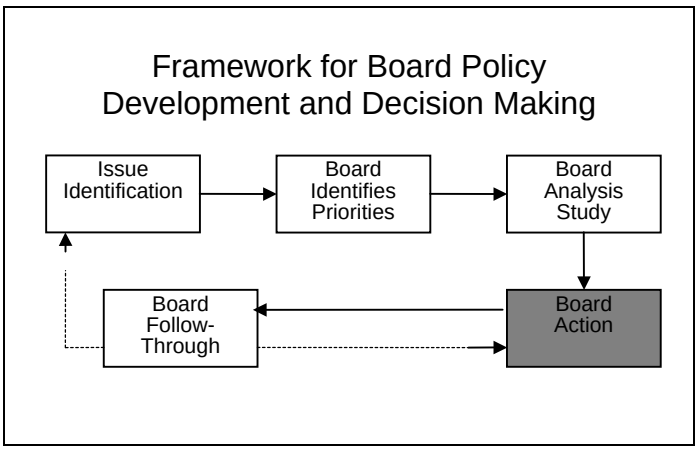
Iowa State Board of Education

Executive Summary

March 8, 2007



Agenda Item: *In re Travis Childs,* 24 D.o.E. App. Dec. 186
(Childs v. North Scott Community School District)

Iowa Goal: 2. All K-12 students will achieve at high levels, prepared for success beyond high school.

Equity Impact Statement: All districts receive guidance from the legal questions answered in this decision.

Presenter: Carol Greta

Attachments: 1

Recommendation: It is recommended that the State Board approve the Administrative Law Judge's proposed decision.

Background: As a senior at North Scott High School and a member of that school's varsity football team, Travis was found by the local school board to have committed his third violation of the District's good conduct policy when he admitted to consuming beer on the evening of October 25, 2006. His arguments on appeal are as follows:

1. That his own failure to return a form acknowledging the good conduct rule prevents the District from punishing him;
2. That he cannot be punished by the District because underage drinking beer at his private residence with a parent or guardian is not a crime; and
3. This should be considered his first violation, not third violation, of the good conduct policy.

The Administrative Law Judge found that the above arguments did not have merit. By participating in an interscholastic athletic event, Travis agreed to comply with the good conduct policy.

Good conduct policies are allowed to reach conduct not otherwise violating criminal statutes. The District treats all violations as cumulative; nothing in the policy contradicts how the District implements its own policy.

In the event of an appeal of a final decision, the State Board is represented in district court by the Iowa Attorney General's office. Therefore, if any State Board member has one or more questions for the Attorney General's office, let us know several days in advance of the February 7 meeting so we can arrange for an assistant Attorney General to be present either in person or via telephone.

RECOMMENDATION: It is recommended that the State Board approve the Administrative Law Judge's decision to affirm the North Scott Community School District's Board of Director's decision that Travis Childs committed a third violation of the good conduct policy and upholding the consequence given to him by the District administration.

IOWA DEPARTMENT
OF EDUCATION
(Cite as 24 D.o.E. App. Dec. 186)

In re Travis Childs

Travis Childs, Appellant,	:	
	:	PROPOSED DECISION
vs.	:	[Admin. Doc. 4647]
North Scott Comm. School District, Appellee.	:	

The above-captioned matter was heard on January 11, 2007, before designated administrative law judge Carol J. Greta. The Appellant, Travis Childs, was present telephonically with his legal counsel, Jay Sommers. The Appellee, the North Scott Community School District, was present personally in the persons of Superintendent Timothy Dose and Associate Secondary Principal and Activities Director Frank Wood, as well as legal counsel, Cameron Davidson.

An evidentiary hearing was held pursuant to agency rules found at 281—Iowa Administrative Code chapter 6. Authority and jurisdiction for the appeal are found in Iowa Code § 290.1. The administrative law judge finds that she and the State Board of Education have jurisdiction over the parties and subject matter of the appeal before them.

The Appellant ["Travis"] seeks reversal of a decision the local Board of Directors of the District made on November 13, 2006, to support the administration's punishment of him under the District's good conduct policy. The administration and Board found that Travis had committed his third violation of the policy, the consequence for which is a one-year suspension from all athletic participation. A timely appeal of the Board's decision was filed herein by Tisha Bousselot, mother of Travis. Travis was substituted as the Appellant without objection when it was discovered that he is an adult.[1]

I.
FINDINGS OF FACT

Travis started the 2006-2007 school year as a senior at North Scott High School where he was a member of the varsity football team. He attained age 18 shortly after the school year commenced. Travis now attends high school in Rock Island, Illinois.

Travis does not dispute that on the evening of October 25, 2006, he consumed "three or four beers" at his residence in the presence of and with the consent of his step-father. This

[1] Authority for filing this appeal is Iowa Code § 290.1, which states in part as follows: "An affected pupil, or the parent or guardian of an affected pupil who is a minor, who is aggrieved by a decision or order of the board of directors of a school corporation in a matter of law or fact … may, within thirty days after the rendition of the decision or the making of the order, appeal the decision or order to the state board of education… ."

event came to the attention of school officials the next day, a Thursday, when one of Travis' teachers smelled alcohol on Travis, who shortly thereafter vomited in a school locker room. When Travis got sick, Mr. Wood - believing at that time that Travis perhaps had been drinking alcohol at school – called Ms. Bousselot. Travis and his mother then informed Mr. Wood that he had drank beer the night before.

Like many (if not most) schools, North Scott has a good conduct policy, proscribing certain behaviors for its secondary students who participate in extracurricular activities, including interscholastic sports. As a sophomore, Travis first violated the good conduct policy. His second offense occurred when he was a junior. The District views his consumption of beer at home on October 25, 2006 as his third violation of the policy.

The District's good conduct rule is explained in several pages of the student handbook. Below are some of the excerpts:

> Activity participants shall not possess or use alcoholic beverages, marijuana, or controlled substances. …In the event the activities participant has consumed or is in possession of alcohol/drugs They [sic] will be issued the below penalties.

The handbook describes the consequences for violation of the good conduct rule as follows:

First Offense: Penalty is either 11% or 22% of the sport season, depending on whether the student agrees to obtain a chemical abuse evaluation.
Second Offense: Penalty is ineligibility for "44% of the season in which the activities participant normally is a participant."
Third Offense: "Suspension for one year from all activities."

The 6th numbered paragraph on page 20 of the student handbook states, "Suspensions will carry into post season and, if necessary, the next activity season."

When students at North Scott High School desire to participate in an extracurricular activities or sports program, they are required to sign and return to the school an Acknowledgment Form. Among other things, the form states that the student agrees to abide by the rules in the student handbook. Travis signed the form his first three years at North Scott High School. He did not return the form his senior year. This lapse was not discovered by the District's administration until during the course of Travis' appeal.

Dr. Dose stated that a secondary student is not to be allowed to participate in sports until his or her form is returned to the school bearing signatures of both the student and the student's parent. When the District is aware that a form has not been returned, the procedure is to notify the coach of the sport in which the student is participating. The coach then is to inform the student that the student's participation is suspended until the form is turned in. Travis admittedly played varsity football for North Scott this fall without the Acknowledgment Form having been returned. Dr. Dose also testified that there have been no changes to the District's good conduct policy during the time Travis has been in high school.

The District presented an unsigned copy of a letter dated March 14, 2005 from its former Activities Director addressed to Travis' mother and step-father. The letter, not on District letterhead but found on the former Activities Director's school computer, states that Travis was involved with alcohol and, because it was his first violation of the good conduct policy, would

miss 11% (2 games) in football the following fall. The letter included general information, consistent with the student handbook, about making an appointment for a chemical abuse evaluation. The letter concludes with the admonition that a "second offense during Travis's high school career will result in his being ineligible for 44% of the season." [Emphasis added.] Ms. Bousselot denies having received this letter.

After Travis' second brush with the District's good conduct rule (for illegal possession of alcohol, an offense for which he also received a citation from law enforcement), Ms. Bousselot evidently spoke at length with Dr. Dose. He followed up that meeting with a letter addressed to her and dated February 3, 2006. The substance of the meeting appears to be Ms. Bousselot's opinion that the District should have waited to punish Travis until the courts had done so. Of more importance to this appeal is the statement in the letter from Dr. Dose, "This is a second offense, which requires a suspension of 44% of the season of competition."

The secondary principal at North Scott High School, Mike Zimmer, is new to the District this school year. Ms. Bousselot testified that, after October 26, she asked Mr. Zimmer whether Travis' violations of the good conduct rule were cumulative or whether he started each school year with the equivalent of a clean slate regarding that policy. Mr. Zimmer was not present at this hearing, but the District does not dispute that Mr. Zimmer told Ms. Bousselot that he was not sure and that he would need a clarification.

The issues presented here on appeal are as follows:

1. Is the District estopped from punishing Travis in any way because it failed to enforce its requirement that students return the Acknowledgment Form?
2. Is the District estopped from punishing Travis because his consumption of beer at his private residence did not violate Iowa Code § 123.47?
3. If the District may punish Travis, should Travis' punishment be for a first offense or a third offense of the good conduct rule?

II.
CONCLUSIONS OF LAW

The Iowa Legislature has directed that the State Board, in regard to appeals to this body, make decisions that are "just and equitable." Iowa Code § 290.3. The standard of review, articulated in *In re Jesse Bachman*, 13 D.o.E. App. Dec. 363 (1996), requires that a local board decision not be overturned by the State Board unless the local decision is "unreasonable and contrary to the best interest of education." *Id*. at 369.

The local Board's authority to enforce a good conduct policy derives from Iowa Code section 279.8, which states that "the board shall make rules for its own government and that of the … pupils, and for the care of the schoolhouse, grounds, and property of the school corporation … ." The Iowa Supreme Court has also ruled that schools and school districts may govern out-of-school conduct of its students who participate in extracurricular activities. *Bunger v. Iowa High School Athletic Association*, 197 N.W.2d 555, 564 (Iowa 1972).

In *Bunger*, *supra*, the Iowa Supreme Court addressed the reasonableness of a good conduct rule. The Court reasoned as follows:

> 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 a school board as to what is a reasonable and necessary rule, except in a plain case of exceeding the power conferred.

Id. at 563, quoting *Kinzer v. Directors of Independent School Dist. of Marion*, 129 Iowa 441, 444-445, 105 N.W. 686, 687.

With that brief general legal background, we address the substantive arguments.

Acknowledgment Form

Extracurricular activities are not mandatory; by choosing to participate, a student agrees to comply with any local good conduct policy. *See, e.g., In re Sharon Ortner*, 16 D.o.E. App. Dec. 269 (1999). Here, the District created an additional condition of participation when it required that students return the signed acknowledgment form. The form itself states as follows:

> [I] have read and understand the rules and regulations and the procedures involved when violations occur.
> …
> Also, I understand that I will be unable to participate in any scheduled activity, practice and/or contest until this acknowledgment had [sic] been signed and returned to the school.

Returning the signed acknowledgment form is a condition of a student's participation. Returning the signed form is not a condition of the District's ability to discipline a student who violates school rules. Travis participated in varsity football for the District this most recent fall. According to the District's handbook, Travis probably should have been withheld from participation until such time as he did turn in a properly signed acknowledgment form. The absence of the form, however, does not impede the District's ability to enforce its good conduct policy. It would be nonsensical for this Board to limit a school's ability to impose discipline only upon those students who agree in writing to be subjected to consequences. We see no reason to disturb the teachings of the *Ortner* case that by choosing to participate, Travis agreed that he would comply with the good conduct policy. *Cf., In re Foust*, 20 D.o.E. App. Dec. 247 (2002).

Consumption of Beer not Violative of Criminal Code

Travis points out that he could not be punished in criminal court in Iowa for drinking beer in his residence with his step-father. Travis is correct. Iowa Code § 123.47, prohibiting persons under the legal age of 21 years from selling, purchasing, or having alcoholic liquor, wine, or beer, includes the following language:

> …except in the case of liquor, wine, or beer given or dispensed to a person under legal age within a private home and with the knowledge, presence, and consent of the parent or guardian… .

Thus, Travis cannot be charged with a misdemeanor crime based on his drinking beer with his step-father at their residence on the evening of October 25, 2006.

It is not unusual for good conduct rules to prohibit conduct on the part of students that is not otherwise punishable in the justice system as a crime. Such prohibitions in good conduct policies have been upheld by this Board and by other appellate bodies. For instance, the legal purchase of a tobacco product by an adult student was nonetheless appropriately punished as a violation of the school's good conduct policy in *In re Kramme*, 13 D.o.E. App. Dec. 89 (1996). Both this Board and the Iowa Court of Appeals upheld a good conduct rule punishment of a 17-year-old student who drank beer in Germany, where the legal age for such activity is 16, in *In re Martin*, 16 D.o.E. App. Dec. 252 (1999).[2] The Court of Appeals specifically determined that "the good conduct policy that prohibited the use of drugs or alcohol by [the student] during the Summer of 1998 while he was in Germany is a reasonable exercise of the school board's authority."

That Travis did not violate § 123.47 is not a bar to his punishment under the North Scott good conduct policy.

Violations Cumulative?

We note that Travis does not argue that the penalty for a third offense is too strict. Such arguments have been rejected by this Board numerous times. *See, e.g., In re Foust*, 20 D.o.E. App. Dec. 247 (2002); *In re Carroll*, 18 D.o.E. App. Dec. 265 (2000); *In re Ricklefs*, 16 D.o.E. App. Dec. 300 (1999); *In re Fuhrmeister*, 5 D.o.E. App. Dec. 335 (1988). Rather, Travis argues that his violations of the North Scott good conduct policy are not cumulative, but that each year starts the clock running anew. If we agree with Travis, the result is that the incident on October 25 is another first violation, not his third violation.

There is nothing either on the face of the District's good conduct policy or in the way in which the District implements the policy that gives credence to this argument. Assuming for the sake of argument that Travis' mother never received the letter of March 14, 2005 from the District regarding Travis' first violation, her conversation with Dr. Dose in February 2006 and his follow-up letter to her clearly put the family on notice that the District treats violations as cumulative during the high school career of each secondary student.

This body has previously ruled that school boards need not write rules that prohibit certain conduct "with the precision of a criminal code." *In re Justin Anderson, et al.*, 14 D.o.E. App. Dec. 294, 299 (1997), quoting favorably *Fowler v. Bd. of Educ.*, 819 F.2d 657, 664 (6th Cir. 1987). The District's good conduct policy is not required to specifically and precisely state that students do not start each school year with a clean slate under the policy. It is sufficient that the District, according to the testimony of Dr. Dose and Mr. Wood, consistently treats all violations of the policy as cumulative.

III.
DECISION

For the foregoing reasons, it is recommended that the decision of the Board of Directors of the North Scott Community School District made on November 13, 2006, finding that Travis Childs committed his third violation of the District's good conduct rule and upholding the

[2] The Court of Appeals case was not reported and the Westlaw citation – 2001WL 293237 (Iowa App. 2001) – is the only one available.

consequence given to him by District administration, be AFFIRMED. There are no costs of this appeal to be assigned.

__01/22/07___ _____
Date Carol J. Greta, J.D.
Administrative Law Judge

It is so ordered.

_____ _____
Date Gene E. Vincent, President
State Board of Education