

FINDINGS OF FACT

The stipulated facts in the case are as follows:

The Appellant, Alan B., his wife Rita B., and son T.B. are residents of the HCSD. T.B. is a student at the Highland High School (hereafter "HHS"). T.B. received a copy of the HHS student handbook at the beginning of the school year. T.B. is a member of the HCSD Cross Country team that attended the Iowa State Cross Country championships in Fort Dodge, Iowa, on or about November 1-2, 2013.² T.B. and the other student athletes who attended the championships were under the supervision of Coach Angela Strobel (hereafter "Coach Strobel").

Students who attended the championships stayed at the Country Inn & Suites in Fort Dodge, Iowa. *See* Exhibit D. Coach Strobel assigned students to their rooms and informed the students of a 10:00 p.m. curfew. The students were told that they were not to be out of their rooms beyond the 10:00 p.m. curfew. T.B. requested to change rooms; however, Coach Strobel denied T.B.'s request.³ Two other students were assigned to room 103 but moved to room 105 without Coach Strobel's approval or knowledge.

Sometime after 10:00 p.m. some of the students who were in room 105 threw paint balls in the room damaging the walls and furnishings. The following morning Coach Strobel checked on room 105 and noticed that it was messy but did not notice the damage to the room or furnishings. She asked the students to clean the room. After Coach Strobel and the team returned to HHS Coach Strobel was contacted by motel management. Motel management indicated that room 105 had damages in excess of \$400.00, which included the cost of lost rent due to additional cleaning and repairs.

After being notified of the damages to room 105 Coach Strobel investigated the incident. Coach Strobel interviewed several members of the HCSD Cross Country Team. Some of the members admitted they were involved in causing damage to the room. None of the students Coach Strobel interviewed implicated T.B. as being involved. Coach Strobel did not interview T.B. Coach Strobel told the team members who admitted causing the damage to call and tell their parents what happened at the motel.

Coach Strobel's investigation concluded that T.B. was not a participant involved in causing the damages but was present in the room when the damages occurred. Coach Strobel shared her conclusions with the activities director. T.B. did not leave the room before or after the damages occurred. T.B. did not report the damages to Coach Strobel or to the motel management.

The activities director Tony Johnson (hereafter "Director Johnson") and Principal Hazelett interviewed T.B. T.B. denied any involvement in the activities that caused the

²The dates of the meet were not contained in the stipulation of facts. However, Exhibit D contains the arrival and departure dates of the students who stayed in room 105 at the Country Inn & Suites when they attended the championships.

³ There is no indication in the stipulation of facts as to what room T.B. was assigned to.

damages to the room. After the interview Director Johnson suspended T.B. for thirty days for a violation of the good conduct policy claiming that T.B. committed exceedingly inappropriate or offensive conduct.⁴

Principal Hazelett stated that the suspension was because T.B. did not report the incident to Coach Strobel or motel management. The suspension was issued for a full thirty days because T.B. denied any involvement in the incident as opposed to the students who admitted their involvement. The students who admitted their involvement had suspensions reduced to fifteen days under the Good Conduct Penalty Reduction policy rules.⁵

On November 8, 2013, Director Johnson sent a letter to Mr. and Mrs. B. finding that T.B. was in violation of the Good Conduct policy due to issues related to the destruction of property in the motel while representing HHS. Exhibit A. The specific finding in the letter stated “[t]his behavior falls under the good conduct policy (exceedingly inappropriate or offensive conduct).” *Id.* T.B. was suspended for thirty calendar days. *Id.* On November 18, 2013, the HCSD Board upheld this decision. On December 10, 2013, the Appellant, Alan B. filed a timely notice of appeal.

CONCLUSIONS OF LAW

In appeals to the State Board under Iowa Code chapter 290, the legislature has mandated that the State Board render a decision that is “just and equitable.” It is well settled that the State Board cannot overturn a local board decision unless the local decision is “unreasonable and contrary to the best interest of education.” *In re Jesse Bachman*, 13 D.o.E. App. Dec. 363, 369 (1996). Thus, the standard of review is a test of *reasonableness*.

Under Iowa Code section 279.8, a local school board “shall make rules for its own government and that of the ... pupils, and for the care of the school house, grounds, and property of the school cooperation, and shall aid in the enforcement of the rules, and require the performance of duties imposed by law and the rules.” Inherent in this law is the school board’s authority to adopt and enforce a good conduct policy. 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 because “these student leaders are looked up to and emulated” and “they represent the school and depict its character.” *Bunger v. Iowa High School Athletic Association*, 197 N.W. 2d 555, 564 (Iowa 1972).

The paramount case in good conduct appeals remains *Brands v. Sheldon Community School District*, 671 F. Supp. 627, 630-631 (N.D. Iowa 1987). This case established several principles that are still followed by the State Board. The first principle is that a secondary student has no “right” to participate in interscholastic athletics or other extracurricular

⁴ Exceedingly inappropriate or offensive conduct is defined in HHS’s student handbook as “exceedingly inappropriate or offensive conduct such as assaulting staff or students, gross insubordination (talking back or refusing to cooperate with authorities), serious hazing or harassment of others.” See Exhibit B at 18.

⁵ The good conduct rules state “if a student comes forward to a coach, administrator or activity sponsor to admit (self report) a violation of the Good Conduct Policy prior to initial confrontation by the high school principal, the student’s penalty may be reduced to fifteen ... days” *Id.* at 19.

activities. *Id.* Second, since there is no right to participate, the amount of due process owed to a student in such cases is minimal. *Id.* Due process requires only two elements: 1) the student must be told what he is accused of; and 2) the student must be given an opportunity to tell his side of the story. Finally, *Brands* established that in order for a student to be disciplined under a school's good conduct policy there need only be "some evidence"⁶ that a student violated the policy. *Id.*

In this case, Principal Hazellett found that T.B. violated the provision of HCSD's good conduct policy regarding exceedingly inappropriate or offensive conduct because T.B. "did not report the incident to the coach or to motel management." The Appellant in this case argues that this provision does not require T.B. to inform on his teammates for their exceedingly inappropriate or offensive conduct. The Appellant cites *Andrew v. East Greene Community School District*, 22 D.o.E. App. Dec. 194 (2003)⁷, to support the proposition that it is a matter of fairness that T.B. be informed of what the rules are before a finding that the T.B. has violated the rules. The State Board agrees.

School boards are not required to write good conduct rules "with the precision of criminal code." *In re Justin Anderson et al.*, 14 D.o.E. App. Dec. 294, 299 (1997). However, the rules must be written "with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *Id.* (quoting *Fowler v. Bd. Of Educ.*, 819 F.2d 657, 664 (6th Cir. 1987)). Students and parents alike look at good conduct policies to determine what the rules are. The question here is whether or not a high school student or the parent of who is reading this rule would understand what behavior would result in a violation of the rule. We do not think so.

The HCSD Good Conduct Rule states:

"A student may lose eligibility under the Good Conduct Rule for any of the following behaviors . . . exceedingly inappropriate or offensive conduct such as assaulting staff or students, gross insubordination (talking back or refusing to cooperate), serious hazing or harassment of others."

The undisputed evidence is that T.B. was not involved in the conduct in the motel room that resulted in damages. Nor is there evidence that T.B. was insubordinate or involved in hazing or harassment of others. On its face, there is no evidence that T.B. violated this rule. *Brands* requires that there be "some evidence" that a student violated the rule and here there is no evidence to support the alleged violation.

⁶ Due process does not require courtroom evidence standards. "Some evidence" is less than preponderance of evidence and far from beyond a reasonable doubt.

⁷ The *Andrews* case involved a student who was found ineligible to compete for a violation of a coach's unwritten team rule that was separate and apart from the district's good conduct policy. *See cf. id.* The State Board in *Andrew* found that a coach can have team rules, but the consequences of a violation must defer to the local board's good conduct policy if it involves an eligibility determination. *Id.* An individual coach's team rules cannot override local board policies regarding good conduct and student discipline. *Id.* Thus, the imposition of a good conduct penalty for a violation of the team rules was reversed. *Id.*

The district has broadly construed this rule to include a requirement to inform on team members who violate the good conduct policy. However, nothing in this rule provides notice to a student that they are required to do so. Nor is there any other provision in HCSD's good conduct policy that requires a student to inform on other students. The only provision that requires an affirmative duty to do anything is the provision which requires a student to leave if found to be in the presence of drugs or alcohol.⁸ However, that provision provides no requirement to inform on other students who are present. If the district wanted to make informing on other students part of the rule they have the authority to, but they have not done so here. We will broadly construe the good conduct policy; however, to find that it encompasses T.B.'s conduct would require the State Board to, in effect, redraft the HCSD's good conduct policy. This we cannot do.

The district argues, as an afterthought, that T.B.'s conduct could also fall under the provision regarding criminal activity.⁹ We find this argument unpersuasive. The violation the district originally charged T.B. with is being involved in behavior that is "exceedingly inappropriate or offensive." The district cannot now claim a violation of another rule without violating due process rights. Furthermore, the record is clear that T.B. was not involved in the conduct. There is no indication that the line between bystander and accomplice was crossed by T.B. In all areas of the law, mere bystander liability is the exception and not the rule. Mere bystander liability, absent extraordinary circumstances not present here, will not be imposed absent an express statute, rule, agreement, or provision.

The district also suggests that the facts in this case are similar to the facts in *Anderson*. See *Anderson*, 14 D.o.E. App. Dec. 294. However, there are several things that distinguish the two cases. First, the appellants in *Anderson* were not challenging the finding of a violation as they are in this case; they were challenging the reasonableness of the punishment. Second, the appellants were no strangers to the good conduct policy since they had both previously violated it in two separate occasions. Finally, the appellants in *Anderson*, unlike this case, were given proper notice of the vandalism rule they violated. Here, T.D. was not given notice of the rule he is accused of violating.

The State Board finds that that the decision of the HCSD Board to uphold the suspension of T.B. unreasonable and contrary to the best interest of education in light of the fact that the HCSD's good conduct policy cannot reasonably be read to impose an obligation to inform on teammates and, as such, did not provide notice to T.B. that not informing on his teammates would result in a violation of the policy.

⁸ This provision provides that "being in attendance at a function or party where the student knows or has reason to know that alcohol or other drugs are being consumed illegally by minors and failing to leave despite having a reasonable opportunity to do so." See Exhibit B at 17.

⁹ This provision provides that "engaging in any act that would be grounds for arrest or citation in the criminal or juvenile court system . . . regardless of whether the student was cited, arrested, convicted, or adjudicated for the acts." See *id.* at 18.

DECISION

For the foregoing reasons, the decision of the Highland Community School District Board of Directors made on November 18, 2013, affirming the administration's decision issuing T.B. a thirty day suspension from competition under the district's good conduct policy is REVERSED. The school is ordered to remove the violation from T.B.'s record. There are no costs of this appeal to be assigned.

It is so ordered.

3/6/2014
Date

/s/
Nicole M. Proesch, J.D.
Administrative Law Judge

3/6/2014
Date

/s/
Rosie Hussey, Board President
State Board of Education