IOWA STATE BOARD
OF EDUCATION
(Cite as 21 D.o.E. App. Dec. 251)

In re Jon Francis	**:**	
Lori Francis, Appellant,	**:**	
v.	**:**	DECISION
Alta Community School District, Appellee.	**:** **:**	[Admin Doc. #4525]

The above-captioned matter was heard telephonically on November 12, 2002, before designated administrative law judge Carol J. Greta, J.D. Appellant, Lori Francis, was present on behalf of her son. Ms. Francis did not choose to be represented by legal counsel at the hearing. Appellee, Alta Community School District, was represented by legal counsel, Ann Tompkins of the Cedar Rapids law office of Gruhn & Blades, as well as by Superintendent Fred Maharry and High School Principal Scott Johnson.

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.

Ms. Francis seeks reversal of a decision of the local board of directors of the Alta District made on September 26, 2002, finding that her son, Jon Francis, violated the District's good conduct rule and upholding the consequence given to her son by Principal Johnson and Activities Director Larry McNutt.

I.
FINDINGS OF FACT

Jon Francis ["Jon"], is a 16-year-old junior in the 2002-2003 school year at Alta High School. He participates in extracurricular activities for the Alta District, particularly (but not exclusively) interscholastic athletics. The district's board has enacted a good conduct rule that addresses the behavior expected of students who participate in extracurricular activities. The board's rule provides for penalties that become harsher for subsequent violations of the rule while also providing means by which a student can reduce his/her penalty. For example, the punishment for a third or subsequent violation of the rule is 16 weeks of ineligibility to participate in extracurricular activities. This period of ineligibility may be reduced to ten weeks if the student either performs approved community service or, if appropriate, seeks an evaluation and follows through with any recommended treatment.

The decision-making dynamics of the rule provide for the building principal and activities director to come together initially as the good conduct team to determine whether there has been a violation of the good conduct rule and to implement the punishment articulated in the rule. If a student or parent or a minor student wishes to appeal the decision of the good conduct team, the rule provides for an appeal to the District's superintendent. Further appeal, if desired, could be taken from the superintendent's decision to the local board. This part of the rule also states that "[d]uring the appeal process, the student shall remain ineligible."

Finally, the rule includes the following provision:

> Voluntarily Seeking Assistance
>
> The school encourages students to seek assistance with chemical abuse problems, or other problems. If a student, in good faith, suspects that he or she needs assistance in dealing with a personal problem before it is known to the school, he or she may request assistance from the school administration, a guidance counselor, or a coach or sponsor of an activity without fear of penalty under the Good Conduct Rule. The student must, at his/her own expense, enter and follow a prescribed program of assessment, evaluation and treatment, if indicated by a non school agency, and must make the principal aware of his or her participation in such program by providing a written confirmation from the agency providing a program. …

The parties agree that on July 23, 2002, Jon was unlawfully in possession of alcohol. They agree that this is both a violation of state law (Iowa Code § 123.47) and of Alta's good conduct rule. This was Jon's fourth violation of his district's good conduct rule, so he faced a loss of eligibility to participate in extracurricular activities for 16 weeks unless reduced by certain voluntary actions on his part.

On or about September 5, 2002, Ms. Francis initiated a meeting with Principal Johnson in which she made him aware for the first time that Jon had "had an incident involving drinking" on July 23. It was her testimony that she made the principal aware that Jon voluntarily would be commencing an out-patient treatment program for chemical dependence on September 16, so that she could explain the demands of his participation in the out-patient program in hopes of keeping school/treatment scheduling conflicts to a minimum. She further testified that her expectation regarding the good conduct rule prior to meeting with Principal Johnson was that Jon would have to suffer the full consequences of his violation of that rule. According to Ms. Francis, she did not ask that Jon be given a chance to use the "Voluntarily Seeking Assistance" provision of the good conduct rule.

Mr. Johnson, in his testimony, did not dispute that at the September 5 meeting he brought up the Voluntarily Seeking Assistance provision of the good conduct rule and offered to let Jon use that provision. Where the parties depart in their recollections is whether the offer by Principal Johnson to utilize the Voluntarily Seeking Assistance provision was conditioned on no citation being issued against Jon based on the events of July 23. Ms. Francis agreed that the provision was conditioned on Jon continuing with the treatment program; however, she testified that the offer of this provision was otherwise made without condition.

Mr. Johnson stated at the hearing that Ms. Francis represented to him on September 5 that she had been told that no criminal charge would be filed against Jon. He further testified that he believes that Ms. Francis knew on that date that a citation was going to be issued against Jon, charging him with illegal possession of alcohol. Ms. Francis denied having been told by any law enforcement or juvenile court officer that a citation against Jon would be issued.

Shortly after the September 5 meeting, the district learned that Jon had been issued a citation for illegal possession of alcohol in violation of Iowa Code section 123.47 as a result of his conduct on July 23, 2002. The citation and written notification to the school [the latter of which is required by Iowa Code section 123.47B] are dated September 3, 2002. There was conflicting evidence whether either Jon or Ms. Francis knew on September 5 that the citation had been issued as of that date.

Once the citation was a reality, however, Ms. Francis met again with Mr. Johnson on September 11, 2002. At this meeting the two of them, joined by Activities Director McNutt, signed a hand-written agreement meant to clarify whether Jon could take advantage of the Voluntarily Seeking Assistance provision. This agreement states that Jon will be fully eligible to compete in extracurricular activities for the district if he stays with his out-patient treatment program *and* either no citation is issued or the citation is issued and subsequently dismissed. The agreement further provides that in the event the citation is issued and upheld, Jon is to suffer the consequences of his violation of the good conduct rule. Ms. Francis testified that, as of the date of this hearing, the citation against Jon is still pending and has not been resolved. She also stated that her family identified Jon's substance abuse problem in January 2002.

Regarding the intent of the Voluntarily Seeking Assistance provision, Mr. Johnson testified that it applies to not just substance abuse, but to other areas in which counseling is available to a student, such as anger management. However, Mr. Johnson added that the provision does not apply to a student who has been cited by law enforcement for illegal conduct. In other words, the district and its board do not mean for the provision to be used by students to avoid the consequences of its good conduct rule once law enforcement is involved.

A second contention raised by Ms. Francis was that Jon was deprived of adequate due process because there was no intermediate appeal available to the district superintendent, and that this is contrary to the appeals provisions of the district's good conduct rule. The parties agree that Superintendent Maharry was involved in the initial determination made by the District's "good conduct team," and that this involvement meant that Jon's intermediate appeal to him was not available. The parties disagree as to whether Dr. Maharry was involved at the request of Mr. Johnson or Ms. Francis.

At it meeting on September 26, the Board was made aware of the agreement of September 11 signed by Ms. Francis, Mr. Johnson and Mr. McNutt. Ms. Francis did not claim at this hearing that she was not given a full opportunity to present her facts and arguments to the local board. The Alta Board of Directors found that Jon's activities of July 23 violated its good conduct rule, and voted to uphold the punishment of 16 weeks ineligibility given to Jon by the good conduct team. Testimony at this hearing established that Jon has met the requirements in the local rule to have his penalty reduced to ten weeks, and that, as of the date of the hearing, two weeks remain of that punishment.

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.

Local school boards of education have been given authority to promulgate rules for the governance of their students in Iowa Code § 279.8, which states in part that the "[local] board shall make rules for its own government and that of the directors, officers, employees, teachers and pupils … and shall aid in the enforcement of the rules, and require the performance of duties imposed by law and the rules." The Iowa Supreme Court has also ruled that schools and school districts may govern out-of-school conduct of it students who participate in extracurricular activities. *Bunger v. Iowa High School Athletic Association*, 197 N.W.2d 555, 564 (Iowa 1972). 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).

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 first address the argument of Ms. Francis that the appeal process as implemented at the local level was inadequate. We have previously ruled that a slight variation in the provisions of a good conduct rule from the actual implementation does not amount to a deprivation of due process. *In re Joseph Fuhrmeister*, 5 D.o.E. App. Dec. 335, 345 (1988). Inasmuch as there was no evidence that Dr. Maharry would have overturned the decision of the good conduct team, and as Jon would have been ineligible while any appeal was pending before Dr. Maharry, Jon was not prejudiced by the lack of this step. Accordingly, we conclude that Jon was not deprived of adequate process at the local level.

Next, we note that Ms. Francis' appeal is from the decision of the local board, not from the decision of the district's administrators. The Board did not make an offer to let Jon use the Voluntarily Seeking Assistance provision and then revoke the offer, which is the gist of Ms. Francis' complaint. The Board was aware of the agreement of September 11, and there was no evidence at this hearing that the board did not hear all of her points she made at this hearing. The Board then decided that Jon should suffer the full consequences of his violation of the district's good conduct rule. The reasonableness of the decision of the Board, and whether it was contrary to the best interest of education, is what the State Board examines.

According to the testimony of Mr. Johnson regarding the Voluntarily Seeking Assistance provision, Jon's situation of July 23 was not meant to be covered by the provision. If Ms. Francis or Jon had approached the district shortly after the family determined in January of 2002 that Jon had a substance abuse problem, clearly the provision would have been applicable at that time. However, a "personal problem," as that term is used in the Voluntarily Seeking Assistance provision does not mean a brush with law enforcement. Therefore, regardless of whether a citation was issued to Jon as a result of his illegal possession of beer on July 23, that situation was not one for which use of the Voluntarily Seeking Assistance provision applies. We understand the Francis family's anger at the offer and later withdrawal of the same, but the local board has the last word for the district. The Board was not bound by the initial offer made by Mr. Johnson or by the agreement of September 11; it correctly determined (as was the sense that Ms. Francis had prior to her first meeting with Mr. Johnson) that the provision was not appropriate in this case.

Having determined that the local board's decision should not be overturned, it is desirable to briefly address testimony on behalf of the district that indicated that the district ceased its own investigation regarding other incidents involving Jon solely because criminal charges were not filed. 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).

What this means is that if a school or school district has a good conduct rule, its decisions regarding alleged violations of that rule should not be dependent on the outcome of any investigation by law enforcement. Learning that a student allegedly has run afoul of state or local law could *initiate* an independent investigation by the school, not dictate it. The school should not feel that its handling of a good conduct violation must parallel law enforcement's handling of the same violation. The standard of proof for law enforcement is a tougher standard to meet than the "preponderance of the evidence" standard that governs proceedings before a local school board. If a criminal charge is dismissed by law enforcement, it does not mean that it will be more difficult for a school or school district to prove the good conduct violation that may be predicated on the criminal charge.

III.
DECISION

For the foregoing reasons, it is recommended that the decision of the Board of Directors of the Alta Community School District made on September 26, 2002, finding that Jon Francis violated the District's Good Conduct Code and upholding the consequence given to him by Principal Johnson and Activities Director Larry McNutt, be AFFIRMED. There are no costs of this appeal to be assigned.

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Date Carol J. Greta, J.D.
Administrative Law Judge

It is so ordered.

_____ _____

Date Gene Vincent, President
State Board of Education