

IOWA STATE BOARD OF
PUBLIC INSTRUCTION

(Cite as 4 D.P.I. App. Dec. 118)

In re Donald and Katherine Blaess	:	
	:	
Donald and Katherine Blaess, Appellants	:	DECISION
v.	:	
	:	
Howard-Winneshiek Community School District, Appellee	:	[Admin. Doc. 804]

The above-captioned matter was heard on July 19, 1985, before a Hearing Panel including Dr. Robert D. Benton, state commissioner of the department of public instruction and presiding officer; Mr. Gayle C. Obrecht, director, administration and finance; and Dwight R. Carlson, director, school transportation and safety education. The hearing was held pursuant to Iowa Code Chapter 290, and departmental rules, Chapter 670--51, Iowa Administrative Code. The appellants were present and not represented by counsel. Appellee Howard-Winneshiek Community School District (hereinafter the District) was present in the persons of Superintendent Donald Pettengill, High School Principal Dennis Brosdahl, and Associate Senior High Principal Bruce Chailquist. An informal "on the record" hearing was held with oral argument by the parties. Mr. and Mrs. Blaess appealed a decision of the District board of directors (hereinafter the Board) affirming the high school administration's failure to "excuse" an absence taken by Donald Blaess, Jr., a ninth grade student in the District, on May 9, 1985.

I.
Findings of Fact

The Hearing Panel finds that it and the State Board of Public Instruction have jurisdiction over the parties and the subject matter of this appeal.

The attendance policy at issue in this case has been in existence for several years, having been adopted in May of 1979. The current policy was the result of dissatisfaction and ineffectiveness of prior policies. At the time of its adoption, parents, students, staff, and board members were given the opportunity to review it as proposed and make comments and suggestions before it was finalized. The purpose and intent paragraph of the policy states a comparison between school and work attendance. "Since high school is your 'job' for three [sic] years, we feel that you should be absent from school for only those reasons that would justify absence from employment."

Nine absences per semester are permitted without penalty. Additionally, the printed policy states that three absences per year (to be included in the nine-per-semester total) may be taken for purely personal reasons, providing the student's "parent or guardian is aware of the absence and they telephone the school BEFORE school begins on the day of the absence or the day (or any day) BEFORE the absence." Other "excused" absences are given for (1) injury or personal illness, (2) professional appointments that cannot be scheduled outside the school day, and (3) serious personal or family problems (exemplified by "serious injury or illness in the family, working at home when absolutely necessary, driving a parent to a doctor's appointment, religious events, immediate family wedding, etc."). The penalty for exceeding nine absences per semester is loss of credit for any and all courses in which absences total ten or more. "When 10 absences are reached, the student may audit the course(s) for no credit and receive a grade of N (no credit) OR drop the course(s) and be assigned to structured study hall during that time the class(es) meet."

Due process and notice provisions are built into the policy, which is printed on the inside and back covers of a folder presumably given to all students at the beginning of the year. The attendance policy provisions cover approximately one-fourth of the printed information found in the folder. Other sections pertain to the split period scheduling, disciplinary guidelines, tardies, restroom and locker information, etc. Students clearly have notice of the attendance policy itself, and provisions therein detail the second type of notice, to wit: "warning" telephone calls and/or letters sent to the parents of a student.

After students have been absent six times in a semester, their parents or guardian will be informed by letter of the student's attendance status. When nine absences are reached, an attempt will be made to notify parents or guardians by telephone (maximum of 3 attempts) and with a follow-up letter, indicating that the student will not receive credit for the class(es) if they miss the class(es) one more time. When students reach nine absences, they may remain in class on probation, and will receive credit for the class if they have perfect attendance for the rest of the semester and completes [sic] all make-up work. When 10 absences are reached, the student may audit the course(s) for no credit and receive a grade of N (no credit) OR drop the course(s) and be assigned to structured study hall during that time the class(es) meet.

Absence policy, paragraph 8 (Exhibit #1).

Beyond the notice provisions outlined above, the policy also delineates additional due process procedures by notifying the reader of the appeal process from the building principal to the Superintendent and Board, and by clearly designating the time periods for appeals.

Discretionary judgment enters into the policy when a student arrives at his or her ninth absence. The policy states:

The principal may waive or extend the 9 absence limit if he feels there is good reason. For example, if all previous absences were health-related absences, it may very well be that the 9-day limit would be extended. However, if one (or more) of the 9 absences was an absence that could have been avoided (suspension from class, skipping school, unexcused absence, etc.) then it is reasonable to assume that the 9 absence limit would not be extended for any reason. . . .

Absence policy, paragraph 5 (Exhibit #1) (emphasis added).

Donald Blaess, Jr. is sixteen years old and has just completed ninth grade at Crestwood Senior High. He was enrolled in five full-time courses, plus physical education and study hall on alternative days, and had one other full-time study hall. On April 1, 1985 a letter was sent to Donald Jr.'s parents informing them that he had reached six absences each in two courses, Power Woods and P.E./Study Hall. On May 2 another letter went to Donald's parents informing them that Donald had reached nine absences in Power Woods. A notation was typed at the bottom under the heading "Other Remarks." "Don has reached nine absences in his Power Woods class. If it becomes absolutely necessary for Don to be absent again, it is imperative that you call Mr. Brosdahl." There is no dispute as to receipt of these warning letters. Appellant Donald Sr. acknowledged his awareness of the policy and receipt of notice letters.

Donald Jr.'s attendance record up to the last warning letter indicates absences as follows for second semester:

1/25/85	All day - ill
2/4/85	All day - dentist
2/12/85	All day - ill
2/13/85	All day - ill
3/15/85	All day - ill
3/27/85	All day - needed at home
4/3/85	All day - ill
4/9/85	All day - dentist
4/16/85	6th period (study hall)
4/18/85	5th and 6th periods (study halls)
4/30/85	All day - dentist

Appellee's Exhibit, page 6. No "personal" days are reflected as taken in the second semester. However, during the first semester, Donald took two and one-half of his allotted three personal days on 10/10/84 (one-half), 10/22/84 (all day) and 11/1/84 (all day). Therefore, at best he had one-half day of "personal" absences remaining.

On May 9, 1985 Donald Jr. celebrated his sixteenth birthday. Upon awakening, the young man was asked by his father whether he would like to stay home. Mr. Blaess' intent was to share that special day in his son's life by spending it together. Mr. and Mrs. Blaess work separate shifts on their jobs, and neither's hours coincide well with their son's schedule, so time together is precious and special to all of them. The "plan" for the day was never fully articulated, but included a routine visit to the barber and perhaps some fishing. Don Jr.'s reply to his father was that he would like to stay home from school, but that Mr. Blaess should call the principal before school began. At

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this point there is some confusion as to each's understanding of Don Jr.'s status in Power Woods, and potentially other courses as well. Apparently, Mr. Blaess assumed that a telephone call citing "personal" reasons would be sufficient contact to eliminate the threatened loss of credit. Mr. Blaess was quite upset when he discovered that the school administration required a more explicit reason than he was willing to give, and became more disheartened when he was told that his refusal to cite a reason would result in the absence being "unexcused." This fact, coupled with his son's absence status, would cause Don Jr. to lose credit for the Power Woods course.

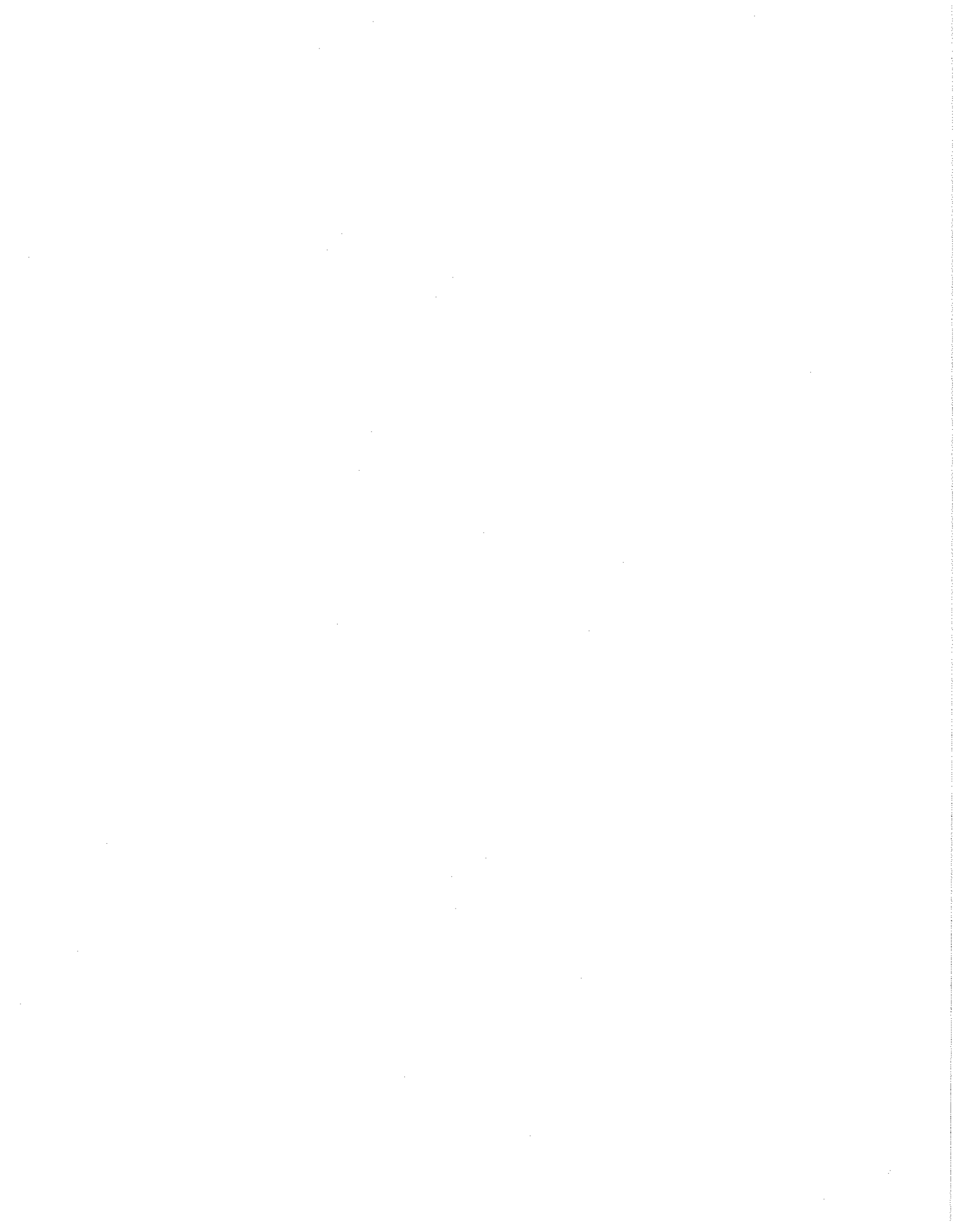
Mr. Blaess approached the Board on May 20, 1985 seeking a reversal of the principal's decision on the grounds that he, as a parent, had the right to decide when or if his son stays home from school, and that it was inherently unfair to punish his son for a decision he made as a father. The Board denied his request and Mr. Blaess filed this appeal.

In oral argument and upon questions propounded by the Hearing Panel, Superintendent Pettengill and Principal Brosdahl conceded that the decision to mark Don's absence as unexcused was based on Mr. Blaess' unwillingness to state the purpose of the absence in detail. This prevented them from assessing the reason as "good" or not. They informed Mr. Blaess that the school can indeed be the final decision-maker in a contested absence determination and that Don's credit in Power Woods was at stake. Nevertheless, Don Jr. remained at home on May 9, and Donald Sr. refused to reveal the reason for the absence aside from his declaration that it was "personal."

Following his return to school, Don was notified again of the loss of credit for the semester course. He opted for the auditing alternative and continued to attend class for the remaining eleven days of the semester. He did receive an "N" on his grade card in Power Woods, where he had held a B or B- average until May 9.

Representatives of the District, in speaking before this Panel, hypothesized that the only way they would have excused this absence (for the stated reason that father and son wanted and needed time together) was if they were aware of problems in the home justifying a need for time. Had the absence been deemed "excused," Don would have not lost credit for Power Woods since "excused" absences over the nine day limit activate the "waiver" or "extension of the limit" discretionary decisions by the principal. Mr. Brosdahl acknowledged under questioning that he has exercised the "waiver" or extension provisions for reasons such as students working in the fields, or visiting a sick friend in an out-of-town hospital. There were no criteria listed in the policy for granting the waiver or extension, other than "good reason" and the principal's discretion in this regard is exercised on a case by case basis. Admittedly, the administration is reluctant to extend the limit if one or more of the first nine absences were unexcused or "avoidable." The policy also reflects this fact. Don's record evidenced no unexcused absences up to that time in the semester, so he may have been eligible for a waiver had his father given a reason which the administration deemed to be "good reason."

There remains some confusion over what was required of Mr. Blaess to enable his son to keep credit in Power Woods. Don Jr. apparently told his father that a telephone call to the administration would be sufficient. The May 2 notice did not include the fact that a mere telephone call would be insufficient. ("If it becomes absolutely necessary for Don to be absent again, it is imperative



(that you call Mr. Brosdahl.") However, we specifically find that both son and Mr. Blaess had notice of the attendance policy, and that the policy is specific enough in its terms to alert the average person to the need for a "good" reason (i.e., an excusable reason) to justify an extension or waiver of the nine-day limit.

II. Conclusions of Law

The only issue clearly raised by Mr. and Mrs. Blaess in their appeal was whether or not a parent may make the ultimate determination of the status (excused or unexcused) of a child's school absence. We have addressed and resolved this issue before, in In re Sandra Mitchell, 1 D.P.I. App. Dec. 201 (1978). In that appeal, the parent of two high school girls sought to be exempted from a five-absence-no-credit policy to allow the girls to participate in an auction sponsored by the parents' livestock business on four afternoons during the school term. Id. at 202. The principal, and ultimately the board, had denied the requested exemption. Id. at 203.

On appeal the two issues facing the panel in Mitchell were whether the parents should have the primary authority for determining whether an absence from school is justified, and whether the rules enacted by the district in its attendance policy were reasonable in that case. The answer to both questions was no. With regard to the parental determination question, we said, "While we agree that parental desires in such matters should be strongly considered by the school, we feel in most instances that the interest of the school in maintaining order in the educational environment sufficiently overrides the interest of the parent to exercise complete discretion." Id. We have found no reason, under case law or on the facts of this appeal, to change that holding.

The Appellants' decision not to challenge this policy itself is wise as this same attendance policy was upheld in In re Richard Caruth, 3 D.P.I. App. Dec. 67 (1982). In that case, however, we did find that the policy was being applied improperly. Id. at 72. The District has since altered its application of it to meet the guidelines stated in that case.

This does not mean, however, that some potential for administrative misapplication no longer exists. We are well aware that when discretionary decisions are made, the possibility exists for an abuse of that discretion. Comments made at this hearing clarified the fact that when ad hoc decisions are made by the principal, (who considers personal needs in making a determination to waive the nine day limitation) inconsistent results may obtain. For example, the Blaess' request to excuse their son's absence to spend the day with his father was denied in this case. A different student with a history of family problems or divorce may have had that same request honored. To an outsider viewing only the stated reasons for the absences, the antithetical results would appear to be irreconcilable. In fact, the differences in the two students' backgrounds would be the basis for the distinction. It is therefore understandable that Mr. Blaess would be perplexed as to why his request was denied, when other students are excused to perform labors at home or to visit sick friends out of town. These problems are the "slings and arrows of outrageous fortune" which must be borne when decisions are made on a

case-by-case basis. The alternative to the application of discretionary judgment is flat, unbending rules which fail to meet the needs of individuals, or a form of "Napoleonic Code" which attempts to envision and rule on every conceivable reason under every imaginable circumstance. Neither is desirable in our view. We applaud policies which allow for special considerations and flexibility. This attendance policy, permitting individual application, is no less praiseworthy.

III.
Decision

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

August 9, 1985

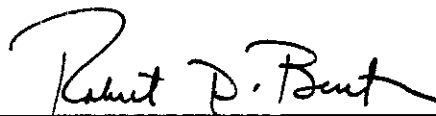
DATE



LUCAS J. DEKOSTER, PRESIDENT
STATE BOARD OF PUBLIC INSTRUCTION

July 29, 1985

DATE



ROBERT D. BENTON, Ed.D.
COMMISSIONER OF PUBLIC INSTRUCTION
AND PRESIDING OFFICER