

IOWA STATE BOARD
OF EDUCATION
(Cite as 9 D.o.E. App. Dec. 38)

In re Lorne Segerstrom :
Lorne Segerstrom, :
Appellant, :
v. : DECISION
Ida Grove Community :
School District, :
Appellee. : [Admin. Doc. #3126]

The above-captioned matter was heard on July 11, 1991, before a hearing panel comprising Don Helvick, consultant, Bureau of Administration and Accreditation; Joan Clary, consultant, Bureau of Special Education; and Kathy L. Collins, legal consultant and designated administrative law judge, presiding. Appellant was present in person and was represented by James Hanks of Klass, Hanks, Stoos, Stoik & Villone, Sioux City. Appellee Ida Grove Community School District [hereafter the District] was present in the persons of Superintendent Dean Collopy, high school Principal Mike Andrews, and two directors, Randy Miller and Mason Fleener, unrepresented by counsel. Appellant timely appealed a May 13, 1991, decision by the District board of directors [hereafter the Board] to deny academic credit due to excessive absences in four subjects in which Appellant was enrolled second semester.

A mixed evidentiary and on-the-record hearing was held following departmental procedures found at 281 Iowa Administrative Code 6. Authority and jurisdiction for the appeal are found at Iowa Code chapter 290. At the agreement of the parties a preliminary decision was mailed out on August 21, 1991.

I.
Findings of Fact

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 relevant facts of this case are not in dispute. Appellant is a 17 year-old talented and gifted (TAG) student who was chronologically a junior in the 1990-91 school year. However, at the beginning of the year he needed only 18 credits to graduate, and he planned to fulfill those requirements in that school year. First semester he took a full load of courses and received an A or B+ in each course. Second semester he was enrolled in eight academic subjects, also without study halls or free periods. He maintained a 3.45 grade point average and was ranked sixth in his class. He was not a discipline problem in school. In addition to his school program Lorne participated in church activities and American Legion football and held two part-time jobs to earn money for college. He was conditionally accepted at the University of Iowa for fall 1991. Although he was most likely eligible for an academic scholarship, his lack of a high school diploma kept him from meeting the requirements for this fall.

In the summer prior to his last year of high school, Lorne and another student made plans to take a Caribbean cruise during the next year. Each student began working to save money for the trip. The reservations were made by early or mid January, initially for a five-day cruise, and the \$600 tickets became non-refundable thereafter.

Lorne was ill all day on January 21, 22, and 23 and again on February 11, 12, and 13.¹ On March 11 he missed American history and Algebra III due to court appearances on a traffic matter. Lorne and his friend went on their Caribbean cruise and were absent from school April 8, 9, 10, and 11. Lorne was absent on April 13 from his TAG class and chemistry due to another court appearance. He was present for the remainder of the school year, completed all coursework, and made up all tests and work he missed due to his absences. Lorne provided a doctor's excuse for his six illness days in January and February. His mother sent notes to school regarding his two court appearances. She was advised by the school after Lorne's third and sixth absences.

Lorne spoke with his high school principal, Mike Andrews, shortly before he left for the cruise because he wanted to find out how the District's attendance policy would be applied if he missed more than ten days of school. Having had six and one-half days of absence at that point, he could see that the four-day cruise would put him over the ten-day limit, and Mr. Andrews had previously warned him that he was in danger of losing credits under the policy. After speaking with Mr. Andrews, Lorne then went to Superintendent Collopy who referred him back to Mr. Andrews because of the superintendent's uncertainty as to how the attendance policy would be applied. Mr. Andrews apparently did not change his position that the cruise-related absences would put Lorne over the limit and he would lose his credits. Lorne went on the cruise anyway.

Shortly after he returned to school, Lorne was notified that he would not receive credit in four of his classes due to excessive absences. His next step was to appeal to the Board. Before the Board meeting Lorne made a decision to stay in school for the five days graduating seniors would normally be dismissed. He did this in an attempt to make up the class time he had missed due to his absences. Despite this action and the fact that he had satisfactorily completed all coursework with exemplary grades, the Board voted 3-2 to deny his appeal, upholding the principal's interpretation of the attendance policy.² It issued written findings and conclusions on or about May 20.

The policy at issue in this case was developed by the principal in conjunction with the District's citizen's advisory committee. Mr. Andrews testified that he felt one of his main tasks in his new position in 1989-90 was to develop a workable attendance policy. Toward that end, he

¹ Either at the end of January or by mid-February at the latest, Lorne and his friend changed their cruise plans from a five-day trip to a four-day trip. Lorne testified that the change was made to avoid the consequences of the District's attendance policy, and occurred after his three January absences.

² At the same meeting, the Board voted 3-2 to allow Lorne to "participate in commencement proceedings and if he chooses to work with the administration to come up with a program of additional instruction to satisfy his graduation requirements and then receive his diploma." Board Minutes of May 13, 1991, at p. 3.

contacted over 50 schools asking for copies of their policies. He consolidated the information and turned it over to a faculty committee whose suggestions led to a draft attendance policy. The citizens' advisory committee was asked to review it and make suggestions, after which Mr. Andrews finalized a proposed policy for Board consideration.

Some of the concerns Mr. Andrews sought to address in developing the new policy included the high rate of absenteeism in previous years and the assumption that some parents will cover for their children and write excuses when the student's absence wasn't really necessary. He also wanted a policy that would stress the need to be in school but at the same time give the students some leeway to be absent for legitimate reasons. Mr. Andrews stated that prior to proposing the final draft to the Board, he contacted this agency for advice and was told something to the effect that the proposal sounded OK but might only be good until it was challenged.

The Board adopted the new attendance policy in July. All students received a copy and were advised of it in the fall.

The attendance policy adopted and applied in this case states, in pertinent part, as follows:

The Department of Education standards require students to be in class a minimum of 60 hours each semester in order to receive a unit of credit.³ At Ida Grove this amounts to a student being able to be absent from a class 10 days per semester. If a student is absent 11 or more days per semester in a class, the student will not receive credit for that semester. Students receiving "no credit" in a required course will need to make up that course in order to graduate. If a student misses more than 10 days for unforeseen reasons, an appeal may be made to the principal. Due process will be afforded as in any grievance.

Much of the testimony at hearing focused on the meaning and application of the term "unforeseen reasons." Mr. Andrews' interpretation was that if the eleventh absence was for an unforeseen or unavoidable reason, he would likely use his discretion in any first-level appeal to him to excuse the absence and grant the credit. He testified that in his view, the reasons for a student's first ten absences are irrelevant; the reason for the eleventh absence is critical and must be "unforeseen." He acknowledged that the policy isn't clear that the term "unforeseen" applies only to the eleventh absence, but he points out that Lorne clearly knew what the administration's position would be before Lorne left for the trip.

In response to a hypothetical question, Mr. Andrews admitted that a different result would have occurred if a student first took a four-day

³ The Department of Education's standards for accredited schools require the school to offer and teach a course, for a unit of credit, for 60 hours per semester. 281 IAC 12.5(18), (19). The standard applies to the school's course offerings, not to student attendance.

trip and then had six days of illness and two half-days of court appearances. He also agreed that it would be bad educational policy to penalize students academically for absences beyond the student's control.

As for the effectiveness of the new policy, we have little information. Mr. Andrews testified that he believes the policy has deterred excessive absenteeism; however, no data were collected, even informally, showing this. He testified that with respect to certain students who previously had serious attendance problems the policy has worked. He also stated that it was not unusual for students to stop in at the office to check their attendance record, perhaps with a view to "maxing out" on their ten-day limit. In addition to Lorne, one other student lost credit in two or three courses last year due to the attendance policy, but he or she accepted the loss of credit punishment without appealing. Other students who exceeded the limit had credit restored because their eleventh absences were validated by a medical excuse from a doctor.

School officials testified that attendance for a given number of days is not a graduation requirement.

II. Conclusions of Law

A local school board is empowered to make rules for the operation of the schools under its control, including rules governing pupils. Iowa Code §279.9 (1991). School boards must adopt policies on attendance in addition to other policies required to run a school district efficiently. 281 IAC 12.3(8). It is axiomatic that school rules so adopted must be reasonable. Board of Directors v. Green, 259 Iowa 1260, 147 N.W.2d 854 (1967). The burden is on those challenging a validly adopted rule to overcome the presumption of its reasonableness. Id.

Student absenteeism is not unique to Ida Grove Community School District; it is a statewide concern. Therefore, attendance is probably the single issue on which secondary administrators in Iowa spend most of their valuable time. We are also aware that in the main, attendance patterns reflect student attitudes toward school, and often those attitudes and patterns are established in the elementary school years, well before the student reaches high school.

In school year 1990-91, students in Iowa high schools were not required to be in school under threat of prosecution of their parents for violating the compulsory education law. See Iowa Code §299.2(2)(1991)(satisfactory completion of the eighth grade excused a student and his or her parents from the requirements of the law). However, even though the compulsory attendance law could not reach them, enrolled high school students were still subject to the school rules regarding attendance.

We certainly cannot fault Mr. Andrews for his zealous efforts to create a workable, reasonable attendance policy. In fact, he did a superlative job of data gathering and seeking broad-based input into the

policy. We still find it flawed in its application, however well intentioned it was.

Over the course of several years, the State Board of Education has had the opportunity to hear appeals from persons "aggrieved" by local school board decisions regarding attendance. One of the first recorded cases arose in the 70's. In re Laurie Stodgill involved a married student's appeal of loss of credit due to absences. In re Laurie Stodgill, 1 D.P.I. App. Dec. 128 (1977). The policy in that case attached loss of credit after twelve absences unless "extenuating circumstances" occurred. Id. at 129. Laurie had missed school thirteen times by the end of November of her senior year, due to personal illness and the illnesses of her two children. Id. at 129-130. Her appeals to the principal and school board were fruitless, and the sole issue on appeal to the State Board was whether "extenuating circumstances" existed to warrant an extension of the twelve-absence rule. Id. at 130.

In its decision, the State Board did not overturn the loss of credit, but pointed out that Appellants had not attacked the rule itself, and implied that such a challenge might have led to a different result. Id. at 131:

School policies of [this] nature appear to be quite prevalent in the state. We hope that this and all school boards with similar policies and rules reconsider all the potential educational and legal ramifications and complexities involved. For instance, such rules must meet tests of reasonableness as related to their educational setting

Id.

The stage was thus set for the next attendance policy case, In re Sandra Mitchell, which was heard a little more than one year later. In Mitchell the same motivation existed for revising the high school attendance policy as is present in this case. In re Sandra Mitchell, 1 D.P.I. App. Dec. 201 (1978). To combat excessive absenteeism, the school board adopted a policy that took away a student's academic credit in classes for more than five absences per semester. Id. at 202. If a doctor or dentist wrote a note, the absence would not be counted in the total.

The hearing panel recommended and the State Board acted to overturn Sandra Mitchell's loss of credit on the grounds that the attendance policy was invalid as unreasonable, unconstitutional [in violation of procedural due process] and "not based on good educational principles." Id. at 207. The upshot of its holding in that case is that "absence rules should not penalize [students] for absences due to sickness or other unavoidable causes." Id. at 204. In reversing the local board in that case, the State Board pointed out that if an attendance policy can be applied differently to two students who have missed an equal number of days but in a different order or for different but legitimate reasons, the result is an unfair policy. Id. at 205.

In re Richard Caruth arose in the 1981-82 school year and is nearly a mirror of this case. In Caruth, the former attendance policy allowed fourteen absences per semester with students exceeding the limit required to appear before the school board for review. In re Richard Caruth, 3 D.P.I. App. Dec. 67 (1982). The Board didn't appreciate so much of its time being spent in such reviews and directed that a new policy be proposed. Id.

The newly adopted policy allowed nine absences per semester for illness or personal injury, professional appointments that could not be scheduled outside the school day, serious personal or family problems, and up to three personal (no-reason-at-all) absences. Id. at 68. School-sponsored activities that caused students to be absent were not counted. Id. at 69. The nine-absence limit could be extended by the principal for "good reason." Id. at 68. In his decision making process, the principal in that case stated that he would extend the limit for extended vacations or trips or extended illness, only when all of the previous nine absences had been for good cause. If the student had even one unexcused absence or had been "a serious disciplinary problem," the principal would not grant an extension. Id. at 69.

Richard Caruth had missed school 15 times between January 15 and May 10. Id. at 70. He had taken two "personal" (no-reason-at-all) absences to attend the state wrestling tournament, had worked at home with his parents two full days, was gone due to an army physical for two days, and was ill five days. Id. He had also been marked "absent" on three days when he was actually at school serving in-school suspension. Id. In effect, the hearing panel and State Board said, Richard was denied credit for too many valid absences, including illness, which was unreasonable. Id. at 71-72.

This hearing panel believes that the message being sent by these decisions⁴ is clear: If a school wishes to set a limit on the number of absences a student can have before credit is lost, only unexcused absences should be counted. If excused and unexcused absences are combined, every student is subject to losing credit due to illness, injury or other unavoidable cause. A student will not likely know in advance that he or she will be ill. Should Appellant have had to forfeit his downpayment for the cruise after he was ill in January and February? Did it make a difference to the principal that this was not a family vacation? Is a planned vacation "unforeseeable"? Did the District mean "unavoidable"?

If Lorne Segerstrom had not been ill in January and February, he would have been able to take his trip without consequence. If Lorne Segerstrom had taken the trip and then become ill, he would not have experienced the consequences of this policy, yet he would have been absent the same number of days, missed the same amount of school, the same number of classes.

The bottom line to this hearing panel is that this policy is unfair and therefore unreasonable. While absenteeism is not to be encouraged, the fact remains that this rule is purely punitive and therefore

⁴ In addition to the above-cited cases, the State Board also overturned as unreasonable a school attendance rule requiring either an in-person appearance by a parent or a written note from a doctor to excuse an illness. In re Barbara Hay, 4 D.P.I. App. Dec. 67 (1985).

inconsistent with sound educational policy. Although it might be a deterrent to some students contemplating frivolous absences, no evidence was introduced (or even gathered) to support that argument. In fact, it might be counterproductive to the goal of reducing absenteeism if students who would otherwise not miss school 10 times see the rule as giving them permission to be absent, to "max out" in the words of the principal. To say that the District doesn't care why a student misses school ten times, but begins to care -- and care deeply -- at the next absence, probably sends the wrong educational message. Further, there is no evidence whatsoever that the attendance rule has any impact on the parent who might be prone to cover for a truant or hookey-playing student. He or she can still write a note excusing the student's eleventh absence. But the faultiest aspect of the policy, in our view, is that it treats differently two students who have the same number of absences for the same reasons, just in different order.

From the perspective of State Board precedent, we repeat this admonition for this and all school districts struggling to develop a "reasonable" attendance policy and rules: No attendance rule which denies credit to a student for excessive absences will be upheld unless the excessive absences are for unexcused reasons or truancy.⁵ To say otherwise would mean that students can be punished for being ill or injured, for having a parent in the hospital, for making a required court appearance, or for other valid reasons for absence.

Obviously students who have excessive excused absences (for example being "ill" nearly every Monday) may need to be called in, along with their parents, and counseled about the value of regular attendance. But it's almost folly to think that a school policy alone can change attitudes and patterns of non-attendance, especially for the student who isn't inclined or motivated to fight for the right to attend school.

Finally, a word of caution. In this decision we have accepted, for the sake of discussion, that an attendance rule can result in loss of credit. We do not wish to be understood as advocating that particular penalty. See Position Statement by the State Board of Education on "Academic Penalties for Nonacademic Violations," October, 1987. Moreover, it is entirely possible that if the issue presents itself in the future, the State Board may conclude that a loss of credit in all subjects is a constructive expulsion requiring action by the school district board of directors pursuant to Iowa Code section 282.4. Is it a lack of creativity on the part of educators that we cannot seem to devise effective penalties other than reduction of grades or denial of credit to motivate students toward acceptable behavior? The panel refuses to believe such is the case.

⁵ The new compulsory attendance law requires schools to keep records of student truancy, which is defined as "the failure to attend school without reasonable excuse for the absence." Iowa Code §299.8 (Iowa Legis. Serv. 133 §11 (West)). Schools are required to report to the Department of Education the number of students who have accumulated "fifteen unexcused absences" over a three-year period. Id. at §15. A student is therefore truant if he or she misses more than the number of days of attendance set by the school board without a "reasonable excuse," and the age 6 to 16 year-old student's parent, guardian, or legal custodian can be prosecuted for violating the compulsory attendance law in that case. These new statutes suggest to us that a school's attendance policy and rules should focus on unexcused absences.

Any objections or motions not previously ruled upon are hereby overruled and denied.

III.
Decision

For the foregoing reasons, the 3-2 decision of the Ida Grove Community School District board of directors made on May 13, denying earned credit in four classes by Lorne Segerstrom is hereby reversed. Costs of this appeal, if any, under Iowa Code section 290.4 are hereby assigned to Appellee.

It is so ordered.

9-13-91

DATE

Ron McGauvran

RON MCGAUVRAN, PRESIDENT
STATE BOARD OF EDUCATION

September 4, 1991

DATE

Kathy L. Collins

KATHY L. COLLINS, J.D.
LEGAL CONSULTANT
AND ADMINISTRATIVE LAW JUDGE