

IOWA STATE BOARD OF
PUBLIC INSTRUCTION

(Cite as 4 D.P.I. App. Dec. 67)

In re Barbara Hay	:	
	:	
Barbara Hay, Appellant	:	DECISION
v.	:	
Denver Community School District, Appellee	:	[Admin. Doc. 778]

The above captioned matter was heard on January 29, 1985, by a hearing panel consisting of Dr. Robert D. Benton, state superintendent and presiding officer; Mr. Virgil Kellogg, director, Field Services and Supervision Division; and Dr. Orrin Nearhoof, director, Teacher Education and Certification Division. Appellant Mrs. Barbara Hay was present and represented herself. Robert Conway, Superintendent, and Mr. Ronald Knudson, Principal of Denver Senior High School, were present representing Appellee Denver Community School District (hereinafter District). The hearing was held pursuant to Iowa Code chapter 290 (1983), and Departmental Rules Chapter 670--51, Iowa Administrative Code.

Mrs. Hay appealed from a 3-2 decision of the District Board of Directors denying a motion to change the high school procedure for excusing student absences.

I.
Findings of Fact

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

In the fall of 1982, Appellant first appeared before the District School Board to challenge a high school attendance procedure which requires, in order to excuse an absence, an in-person appearance by a student's parent or guardian within five days of the student's at-home illness. The high school policy also sets a limit of six unexcused absences, after which the student would be penalized by a loss of credit for any course(s) in which seven or more unexcused absences were recorded. The personal appearance requirement was a modification of prior policy which permitted only a doctor's note to excuse an illness-related absence.

The new policy was presented for adoption by the high school principal on the recommendation of a student council-faculty committee. The proposal was in response to the administration's perceived need to remove the potential for misrepresentations by students. Faculty and administration were concerned that there be a more accurate method of assuring that the person calling on the telephone or authoring a note to excuse the student's absence was who he or she purported to be. The policy as it appears in the 1984-85 Student Handbook reads in pertinent part as follows:

...(7) All absences confirmed by the parent will be classified either excused-excused or excused-unexcused, meaning excused by parent-excused by the school or excused by the parent-unexcused by the school.

...(9) Excused-excused means confirmed by parent and excused by school. Following are listed absences in this category:

...(b) Sick at home only if a doctor's statement is brought or the parent appears in the principal's office confirming the necessity and length of absence within five school days after absence. . . .

...(12) A total of six absences per semester not designated as excused-excused (truancy or excused-unexcused) will be allowed from any class without penalty. . . . Any combination of excused-unexcused and truancy (including suspensions from school) beyond the total of six will cause a student to be denied credit for courses involved or to be dropped from school for the remainder of the semester in the case of more than six such absences for entire school days. . . .
[emphasis added]

Appellant is the mother of two Denver High School students. She works in a neighboring school district, and her hours of employment correspond to the Denver District's. She sought to have the policy reviewed by the Board, alleging hardship on parents. It was established that at least 50% of the District's families live in rural areas, and many of them have only one car. Further, the roads in the "Denver Hills" area are particularly treacherous under adverse weather conditions. Many students are from two-working-parent or single-parent homes. Appellant also raised the issue of basic inequity in penalizing a student for his or her parent's inability to appear personally at the school within five days of the student's return following an at-home illness. The Student Handbook evidences the fact that other types of absences continue to be excused by a note or phone call from the parent. (Family vacations, extra-curricular education outside the present curriculum, and anticipated absences are among those exempted from the personal appearance requirement.)

At the regular November, 1984 Board meeting, Appellant appeared again before the Board and renewed her concern regarding the issue. On December 11, 1984, she presented a petition with 167 constituent signatures in

support of her proposal. A motion was made and seconded to modify the policy so that item 9(b) would read: "Sick at home if parent has either verbal or written communication with the principal's office, confirming the necessity and length of the absence, within five school days after the absence." Discussion ensued, following which a vote was taken on the motion. The Board voted 3-2 to uphold the current policy; however, immediately thereafter, the superintendent agreed to appoint a study committee to review the policy in question. The committee had made no report to the Board as of the hearing date.

Appellant then timely filed an appeal to the State Board of Public Instruction pursuant to Iowa Code section 290.1 (1983). On behalf of the District, Superintendent Robert Conway appeared at the hearing resisting Mrs. Hay's position. He argued that the current policy was not detrimental to students or parents, that it is a fair and appropriate procedure that affects only a small portion of students because few exceed the six absence limitation. Further, he stated that it is the Board's practice to annually examine student handbook policies in May or June, with approved changes implemented at the commencement of the ensuing school year. This practice serves to prevent single issue concerns from being raised at each Board meeting, and insures continuity of policy during an academic year. There is no evidence that the Board per se opposes the requested change; Appellant's timing (requesting that the policy change be effected immediately) may have been the basis for the Board's rejection of the proposed motion. Nevertheless, testimony revealed that the procedural policy at issue in this case was itself instituted at mid-year in 1982-83.

Evidence further established that Denver High School's personal appearance requirement may be unique or in a minority as compared to neighboring districts. Moreover, the District conceded that a notably small number of students are responsible for suspected forgeries or misrepresentations, and that the current policy has not fully eliminated the problem. In addition, the District also acknowledged the unfortunate fact that there exists a small number of parents who are not always truthful or honest with the administration regarding their children's absences, and that the personal appearance procedure has virtually no effect on that problem. Significantly, the high school principal, Mr. Ronald Knudson, testified that in situations where parental notes and telephone calls are accepted to excuse an absence, the administration checks on the validity of those excuses which generate suspicion in their minds by initiating contact with the parent or guardian of their child.

II

Conclusions of Law

Appellant in this matter did not challenge the authority of the Board to make rules and regulations in the best interests of the students, nor did she base her appeal upon a challenge of the Board's authority to make the particular rule involved in this matter. The Board is correct in asserting its right to establish local control and its authority to promulgate such rules under Iowa Code section 279.8 (1983). The primary thrust of Mrs. Hay's appeal is that the procedure at issue causes a hardship to a significant number of parents in the District without an equally significant and corresponding benefit to the District. She argues that the appearance requirement to excuse at-home illnesses discriminates

against rural parents, single parents, and working parents, that it is inconsistent with practices in other districts and even with practices within this District, and that the Board's failure to approve the proposed change at mid-year was unjustified in light of established exceptions to the Board's practice of implementing changes only at year end. We are in agreement with Appellant's position.

Although local school boards are endowed with broad powers to regulate school policies and activities, "such rules must meet the test of reasonableness as related to their educational setting." In re Laurie Stodgell, 1 D.P.I. App. Dec. 128. We acknowledge the inconvenience aspect of the in-person appearance requirement for parents in a rural setting, especially those whose work takes them in the opposite direction from the high school, for a work day with hours which do not permit the required appearance without seeking time off. The situation is compounded for parents with more than one child in the high school whose illnesses are not necessarily synchronized.

The basic problem we perceive with this procedure, however, is that because of its inconsistency with methods of excusing absences for other activities, it is not rationally related to the rule's purpose. A parental note requesting "excused" status for an upcoming family vacation is, absent suspicious circumstances, accepted at face value. Yet an ex post facto note from the same parent for the same child's at-home illness is not acceptable. The panel feels that unless the requirement of a personal appearance to excuse an absence is applied consistently, it cannot be cited as justification of a deterrence policy. No statistical data or evidence was introduced to show that a student is more likely to forge a note to excuse an at-home illness than he or she is to excuse a family vacation, funeral, or an out-of-school educational opportunity. We feel it is inconsistent, therefore, for the District to forego a personal appearance in one instance and require it in the next, where both situations are equally susceptible to the same potential dishonest activity.

Secondly, bearing in mind the deterrent purpose behind the stated procedure, the District acknowledged that the forging or misrepresentation activity continues to be a problem, albeit a small one. The District also recognized that due to some parents' willingness to lie for their children, the personal appearance requirement will not eliminate all instances of abuse of the attendance policy. Consequently, the effectiveness of the procedure is questionable.

When faced with suspicious notes or phone calls, where those methods are acceptable to excuse an absence, the policy of the school is to follow up by telephone call or letter to the parent requesting verification of the suspicious verbal or written excuse. While we have no desire to place additional burdens on school personnel, we feel that in the admittedly few instances where forgeries or misrepresentations may occur or be suspected, the school could follow the same practice with regard to suspicious excuses for at-home illness that it does in the other situations.

Noteworthy as well is the fact that on its face this policy is quite capable of penalizing the student for the inability of a parent to make the requisite appearance. In addition to the visible distinctions the policy makes between acceptable and unacceptable reasons for absence, the

potential exists for penalizing a student for what would otherwise be an excused absence in the case of a student whose parents could not appear in the five-day time period. Sound legal and educational principles require more.

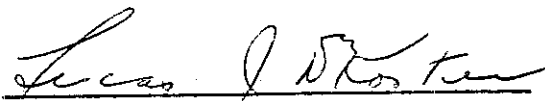
Finally, in failing to pass Mrs. Hay's motion, the Board in part relied on its stated policy against changing school rules in the course of the academic year. While we recognize the value of continuity and predictability in such circumstances, we note that the Board has made exceptions to this practice in the past, including the adoption of the procedure at issue in December, 1982. When no guidelines exist for following or departing from stated practice, an allegation of arbitrariness is more difficult to overcome.

It is an often stated legal axiom in Iowa that when a school board adopts a policy for the operation of its schools, that policy is presumed to be reasonable and the burden of proving the policy unreasonable rests upon those challenging it. Board of Directors v. Green, 259 Iowa 1260, 147 N.W.2d 854 (1967). We feel that Mrs. Hay has sufficiently overcome this presumption and that the District's excuse procedure challenged here is not reasonable on legal or educational grounds. Where a prima facie case of unreasonableness is made out, the burden shifts to the Board to justify its policy. In this case, the District's reasoning, while laudable in purpose and intent, failed to overcome the proven unreasonableness of the procedure, and the rule must fall.

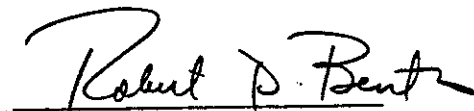
III.
Decision

The decision in this matter rendered by the Denver Community School District Board of Directors on December 11, 1984, is hereby overruled. Appropriate costs, if any, under Chapter 290 are hereby assigned to the Appellee. All motions and objections not previously ruled upon are hereby overruled.

March 13, 1985
DATE


LUCAS J. DEKOSTER, PRESIDENT
STATE BOARD OF PUBLIC INSTRUCTION

March 1, 1985
DATE


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