

IOWA STATE BOARD OF
PUBLIC INSTRUCTION

(Cite as 3 D.P.I. App. Dec. 67)

In re Richard Caruth	:	
	:	
Richard Caruth, Appellant	:	DECISION
v.	:	
	:	
Howard-Winneshiek Community School District, Appellee	:	[Admin. Doc. 647]

The above entitled matter was heard on June 30, 1982, before a hearing panel consisting of Dr. Robert Benton, state superintendent and presiding officer; Dr. Lenola Allen, supervisor, preparatory and supplemental services unit; and Mr. A. John Martin, director, instruction and curriculum division. The hearing was held pursuant to Chapter 290, The Code 1981, and Departmental Rules, Chapter 670--51, Iowa Administrative Code. The Appellant was represented by Attorney Kevin Magee, and the Howard-Winneshiek Community School District (hereinafter District) was represented by Attorney C. J. Anderson.

The Appellant is appealing a decision of the District Board of Directors denying him credit for school work in the spring semester of 1982.

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.

District officials have made a considerable effort to develop a school absence policy which has proven to be effective for the District in decreasing the number of student absences. The absence policy was adopted by the District Board on May 14, 1979, after considerable study, discussion and revision. Dissatisfaction with the previous absence policy apparently arose because many students exceeded the former policy provision which allowed 14 days absence per semester. Exceeding the 14-day absence maximum under the former policy resulted in students being brought before the Board for review of their situations. Some Board members apparently thought too much Board time was being used in disputes over attendance and asked the District Administration to develop a new policy which would reduce the time required for Board consideration of student absence issues.

High School Principal Dennis Brosdahl testified that he had reviewed over 80 absence policies used by school districts in Iowa during the development of the District's current absence policy, and the current absence policy went through several revisions and drafts in reaching its current state. Proposed policy content was reviewed by and input solicited from many segments of the school community. Parents, students, staff and Board members reviewed drafts of the policy before final adoption and made recommendations for improvement. Mr. Brosdahl testified that the specific provisions at issue in this hearing, the dropping of a student from class after nine absences, was originally a suggestion of the District's student council.

Relevant portions of District absence policy No. 501.2 read as follows:

Regular school attendance is an essential ingredient in obtaining the maximum benefits of a high school education and in developing habits of punctuality, self-discipline, and responsibility. Students with good attendance records at school generally achieve higher grades, enjoy school more, and participate in more activities than students with a poor attendance record. Since high school is your "job" for three years, we feel that you should be absent from school for only those reasons that would justify absence from employment. Employers are very reluctant to hire a person who has established a poor attendance record at school because this pattern often is similar to attendance patterns on the job. Teachers cannot teach students who are absent!

Students will be allowed nine (9) absences from each class per semester, those absences to be used only for the following reasons: (1) Injury or personal illness. A student who is ill should not be in school; the assumption is made, however, that if a student is too ill to attend school; they are also too ill to appear in public that day. When students spend time in the nurses' office because of illness this is an excused absence; however, if they are absent from a class(es) during this time, it will be counted in the 9 absence limitation. (2) Professional appointments that cannot be scheduled outside the school day. . . . Examples of professional appointments would include doctor, dentist, court appearances and/or legal appointments, college visits approved and arranged by counselor, one occasion to procure a driver's license, etc. (3) Serious personal or family problems. This includes death or 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. (4) Students will be allowed three absences per year for any reason as long as their 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 before the absence. These three days will be counted within the 9 absence limitation.

* * * * *

If a student is absent and the reason submitted by the student does not meet any of the above criteria, the student will be assessed an "unexcused" absence. Examples of unexcused absences are; working for someone other than parent or guardian, shopping, hair appointments, oversleeping, missing the bus, photo appointment, car stalling and getting stuck (exception - if parent or guardian telephones the school as soon as possible stating the car problem), cleaning the garage, "personal" reasons, etc. For an unexcused absence, the student will be given a zero(s) in the class(es) missed and will be counted as an absence within the 9 absence limitation.

The principal may waive or extend the 9 absence limit if he feels there is good reason. The reason for waiving the limit should be filed in writing in the principal's office by the parents or guardian requesting the waiver. If the extended absence is due to vacation or trip, it must be preplanned and approved by the principal with school work done in advance (other considerations will be the number of days involved, the student's previous absence record, grades, and student conduct).

Classes missed because a student is suspended for disciplinary reasons will be counted in the 9 absence limit. If the suspension causes the student to exceed the the [sic] 9 absence limit, the limit will be extended to accommodate the suspension-but any additional suspensions beyond that will cause the student to lose credit for the course(s).

School sponsored activities are exempt and will be considered authorized absences and not counted as part of the 9 absence limit (examples are field trips, athletic contests, speech and debate, music activities, etc.).

After students have been absent 6 times in a semester, their parents or guardian will be called and informed of the student's attendance status. A letter will be sent if parents or guardian cannot be reached by telephone. When 9 absences are reached, parents or guardian will be notified by telephone and with a follow-up letter, indicating that the student will not receive credit for the class(es) if they miss the classes(es) [sic] one more time. When students reach 9 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 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.

Students who exceed the 9 absence limitation and the principal determines that they are to lose credit for the course(s), this decision may be appealed to the Superintendent and Board of Education. This request for hearing must be made by the student and/or parents of the student in writing and within 7 school days after notification of loss of credit. If no request has been made within that time period, the student will lose his right of appeal. Such hearings will be held at regularly scheduled meetings of the Board of Education. [emphasis added]

The Board action to amend the District's absence policy was covered by the local news media and explained in the District's newsletter to parents. The terms of the policy are contained in the student handbook and are discussed at the beginning of each school year at an orientation assembly of the high school students. The policy is also extensively explained and discussed in the high school homerooms at the beginning of each school year.

Mr. Brosdahl testified before the Hearing Panel regarding his use of discretion under the terms of the policy allowing the principal to extend the nine absence limit when the principal feels there is "good reason." He stated that he regularly extends the nine-day limitation for extended vacations or trips, extended illness and when the nine previous absences have been for good cause. However, if a student has had an unexcused absence or a serious disciplinary problem, Mr. Brosdahl does not extend the nine-day limitation.

Mr. Brosdahl also testified that students are not dropped from class without first discussing the matter with the student so that the student has the opportunity to show him good reason to not be dropped from class under the policy. Additional review and consideration procedures are available to the student under the policy.

Richard Caruth was a junior in the District's high school during the 1981-82 school year. During the first semester he was absent nine times. His last absence that semester occurred on January 6, 1982, and the semester ended on January 15. His grades de-

teriorated somewhat throughout the first semester, and he ended the semester with Ds in three classes and Fs in two classes. During the first semester, he used one of his three days of personal leave. His absence record for the second semester was as follows:

2/10/82 Personal
 2/15/82 Nurses office (6th period)
 2/18/82 Ill
 2/25/82 Personal
 2/26/82 Unexcused Absence
 3/ 1/82 Ill
 3/11/82 Ill
 3/15/82 Army physical
 3/16/82 Army physical
 3/22/82 In-school suspension
 3/23/82 In-school suspension
 3/24/82 In-school suspension
 3/30/82 Ill
 3/31/82 Ill
 4/ 2/82 With parents (4th, 5th and 6th periods)
 5/ 7/82 Work at home (1st and 2nd periods)
 5/10/82 Work at home
 [emphasis added]

Richard's absences on February 25 and 26 occurred when he traveled to Des Moines to attend the boys' state wrestling tournament as a nonparticipant. He contacted the school for permission in advance of the trip, but was told that after the first day of the trip he would have used up his three personal days and the second day of the trip would be unexcused. He chose to attend the tournament and miss two days of school.

On March 22 through 24, Richard received an inschool suspension for chewing and spitting tobacco on the school bus. The three-day inschool suspension counted toward the maximum nine-day absence limitation in District policy but also extended the number of days of absences allowed before being dropped from classes. Richard's third day of inschool suspension was actually his 11th day of absence under the District absence policy.

On March 30 and 31, Richard did not attend school due to his having contracted the flu. The school does not dispute that Richard was ill those two days. Mr. Brosdahl testified that had Richard come to school ill and had he learned about it, he would have sent Richard to the school nurse's office. Under the terms of the policy, had Richard been sent to the nurse's office, the time spent there would have counted toward the maximum days of absence allowed, and he would have been dropped from class.

As it was, when Richard returned to school after his illness, Mr. Brosdahl informed him that he was to receive no credit for the courses in which he exceeded the absence limitation. He encouraged Richard to remain in the classes so that he would have an easier time next year when he repeated the classes. After Richard filed an appeal to the District Board, Mr. Brosdahl advised him to keep his studies current in the event that the District Board would reinstate his credit in his classes. Richard apparently did not heed Mr. Brosdahl's advice. He did failing work in all four of his academic classes and did passing work for the semester only in physical education.

The District Board considered Richard's appeal of Mr. Brosdahl's decision at its regular meeting of April 19, 1982. The Board went into executive session and heard evidence and argument and discussed the matter for over an hour. When the Board came out of executive session, a motion to "uphold the administration's interpretation and

action" taken relative to the loss of academic credit for Richard was seconded and carried.

An appeal of the District Board decision was filed with the State Board of Public Instruction on May 11, 1982.

II. Conclusions of Law

The State Board precedent on the issue of school board absence policies is found in the decision entitled In re Sandra Mitchell, 1 D.P.I. App. Dec. 201. The facts in that decision involved a parent who challenged the validity of a school policy which provided for the dropping of students from classes without credit for more than five absences per semester unless a physician or dentist provided a written excuse.

In the Mitchell decision, the State Board stated very clearly that school districts have a great deal of discretion in determining what types of absences constitute a valid reason for being absent from school and that schools, not parents, have the primary authority for determining whether an absence from school is justified. The State Board stated with equal clarity that school board policies and practices should reflect the fact that reasonable cause for absences do sometimes exist and that students should not be punished for absences caused by death in the immediate family, or illness, including minor contagious diseases such as colds and flu. See also Burdick v. Babcock, 31 Ia. 562 (1871); and Section 299.6, The Code 1981.

In that regard, we have no problem with the District absence policy on its face. While the policy purports to withhold class credit for students exceeding nine absences in a semester, it has written into it a saving feature of flexibility. Under the policy's terms, the principal may extend the maximum days of absence upon a showing of "good cause." Indeed, Mr. Brosdahl testified that it was his practice to extend the maximum number of days of allowed absence when a student exceeded the maximum due to illness and the student had no previous unexcused absences.

Where we do have a problem is not with the policy itself, but with that aspect of the administration of the policy which precludes the extension of the maximum absence for "good reason" when a student has an unexcused absence in his or her record. We think that the State Board decision in Mitchell and the law and logic discussed therein preclude a school district from taking disciplinary action against a student for absence from school due to illness. A student who has attained the maximum number of absences allowed under the terms of the policy, including one which is unexcused, is placed in an untenable predicament when he or she becomes ill. The choices for the student are to be absent from school and attempt to regain his or her health, but lose course credits, or go to school and further endanger his or her health and that of other students. Even if students go to school in that circumstance, there is no assurance they will not lose credit in courses. The principal testified that upon learning a student is ill, he would send the student to the school nurse's office. Under the policy, time spent in the nurse's office could also result in course credit being withheld.

In addition to the conflict between the Mitchell decision and the administration of the District absence policy in Richard's circumstance, we also find that the application of the principal's discretion in Richard's circumstance is inconsistent with other terms of the policy. In the first paragraph of the policy, the District Board has stated, ". . . we feel that you should be absent from school for only those reasons that would justify absence from employment." Rare is the good employer who would punish an employee for being ill. A portion of the second paragraph makes even a stronger state-

ment: "A student who is ill should not be in school:." We consider such statements of philosophy in the policy inconsistent with the application of the policy to students in Richard's situation.

We also find it a bit incongruous that the District is attempting to punish a student who was indisputably ill, when it has previously allowed him three days of "personal" leave from school. While we think some flexibility to meet individual student needs, such as personal days of absence, is important in school absence policies, we feel it inconsistent to be flexible on the one hand, and punish a student as a result of his being ill on the other.

Because the application of the District absence policy to Richard actually resulted in his being punished for being ill and is contrary to other portions of the District absence policy, the Hearing Panel finds that the application of the District absence policy to Richard in the circumstances before it is unreasonable. Our finding should be narrowly construed to Richard's circumstance and not be considered to have application to the policy on its face or to the principal's practice of extending the maximum limit on absences for good cause when a student's record does not contain an unexcused absence.

It is unfortunate, however, that Richard did not heed Mr. Brosdahl's advice to continue working for passing grades in those courses from which credit had been initially withheld while his appeal was pending. Had Richard successfully completed the academic work expected of him by the teachers in those classes, under our ruling he probably would have received credit towards graduation in those classes. As the facts stand, however, Richard did not satisfactorily complete the required work in those courses even though he was given the opportunity to do so. The Hearing Panel is not inclined to attempt to fashion some sort of credit toward graduation for a student where none has been earned.

The District Board members and other school officials are to be commended for their efforts in developing a Board policy which attempts to solve the complex problem surrounding unreasonable student absences. The Hearing Panel was especially favorably impressed with the amount of public participation and input which went into the development of the District absence policy. Absences for any reason are disruptive to the school environment and are to be discouraged. However, it is only for those absences which are unnecessary or unreasonable that students may be punished.

All motions and objections not previously ruled upon are hereby overruled.

III.
Decision

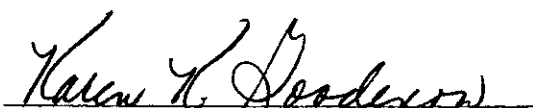
The decision of the Howard-Winneshiek Community School District Board of Directors in this matter is hereby overruled. Appropriate costs under Chapter 290, if any, are hereby assigned to the Appellees.


August 13, 1982

DATE

July 30, 1982

DATE


KAREN K. GOODENOW, PRESIDENT
STATE BOARD OF PUBLIC INSTRUCTION


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