IOWA STATE DEPARTMENT
OF PUBLIC INSTRUCTION

(Cite as 2 D.P.I. App. Dec. 176)

In re Richard Crawford :

:

Kenneth & Therese Crawford, Appellants :

DECISION

:

v.

:

Indianola Community School District, :
Appellee

[Admin. Doc. 548]

The above entitled matter was heard on July 16, 1980, by a hearing panel consisting of Dr. Robert Benton, state superintendent and presiding officer; Mr. Gayle Obrecht, director, administration and finance division; and Mr. Carl Miles, director, field services and supervision division. Mr. & Mrs. Crawford were represented by Attorney Mason J. Ouderkirk, and the Indianola Community School District, (hereinafter District) was represented by Attorney Richard Clogg. The hearing was held pursuant to Chapter 290, The Code 1979, and Departmental Rules, Chapter 670--51, Iowa Administrative Code.

The Appellants have appealed a decision of the District Board of Directors which affirmed an earlier decision of the District Administration to remove Richard Crawford from Metals I class for the remainder of the year.

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 second semester of the 1979-80 school year, Richard Crawford was a senior in the District's High School. Richard was an above-average student, active in athletics and other school activities and had few disciplinary problems on his record. He expected to graduate at the end of the semester upon successful completion of all of the courses in which he was enrolled.

Richard's expectation of graduation was placed in doubt by events which occurred on March 13, 1980, and the few days thereafter. On that day, shortly after 8:30 a.m., Richard was in Metals I class. There were about 15 students and one teacher in the class which met in a room with about 4,000 square feet of space. As Richard was working on a class project with another student near the center of the room, an object was thrown at the two boys from somewhere behind Richard. He picked up the object and turned around and threw it in the direction from which it was believed to have come. The object hit the wall eight to 10 feet above the floor and fell to the floor eight to 10 feet from the nearest person. Four other students were in that general area. All students in the class were wearing safety glasses or goggles as required by state law.

Dean Iverson, the Metals I instructor, did not see the object tossed at Richard but did see Richard throw the object in the direction of the four boys. He immediately pointed toward the door and ordered Richard to leave. Richard went to the school's lobby and waited for his next class to begin. Mr. Iverson called Mr. Parkins, the assistant high school principal, on the intercom telephone and informed him that Richard had been removed from the class for throwing an object. Mr. Iverson told Mr. Parkins that he had previously warned the students that they would be permanently removed from class if they were caught throwing objects.

Mr. Parkins did not immediately seek Richard out, but waited until the next morning. When Mr. Parkins discovered that Richard was not in Metals I class, he began looking for him in the school's hallway. He found Richard in the school's lobby area immediately outside the school's office.

Richard and Mr. Parkins discussed the matter at some length. Mr. Parkins told Richard that if he was removed from the class with no credit, he would be one credit short of the number required for graduation and would not be able to graduate with his class. Richard did not deny throwing an object, and when he was shown a piece of metal that Mr. Iverson alleged he threw, he made no comment. He did, however, dispute the fact that he had been previously warned of the possibility of being removed from class for throwing objects. He asked Mr. Parkins to check his absence record to determine whether he may have been absent on the day Mr. Iverson thought he had warned the class. Mr. Parkins responded in the affirmative and indicated that if he was absent on the day in question, his removal from class might be only temporary. This discussion took place on a Friday.

The next Monday and Tuesday, Richard sought Mr. Parkins out to determine what he had learned about his attendance on the day Mr. Iverson said that he had warned the class. Mr. Parkins replied on both days that he had not yet talked to Mr. Iverson.

Mr. Parkins testified that his attitude changed during these few days and he no longer felt that it was relevant whether or not Richard was absent on the day of the alleged warning. He felt that Richard's actions were so inherently dangerous that he should be removed from the class. He so informed Richard and on Tuesday offered to help him complete his graduation requirements through summer school or correspondence courses.

Richard's attendance record indicated one or more absences for orthodontic appointments in the time period in question. However, Mr. Iverson could not confirm what day he made the alleged warning even though he contended that he warned the class about one week before the incident. Richard and two students in class testified that they had not heard such a warning before March 13. The other students did indicate that such a warning was given by Mr. Iverson on March 14, the day after the throwing incident.

On Wednesday, March 19, Richard talked with Norman Huse, high school principal. He was informed that Mr. Huse would support the shop teacher and declined to help Richard get back into class.

When Richard went home at the end of the school day on the 19th, he informed his parents that he had been removed from Metals I class and would not be allowed to graduate That was the first his parents had been informed of the incident. The school had not made any effort to inform Richard's parents even though six days had elapsed subsequent to Richard's removal from class by Mr. Iverson.

Richard's parents met the next day with Mr. Iverson and Mr. Parkins. Remaining dissatisfied after the meeting, they requested and were granted a meeting with Superintendent Carol Seevers on Saturday, March 22. Mr. Seevers affirmed the previous actions

of Mr. Parkins and Mr. Huse and suggested that the Crawfords could discuss the matter with the District Board of Directors at its next meeting on March 24. The Crawfords, however, were not informed of a hearing procedure or that they could be represented by legal counsel or present witnesses.

The Crawfords attended the District Board meeting on March 24. At the conclusion of the Board's regular business, the Board members met in private with Mr. Seevers, Mr. Huse and Mr. Parkins. The Administrators discussed the matter and Richard's complete school record with the Board members. Richard and his parents were later invited to join in the meeting. The Board meeting with the Crawfords consisted primarily of Board members asking Richard questions and Richard's mother making a statement that he had not previously been a disciplinary problem at school and that the punishment was too severe for the infraction. No witnesses were presented and the Administration made no statements or allegations against Richard in the presence of the Crawfords at the meeting. The Board members had before them written materials regarding Richard's situation which were not provided to the Crawfords prior to the meeting. When shown a sharp nail-like metal object which he allegedly threw, he denied throwing that particular object. This was the first time Mr. Parkins was aware that he disputed throwing that particular object.

Richard and his parents were then asked to leave the meeting room, but Mr. Seevers, Mr. Huse and Mr. Parkins remained with the Board. After 20 to 30 minutes, the Crawfords were again escorted back into the meeting room and the District Board voted to support the previous administrators' decision to remove Richard from the Metals I class for the remainder of the year. There was no written finding of facts made.

Richard was absent from Metals I class between March 13 and April 21, but attended his other classes and participated in school activities. One of the classes he continued in was an electronics class taught by Mr. Iverson. After April 21, Richard again attended Metals I class as a result of a court order obtained by his parents. Although he missed about a month of Metals I class in March and April, he successfully completed the course work for Metals I by the end of the school year and will be granted credit in the course if he is successful in this appeal. He was allowed to participate in graduation exercises with his classmates in May, but he did not receive a diploma.

Testimony before the Hearing Panel indicated considerable discrepancies in the testimony of Richard and two student witnesses and that of Mr. Iverson. Mr. Iverson testified that he saw Richard throw an object as hard as he could at a particular student. He testified that the object was a sharp nail-like portion of a type of rivit used in class. The students testified that Richard tossed an object in a high arching lob in the general direction of four students. Richard testified that the object he threw was another type of rivit which is much more blunt than that presented by Mr. Iverson. Mr. Iverson said that he immediately picked the object thrown from the floor. The two students indicated that Mr. Iverson did not pick anything off the floor during the rest of the class period, but went instead to the storage room.

Mr. Iverson testified that he had warned the students a week prior to March 13 that they would be permanently removed from class for throwing dangerous objects. The students testified that they recalled no such warning until March 14, the day following the incident. One student testified that Mr. Iverson prefaced his remarks on March 14 with a statement that he thought he had previously told the students not to throw objects, but to make sure, he would repeat the warning.

Richard's disciplinary record in the high school prior to the March 13 incident included a three-day suspension for fighting in his sophomore year, being referred to the Principal's office for being found near an electric master control switch after someone had turned the switch off, and being removed from physical education class for several class sessions. The record indicates that his suspension for fighting may have resulted more from self-defense than aggression, that no one could prove that he had turned the

electric switch off and that he was not considered to be the guilty party and that he was removed from physical education class because he left class to phone his employer that he was ill and would need to find a work replacement.

II.
Conclusions of Law

In an extensive affidavit of appeal, the Appellants have alleged at least nine errors of procedure and judgment on the part of the District Board of Directors in this matter and have raised several more related matters during oral argument. Since we are inclined to find for the Appellants on two of those grounds, we see no great need to discuss and rule on each of the other issues raised.

We conclude, firstly, that Richard Crawford was not afforded proper procedural due process of law required by the United States Constitution and good educational practice. Clearly, permanent removal from a class with loss of credit is a more severe penalty than a short-term suspension from all classes with no specific loss of credit or grade. While we make no specific comment here regarding the due process requirements necessary for the permanent removal of a student from a class with loss of credit for disciplinary reasons, we do note that such action does reflect upon the liberty and property rights of public school students to the extent that at least the rudimentary due process requirements outlined in Goss v. Lopez, 419 U. S. 565, 95 S.Ct. 729 (1975) must be accorded the student.

A need for greater than rudimentary due process procedures is indicated in Richard's circumstance by the fact that as a result of his loss of credit in Metals I, he will be unable to graduate with his class and may be limited in his educational and employment pursuits in at least the near future. Even though we recognize and applaud the actions of District officials in encouraging and assisting Richard to complete his graduation requirements through alternative methods, a red flag of caution should have appeared in their minds warning them to proceed with caution when they became aware that their actions would result in such severe detriment to a student as exists here. Sometimes school administrators should mentally place themselves in the student's role and question how they would wish to be treated under similar circumstances.

We feel that a public school student who is removed from class for disciplinary reasons and whose anticipated graduation with his or her classmates is severely jeopardized thereby, has clear and distinct liberty and property interests protected by good educational practice and the United States Constitution. See In re Monica Schnoor, 1 D.P.I. App. Dec. 136; In re Jason Clark, 1 D.P.I. App. Dec. 168 and In re Duane Kunde, 1 D.P.I. App. Dec. 251.

Clearly those protected interests of Richard at issue here have not been adequately safeguarded. One element of due process, in situations such as this, is the right to cross examine persons testifying against you and to examine and raise questions regarding documents in the hands of the decision maker. At the meeting with the District Board of Directors, that right was clearly abridged. It is obvious from the record that documents were made available to District Board members which were not made available, at the time, to the Crawfords. The Crawfords were thereby precluded from explaining the circumstances surrounding previous disciplinary matters and from even questioning their relevancy regarding the issue before the Board, that of Richard's removal from class. Also, the District's administrators whose decisions and actions were being questioned by the Crawfords met privately with District Board members for lengthy periods of time both before and after the Board meeting with the Crawfords. Such ex parte meetings cannot be condoned under most circumstances and certainly not here. The Crawfords were

not given the opportunity to cross examine Mr. Iverson, the primary accuser, at the Board meeting. Neither were the Crawfords informed regarding their right to be represented by counsel or to bring witnesses.

While we agree that other due process issues such as lack of proper notice of the prohibited conduct, lack of clearly established due process procedures and lack of written decision are also relevant issues, we feel that the foregoing discussion more than adequately establishes the due process issue in favor of the Appellants.

We are also inclined to agree with an argument made by Mrs. Crawford before the District Board and continued before the Hearing Panel that the resulting penalty to Richard of loss of credit and failure to graduate on time from his single act of throwing an object in Metals I class is a penalty which is too severe for the infraction. While we would not likely contest the removal of a student from a metals class for throwing a sharp metal object as hard as the student could throw it directly at another student and the result did not effect the student's graduation, such is not the record before us. This is not the mere permanent removal from class. It is an act which will at least delay Richard's planned graduation and conceivably result in his never graduating. Even though we question the relevancy to this matter of Richard's other minor disciplinary experiences, we certainly do not conclude that they show Richard to be the type of student who should be dealt with in the severe manner in which he has been here. It is also too severe a penalty to be imposed in light of the contradictory testimony of the three boys and Mr. Iverson. But then, the District Board had not afforded itself the opportunity to hear the testimony of either Mr. Iverson or other witnesses.

In conclusion, we find that a student who may possibly be permanently removed from class with loss of credit with the result that he or she will be unable to graduate with his or her classmates is entitled, legally and educationally, to more procedural due process than was afforded Richard on the record before us. We also conclude that the penalty and resulting circumstance imposed against Richard did not comport with his acknowledged improper conduct.

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

III.
Decision

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

September 12, 1980
DATE

Susan M. Wilson
SUSAN M. WILSON, PRESIDENT
STATE BOARD OF PUBLIC INSTRUCTION

August 25, 1980
DATE

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