

IOWA STATE DEPARTMENT  
OF PUBLIC INSTRUCTION

(Cite as 1 D.P.I. App. Dec. 201)

In re Sandra Mitchell :

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Sandra Mitchell, Appellant :

DECISION

v. :

:

Baxter Community School District  
Appellee :

[Admin. Doc. 416]

The above entitled matter came for hearing on February 28, 1978. It was heard before a hearing panel consisting of Dr. Robert Benton, state superintendent and presiding officer; Dr. LeRoy Jensen, associate superintendent, administration branch; and Dr. Donald Cox, associate superintendent, instruction and professional education branch. Sandra Mitchell was present and was accompanied by her husband, Max, and daughter, Valerie. The Baxter Community School District (hereinafter District) was represented by Attorney Sue Luettjohann. The hearing was held pursuant to Chapter 290, The Code 1977, and Departmental Rules, Chapter 670--51, Iowa Administrative Code.

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 December, 1976, the District's high school principal, Maurice Miller, and several of the high school teachers began work on drafting a District policy designed to alleviate excessive absences. Several teachers felt that an excessive absence rate detracted from their teaching effectiveness, and they felt burdened due to the inordinate amount of time they had to spend with students making up work missed due to absences.

At the regular Board meeting in January, 1977, Principal Miller presented the policy to the District's Directors at their regular monthly meeting. No action was taken on the proposed policy at that meeting. On January 27, the local newspaper carried a story about the proposed policy on the front page. At the regular February Board meeting, the policy was approved, with minor modification, on the first reading. At the March 10 meeting, the policy on attendance was adopted as Board policy (series #629).

Testimony of several persons shows that the Board did not consider other alternative solutions to the problem of excessive absences. Superintendent David Scala testified that the policy was similar to those existing in many other school districts in the state.

The attendance policy (series #629), which is at the center of this controversy, reads as follows:

Each student may be absent from a class a maximum of five (5) times a semester without penalty, however, each absence must be approved by a student's parent or guardian and a signed written note given the principal. These absences may be for any reason acceptable to the parent or guardian—such as for a funeral, family trip, illness not requiring a medical doctor, and so on. Also included in these five absences from a class are those caused by suspension from school.

A student who is absent from a class more than five (5) times during a semester shall be dropped from the class and receive no credit, such action subject to review by the principal and if necessary, a parental meeting with the Board of Directors. Absences specifically excused by a medical doctor or dentist will not be counted among the five (5) days described above. Three (3) unexcused tardies, the teacher deciding whether a tardy is excused or unexcused, will count as one absence.

While provisions for exemptions are not specifically stated in the policy, exemptions from the policy's terms have been granted. Apparently, a student wanting to be exempted from the policy must first approach the principal. If the principal does not feel that the student's reasons are sufficient to justify an exemption, the student may then approach the superintendent and, in a like manner, the Board of Directors. In one instance, Principal Miller disapproved a student's request for an exemption in order to attend his brother's wedding in Hawaii. Superintendent Scala, who feels that travel has educational value, approved the trip and allowed the exemption. Because part of the trip occurred during the school's winter vacation, a total of eight days of school were missed. The student had two other absences for a total of ten absences that semester. One girl, whose parents are in the livestock business, was granted an exemption for a trip to a livestock show in Alabama. Principal Miller stated that on one other occasion he disapproved a request for an exemption for a trip on one day, and after further discussion, approved the request the next day. He concluded that in retrospect, he should not have approved the trip. There is no stated or formal criteria, standard or guideline for the granting of exemptions, and there is no reference to exemptions in the policy.

Statistics were introduced to show that student absences in the District's high school have declined. Comparisons of average daily attendance show an increase the first semester of the current school year over the same period of the last school year of .1% for the eighth grade, 4.7% for the ninth grade, 1.5% for the tenth grade, 1.6% for the eleventh grade and 6.1% for the twelfth grade, and a decrease of .5% for the seventh grade. The Appellant, Mrs. Mitchell, was quick to point out that there may be other circumstances affecting the statistics. The Hearing Panel noticed that several students with excessive absence rates last year have dropped from the school and are not included in this year's statistics.

Principal Miller testified that it was his practice to notify parents in writing when a student has been absent four times.

Max Mitchell and his daughter, Valerie, attended the November 16, 1977 Board meeting seeking an exemption from the terms of the policy for Valerie and her sister, Vicky. The request was based upon the family's desire to have the two girls work sale-days at the livestock auction owned and operated by the Mitchells. At that time, they thought the girls would have to miss afternoon classes on seven sale days. Since then, one sale has been cancelled and two others will be held on afternoons on which school will be dismissed early. Currently, only four afternoon sales are planned this semester which conflict with school attendance. However, illnesses and other unavoidable

reasons might cause the total absences from school to exceed the maximum allowable and jeopardize the girls' scholastic standings. Valerie suffers from asthma, and Vicky suffers from frequent headaches. Valerie's physician's office is located in Des Moines.

The Board took no action at the November meeting on the Mitchell's request, but instructed them to discuss the matter with the school administration. Sandra Mitchell appeared at the December 14 Board meeting and renewed the request made in November. The Board voted against granting an exemption to the attendance policy for Valerie and Vicky to work sale dates. Mrs. Mitchell made a timely appeal of that decision to the State Board of Public Instruction.

Mrs. Mitchell's daughter, Valerie, is a 17 year-old high school junior, and Vicky is a 16 year-old sophomore. Valerie is currently taking six subjects, two more than required, plus physical education. She has no study hall, but claims school work is not difficult for her. She is class president, student council secretary and active in a variety of organizations both in and out of school. She testified that her work at the sales provides good educational experience. During sales, one of the girls acts as sales clerk and has exercised responsibility over receipts totaling more than \$250,000. The other girl works as a supervisor over as many as 12 persons in the livestock holding and sorting area. The girls are willing participants in the business.

## II.

### Conclusions of Law

The primary thrusts of Mrs. Mitchell's appeal are two in number. The first is that the District's parents should have the primary authority for determining whether an absence from school is justified. While we agree that parental desires in such matters should be strongly considered by the schools, 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.

Our view finds strong support in the Iowa Supreme Court decision of Burdick v. Babcock, 31 Ia. 562 (1871). In that case, the Court had before it two students who had been suspended from school by school authorities under rules which required students to attend school "unless detained by sickness or other unavoidable cause," and which required the cause of the absence to be certified by a parent or guardian. The father of one of the students refused to give the school a proper excuse for his son who was repeatedly kept home to perform normal farm chores. He claimed the right to detain his child from school at any time for like reason. The other student's parents claimed they had to take their daughter on a trip with them, because they could not afford to pay someone to look after her while they were gone. The primary question before the Court was whether the school had the authority to prescribe and enforce its absence rules in direct opposition to the wishes of the parents. The Court answered in the affirmative. Such rules were found to be in the best interest of the offending pupil as well as the other pupils in the school. The Court said in part at page 568:

As we all surrender to society some of our natural rights that we may enjoy its great advantages, so must the parent give up the society and service of his child for the incalculably greater benefit of the education which his offspring will receive from attendance at the public school.

We find, therefore, that it was proper for the District Board of Directors to refuse the Mitchell's request for exemption to work at the family's business.

The second thrust of the appeal goes to the validity of the rule itself. While the Board minutes report Mrs. Mitchell's concern regarding the policy in general terms and does not expressly disclose a challenge to the rule's validity, Mrs. Mitchell's appeal affidavit, oral arguments and evidence clearly show that she intended to make the policy's validity an issue in this appeal. The District, in presenting its defense, did so with the understanding that the rule itself was at issue.

Approximately one year ago, another school district's application of absence policy was appealed to the State Board. In a narrow ruling, that school district's application of its absence policy was upheld. The State Board did not feel that the appeal presented an attack upon the rule itself and declined to speak to the rule's validity. The State Board, however, did issue a warning regarding potential legal problems with such rules. The last paragraph of In re Laurie Stodgell, 1 D.P.I. App. Dec. 128, said at page 131:

School policies of the nature involved in this matter appear to be quite prevalent in the state. We hope that this and all school boards with similar policies and rules consider 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, procedural due process requirements and proper delegation of board authority. It would be well for the New London Board and for all boards with similar policies and rules to review such rules regularly and to include students and parents in those reviews.

It is an often stated legal axiom in Iowa that when a school board adopts a policy for the operation of the schools of the district, that the policy is presumed to be reasonable and the burden of proving the policy unreasonable is upon those challenging the policy. Board of Directors v. Green, 147 N.W.2d 854 (1967). We feel that Sandra Mitchell has sufficiently overcome this presumption and that the District's absence policy contained in #629 is not reasonable on either legal or educational grounds. We feel, generally, that an absence policy used to administer punishment to students should distinguish between reasonable and unreasonable cause for absence. See definition of "truant" in Section 299.8, The Code 1977.

The District policy before us here is lenient for the first five absences. However, absence for any reason after the fifth absence without a doctor's verification of illness, will meet with harsh disciplinary action. While we cited the Burdick decision earlier as upholding a school district absence rule, we also feel that the decision is authority for the proposition that absence rules should not penalize for absences due to sickness or other unavoidable causes. The Court stated that it would be incumbent upon school authorities to accept as reasonable, absences of children belonging to a poor family who needed the services of their children to maintain a subsistence level of living. The Court said at page 570:

Now we cannot believe that a school board or school teacher within our State would not accept as an unavoidable cause of absence or delay in reaching school, the facts that the child's services, at such times, were demanded for its own support or that of its parents. In such cases the school boards and teachers would be bound to permit inconvenience and annoyance to other pupils, which we have above pointed out, for the sake of such unfortunate ones, upon whom want has enforced the necessity of labor during school hours.

We would like here to draw upon several hypothetical situations to show the great variety of circumstances under which application of the District's policy would result in unreasonable and inappropriate results. An example might be a student who, for good reason, has previously missed five days of school under the lenient five-day provision, but is suddenly faced with a relatively minor illness, such as a cold or flu, which is not commonly referred to a medical doctor. That student or the student's parents are left with the difficult task of choosing to send the student to school with a contagious disease, allowing the student to be absent from school and be penalized under the policy, or seeing a physician in order to obtain a proper excuse. Even if the inconvenience, discomfort, transportation and other problems of visiting a physician's office can be overcome, many persons cannot easily afford the luxury of such services for minor ailments. Such a policy certainly has serious disadvantages for the less economically well-off patrons in the District.

As another example, consider the fate of a student who has, for good reason, been absent five days and then finds himself or herself in the position of desiring to attend the funeral of a close relative, maybe even a parent. Under the terms of the policy, the student's alternative courses of action are severely and unfairly limited. Under the policy's express terms, only medical and dental excuses are accepted for absences in excess of five.

As a third example, consider a student who has exhausted his or her first five absences due to illness, and then violated a relatively minor school discipline policy resulting in a one-day suspension from school. The cumulative effect under the policy will be the same as an expulsion for the most serious breaches of school discipline policy. Had the student committed the act without previously being ill, the student's situation would have been considerably less difficult.

The net result of the above hypothetical situations is that students can be punished severely under the policy in question for being ill, attending funerals and violating minor school rules.

We do not say that school policies and rules must be drafted, or even that they can be drafted, so that unjust results are impossible. What we say here is that there are a sufficient number of circumstances under which an injustice can occur that the policy itself cannot be considered reasonable.

The District contends that the policy is not as rigid in enforcement as its terms would indicate. To substantiate this point of view, we are directed to the fact that exemptions have been granted. We find some difficulty with that argument. For one thing, there is nothing in the policy or any other administrative regulation regarding the absence policy which spells out the existence or availability of exemptions, the criteria on which exemptions may be granted, or the procedure through which they are obtained. Had Mr. Mitchell been properly informed of the proper procedure, he would not likely have appeared at the November Board meeting where he was instructed to discuss the matter with the school administration.

We feel that if exemptions are to be available under a restrictive school policy, that some form of official notice to those persons to whom the policy is to be applied is necessary. We also feel that the criteria, guidelines or standards upon which exemptions are to be considered should be generally known, or at least available, to students and parents. The absence of such standards creates the potential for inconsistent, arbitrary, and capricious decisions. While we do not find that the District Administration or Board acted in an arbitrary or capricious manner with respect to application of the policy to the Mitchell girls, left with total discretion in the determination of exemptions, such a result would likely only be a matter of time.

In addition to being unreasonable, we also feel that the policy and its administration do not contain sufficient procedural due process protections. In order for a right to Constitutional procedural due process to arise, an interest protected by the Fourteenth Amendment must be present. The State Board has previously found that a property right arose in an action to expel a student. In re Monica Schnoor, 1 D.P.I. App. Dec. 136. The Federal Court in Strickland v. Inlow, 485 F.2d 186 (8th Cir. 1973) found that suspensions for the balance of the semester were of sufficient severity to require procedural due process. While we are not here inclined to state unequivocally that being dropped from courses with loss of credit is the same thing as an expulsion, we do find that being dropped from all courses with loss of credit is of such severity that procedural due process is required.

We also find that students being judged under this policy have a "liberty" right which also requires similar protection. The State Board found in In re Jason Clark, 1 D.P.I. App. Dec. 167, that conduct by a school district in the enforcement of a school policy which has the potential of injuring a person's good name and reputation requires the application of procedural due process. While we stated previously that students may be punished under this policy for reasons which normally should not injure a person's reputation, such as illness, the policy's primary thrust is disciplinary, and people in the community are likely to think badly of a student dropped from classes.

The policy before us does contain some elements of procedural due process, and with the exception of one important element of procedural due process, which is absent, the actual administration of the policy could possibly comply with minimal procedural due process requirements. The State Board ruled in In re Jason Clark, that procedural due process requirements can be successfully met through the administration of a school policy, even though the policy itself did not contain specific due process procedures. However, the policy involved here appears on its face and in practice to be defective in that a student is dropped from class and credit is removed prior to the application of procedural due process. Even when only the most rudimentary elements of procedural due process are required, unless there is a continuing danger to persons or property or an ongoing threat of disrupting the school environment, the opportunity to be heard must be granted prior to action being taken. Goss v. Lopez, 419 U.S. 565, 582, 95 S.Ct. 729 (1975). Such is the problem with any policy which purports or is administered so that the happening of an event automatically triggers punishment. "Automatic" discipline is repugnant to both education and the Constitution.

While the Due Process Clause does not protect a student from discipline properly imposed, no one's interests, including the school's, is protected if punishment is administered where it is not warranted. What justice is done if, under the policy, a student should be automatically dropped from classes with no credit only to find on appeal at a Board meeting several weeks later that the student was improperly removed as a result of clerical error? It is not the good faith actions of disciplinarians which procedural due process protects against, it is the risk of error. Goss, supra. 580.

We further find that the District policy in question is not based on good educational principles. We think it inappropriate to lump all absences, except those which are verified in writing by a doctor or dentist, into one category and treat them the same. Educators should look to the specific reason for each absence to determine whether or not it can be justified from an educational standpoint. While some reasons for absence may be disputed as to whether they can be so justified, there are others which we feel are beyond reasonable dispute and which must be allowed under school absence policies. We feel, for instance, that a relative's funeral and minor contagious illnesses, such as colds and flu, which normally interfere with a student's learning process, but which are not normally serious enough to require a visit to a physician, should be considered reasonable excuses for absence from school.

We are also concerned that the District's policy does not recognize the long established educational practice of school officials discussing violations of school policies with suspected transgressors prior to the taking of disciplinary action. While this practice has been only recently established in Goss v. Lopez as a legal requirement, it has long been a common and accepted educational practice. We do not think that it is educationally appropriate, in most circumstances, for school officials to take disciplinary action against students without an earnest discussion of the situation with the students involved.

In conclusion, we find that the District's absence policy, (series #629) is invalid because it is unreasonable, and violates Constitutional procedural due process. We further find that the District policy in question is not based on good educational principles.

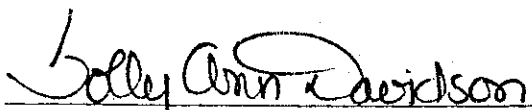
We have reached the above conclusions only after considerable deliberation and review. It is not an easy task to rule any policy adopted by a school board of directors as improper, especially when the board acted in good faith and with good intent as the facts in this appeal show to be present here. The District Board is to be congratulated for the effort it has put forth in attempting to solve the increasing problem of unnecessary absences. Absences for any reason are disruptive to the school environment and are to be discouraged. We sincerely hope that our ruling in this matter does not dull the Board's enthusiasm for attempting to find alternative solutions to the problem.

III.  
Decision

The Decision in this matter rendered by the Baxter Community School District Board of Directors on December 14, 1977, is hereby overruled. Appropriate costs under Chapter 290, if any, are hereby assigned to the Appellee. All motions and objections not previously ruled upon are hereby overruled.

June 8, 1978

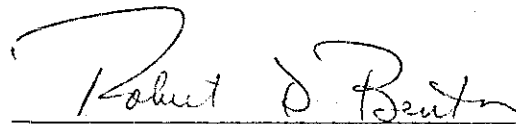
DATE



JOLLY ANN DAVIDSON, PRESIDENT  
STATE BOARD OF PUBLIC INSTRUCTION

May 30, 1978

DATE



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