

IOWA DEPARTMENT OF EDUCATION
(Cite as 26 D.o.E. App. Dec. 368)

In re Petition to Join Activities Conferences

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| <i>Clay Central Everly Community School District,</i> | : | DECISION |
| <i>Petitioners</i> | : | [Adm. Doc. 4767] |

The above-captioned matter was heard on June 17, 2013, before Nicole M. Proesch, J.D., designated administrative law judge, presiding on behalf of Jason Glass, then Director of the Department of Education [“Department”].

This hearing was held pursuant to the provisions of 281—Iowa Administrative Code [IAC] Chapter 37 and Iowa Code section 280.13 (2013). Chapter 37 provides for a hearing before the Director of the Department if the mediation process outlined in Chapter 37 fails to resolve a petitioner’s request for conference membership.

FINDINGS OF FACT

The Department originally received requests from three schools to join one of two activities conferences that had denied them membership. Clay Central-Everly Community School District [“CCE”], Graettinger-Terril/Ruthven-Ayshire Community School District [“GTRA”], and Corwith-Wesley and LuVerne Community School District [“CWL”] all requested conference realignment. However, by the time the mediation team met with the affected petitioners, only CCE’s request was left to mediate due to GTRA being accepted into the Twin Lakes Conference [“TLC”] and CWL withdrawing their request due to a whole grade sharing agreement with Algona Community School District [“ACSD”].

CCE is currently a member of the Cornbelt Conference [“CC”]. As a result of whole grade sharing agreements, cooperative agreements, and consolidations the number of members in the CC has declined from 12 schools to 6 schools over the past four years. Of the remaining schools, two have been accepted to join other conferences for the 2014-2015 school years. North Union [“NU”] will join the North Iowa Conference [“NIC”] and West Bend-Mallard [“WBM”] will join the TLC. Although, the CC has attempted to recruit new member schools to the conference these attempts have been unsuccessful. The additional loss of NU and WBM will leave the CC no longer sustainable.

In November of 2012, the CCE petitioned for membership into the TLC. The CCE’s petition was denied. The CCE also petitioned for admission into the War Eagle Conference [“WEC”] and that petition was also denied. On February 19, 2012, the CCE filed a petition with the Department requesting conference realignment for the 2014-2015 school year.

The Department as required by the Chapter 37 rules appointed a mediation team to resolve the issues. The mediation team was composed of Mike Dick, Executive Direc-

tor of the Iowa Girls High School Athletic Union [“IGHSAU”], David Anderson, Assistant Executive Director of the Iowa High School Athletic Association [“IHSAA”], and Les Douma, who is a former Superintendent, IHSAA Board member, NFHS Board member, AEA Director, and currently the Mayor of Orange City. Mr. Douma was appointed Chairperson of the mediation team. The Department’s charge to the mediation team was to not feel constrained to limit its mediation to the Petitioners, stating, “It is a reality that conference realignments have far-reaching consequences. Please invite any schools that you reasonably believe will be affected to participate in the mediation.”

At the time of the mediation team activities and subsequent hearing before the Department, the composition of the affected conferences was as follows:

TWIN LAKES CONFERENCE

Alta-Aureila
 East Sac County
 Laurens-Marathon
 Manson Northwest Webster
 Newell-Fonda
 Pocahontas Area
 Prairie Valley, Gowrie
 Saint Mary’s, Storm Lake
 Sioux Central, Souix Rapids
 South Central Calhoun
 Southeast Webster-Grand, Burnside

WAR EAGLE CONFERENCE

Akron-Westfield
 Gehlen Catholic, Lemars
 Hartley-Melvin-Sanborn
 Hinton
 Marcus-Meriden-Cleghorn
 Remsen-Union
 Saint Mary’s, Remsen
 South O’Brien, Paullina
 Spaulding Catholic, Granville
 Unity Christian, Orange City
 West Sioux, Hawarden

MEDIATION TEAM ACTIVITIES

The mediation team first met in Spencer, Iowa on April 18, 2013, inviting all member schools of the TLC and WEC to be in attendance. The minutes from that meeting show that several schools took advantage of the invitation to be present. All conference members, as well as representatives of CCE were permitted to offer evidence and argument for their positions regarding the petition. The team provided a compilation of data including enrollment information, mileage information, a map showing the geographic locations of all schools potentially involved, and information about the programs offered by each school. The parties discussed the advantages and disadvantages of CCE joining each conference.

A representative from the WEC expressed satisfaction with the current makeup of their conference which consisted of twelve teams that easily divided into two six team divisions. A representative from TLC expressed the opinion that due to CCE’s enrollment size and geographic location to other schools (at least two schools in the TLC would have to travel over one hundred miles to compete with CCE) that the WEC would be a better fit.

CCE indicated no preference as to which conference they join. CCE agreed that the WEC would provide a closer driving distance to the member schools but acknowl-

edged that TLC was close geographically as well. CCE indicated it had several good rivalries in the TLC. However, TLC expressed concern for the driving distances and the need for early dismissals. The parties discussed whether the parties were agreeable to a 2015-2016 school year begin date.

Following individual statements from the parties, a short caucus convened to allow each conference to reconsider CCE's petition for admission into those conferences. After the meeting reconvened neither conference was willing to reconsider CCE's petition. The meeting was adjourned.

The task of the mediation team was to consider the factors listed in Iowa Administrative Code rule 281—37.4, which are as follows:

- School enrollment figures (current and projected)
- Travel distances
- Comparability of instructional programs
- Traditional rivalries
- Number of existing and proposed schools in the conference
- Comparability of athletic programs and other school-sponsored programs.

On May 8, 2013, the mediation team met by itself, reviewed the minutes and discussion from the mediation meeting held in Spencer and unanimously issued a recommendation to the Department that CCE be assigned to the WEC beginning with the 2015-2016 school year.

HEARING BEFORE THE DEPARTMENT

The Department scheduled a hearing for June 17, 2013, at which time the two conferences and several schools appeared and presented their opinions regarding the recommendation of the mediation team. The mediation team's recommendation that CCE be accepted into the WEC was accepted by WEC and CCE. However, CCE was concerned about the recommendation that this assignment would not begin until the 2015-2016 school year. During the hearing, CCE noted that all other schools that were accepted into WEC were accepted for the 2014-2015 school year. The CC will only continue to operate for the 2013-2014 school years. This would leave CCE without a conference for the 2014-2015 school year.

Both IGHS AU and IHSAA indicated that during the mediation it was discussed that CCE would be able to fill in games for the 2014-2015 school year by scheduling games with teams from both conferences. The parties noted that it would be difficult for CCE to join the WEC for the 2014-2015 school year because the WEC would have to redo the entire schedule to accommodate the addition of CCE. Members of the mediation team indicated that during the mediation meeting CCE was willing to accept reassignment to either conference beginning the 2015-2016 school year. Therefore, the mediation team decided that the WEC was the best placement for CCE given all of the circumstances and further found the 2015-2016 school year to be the best date to join.

CCE acknowledged their willingness during the mediation to accept that offer but advised they still had concerns for the 2014-2015 school year. During the hearing, CCE indicated a

concern that they would only be able to schedule games on off nights for the other teams which would be on Mondays, Thursdays, or Saturdays. CCE does not want to be playing only on off nights for the 2014-2015 school year. Representatives from the WEC voiced concerns for redoing the schedule indicating that it would be difficult but not impossible to redo the schedule to accommodate CCE if needed. Scheduling is done well in advance of the 2014-2015 school year and would require a considerable amount of work to redo thus, affecting other member schools. CCE would still be able to schedule games with teams they are already competing with for the 2014-2015 school year.

CONCLUSIONS OF LAW

The administrative rules in chapter 37 became effective on December 11, 1991, as a result of legislative concerns that some procedure be put into place that "would guarantee each high school membership in an athletic conference." *In re Petition of Williamsburg Community School District for Membership into the Eastern Iowa Hawkeye Conference*, 17 D.o.E. App. Dec. 247, 254 (1999) (quoting *In Re Petition of Carroll Community School District*, 9 D.o.E. App. Dec. 251, 255 (1992)). This concern is reflected in Iowa Administrative Code rule 281—37.1, as follows:

It is the purpose of this chapter to provide a procedure ensuring that a public school or accredited nonpublic school desiring to be a member of a conference providing extracurricular athletic contests and competitions for students is granted this opportunity. Membership shall be with other schools of comparable size and within reasonable geographic proximity.

The procedure begins with the filing of a petition by one or more schools with the director of the Department, who then appoints a mediation team to meet with the petitioning schools and representatives of the schools in the desired conferences.

[T]he important phase of this process is mediation. In that setting, all evidence, reasoning, and arguments should be made by all parties. If a mediated settlement is not reached, ... great weight [will be placed] on the mediation team's ensuing recommendation, so much so that the burden of persuasion will thereafter be placed at hearing on the school or schools who oppose the recommendation. **In the absence of convincing proof that the mediation team failed to consider one or more of the factors laid out in the rules, or was otherwise biased, prejudiced, or predisposed, the mediation team's recommendation will be implemented.** [Emphasis added.]

See Williamsburg Community School District, 17 D.o.E. App. Dec. at 255 (quoting *Petition of Carroll Community School District*, 9 D.o.E. App. Dec. at 257-58).

Thus, past precedent is clear. Absent proof that that the mediation team failed to consider one or more of the factors in the rules and absent proof that the mediation team was biased, prejudiced, or predisposed, the Department is to implement the mediation team's recommendation. CCE did not argue that the mediation team failed to mediate in good faith, diligently, and in ac-

cordance with the rules. Furthermore, the present record would not support such an argument. While CCE disagreed with the recommendation to begin reassignment into the WEC for the 2015-2016 school year, CCE acknowledged that the Chapter 37 process was carried out with fidelity and the mediation team did a good job. Additionally, if the decision requires conference realignment, the date of this change shall be made with deference given to existing contracts and commitments. Iowa Admin. Code r. 281—37.7 (2013).

DECISION

The Department has carefully considered the information gathered by the mediation team and its recommendation, as well as the testimony and evidence given at the hearing of June 17, 2013. The Department affirms and adopts the May 8, 2013, recommendation of the mediation team. The CCE shall be admitted into the membership of the WEC effective no later than the start of the 2015-2016 school year. The Department’s decision gives CCE membership into an appropriate conference and is the least disruptive to the other affected schools in the WEC. This decision is effective with the 2015-2016 school year. All schools are reminded of rule 37.7’s four year “stay put” provision. That is, absent consensual decision of a conference, conference realignments are binding on CCE and on all members of the conferences listed for a four-year period, through the end of the 2018-2019 school year.

7/8/2013
Date

/s/
Nicole M. Proesch
Administrative Law Judge

It is so ordered.

7/8/2013
Date

/s/
D.T. Magee
Interim Director