

IOWA DEPARTMENT OF EDUCATION
(Cite as 27 D.o.E. App. Dec. 516)

<i>In re: Activities Conference Realignment</i>)	
)	DECISION
Harmony Community School District's)	
Petition for Membership into)	
Bluegrass Conference)	Admin. Doc. No. 4786
)	

The above captioned matter was heard on July 9, 2014, before Nicole M. Proesch, J.D., designated administrative law judge, presiding on behalf of Brad A. Buck, Director of the Department of Education [hereinafter "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 the petitioner's request for conference membership.

Petitioner Harmony Community School District [hereinafter "HCSD"], was represented by spokesperson Kerry Phillips, Superintendent of HCSD [hereinafter "Superintendent Phillips"]. Also present for HCSD was David Ross, the Secondary Principal [hereinafter "Principal Ross"] and Dennis Phelps, the former Superintendent of HCSD [hereinafter "Superintendent Phelps"]. Respondent Bluegrass Conference [hereinafter "BGC"] was represented by spokesperson Delane Galvin, Superintendent [hereinafter "Superintendent Galvin"] of Melcher-Dallas Community School District [hereinafter "MDCSD"]. Also present for BGC was Jim Crozier, Athletic Director for MDCSD [hereinafter "AD Crozier"] and BGC secretary, and Aaron Pals, Athletic Director and Secondary Principal [hereinafter "AD Pals"] for Ankeny Christian Academy [hereinafter "ACA"].

Each of the designated spokespersons presented testimony and other evidence in support of his school or conference's position. In addition, other administrators and students attended the hearing and presented their testimony.

FINDINGS OF FACT

The administrative law judge finds that she and the Department have jurisdiction over the parties and subject matter of the appeal before them. 281---IAC 37; Iowa Code section 280.13(2013).

HCSD is currently a member of the Southeast Iowa Super Conference [hereinafter "SEISC"] since its inception in 1992. As a result of declining enrollment, HCSD has smaller

team sizes than many of the other schools in SEISC. For the 2014-2015 school years, estimated enrollment for HCSD for grades 9-11 is 53. HCSD has not been competitive in SEISC for several years and as a result, many students choose not to participate in athletics or open enroll out of the district. HCSD maintains it cannot successfully compete with other schools in SEISC that are larger in size and have more student athletes than HCSD.

After a showing of overwhelming support from the district and students, in the spring of 2014 HCSD petitioned for membership into BGC. BGC's Board denied HCSD's membership petition. On April 17, 2014, HCSD filed a Petition with the Department requesting conference realignment for the 2015-2016 school years.

The Department as required by the Chapter 37 rules appointed a Mediation Team to resolve the issues. The Mediation Team appointed by the Executive Directors of the Iowa High School Athletic Association [hereinafter "IHSAA"] and the Iowa High School Girls Athletic Union [hereinafter "IHSGAU"] was composed of Chuck Van Hecke, Chairperson, Mike Dick of IHSGAU, Dave Anderson and Jared Chizek both IHSAA. The Department's charge to the Mediation Team was to invite any schools that the team reasonably believed would be affected to participate in mediation.

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

BLUEGRASS CONFERENCE

Ankeny Christian Academy
 Diagonal
 Grandview Christian
 Iowa Christian Academy
 Lamoni
 Melcher-Dallas
 Moravia
 Mormon Trail
 Moulton-Udell
 Murray
 Orient-Macksburg
 Seymour
 Twin Cedars

SOUTHEAST IOWA SUPER CONFERENCE

Cardinal	Columbus
Central Lee	Highland
Danville	Iowa Mennonite
Harmony	Lone Tree
Holy Trinity Catholic	Louisa-Muscatine
Maharishi	Mediapolis
New London	Pekin
Notre Dame	Waco
Van Buren	Wapello
West Burlington	Winfield-Mount Union
(SOUTH)	(NORTH)

SOUTH IOWA CEDAR CONFERENCE

Belle Plaine	BGM	English Valleys	HLV
Iowa Valley	Keota	Lynnville-Sully	Montezuma
North Mahaska	Sigourney	Tri County	

MEDIATION TEAM ACTIVITIES

The Mediation Team first met with the schools and conferences in Mount Pleasant, Iowa, on May 13, 2014, inviting all member schools of SEISC both North and South Divisions, BGC, and the South Iowa Cedar Conference [hereinafter "SICC"] to be in attendance. The minutes and attendance sheets from the meeting show that several schools took advantage of the invitation to be present at the mediation. The Mediation Team outlined the factors that are required to be considered and provided a compilation of data including enrollment information, mileage information, and a map showing the geographic locations of all schools potentially involved. The parties discussed the advantages and disadvantages of HCSD joining BGC or remaining in SEISC.

HCSD presented first. Superintendent Phillips offered information regarding high open enrollments numbers out of the district due to a non-competitive athletic program. HCSD's projected enrollment for the 2014-2015 school years is 53 for grades 9-11. He offered that HCSD wants a more competitive program for students so they may have a fair chance to compete. Superintendent Phillips offered information that BGC had approached HCSD in the 2012-2013 school years to see if there was an interest in joining BGC at that time however, HCSD was not ready to make that move at that time. HCSD is also planning to purchase an 84 passenger bus which will be used for teams and spectators to go to games, offer tutoring on the bus, and will provide free meals to team participants. Several HCSD students spoke about their perspectives. The main issues articulated were the lack of competitiveness, loss of students due to open enrollment, and poor school spirit. A video was shown supporting their positions. Superintendent Phillips provided letters of support from several schools in SEISC and a PowerPoint presentation to the Mediation Team.

Representatives of each conference as well as individual school conference members were provided the opportunity to offer evidence and argument for their positions regarding the petition. A representative from Murray/Morman Trail who served as the President of BGC in the 2012-2013 school years indicated BGC did not make an official invitation to HCSD that year. Four other schools petitioned BGC for admittance and were admitted to the conference however HCSD was not one of them. A representative from Seymour/Moravia indicated that they currently play HCSD. A representative from Twin Cedars expressed concerns for the increase in travel and the associated transportation issues if HCSD joined BGC. A student offered that Central Lee, which is part of SEISC is four times the size of HCSD. A representative from MDCSD expressed concerns that admitting HCSD to BGC would cause an east/west division and thus it would impact scheduling and conference tournaments. Both BGC and SICC expressed concerns about the distances that teams would have to travel if a change occurred.

Programming was discussed and a suggestion was made that HCSD has lower level programs than some of the other schools. HCSD maintains that they have competitive programming. Currently, BGC has vocal, band, speech, art, math, and the college bowl.

The Mediation Team questioned the viability and stability of the current conferences and concluded that there were no issues in the near future for any of the conferences. SICC mentioned that Colfax-Mingo and Lone Tree might be possibilities for joining SICC in the future. SEISC discussed forming a big/small school division; however, this created a scheduling issue and did not occur. HCSD considered playing as an independent team but determined it would likely be a scheduling conflict for most other teams they would want to play and additionally it would deprive their students of the opportunity to receive conference awards. HCSD did not apply to join any other conferences.

Following individual statements from the parties, a short caucus convened to allow each conference to discuss HCSD's petition. After the meeting reconvened, none of the parties' positions had changed and no solution was offered. The Mediation Team took the matter under advisement and adjourned.

MEDIATION TEAM'S RECOMMENDATION

The task of the Mediation Team was to consider the following factors listed in Iowa Administrative Code rule 281 --- 37.4:

- 1) School enrollment figures (current and projected)
- 2) Travel distances
- 3) Comparability of instructional programs offered
- 4) Traditional rivalries
- 5) Number of existing and proposed schools in the conference
- 6) Comparability of athletic programs and other school sponsored programs

On June 4, 2015, the Mediation Team met by itself, reviewed the minutes and discussion from the mediation meeting held in Mount Pleasant and made the following findings from the mediation:

- 1) School Enrollment Figures – HCSD has the smallest enrollment in SEISC with a difference of 89 students from the average conference enrollment. In other potential conferences, the average enrollment difference between HCSD would be 7 student or 52 student differences.
- 2) Travel Distances – HCSD currently has an average travel distance of 32.8 miles within its conference division and 48.9 miles for all other SEISC schools. In other potential conferences, the average travel distance would be 120.2 miles or 98.4 miles. The significant increase in travel for the majority member schools was a significant factor in the Mediation Team's recommendation.
- 3) Comparability of Instructional Programs – While the Mediation Team noted that HCSD has limited fine arts and academic offerings they found no significant difference in the instructional programs of the member schools of the conferences considered.
- 4) Traditional rivalries – HCSD currently plays traditional rivalries.

- 5) Number of existing and proposed schools in the conference – Each conference locally determines its structure. None of the current conference structures would be advantageous to HCSD. Each conference is encouraged to review their structure and seek ways to assist those member schools who are struggling with low enrollment and competitiveness of their teams.
- 6) Comparability of athletic programs and other school sponsored programs – The Mediation Team considered all sports offered in potential conferences and HCSD's inability to participate in those sports. Consideration was also given to the lower level programs offered in the considered conferences and concluded that HCSD would have difficulty offering other member schools sub-varsity and junior high contests.

On June 5, 2014, the Mediation Team unanimously issued a recommendation to the Department that HCSD remain a member of SEISC.

HEARING BEFORE THE DEPARTMENT

The Department scheduled a hearing for July 9, 2014, at which time HCSD, BGC, and other interested schools appeared and presented their opinions and testimony regarding the recommendation of the Mediation Team. The Mediation Team's recommendation was accepted by BGC. However, HCSD did not accept the recommendation. The parties were each given an opportunity to provide evidence or testimony in support of their perspective positions.

Superintendent Phillips presented first on behalf of HCSD. He offered his own comments and testimony indicating that HCSD is not competitive in SEISC and that the district and the students were willing to travel the distance to be part of BGC. He also offered testimony from the following HCSD students: Tessa Story, Alena Whitaker, Amber Vance, Alyssa Vance, Taylor Diephuis, Christopher Pilcher, and Brian Bye. Each student offered emotional testimony supporting the district's position that HCSD has declining enrollment which has resulted in smaller athletic teams who are generally not competitive with larger schools in SEISC. As a result, students open enroll out of the district to join programs that are more competitive. This issue has created a problem with school spirit for both the athletes and the spectators. To the credit of BGC, several students also testified that the students in BGC offer better sportsmanship than SEISC.

Superintendent Galvin presented on behalf of BGC. He offered his own testimony and the testimony of AD Crozier and AD Pals. The testimony offered supported BGC's main concern that admitting HCSD to BGC would create a significant increase in the distance that member schools would have to travel to compete. This not only impacts transportation costs but also creates loss of time in the classroom to accommodate travel. BGC noted that only three out of thirteen schools would stand to benefit with regard to distances traveled if HCSD was admitted. Additionally, there was a concern that there would be a need for an east/west division in BGC if HCSD was accepted. AD Crozier and AD Pals testified that several schools

in BGC have similar issues to those of HCSD including declining enrollment, low athletic participation, and lack of competitiveness.

At the time of the hearing, the Department requested the Mediation Team to supplement the record with a chart that included current distances traveled for all schools in BGC. This chart was provided on the same day of the hearing.

CONCLUSIONS OF LAW

The purpose of the administrative rules in chapter 37 is to "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 the rule:

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.

281 --- Iowa Administrative Code 37.1.

To invoke this procedure a school must file a petition with the Director of the Department of Education, who then appoints a mediation team to meet with the petitioning schools and representatives of the affected conferences. 281--- IAC 37.3-37.4. The principals that guide this process are stated in the rules:

Membership shall be with other schools of comparable size and within reasonable geographic proximity.

281 --- IAC 37.1.

Factors to be weighted in reaching a resolution will include, but not be limited to, school enrollment figures (current and projected, travel distances, comparability of instructional programs, traditional rivalries, number of existing and proposed schools in the conference, and comparability of athletic programs and other school-sponsored programs.

281 --- IAC 37.4.

[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, In re Petition of Williamsburg Community School District for Membership into the Eastern Iowa Hawkeye Conference, 17 D.o.E. 247 (1999); *In re Petition of Carroll Community School District, supra* at 254-255 (1992).

Thus, the Department's past precedent on petitions for athletic realignment is clear. Absent some showing that the mediation team failed to consider one or more factors in the rules and absent some proof that the mediation team was biased, prejudiced, or predisposed, the Department is to implement the team's recommendation. HCSD provided no evidence that the Mediation Team failed to consider the factors required by the rules. Nor did HCSD provide evidence that the Mediation Team was biased, prejudice, or predisposed to their decision. There was no evidence that the Mediation Team failed to mediate in good faith, diligently, and in accordance with the rules.

The Department agrees with the Mediation Team's recommendation. In particular, the Department finds that the significant increase in travel for all teams in the respective conferences, including HCSD, and the impact this would have on schools and students from a financial sense and educational perspective cannot be ignored. HCSD currently has an average travel distance of 32.8 miles within its conference division and 48.9 miles for all other SEISC schools. In other potential conferences, the average travel distance would be 120.2 miles or 98.4 miles. Currently there is no school in BGC that has to drive more than 124 miles one-way to compete with another school. If HCSD were added to BGC, at least seven schools would be required to drive more than 124 miles one-way to get to HCSD. At least one school would have to drive over 176 miles one-way. While the Department appreciates the testimony and genuine concerns from the students of HCSD, these concerns cannot cloud the overall picture and the significant impact a change would have on HCSD and thirteen other schools and their students. The Department encourages these conferences to review their structure and find ways to assist member schools who are struggling with low enrollment, lack of competitiveness, and concerns about sportsmanship.

DECISION

After consideration of all of the information gathered by the Mediation Team and its Recommendations, as well as the testimony and evidence presented by the parties at the hearing, it is the decision of the Department to affirm and adopt the June 5, 2014, Recommendation of the Mediation Team. HCSD shall remain a member of SEISC. This decision provides HCSD membership into an appropriate conference that is the least disruptive HCSD and to the other schools in BGC.

It is so ordered.

7/28/2014

Date

Nicole M. Proesch

Nicole M. Proesch, J.D.

Administrative Law Judge

7/28/14

Date

Brad A. Buck

Brad A. Buck, Director

Iowa Department of Education