

IOWA DEPARTMENT OF EDUCATION
(Cite as 26 D.o.E. App. Dec. 221)

In re Petitions to Join Activities Conferences

<i>Camanche Community District,</i>	:	DECISION
<i>Bellevue Community School District,</i>		
<i>Northeast Community School District</i>	:	[Adm. Doc. 4736]
<i>and Cedar Valley Christian School,</i>		
<i>Petitioners</i>	:	

The above-captioned matter was heard on March 28, 2012, before Carol J. Greta, J.D., designated administrative law judge, presiding on behalf of Jason E. Glass, 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(2011). 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

This has been a uniquely complicated process. Rather than the usual request from a single school or school district to join an activities conference, the initial request herein quickly spawned others. The Department received requests from four schools to join one of two activities conferences that had denied them membership. Those requests and the pertinent details are as follows:

- Camanche Community School District [“Camanche”] requested membership into the Cedar Valley Conference [“CVC”]. Camanche, presently a member of the Big East Conference [“Big East”], cited concerns that the Big East members cannot provide sufficient athletic contests at subvarsity levels, including junior high or middle school contests.
- Bellevue Community School District [“Bellevue”] requested membership into the Tri-Rivers Conference [“Tri-Rivers”]. Bellevue is also presently a member of the Big East. In its request, Bellevue added the following information about the perceived decline of the Big East:
 - North Cedar Community School District [“North Cedar”] left the Big East in 2008.
 - Lisbon Community School District [“Lisbon”] is approved to leave the Big East next year to join the Tri-Rivers.
 - (Former) Big East members Olin, Andrew, and East Central no longer have their own high schools because of whole grade sharing agreements.

- Northeast Community School District [“Northeast”] requested membership into either the CVC or the Tri-Rivers, with a slight preference of the CVC. As are Camanche and Bellevue, Northeast is presently a member of the Big East.
- Cedar Valley Christian School, which presently is not a member of any activities conference, requested membership in the Tri-Rivers.

The mediation team, required to be appointed by the Department by the Chapter 37 rules, was composed of Mike Dick, Executive Director of the Iowa Girls High School Athletic Union [“IGHSAU”], David Anderson, Assistant Executive Director of the Iowa High School Athletic Association [“IHSAA”], and Dwight Carlson, who was the administrator of the Department’s PK – 12 Division for several years, and also served as the Department’s liaison to the boards of the IHSAA and IGHSAU.

It soon became clear that the mediation team would need to widen its usual scope regarding the number of current conference affiliations to review. 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:

CEDAR VALLEY CONFERENCE

Mid-Prairie, Wellman
Regina, Iowa City
West Liberty
West Branch
Tipton
Durant
Wilton
North Cedar

BIG EAST CONFERENCE

Camanche
Calamus-Wheatland
Midland, Wyoming
Preston
Bellevue
Northeast, Goose Lake
Marquette Catholic, Bellevue
Prince of Peace Catholic, Clinton

TRI-RIVERS CONFERENCE

East Buchanan
Maquoketa Valley
North-Linn
Central City
Alburnett
Lisbon (membership to commence 2012-13)
Monticello
Springville
Cascade, Western Dubuque
Starmont
Edgewood-Colesburg

MEDIATION TEAM ACTIVITIES

The mediation team first met at Monticello on November 15, 2011, inviting all member schools of the CVC, Tri-Rivers, and Big East, as well as Cedar Valley Christian School to be in attendance. The minutes from that meeting show that all schools took advantage of the invitation to be present. The mediation team heard from representatives from all conferences, and then randomly placed those in attendance into six small groups to discuss the advantages and disadvantages of widespread conference realignment, asking the groups to also consider possible solutions. Each group reported to the entire assemblage; the minutes show that “excellent discussion” occurred in the small groups. Following the small group presentations, each of the three conferences was asked to meet separately and discuss the solutions (provided in written form) that had been proffered by the small groups. Following those discussions, each conference was asked to report to the entire assemblage. These reports were less than successful, with the CVC and Tri-Rivers both stating that they favored no change to current memberships.

The task of the mediation team was to consider the factors listed in 281—Iowa Administrative Code 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 February 13, 2012, the mediation team met by itself and unanimously issued a recommendation to the Department, detailed herein. The mediation team also traveled again to Monticello to present its recommendation to the affected schools in person on February 21. In its written report, the mediation team cited its belief that the Big East “is no longer able to provide the competitive opportunities needed by conference student athletes.” The recommendation of the mediation team addressed reduction of travel distances and fairly sought to meet competitive needs of all affected schools. That recommendation is as follows:

1. The existing Cedar Valley Conference, Tri-Rivers Conference, WAMAC Conference and Big East Conference shall be reorganized in the following manner:

CEDAR VALLEY CONFERENCE

Mid-Prairie, Wellman
Regina, Iowa City
West Liberty
West Branch
Tipton
Durant
Wilton

NEW CONFERENCE

Cascade, Western Dubuque
Monticello
Anamosa
North Cedar
Bellevue
Northeast, Goose Lake
Camanche

TRI-RIVERS CONFERENCE

Edgewood-Colesburg
 East Buchanan
 Maquoketa Valley
 North-Linn
 Central City
 Alburnett
 Lisbon
 Springville
 Cedar Valley Christian
 Midland, Wyoming
 Calamus-Wheatland
 Marquette Catholic, Bellevue
 Preston
 Prince of Peace Catholic

WAMAC CONFERENCE

Epworth, Western Dubuque
 Maquoketa
 Central Clinton
 West Delaware
 Solon
 Mount Vernon
 Beckman Catholic
 Marion
 Benton Community
 Vinton-Shellsburg
 Clear Creek-Amana
 Center Point-Urbana
 Independence
 Williamsburg
 Columbus Catholic

The Big East Conference shall be dissolved. A new conference shall be established. Northeast, Goose Lake; Camanche; and Bellevue shall be re-assigned from the Big East Conference to the new conference. Monticello and Cascade shall be re-assigned from the Tri-Rivers Conference to the new conference. North Cedar, Stanwood shall be re-assigned from the Cedar Valley Conference to the new conference. Anamosa shall be re-assigned from the WAMAC Conference to the new conference. Lisbon; Calamus-Wheatland; Midland, Wyoming; Preston; Marquette Catholic, Bellevue; and Price of Peace Prep, Clinton shall be re-assigned from the Big East Conference to the Tri-Rivers Conference. Cedar Valley Christian shall be assigned to the Tri-Rivers Conference. The Tri-Rivers Conference shall have two divisions. Participation in the divisions shall be determined by the conference. When determining division assignments, consideration should be given to geography and enrollment.

2. Conference re-alignment shall begin with the 2013-2014 school year.
3. All schools involved in this re-alignment shall not be allowed to seek new conference membership until the beginning of the 2017-2018 school year. There shall be no restriction on schools not assigned by this recommendation to seek membership in any of the re-aligned conferences.

The mediation team encourages all schools involved in this realignment to cooperate with each other in cross conference scheduling to assist schools in providing participation opportunities for students at all levels.

HEARING BEFORE THE DEPARTMENT

The mediation team's recommendation was not approved by all affected schools, but was met with approval from the Petitioners. In the interest of fairness to all members of the impacted conferences, the Department scheduled a hearing for March 28, at which several schools appeared and presented their opinions regarding the recommendation of the mediation team.

One concern raised consistently at the March 28 hearing was regarding the recommendation of the mediation team regarding Anamosa. Acting in good faith on a reasonable belief that Anamosa desired to leave its present conference, the WaMaC, the mediation team recommended that Anamosa be placed in the new conference. At the March 28 hearing, Anamosa and several other WaMaC member schools made it clear that this was not the desire of Anamosa.

Anamosa's fate aside, the Petitioners' positions are as follows:

- Camanche: present at the hearing of March 28 and satisfied with the recommendation of the mediation team
- Bellevue: also present at the hearing of March 28 and satisfied with the recommendation of the mediation team
- Northeast: unable to attend the March 28 hearing, but sent an electronic letter March 29 to indicate satisfaction with the medication team's recommendation
- Cedar Valley Christian: neither attended the March 28 hearing nor sent further communication, which the Department assumes to mean satisfaction with the recommendation of the mediation team

POST-HEARING ACTIVITIES

The schools at the March 28 hearing asked that the Department take all 60 days from March 28 to make its decision, in large part to give schools every opportunity to be proactive and try to craft their own solution. The Department acknowledges that many school officials worked diligently toward the goal of crafting their own fate, setting aside parochial interests in favor of serving the interests of students. In addition, the schools were informed that any voluntary actions on the part of other activities conferences to accept new members prior to this Decision would be honored. In reliance upon this information from the Department, Starmont and Edgewood-Colesburg have been voted into membership by the Upper Iowa Conference.

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. 247 (1999). This concern is reflected in 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, 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, past precedent is clear. Absent proof 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 team's recommendation. No school argued here that the team failed to mediate in good faith, diligently, and in accordance with the rules. Many schools disagreed with the recommendation, but all acknowledged that the Chapter 37 process was carried out with fidelity

The Department agrees with the overall conceptual conclusion of the mediation team. Nevertheless, there are reasons why the Department is not implementing the mediation team's recommendation verbatim. The deviations are as follows:

- *Anamosa*. The team acted in good faith reliance upon indications that Anamosa desired to leave the WaMaC. At the hearing before the Department on March 28, Anamosa and several other members of the WaMaC appeared to vigorously dispute placement of Anamosa outside of the WaMaC. While the team followed the guidance from the Department in expanding its scope, the Department's decision is to leave the WaMaC intact.
- *Formation of small, discrete conference*. In the past, school enrollments have been a large factor in conference alignments. Enrollments, while still important, are a more fluid concept than ever before. More schools are whole grade sharing with other schools pursuant to Iowa Code section 282.7. More schools are taking advantage of Iowa Code section 280.13A and the authority therein to cooperatively share activity programs (all, some, or none) with other schools. Enrollments fluctuate by activity and are not solely dependent on the population of a school district. The formation of smaller conferences thus is risky business because the fewer the number of conference members, the more important enrollments become. The fewer the number of conference members, the higher the risk of not finding sub-varsity and sub-high school contests. The Department favors the formation of larger, so-called "super conferences" rather than smaller conferences.
- *North Cedar*. Because North Cedar's membership into a small discrete conference is not necessary to make a viable conference, North Cedar will remain with its fellow members of the Cedar Valley Conference, albeit in a larger conference.

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 March 28, and all written communications received by the Department following the March 28 hearing. The Department's decision is as follows:

- The Big East Conference shall be dissolved.
- Cedar Valley Christian School shall be admitted into membership of the Tri-Rivers Conference, *effective no later than* the start of the 2013-14 school year. Other schools presently in the Big East to be assigned to the Tri-Rivers are Marquette Catholic, Calamus-Wheatland, Midland, Preston, and Prince of Peace. The Tri-Rivers Conference members are encouraged to form two divisions if they so desire, to reduce travel time and to schedule the majority of their contests with schools of similar enrollments and programming.

TRI-RIVERS CONFERENCE

Alburnett
 Calamus-Wheatland
 Central City
 Cedar Valley Christian
 East Buchanan
 Lisbon
 Maquoketa Valley
 Marquette Catholic, Bellevue
 Midland, Wyoming
 North-Linn
 Preston
 Prince of Peace, Clinton
 Springville

- The Cedar Valley Conference shall be merged into a larger, unnamed conference, which is strongly urged to form two divisions to reduce travel time and to schedule the majority of their contests with schools of similar enrollments and programming. The new conference shall meet to determine its name and to formulate governing documents. The membership of the new conference shall be as follows:

Two-Division NEW CONFERENCE

Bellevue
 Cascade, Western Dubuque
 Camanche
 Durant
 Mid-Prairie, Wellman
 Monticello
 North Cedar

Northeast, Goose Lake
Regina, Iowa City
Tipton
West Branch
West Liberty
Wilton

The Department's decision gives the Petitioner schools memberships into appropriate conferences and is the least disruptive to the other affected schools. This decision is effective with the 2013-14 school year. All schools are reminded of rule 37.7's four year "stay put" provision. That is, absent consensual decision of a conference, these conference realignments are binding on Petitioners and on all members of the conferences listed below for a four-year period, through the end of the 2016-2017 school year.

5/29/12
Date

/s/
Carol J. Greta
Administrative Law Judge

It is so ordered.

5/29/12
Date

/s/
Jason E. Glass
Director