

**IOWA DEPARTMENT OF EDUCATION  
(Cite as 27 D.o.E. App. Dec. 733)**

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<i>In re Dissolution Commission</i>	)	
<i>Appointments</i>	)	
	)	
Mistery Ficken,	)	DECISION
	)	
Appellant,	)	
	)	
v.	)	
	)	
Gladbrook-Reinbeck Community	)	Admin. Doc. No. #5023
School District,	)	
	)	
Appellee.	)	

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**PROCEDURAL BACKGROUND**

On or about May 21, 2015, the Board of Directors of the Gladbrook-Reinbeck Community School District (“Board”) received a Petition and Proposal for Dissolution of the Gladbrook-Reinbeck Community School District (“District”).<sup>1</sup> On August 20, 2015, the Board moved to appoint members of the community to a dissolution commission as required under Iowa Code section 275.51. On September 17, 2015, the Board moved to make changes to those appointments due to recent school board elections.

On September 21, 2015, the Appellant filed by email<sup>2</sup> an appeal of the decisions rendered on both August 20, 2015, and September 17, 2015, by the Board to the State Board of Education (“State Board”). This appeal was initiated pursuant to Iowa Code section 290.1, which allows the parent or guardian of an affected student who is aggrieved by a decision or order of the Board of Directors of a school corporation to appeal the decision to the State Board. The undersigned administrative law judge for the Iowa Department of Education has been designated to serve as the presiding officer for this case.

A scheduling conference was held on September 30, 2015 and the parties agreed to motions deadline of November 6, 2015, with any resistances or replies due by November 20, 2015. The District timely filed a Motion to Dismiss and a Motion for Summary Judgment, Statement of Undisputed Material Facts with a supporting Appendix, and a Memorandum of Authorities in Support of the motion on November 5, 2015. The Appellant timely filed a Resistance to the Motion to Dismiss on November 17, 2015. The District timely filed a reply to

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<sup>1</sup> The District raised the issue of whether or not the Petition and Proposal for Dissolution was a valid Petition. This issue is not for this board to decide so we decline to address it here.

<sup>2</sup> The original filing was sent by regular mail and postmarked September 22, 2015, and received by the Department on September 24, 2015.

the Resistance to the Motion to Dismiss on November 17, 2015. The Appellant untimely filed a Resistance to the Motion for Summary Judgment, Statement of Disputed Facts, and Memorandum of Authorities in Support of the motion on November 23, 2015, via both email and U.S. mail. The District filed a Motion to Strike the untimely Resistance to the Motion for Summary Judgment on November 25, 2015. The Appellant filed a response to the Motion to Strike on December 1, 2015. On December 18, 2015 an order was issued which reserved the ruling on the Motion to Dismiss for the time of the hearing, DENYING the District's Motion for Summary Judgment, and GRANTING the District's Motion to Strike.

An in person evidentiary hearing was held in this matter on March 23, 2016, before designated administrative law judge, Nicole M. Proesch, J.D., pursuant to agency rules found at 281 Iowa Administrative Code chapter 6. The Appellant was present and represented by attorney Darrell Meyer. The District was represented by Attorney Kristy Latta. Superintendent Jay Mathis ("Superintendent Mathis") appeared on behalf of the District. Also present for the District was Board President Joshua Hemann ("President Hemann"), Business Manager and Board Secretary Deb Oleson ("Mrs. Oleson"), and the Superintendent's Secretary Kate Schildroth ("Mrs. Schildroth").

The Appellant testified in support of the appeal. Appellant's exhibits were admitted without objection. Superintendent Mathis, President Hemann, and Mrs. Schildroth testified for the District and the District's exhibits were admitted into evidence without objection.

At the hearing the District renewed its original Motion to Dismiss and also made an oral Motion to Dismiss on the basis of a lack of standing of the Appellant to file this appeal.

### **RULING ON FIRST MOTION TO DISMISS**

First we will review the first Motion to Dismiss filed by the District. Under Iowa Code section 290.1 the parent or guardian of an affected pupil who is a minor, who is aggrieved by a decision or order of the board of directors of a local school district in a matter of law or fact may within thirty days after the rendition of the decision appeal the decision to the state board of education. Iowa Code § 290.1. The appeal shall be in the form of an affidavit filed with the state board by the aggrieved party within the time for taking an appeal. *Id.* "The affidavit shall be considered filed with the agency on the date of the United States Postal Service postmark, the date of arrival of a facsimile, or the date personal service is made." Iowa Admin. r. 6.3(1). The rules do not specifically permit filing by e-mail or electronically. *Id.*

The State Board has found that lack of compliance with the statutory requirements will result in no jurisdiction over an appeal. *In re Intra District Transfers*, 27 D.o.E. App. Dec. 568 (2015). The Iowa Supreme Court has found that the manner of service prescribed in statute shall be strictly adhered to. *Dawson v. Iowa Merit Employment Commission*, 303 N.W. 2d 158, 160 (Iowa 1981). In *Dawson*, the Court dismissed a petition for judicial review even though the petition was personally served on the respondent but not mailed. *Id.* At the time of the appeal personal service was not permitted under the Iowa Administrative Procedures Act. *Id.* The Court held firm to the statute even though personal service is arguably more accurate than service by mail. *Id.*

Here, the District has filed a Motion to Dismiss on the basis that the affidavit of appeal was filed untimely. Specifically, the District asserts the appeal of the August 20, 2015 decision is untimely because the appeal was not postmarked by September 21, 2015. A review of the record shows the Department received the Appellant's affidavit via email on September 21, 2015 and by U.S. mail on September 24, 2015, with a September 22, 2015 postmarked date. There is no question that the postmarked date is past the filing deadline for the August 20, 2015 decision. However, the issue here is whether or not the email filing is sufficient to comply with the rule.

This case is in contrast to *Dawson* because it is not the statute that prescribes the method of service in Chapter 290 appeals it is the Department's rule that prescribes acceptable service. The rule also provides that an affidavit shall be considered filed with the agency on the date of arrival of a facsimile. Iowa Admin. Code r. 281 – 6.3(1). The Department's facsimiles are received via email exchange when they come in from the fax server. Under these circumstances we cannot say definitively that receipt of the appeal by an email is substantially different than receipt of the appeal by fax. However, this is a close question. In light of the fact that this is a close question we will accept the email filing as substantial compliance with the rules and find it is timely. The Department will further review its rules regarding acceptable methods of service and provide more clarity moving forward.

We must now review the District's Second Motion to Dismiss on the basis that the Appellant does not have standing to bring this appeal.

### **RULING ON SECOND MOTION TO DISMISS**

At the time of the hearing the Appellant testified that on January 1, 2015, she open enrolled her children from the District to the GMG Community School District ("GMG") for the 2015-2016 school year, her children are currently attending school at GMG, and were attending GMG at the time of the Board's decisions. The District made an oral Motion to Dismiss the case on the basis that the Appellant's children are no longer "affected pupils" under Iowa Code section 290.1 and were not "affected pupils" at the time of either decision by the Board in this case. See Iowa Code § 290.1. Iowa Code section 290.1 states in pertinent part:

*An affected pupil, or the parent or guardian of an affected pupil who is a minor, who is aggrieved by a decision or order of the board of directors of a school corporation in a matter of law or fact, . . . may, within thirty days after the rendition of the decision or the making of the order, appeal the decision or order to the state board of education. . .*  
(emphasis added)

The State Board has ruled that in order to be an aggrieved party there must be a direct and immediate impact from the decision. Simply being affected indirectly or remotely is not sufficient. *In re Pam Rohlk*, 11 D.o.E. App. Dec. 20, 22 & n. 2 (1994). First, we note that the Board's decision not to appoint the Appellant to the committee appears to have more of an impact on the Appellant than it does on her children. The Appellant failed to articulate a direct and immediate impact of the decision on her children at the hearing. Additionally, they are no longer pupils in the District and were not pupils in the District at the time of the Board's decisions. Thus, we find and conclude that at the time of the filing of this appeal, September 21,

2016, the Appellant was not “a parent or guardian of an affected pupil” who was aggrieved by a decision of the Board. As a result, the Appellant is not an aggrieved party under Iowa Code section 290.1. As such, the State Board lacks jurisdiction to hear the appeal on this basis.

However, given that these are time sensitive issues we will review the merits of the parties’ appeal and attempt to resolve those issues for purposes of further review. Even if we assumed that the Appellant was an aggrieved party for the purpose of this appeal, we find that the Appellant would not be entitled to relief for the reasons stated below.

### **FINDINGS OF FACT**

The Appellant is a parent of five minor children who attended school in the Gladbrook-Reinbeck Community School District (“District”) until the end of the 2014-2015 school year. On January 1, 2015, the Appellant filed an application for open enrollment from the District to GMG. The Appellant’s children began attending GMG in the 2015-2016 school year.

On or about May 21, 2015, the Board of Directors of the Gladbrook-Reinbeck Community School District (“Board”) received a Petition and Proposal for Dissolution of the District. The petition proposed the following names of individuals to serve on a commission for dissolution pursuant to Iowa Code section 275.51, including the appellant:

- 1) Lisa Swanson, who is a resident of Reinbeck with children in the District and is a current school board member;
- 2) Eric Sieh, who is a resident of Reinbeck with children in the District and is a current school board member;
- 3) Doug Rowe, who is a resident of Gladbrook and is a current school board member;
- 4) Terri Luehring, who is a resident of Gladbrook and a former instructor and athletic director in the District;
- 5) Mistrey Ficken, the Appellant, who is a resident of Gladbrook with children in the district;
- 6) Keith Sash, who is a resident and Mayor of Gladbrook; and
- 7) Ted Hammer, who is a resident of Traer, a farmer, and a former school board member.

On June 18, 2015, the Board determined that the first step in the dissolution process was to appoint members of a commission for dissolution. During the July 20, 2015, board meeting the Board voted to form a commission comprised of seven members, with up to three board members from the board and other members meeting geographic and socioeconomic considerations pursuant to the statute. The Board also voted to form a subcommittee comprised of three board members to make recommendations regarding who should be appointed to the commission. Josh Hemann, Doug Roe, and Matt Wyatt made up the subcommittee. All Board members were asked to submit names to Superintendent Mathis by the end of July.

On August 18, 2015, the subcommittee met to discuss potential commission members. The Board reviewed the requirements set out in Iowa Code section 275.51. The subcommittee discussed possible members and the various geographic areas and socioeconomic factors these

members represent to include: family, occupation, education, whether employed or unemployed, number of children or grandchildren in the district, and any additional information of the proposed members. The subcommittee did not consider free and reduced lunch data<sup>3</sup> as a consideration nor did they ask possible committee members for income information. The subcommittee also tried to balance the commission with members from both Gladbrook and Reinbeck. Based on this discussion the subcommittee selected various individuals from the community to recommend to the Board for appointment. After the meeting, the Superintendent contacted those individuals to determine if they were willing to serve on the commission. On August 20, 2015, the Board voted unanimously to appoint the following individuals to the Commission:

- 1) Rod Brockett, who is Board member, a CPA and a resident of Reinbeck;
- 2) Matt Wyatt, who is a Board member, a farmer, and a resident of Reinbeck;
- 3) Doug Rowe, who is a Board member, works in Information Technology, and a resident of Reinbeck;
- 4) Susie Petersen, who works for a co-op and lives in Gladbrook;
- 5) Gary Stanley, who is a farmer and lives in Reinbeck;
- 6) Terri Luehring, who is a single father, currently retired but was an athletic director and a teacher in the district, and resides in Gladbrook;
- 7) Ann Boyer, who is an office manager and resides in Reinbeck;

Two out of seven of the individuals who were proposed in the petition were chosen to serve on the commission. The Appellant was not chosen as a member of the committee. All of the members who were chosen are eligible electors who reside in the district and three are current board members. Three of the members reside in Gladbrook and four of the members reside in Reinbeck. Three women were on the commission and four men.

On August 24, 2015, a notice was provided to Area Education Agency 267 certifying the names of the members of the commission and that the members represent various geographic areas and socioeconomic factors. On September 8, 2015, Anne Boyer was elected to the Board. This caused the commission to have more Board members than were allowed to serve on the commission. On September 17, 2015, the Board voted to remove Mr. Wyatt from the commission and replace him with Barry Thede. Mr. Thede is a single father who works for the Department of Transportation, is an eligible elector, and resides in Reinbeck.

On September 21, 2015, the Appellant filed an appeal of the August 20, 2015, and the September 17, 2015, Board decisions with the Department. The Appellant contends that the Board abused its discretion in selecting the members to the commission on August 20, 2015 and September 17, 2015. Specifically, she contends that the Board was required to appoint dissolution commission members from "all" socioeconomic factors present in the district. The Appellant contends that the Board failed to include a member, such as herself, who represents free and reduced lunch families in the district and that this failure is an abuse of discretion.

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<sup>3</sup> Superintendent Mathis and Ms. Schildroth both testified that free and reduced lunch data is confidential and this data is not to be used for a local purpose such as this. The Board thus could not have access to this information for consideration.

## CONCLUSIONS OF LAW

The State Board's review of a local school board's discretionary decision is for abuse of discretion. See *Sioux City Comm. Sch. Dist. v. Iowa Dep't of Educ.*, 659 N.W.2d 563, 569 (Iowa 2003). An abuse of discretion standard is synonymous with unreasonableness. In applying an abuse of discretion standard we look at only whether a reasonable person could have found sufficient evidence to come to the same conclusion as the local board. *Id.* "[W]e will find a decision was unreasonable if it was not based on substantial evidence or was based upon an erroneous application of the law." [Citations Omitted] *Id.* at 569. The State Board may not substitute its judgment for that of the local board. *Id.*

The decision of a school district to appoint members of a dissolution commission is clearly an issue of discretion. The question is whether or not the decision to appoint particular members was unreasonable under the facts and circumstances or based on erroneous application of the law.

Iowa Code section 275.51 provides, in relevant part:

*A school district dissolution commission shall be established by the board of directors of a school district if a dissolution proposal has been prepared by eligible electors who reside within the district. The proposal must contain the names of the proposed members of the commission and be accompanied by a petition which has been signed by eligible electors residing in the school district equal in number to at least twenty percent of the registered voters in the school district.*

*The dissolution commission shall consist of seven members appointed by the board for a term of office ending either with a report to the board that no proposal can be approved or on the date of the election on the proposal. Members of the dissolution commission must be eligible electors who reside in the school district, not more than three of whom may be members of the board of directors of the school district. Members shall be appointed from throughout the school district and should represent the various socioeconomic factors present in the school district.*

(Emphasis added.)

The Appellant misstates the requirement of the statute with respect to a requirement to establish a commission that represents *all* socio-economic/ demographics. (Emphasis added). It is clear from the text of section 275.51 that the district shall appoint seven members who are eligible electors who reside in the district and not more than three of those members may be board members. Members shall be appointed from throughout the school district and should represent the *various* socioeconomic factors present in the school district. (Emphasis added). The text on its face requires that the Board appoint members representing a various socio-economic factors, but it does not require the board to appoint members from *all* socio-economic factors. It only stands to reason that a commission made up of only seven people would not be large enough to represent all socio-economic factors in a school district. Thus, to impose such a requirement would not be reasonable. The evidence shows that the Board considered geographic location, family, occupation, education, whether employed or unemployed, number of children or grandchildren in the district, and any additional information of the proposed

members. The commission was also made up of members from both Gladbrook and Reinbeck and was gender diverse. The evidence shows that the Board met the requirements of the statute. We cannot say that the Board was required to obtain free and reduced lunch information or income from the potential commission members based on a plain reading of Iowa Code section 275.51. Nor would they have had access to this confidential information for this purpose. Thus, we cannot say with any assurance that this group is not represented by the current commission members. Under these facts we find no abuse of discretion.

The Appellant is understandably disappointed with the Board's decision not to appoint her to the commission. But we may not substitute our judgment for that of the local board. The State Board may not disturb the local board's decision absent a showing of abuse of discretion by that Board and we find no abuse of discretion here.

### DECISION

For the forgoing reasons, the District's First Motion to Dismiss the appeal as untimely filed is DENIED, the District's Second Motion to Dismiss the appeal on the basis that the Appellant is not an aggrieved party is GRANTED, and the decisions made by the Board of Directors of the Gladbrook-Reinbeck Community School District Board on August 20, 2015, and September 17, 2015, to appoint members of the dissolution commission and reappoint members of the dissolution commission is hereby AFFIRMED.

5/12/2016

Date

/s/ Nicole M. Proesch, J.D.

Nicole M. Proesch, J.D.

Administrative Law Judge

5/12/2016

Date

/s/ Charles C. Edwards, Jr.

Charles C. Edwards Jr., Board President

State Board of Education