**IOWA DEPARTMENT**
**OF EDUCATION**
**(Cite as 23 D.o.E. App. Dec. 340)**

*In re Educational Placement*

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| Susan E., Appellant, | : | |
| | : | DECISION |
| vs. | : | [Admin. Doc. 4621] |
| Remsen-Union Community School District, Appellee. | : | |

The above-captioned matter was heard telephonically on November 8, 2005, before designated administrative law judge Carol J. Greta. The Appellant, Susan E., was present on behalf of her minor son, Jimmy S. Ms. E. was represented in these proceedings by attorney Janet Schroeder. Superintendent Gary Battles appeared on behalf of the Remsen-Union Community School District, which was represented by attorney Andrew Bracken. Also present throughout the hearing were Jimmy S. and Michele Lauders, both of whom accompanied the Appellant, and present with Superintendent Battles were Linda Hardy (elementary school principal) and Kirk Johnson (secondary school principal).

An evidentiary hearing was held pursuant to agency rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for the appeal are found in Iowa Code § 290.1. The administrative law judge finds that she and the State Board of Education have jurisdiction over the parties and subject matter of the appeal before them.

In this case Ms. E. seeks reversal of a decision the local Board of Directors of the District made on September 13, 2005, to enroll her son in the District but not admit him "this school year to the regular academic program at the High School in Remsen, instead, the student should be provided access to an alternative program separate and apart from the regular academic program and that the student should not be allowed access to school extracurricular programs this school year."

## I.
## FINDINGS OF FACT

In this case of first impression, the parent of a child on Iowa's Sex Offender Registry ("SOR") challenges the District Board's decision to provide an education for her son apart from the regular student population.

Jimmy S., who was 15 years of age this past May, sexually assaulted a younger minor, and was adjudicated delinquent for that offense in August of 2003. Upon

disposition, he was committed to Woodward Academy, a residential treatment program for youthful sexual offenders. Upon his release from that program on April 1, 2005, Jimmy enrolled at his former resident district to finish the 2004-05 school year. There were no issues with either his behavior or with fellow students harassing him during those last nine weeks of the 2004-05 school year.

Over the summer Jimmy's family (with whom Jimmy again resides) moved into the Remsen-Union District. As explained in detail below, the District's Board met on September 13, 2005, to consider Jimmy's educational placement. After conducting a closed session hearing for nearly two hours, the local Board voted to provide Jimmy with access to an alternative educational program "separate and apart" from the other regularly enrolled secondary students of the District for the 2005-06 school year. The local Board also voted to deny Jimmy the opportunity to participate in any extracurricular activities this same school year.

Before rendering its decision, which adopted the recommendation of Superintendent Battles, the local Board heard from Jimmy, his mother, and Ms. Schroeder. It was aware that Jimmy had been enrolled without incident at his former resident district (also in Northwest Iowa) for the fourth quarter of the preceding school year. No local Board member testified herein, but Superintendent Battles listed the following rationale for his recommendation that Jimmy not attend regular classes:

- The District's prekindergarten through fifth grade population shares the attendance center with the secondary students, including the auditorium, cafeteria, hallways and classrooms for music, art, Title I services, and special education services.

- When Jimmy was released from Woodward Academy he returned to his resident district where the students knew him.

- The District has the responsibility of providing a safe environment for all of its students.

- Jimmy remains on probation to the juvenile court, and as a condition of his probation, an adult must be present at any occasions when Jimmy is near young children.

Jimmy's alternative educational program is provided to him at the middle school attendance center, a building attended only by sixth through eighth grade students, after school hours. Jimmy is present at that building from 4:00 p.m. to 6:30 p.m. to receive tutoring in five classes. Superintendent Battles reports that Jimmy does well in all five classes.

Finally, although not a part of any formal Board action the Board informed Jimmy and his mother that Jimmy could attend any extra-curricular school functions as a spectator. Jimmy is to let Superintendent Battles and Principal Johnson know of his presence at such events. Superintendent Battles explained that this is an effort to make Jimmy more visible to the student body and the rest of the community. He also stated that any safety concerns are decreased at such events because of the public nature of the events and the presence of many adults in attendance.

## II.
## CONCLUSIONS OF LAW

As stated at the outset, this is a case of first impression for any appellate body – judicial or administrative – in Iowa. The operative statute is Iowa Code section 282.9(1), which states as follows:

> 1. Notwithstanding sections 275.55A, 256F.4, and 282.18, or any other provision to the contrary, prior to knowingly enrolling an individual who is required to register as a sex offender under chapter 692A, but who is otherwise eligible to enroll in a public school, the board of directors of a school district shall determine the educational placement of the individual. Upon receipt of notice that a student who is enrolled in the district is required to register as a sex offender under chapter 692A, the board shall determine the educational placement of the student. The tentative agenda for the meeting of the board of directors at which the board will consider such enrollment or educational placement shall specifically state that the board is considering the enrollment or educational placement of an individual who is required to register as a sex offender under chapter 692A. If the individual is denied enrollment in a school district under this section, the school district off residence shall provide the individual with educational services in an alternative setting.

None of the "notwithstanding" provisions of the law apply here. Jimmy is indisputably a resident of the District; he is not enrolled because of a dissolution of another district. Also, Remsen-Union does not operate a charter school, and Jimmy is not open enrolled to the District. Therefore, the legal issues are presented without complication for this Board's consideration.

The Appellant frames her arguments as follows: (1) the local Board acted beyond the scope of section 282.9 and (2) the local Board's action denied Jimmy the process due to him.

*Did the local board act beyond the scope of the Statute?*

Ms. E. argues that the local Board impermissibly used a two-prong approach when it acted. The Board made its decision based on its perception of the risk that Jimmy's presence posed to the students in attendance at the building shared by secondary students and prekindergarten through fifth graders, *but also on its perception of Jimmy's exposure to personal harm by those students*. It is the latter to which she objects. As she stated in her affidavit of appeal, "the R-U Board erred upon reasoning that the student should be denied admittance to the regular academic program, not for reasons attributed to this student, but for reasons of how other students may react to this student," basing that decision not upon "known problems" but "solely upon speculation." [Affidavit of Appeal, ¶¶ 5,7.]

Section 282.9 directs boards to "determine the educational placement" of a student on the SOR; if a board decides that such student is not to be placed with the general population of the district's students, the board is further directed to "provide the individual with educational services in an alternative setting." However, the statute is bereft of criteria by which a local board of directors is to base its decision. It contains neither criteria for affirmative consideration by a local board nor criteria to be avoided.

Given that the Legislature has conferred upon local school boards clear authority to make enrollment and placement decisions, we must apply an abuse of discretion standard of review. *Sioux City Community School District v. Iowa Dept of Education*, 659 N.W.2d 563 (Iowa 2003)(where a school district has statutory authority to act, our review is limited to determining whether the district abused its discretion). "In applying abuse of discretion standards, we look only to whether a reasonable person could have found sufficient evidence to come to the same conclusion as reached by the school district. In so doing, we will find a decision was unreasonable if it was not based upon substantial evidence or was based upon an erroneous application of the law. Neither we nor the Department may substitute our judgment for that of the school district." *Id*. at 569. [Citations omitted.]

The local Board cannot be said to have acted beyond the scope of the statute or otherwise erroneously applied section 282.9. Although there is no evidence in the record here that the local Board discussed Jimmy's safety, assuming for the sake of argument that the Board had done so, it does not strike us as an unreasonable consideration. As do all school districts and accredited nonpublic schools in Iowa, this District has an anti-harassment policy. Ms. E. argued that her son would be adequately protected by the presence of that policy. We simply have no record by which to determine that argument, and in any event, we need not address it. Under the abuse of discretion standard of review, we simply determine that there are insufficient grounds before us by which we can or should overturn the local Board's decision because Ms. E. has not shown that the local Board's decision was unreasonable and lacking rationality.

*Did the local board's action deny Jimmy due process?*

Ms. E. next argues that section 282.9 requires an individual evaluation regarding enrollment of the student on the SOR and is not a *carte blanche* denial of enrollment of all sex offenders required to register on the SOR. As proof that the local Board had already made up its mind before its meeting on September 13, Ms. E. offered a partial transcript from juvenile court proceedings regarding her son in which the Juvenile Court Officer ("JCO") assigned to oversee Jimmy's probation testified that Superintendent Battles indicated to him that "they are not going to allow Jimmy to go to school in their school district but by law would still have to educate him."

We do not know if in fact Superintendent Battles made such a statement to the Juvenile Court Officer because the JCO did not testify at this hearing. We do not suggest that he gave false testimony before the juvenile court; rather, that his sworn statement may have been incomplete or taken out of context. In any event, the ultimate decision - the decision being appealed herein - belonged to the local Board. There is no evidence or any argument that the Board members prejudged Jimmy's placement. The members devoted nearly two hours to the reception of evidence, hearing of legal arguments, and the debate among themselves of this matter. There is no credible evidence that it merely rubber-stamped the administration's recommendation. Jimmy was not denied due process.[1]

Finally, Ms. E. posed the question (to Superintendent Battles) whether section 282.9 makes a school safer. This is a valid question, but not one that demonstrates a lack of due process on the part of the local Board for her son. The Iowa Legislature made a policy decision when it enacted section 282.9 that school districts do not have to educate resident students who are to be registered on the SOR with the general student population. Ours is not to comment on the policy. Our decision is merely that the local Board did not act contrary to the law.

[1] We assume that the Appellant's argument is that her son was denied substantive due process. She made no argument that his procedural due process rights were denied, and the record - showing as it does that he had notice, representation by counsel, opportunity to present his side, and a full and fair hearing before an impartial decisionmaker - does not show any procedural lapses.)

## III.
## DECISION

For the foregoing reasons, it is recommended that the decision of the Board of Directors of the Remsen-Union Community School District made on September 13, 2005 be AFFIRMED. There are no costs of this appeal to be assigned.

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Date Carol J. Greta, J.D.
Administrative Law Judge

It is so ordered.

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Date Gene E. Vincent, President
State Board of Education