

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

<i>In re Post-Secondary Enrollment</i>)	
<i>Options of J.Z.,</i>)	
)	
B.Z. and S.Z.,)	
)	DECISION
Appellant,)	
)	
v.)	
)	
Clear Creek Amana)	Admin. Doc. No. 5052
Community School District,)	
)	
Appellee.)	

STATEMENT OF THE CASE

The Appellant, S.Z., seeks reversal of an August 17, 2016, decision by the Clear Creek Amana Community School District ("District") Board ("Board") finding that the General Chemistry 1 Course at Kirkwood Community College ("KCC") is comparable to the Chemistry 2 courses offered at the Clear Creek Amana High school ("CCAHS") and thus is not an eligible Post-Secondary Enrollment Option course for J.Z. The affidavit of appeal filed by September 15, 2016, attached supporting documents, and the school district's supporting documents are included in the record. Authority and jurisdiction for the appeal are found in Iowa Code section 290.1. The administrative law judge finds that she and the State Board of Education ("State Board") have jurisdiction over the parties and subject matter of the appeal before them.

An in person evidentiary hearing was held in this matter on November 8, 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 with J.Z. Superintendent Tim Kuehl ("Superintendent Kuehl") appeared on behalf of the District and was represented by attorney Kristy Latta. Also present for the District was High School Principal Mike Moody ("Principal Moody").

The Appellant testified in support of the appeal. Appellant's Exhibits A-I were admitted without objections. Superintendent Kuehl and Principal Moody testified for the District and the school district's exhibits 1-4, 7 & 8 were admitted into evidence without objection. Exhibits 5 and 6 were objected to and excluded because they were not received by the local board.

FINDINGS OF FACT

The Appellant lives in Homestead, Iowa, and a resident of the Clear Creek Amana Community School District. Her son, J.Z., was a ninth grade student attending the Clear Creek

Amana High School, during the 2015-2016 school year. He is currently being homeschooled, is dual enrolled with CCAHS, and is in the tenth grade. J.Z. has been identified according to the District's criteria and procedures, as a Gifted and Talented pupil. Because of this designation J.Z. is eligible to attend Kirkwood Community College as a 10th grader to take classes under Postsecondary Enrollment Options Act ("PSEO") enacted by legislature to "promote rigorous academic and vocational pursuits" for Gifted and Talented ninth and tenth graders, and eleventh and twelfth graders to take courses in an eligible postsecondary institution of higher learning. Under PSEO, a school district will provide tuition reimbursements to an eligible postsecondary institution equal to the lesser of the actual and customary costs of tuition, textbooks, materials, and fees directly or two hundred fifty dollars. Iowa Code § 261E.7(1).

The Appellant testified that after J.Z. was designated as Gifted and Talented she approached Principal Moody in the summer before the 2016-2017 school year and inquired whether J.Z. could take an Intro to Chemistry course at KCC. Principal Moody informed the Appellant that the Intro to Chemistry course at KCC was equivalent to the Chemistry 1 course at CCAHS and thus would not be eligible as a PSEO course. The Appellant accepted that answer.

In early August, J.Z. took a compass placement test at KCC and based on his scores he was advised that they would waive the Intro to Chemistry course requirement and allow him to take the General Chemistry 1 course at KCC instead. On August 15, 2016, the Appellant notified the District that she would be homeschooling J.Z. and he would dual enroll for PSEO classes. The Appellant requested that the District approve the General Chemistry 1 course as a PSEO course in the fall and for approval for General Chemistry 2 course in the spring as a PSEO course. The Appellant asked that it be placed on the Board's agenda.

At the Board meeting on August 17, 2016, the Board heard comments from the Appellant and recommendations from Superintendent Kuehl. Superintendent Kuehl provided the Board with a course description of the Chemistry 1 course at KCC and an opinion from Mr. Muhlenbruch¹ that the topics and content taught in the KCC Chemistry 1 course are covered in the chemistry class taught at CCAHS. The handout also states that CCAHS also has a semester long Chemistry 2 class that covers advanced topics not covered in the KCC Chemistry 1 class. Exhibit 4.

The Board agenda reflects that Superintendent Kuehl "recommend[s] the Board declare the General Chemistry 1 Course at Kirkwood CC equivalent to Chemistry 1/2 at CCAHS." Exhibit 1. However, the recording of the board meeting reflects that Superintendent Kuehl recommended that "the Board to declare the General Chemistry 1 Course at Kirkwood CC equivalent with our Chemistry 2 course at the high school." Exhibit 2. The Board moved to approve the recommendation. Exhibit 2. The minutes of the Board meeting reflect "Board declares the General Chemistry 1 course at Kirkwood CC equivalent to Chemistry 1 & 2 at CCA." Exhibit 3. Mr. Kuehl provided clarifying testimony that the Board moved to accept his recommendation and the Board unanimously approved the recommendation.

On August 17, 2016, the Appellant filed a timely appeal with the Department. The Appellant argues that the District did not due their due diligence in comparing the courses and

¹ He has taught chemistry for CCAHS for thirty years.

that you cannot compare one course to two courses. The Appellee argues that it did compare the courses and their decision finding the courses comparable was reasonable.

CONCLUSIONS OF LAW

The Iowa Supreme Court has stated that the standard of review for appeals under Iowa Code section 290.1 is abuse of discretion. "[W]here a statute provides for a review of a school district's discretionary action, the review, by necessary implication, is limited to determining whether the school district abused its discretion." *Sioux City Cmty. Sch. Dist. v. Iowa Dep't of Educ.*, 659 N.W.2d 563, 568 (2003). The abuse of discretion standard requires the Board to look only at whether a reasonable person could have found sufficient evidence to come to the same conclusion as the school district. *Id.* at 569; *see also* Iowa Code § 17A.19(10)(f)(1). If a decision was not based upon substantial evidence or was based on an erroneous application of law we will find the decision is unreasonable. *Id.* The State Board may not substitute its own judgment for that of the school district. *See id.*; *see also In re Matthew Davis*, 14 D.o.E. App. Dec. 199, 203 (1997) (PSEO appeal).

The question in this appeal is whether or not the local board's decision finding that the General Chemistry 1 Course at Kirkwood is comparable to the Chemistry 2 course offered at the CCAHS and thus is not an eligible Post-Secondary Enrollment Option course is reasonable and complies with the Postsecondary Enrollment Options laws under the facts and circumstances in this case. Thus, we must first look at the statute itself.

Iowa Code section 261E.6(3) provides:

To participate in this program, an eligible student shall make application to an eligible postsecondary institution to allow the eligible student to enroll for college credit in a nonsectarian course offered at the institution. *A comparable course*, as defined in rules adopted by the board of directors of the school district consistent with department administrative rule, must not be offered by the school district or accredited nonpublic school the student attends.

Iowa Code § 261E.6(3) (emphasis added). The Department's administrative rules provide:

[P]ostsecondary courses eligible for students to enroll in under this division shall be limited to: ... courses that are not comparable to courses offered by the school district where the student attends which are defined in rules adopted by the board of directors of the public school district. 281-- IAC 22.17.

A comparable course must not be offered by the school district or accredited nonpublic school the student attends. For purposes of these rules, "comparable" is not synonymous with identical, but means that the content of *a course* provided to a high school student for postsecondary credit shall not consist of substantially the same concepts and skills as the content of *a course* provided by the school district or accredited nonpublic school.

281—IAC 22.18 (emphasis added).

The Appellant argues that the District compared two District courses to one college course. However, the record is not clear what the District compared. The handout provided to the Board suggest that Mr. Muhlenbruch compared General Chemistry 1 to Chemistry 1 at CCAHS. It also suggested that Chemistry 2 at CCAHS covers advanced topics not covered in General Chemistry 1. There was no comparison with General Chemistry 1 and Chemistry 2, nor was there a comparison between General Chemistry 2 and Chemistry 2. However, the motion approved by the board was to declare the General Chemistry 1 Course at Kirkwood CC "equivalent with our Chemistry 2 course at the high school."

The law and the rules clearly contemplate a one-to-one course comparison and not a two-to-one course comparison. Since, the record is not clear what the District compared and what the decision of the Board was, we must find their decision is an erroneous application of the law and thus, not reasonable and overturn the decision. It is not the State Board's duty to analyze and compare these courses *in the first instance* on a one-to-one basis. Thus, the comparison and final decision must be made by the District. This comparison must be made by comparing course content as described in 281 — IAC 22.18. A District cannot pay for a course at a community college that has substantially the same concepts and skills offered to students in the District's own high school course; to do so would be supplanting. See 281 — IAC 22.4(2)(a). So long as that decision is reasonable and not an erroneous application of the law, the District's decision on remand will not be disturbed. See, e.g., *In re Matthew Davis*, 14 D.o.E. App. Dec. at 203.

DECISION

For the foregoing reasons, the decision of the Board made on August 15, 2016, finding that the General Chemistry 1 course at Kirkwood is comparable to the Chemistry 2 offered at the Clear Creek Amana High school and thus is not an eligible Post-Secondary Enrollment Option course is REVERSED AND REMANDED. The District shall consider the definitions in the statute and the rules, and make a one-to-one course comparison of each of its courses. The State Board does not retain jurisdiction.

1/19/2017
Date

Nicole M. Proesch
Nicole M. Proesch, J.D.
Administrative Law Judge

1/19/2017
Date

Michael L. Knedler
Michael L. Knedler, Board Vice-President
State Board of Education