

**IOWA STATE BOARD
OF EDUCATION
(Cite as 21 D.o.E. App. Dec. 242)**

<i>In re William Austin Deck,</i>	:	
William & Janette Deck, Appellants,	:	
v.	:	DECISION
Sioux City Community School District, Appellee	:	[Adm. Doc. #4515]

The above-captioned matter was heard in person on November 18, 2002, before designated administrative law judge Carol J. Greta. The Appellants, William G. Deck and Janette H. Deck, were present on behalf of their son. Mr. Deck is an attorney with the firm of Deck & Deck in Sioux City, and acted as legal counsel for himself and his wife at the hearing. Appellee, Sioux City Community School District was represented by legal counsel, Dawn Mastalir of the Sioux City law office of Berenstein, Moore, Berenstein, Heffernan & Moeller, as well as by Assistant Superintendent Linda Madison and Peter Garlinghouse, Director of Secondary Education and Curriculum.

An evidentiary hearing was held pursuant to agency rules found at 281 Iowa Administrative Code chapter 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.

The Decks seek reversal of a decision of the local board of directors of the Sioux City District made on August 5, 2002, denying a request that their son transfer intradistrict from West High School to North High School. They filed their timely appeal to this agency on September 3, 2002.

**I.
FINDINGS OF FACT**

William Austin Deck [“Austin”], is a freshman at Bishop Heelan Catholic High School, an accredited nonpublic school located in Sioux City. At all times pertinent to this appeal, Austin and his parents have resided within the Sioux City School District. Specifically, Austin and his family live within the attendance boundaries for Sioux City West High School. Prior to his transfer to Heelan, Austin was enrolled in the Sioux City District, attending Hoover Middle School the 2001-2002 school year. Hoover is one of two middle schools that “feed” into West High.

There is no question that, by any set of criteria, Austin is a gifted student, particularly in mathematics. As a middle school student, for instance, Austin took classes at West High in geometry and Spanish. He is also a well-rounded individual who participates in such extracurricular activities as football, wrestling, and baseball.

The Decks presented a wealth of documents, the gist of which is summarized as follows:

1. Of the three high schools operated by the district, West High consistently is the lowest performing, as measured by student performance on the Iowa Tests of Educational Development (ITEDs).
2. Fewer advanced placement [“AP”] courses are offered at West than are offered at the district’s other high schools.¹
3. Fewer students at West High take post-secondary education option [“PSEO”] courses than do students at the district’s other high schools.
4. There are fewer students identified as talented and gifted [“TAG”] at West High than at the district’s other high schools.²

The district entered into evidence *Exhibit 23*, which shows the ACT and SAT scores by building of students who took one or both of those tests in 1998-2001. The information on the exhibit was gathered from the guidance counselors at the high schools. For each of the three years covered by *Exhibit 23* students at West High scored lowest on the ACT in all categories (English, math, reading, science reasoning, and composite). On the scoring scale of 1 – 36, the largest discrepancy between West High students and other district students was 3.2 points (1999-2000, reading). Not all of the information in this exhibit showed that West students’ performance was at the bottom in the district. The exhibit showed that the average math score for West students who took the SAT for the only year reported was 580, as compared to an average math score during the same year of 557 for North High students.

¹ That is, fewer AP courses are offered on site at the West attendance center. Such courses are available to West students at other sites, such as another attendance center within the district or a post-secondary institution campus.

² This is not disputed by the district, but the parties differ slightly on the precise numbers of TAG students in attendance at the high schools.

During Austin's 8th grade year, his parents met with various district personnel regarding how the district would meet Austin's needs at West High. Testimony of Mr. Garlinghouse and a letter from Superintendent Larry Williams showed that the district offered to make available PSEO courses "in any area where we do not offer an appropriate course." *Exhibit 1*. The district similarly offered to make available to Austin courses at the local community college through a 28E agreement with Western Iowa Tech. Exhibit 1, a letter to the Decks from Superintendent Williams, concluded as follows:

A West High School counselor can work closely with Austin to select courses and teachers that will benefit Austin's development. Mr. Garlinghouse is willing to work with you to establish an initial relationship with both the principal and a counselor. Obviously, teachers will need to be selected who are willing to differentiate instruction for Austin. Possibly the same counselor, or someone else to be identified on staff, needs to determine Austin's learning styles, and to provide this information to teachers for use in working with Austin. Here again, Mr. Garlinghouse is willing to work toward the initial conferences that may be necessary to establish such a relationship.

Advanced Placement (AP) courses will be available to Austin in American History and English as well. Also, as a TAG student, Austin will be eligible for Accelerated English in grades nine and ten.

Please feel free to contact Dr. McTaggart [West High principal] and/or Mr. Garlinghouse to work toward the most appropriate accommodation of Austin's needs. And please do not hesitate to contact me when needed.³

The Decks' response was noncommittal, and they asked to meet with personnel from both West High and North High School "to determine which school will best meet our son's needs." *Exhibit 2*. Testimony from both parties at the hearing established that the relationship between the family and the district deteriorated early in calendar year 2002 for reasons not pertinent to this appeal. The result is that the Decks did not receive all of the information that they desired to have from North High regarding how that attendance center would meet Austin's needs.

³ The Decks did not dispute the testimony and evidence offered by the district that the district was willing to provide AP and other appropriate courses to Austin at sites other than West High. The district conceded that this would require Austin to lose class time while being transported to the site where the courses were offered. Although the district offered to arrange it so that Austin could take courses back-to-back in this manner, and thereby minimize the effect of the travel time, the Decks were not willing to consider this proposal.

On or about March 22, 2002, the Decks filed a request with the district, asking that Austin be allowed to transfer for the 2002-03 school year from West High to North High School, citing the family's desire that "Austin, as a talented and gifted student, have a sufficient number of peers to challenge and further his education." Mr. Deck's addendum to the request ended, "It is in the best interest for Austin's educational health that he be provided a transfer."

Intradistrict transfer requests are provided for in Board Policy Number 501.8 of the Sioux City Community School District, which states in pertinent part as follows:

B. High School Transfer

Transfers at the high schools may be approved if space is available. Transfers between the District high schools are not accepted except to (1) improve racial balance when the difference in the percentage of children of color between two schools is at greater than 7 percent (7%) by May 1 of the previous school year, or (2) protect the student for health or safety reasons.

[The policy also has a sibling exception allowing intradistrict transfers if parents desire to have siblings attend the same attendance center. Austin has an older sister who is a senior at West High. She has attended West throughout her high school years, making this exception unavailable to the Decks for Austin.]

Transfer requests made pursuant to Policy 501.8 initially are received by Mr. Garlinghouse for action. Mr. Garlinghouse denied the transfer request for Austin; he testified that the reasons given by the Decks were not within the language or intent of Policy 501.8. The Decks appealed this denial to Assistant Superintendent Richard Bathurst, who upheld the denial.

Utilizing the district's written procedure, the Decks filed a further appeal to Superintendent Williams for hearing before the local board. On or about May 16, 2002, the Decks were advised in a letter from Superintendent Williams that the board Policy Committee affirmed the denial of the transfer. The letter cited three findings on which the Board Policy Committee based its decision, to-wit:

1. There is a racial imbalance of greater than 7 percent between [West High and North High]. Austin is a non-minority student. Releasing him from attendance at West High School would adversely affect the composite ratio of minority to non-minority students for his designated center of attendance, West High School.

2. There is insufficient evidence to demonstrate that Austin's health or safety would be adversely affected by attending West High School.
3. Austin has been assessed as a talented and gifted student. There is insufficient evidence to indicate that Austin's health and well being would be adversely affected on the ground that he would not be able to achieve the academic goals established for him as a talented and gifted student were he to attend West High School.

...

No "safety" reasons have been articulated in support of the application to transfer. The parents did, however, provide an argument in support of the transfer based on "health" reasons. It was argued that the definition of "health" is inclusive of "health of body, mind or soul," and that Austin's mental vigor and talent would not prosper if he were required to attend West High School.

...

...There was no complaint [by the Decks] that adequate instructional materials could not be provided to Austin. There was no complaint that the teachers who would be providing extra educational enhancement to Austin as part of the TAG program at West High School were less qualified than teachers providing the same instructional enhancements at North High School. There was no evidence that Austin would not have the same opportunities to attend college courses on college campuses that he would have at North High School. There was no evidence that the math mentor, currently provided to Austin, would not be provided to Austin if he were to attend West high School rather than North High School. There was no evidence to indicate that Advanced Placement courses that were offered at North High School were not also offered at West High School. ...

...The district believes that the evidence supports the finding that Austin's intellectual growth will not be adversely affected by receiving his high school education at West High School. ...

Exhibit 11.

After receiving notice of the Board Policy Committee's denial of Austin's transfer request, the Decks asked that the entire Sioux City Community School District board hear and decide the request. This hearing was held on August 5, 2002, with the board voting 4-0 (with 1 abstention and 2 absentees) to deny the transfer request. This appeal followed.

II. CONCLUSIONS OF LAW

The Iowa Legislature has directed that the State Board, in regard to appeals to this body, make decisions that are "just and equitable." Iowa Code § 290.3. The standard of review, articulated in *In re Jesse Bachman*, 13 D.o.E. App. Dec. 363 (1996), requires that a local board decision not be overturned by the State Board unless the local decision is "unreasonable and contrary to the best interest of education." *Id.* at 369.

The district conceded during the appeal to the Board Policy Committee that "evidence established that students attending West High School may achieve lower scores on standardized tests in general; that they are disproportionately poorer; and disproportionately members of minority classes..." *Exhibit 11*. However, the district noted that "there was insufficient evidence to establish specifically how these factors would adversely affect the ability or willingness of the staff at West High School to meet the requirements of the TAG plan established for Austin." *Id.*

We conclude that not only is there insufficient evidence that Austin's needs would not be met at West High, but there is insufficient evidence that he would suffer in any respect at West. Our conclusion in this matter does not require that we decide whether "educational health" is contemplated by Policy 501.8.

Mr. and Mrs. Deck offered their sincere and strongly held opinion that Austin's "education will suffer" if he attends "a school such as West, which has scored at the bottom of all Iowa high schools in [standardized] test scores." However, there was insufficient evidence presented that his academic achievement would decline. The district offered to meet Austin's needs as a gifted student in a variety of means. The Decks argue that Austin has a need for extraordinarily challenging content in courses with *gifted peers*. Their admitted reluctance to isolate Austin from *high school peers* by having him transported to attend any extraordinarily challenging classes at another high school or at the local community college deprives the district of the opportunity to meet that need.

Even assuming for the moment that the district's policy should be liberally interpreted to include educational health, there is simply insufficient evidence that Austin would suffer. Indeed, the experience of Austin's older sister, a senior at West High, belies the Deck's predictions of declining achievement for Austin. They testified that

their daughter is bored at West and that neither she nor they are satisfied with her education at West, but her grade point average is 3.94. *Exhibit A*. Her achievement did not decline at West; there is insufficient evidence to suggest that Austin would fare worse than his sister at that high school.

The Decks contend that state and national laws and policies mitigate in favor of their position. The federal No Child Left Behind Act (P.L. 107-110) addresses school choice, but does so in the context of an attendance center that has been identified as a “school in need of improvement.” Specifically, under section 1116(b)(1)(A) of the NCLBA, a school district is required to identify for school improvement any elementary or secondary school receiving Title I funds whose students - as a whole - fail to meet certain performance standards. Twenty-six (26) attendance centers in Iowa have been so identified; West High School is not among these. Therefore, the Decks cannot rely upon the NCLBA to support their request.

Iowa Code § 279.11 is the pertinent state authority. It states as follows:

The board of directors shall determine the number of schools to be taught, divide the corporation into such wards or other divisions for school purposes as may be proper, determine the particular school which each child shall attend, and designate the period each school shall be held beyond the time required by law. [Emphasis added.]

This statute clearly gives discretion to the local school board to assign attendance centers for its students. By local policy, parents may request a transfer, but that determination by a local board will not be reversed by this Board unless the local board’s decision is unreasonable and contrary to the best interest of education. *In re Jesse Bachman, supra*.

Here, we agree with the assessment made by district personnel that, even if “health,” as that term is used in Policy 501.8 were so broad as to include educational health, Austin would not have been harmed by attending West High School. We cannot conclude that the determination of the local board was unreasonable and contrary to the best interest of education.

III. DECISION

For the foregoing reasons, it is recommended that the decision of the Board of Directors of the Sioux City Community School District made on August 5, 2002, denying the intradistrict transfer application made on behalf of William Austin Deck, be **AFFIRMED**. There are no costs of this appeal to be assigned.

Date

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

It is so ordered.

Date

Gene E. Vincent, President
State Board of Education