IOWA STATE BOARD
OF EDUCATION
(Cite as 19 D.o.E. App. Dec. 104)

In re Meggan Stone	**:**	
Kelly Stone, Appellant,	**:**	
v.	**:**	**PROPOSED DECISION**
Ankeny Community School District, Appellee.	**:**	[Admin. Doc. # 4239]

The above-captioned matter was heard on July 14 and July 26, 2000, before a hearing panel comprised of Ms. Donna Eggleston, consultant, Bureau of Administration and School Improvement Services; Mr. David Morgan, consultant, Bureau of Practitioner Preparation & Licensure; and Ms. Susan E. Anderson, J.D., designated administrative law judge, presiding.

Appellants Kelly and Maureen Stone were present, along with their daughter, Meggan. The Stones were represented by Attorney David Gordon of the Home School Legal Defense Association. Appellee, Ankeny Community School District [hereinafter, "the District"], was present in the persons of Bob Hartzler, assistant superintendent; Gary Ratigan, high school principal; Patricia Sievers, special programs director; and David Kissinger, high school counselor. The District was represented by Attorney Jeff Krausman of Dickinson, Mackaman, Tyler & Hagen, P.C.

An evidentiary hearing was held pursuant to departmental rules found at 281 Iowa Administrative Code 6. Jurisdiction for this appeal is found at Iowa Code section 290.1 (1999). 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.

Appellants seek reversal of an April 10, 2000, decision of the Board of Directors [hereinafter, "the Board"] of the District which denied their request for Meggan to take courses under the Postsecondary Enrollment Options Act, Iowa Code chapter 261C (1999) [hereinafter, "the Act" or "the PSEO Act"].

I.
FINDINGS OF FACT

Meggan Stone and her parents reside in the Ankeny Community School District. Meggan and her four younger siblings are home-schooled by Mrs. Stone, who is a certified teacher. During the 1999-2000 school year when Meggan was a twelfth-grade pupil, she was dual-enrolled in the Ankeny District so that she could participate in the District's high school choir program. [Exhibits B and K]. Meggan was counted as one-

tenth of one pupil as a "resident pupil receiving competent private instruction under dual enrollment, pursuant to chapter 299A." Iowa Code section 257.6(f)(1999).[1]

For the fall semester of 1999-2000, Meggan applied to take two courses at Des Moines Area Community College ["DMACC"] under the Postsecondary Enrollment Options Act. She was taking five credit courses at that time, four at home and one at Ankeny High School. According to the terms of the Act, the school district will provide tuition reimbursement to an eligible postsecondary institution equal to the lesser of:

1. The actual and customary costs of tuition, textbooks, materials, and fees directed related to the course taken by the eligible student.

2. Two hundred fifty dollars.

Iowa Code §261C.6(1999).

The Act further provides that "high school credits granted to an eligible pupil under this section shall count toward the graduation requirements and subject area requirements of the school district of residence." Iowa Code §261C.5 (1999). However, in order to be eligible for tuition reimbursement by the school district, the course taken at the eligible postsecondary institution must not be "comparable" to a course already offered by the school district. Iowa Code §261C.4 (1999).

Meggan's application was denied. Meggan's mother was informed by High School Principal Gary Ratigan, and by Patricia Sievers, the Special Programs Director, that the denial was based upon a Department of Education Declaratory Ruling ["Ruling #44"], which concluded that dual-enrolled students are excluded from participation in the Act. Declaratory Ruling #44, 5 D.o.E. App. Dec. 33 (1993). According to Mrs. Stone's testimony, which was confirmed by Assistant Superintendent Hartzler, Ankeny High School did not retain Meggan's application for the Act's benefits from the fall of 1999. Since Mrs. Stone had also failed to retain copies of the materials submitted, she did not appeal to the school board at that time.

For the spring semester of 1999-2000, Meggan again applied for the Act's benefits. At that time, she was taking four credit courses, three at home and one at Ankeny High School. Meggan's high school counselor, David Kissinger, reviewed Meggan's transcript and the DMACC catalog with her to determine her eligibility for the two courses she wanted to take, Human Biology and Music Appreciation. Mr. Kissinger advised Meggan that those two DMACC courses were eligible courses under the Act

[1] **The state cost-per-pupil used for weighting purposes for the 1999-2000 school year was $4,171; one-tenth of that amount is approximately $417.**

because there were not comparable courses at Ankeny High School and because she had taken the necessary prerequisites for them. He told Meggan that the final step would be for Principal Ratigan to approve her application for benefits under the Act.

Principal Ratigan declined to sign the necessary registration form for Meggan and explained his decision in a letter dated January 10, 2000. That letter stated that Meggan was not eligible to receive benefits under the Act for the following reasons:

> The Act was implemented, at least in part, to provide a wider variety of options to high school students. Since Meggan has minimally experienced the Ankeny High School curriculum and since she has not expired her curricular options at AHS, it is my interpretation that Meggan does not qualify for the Act.

Other than the reference to the curriculum in Mr. Ratigan's March 10, 2000 letter, the only explanation given to Mrs. Stone or to Meggan for the denial was Ruling #44.

On March 8, 2000, Mr. Stone requested in writing that Meggan's application for benefits under the Act be placed on the Board's agenda. Mr. Stone's letter clarified that Meggan had been denied benefits because "Dr. Ratigan was following the direction of the Department of Education's Declaratory Ruling." [Exhibit E.] Mr. Stone stated in his letter that he and his wife intended to challenge Ruling #44 on appeal. *Id.*

At its meeting on April 10, 2000, the Board considered the Stones' request for the District to pay for Meggan's postsecondary enrollment courses at DMACC. [Exhibit F.] The minutes of the meeting simply state:

> Resolved: The Board deny the request to pay for post-secondary enrollment for home schooled students.

Id. According to Mrs. Stone, who made a brief presentation to the Board on April 10, 2000, the only reference at the meeting to a basis for the Board's decision was Ruling #44.

At the hearing on this appeal, Principal Ratigan testified that Meggan was ineligible for the Act because she failed to meet the Ankeny District's requirements for participation. According to Principal Ratigan, the Parent Handbook [Exhibit H] and Curriculum Guide [Exhibit J] require Act participants to be enrolled in five credit courses at Ankeny High School.[2] Principal Ratigan testified that neither Meggan's failure to take

[2] **The application form used by Ankeny, however, entitled Post Secondary Options Act Checklist [Exhibit B], indicates that four academic credits are required. At the hearing, Mr. Kissinger and Dr. Ratigan testified that the form should read "five" academic credits and that this form has been in error for perhaps as long as five years. There was no proof that this form had been revised, as of the date of the appeal hearing.**

five credit courses at Ankeny, nor his concerns about her eligibility for the particular DMACC courses, was ever communicated to the Stones or to the Board. Mr. Ratigan testified that because Ruling #44 was the primary basis for his denial, his office never reached the specific eligibility requirements of the school.[3] Principal Ratigan did testify, however, that comparable courses to DMACC's Human Biology and Music Appreciation are not offered at Ankeny High School.

Special Programs Director Patricia Sievers testified that there are eleven students dual-enrolled at Ankeny High School grades 9 through 12. Meggan Stone is the first and only dual-enrolled student who has ever applied to take postsecondary courses in the District. [Exhibit O.] Out of 1,700 full-time high school students in the District, 14 are enrolled in postsecondary courses. [Exhibit P.]

The Stones appealed the Board's decision to deny their daughter benefits under the Act based upon its reliance on Ruling #44. This appeal requests the State Board of Education to overrule Declaratory Ruling #44.

II.
CONCLUSIONS OF LAW

Under the State Board's standard of review, a local school board's decision will not be overturned unless it is "unreasonable and contrary to the best interest of education." *In re Jesse Bachman*, 13 D.o.E. App. Dec. 363, 369(1996). This appeal presents two related issues:

1. Are dual-enrolled students "eligible pupils" under the Postsecondary Enrollment Options Act?

2. Is participation under the Act an "academic activity" of the District?

The Iowa Legislature enacted the Postsecondary Enrollment Options Act in 1987. Iowa Code chapter 261C (1999). Section 261C.2 of the Act states:

> It is the policy of this state to promote rigorous academic or vocational-technical pursuits and to provide a wider variety of options to high school pupils by enabling ninth and tenth grade

[3] **Because the district did not rely upon the five-credit provision in the curriculum guide in making its decision on Meggan's application, we are not considering that argument on appeal. We do note, however, that districts may not erect unreasonable barriers to discourage students from participating in the Act's benefits.**

> pupils who have been identified as gifted and talented, and eleventh and twelfth grade pupils, to enroll part-time in nonsectarian courses in eligible postsecondary institutions of higher learning in this state.

The Act provides that eligible public and accredited private high school students may take college courses with tuition reimbursement from the local school district of up to $250 per course. Section 261C.3 of the Act provides, in pertinent part:

> 2. "*Eligible pupil*" means a pupil classified by the board of directors of a school district, by the state board of regents for pupils of the school for the deaf and the Iowa braille and sight saving school, or by the authorities in charge of an accredited nonpublic school as a ninth or tenth grade pupil who is identified according to the school district's gifted and talented criteria and procedures, pursuant to section 257.43, as a gifted and talented child, or an eleventh or twelfth grade pupil, during the period the pupil is participating in the enrollment option provided under this chapter. A pupil attending an accredited nonpublic school shall be counted as a shared-time student in the school district in which the nonpublic school of attendance is located for state foundation aid purposes.

Section 261C.5 of the Act provides, in pertinent part:

> … The high school credits granted to an eligible pupil under this section shall count toward the graduation requirements and subject area requirements of the school district of residence, the school for the deaf, the Iowa braille and sight saving school, or accredited nonpublic school of the eligible pupil. Evidence of successful completion of each course and high school credits and postsecondary academic or vocational-technical credits received shall be included in the pupil's high school transcript.

Four years later in 1991, the Iowa Legislature enacted Iowa Code chapter 299A, entitled "Private Instruction," which allows home-schooled students like Meggan to receive competent private instruction by a licensed practitioner like Mrs. Stone. Iowa Code Section 299A.2 (1999). Since the PSEO Act predated the Private Instruction Act, there is no mention of the PSEO Act's applicability to home-schooled students. Similarly, there is no specific mention of the Postsecondary Enrollment Options Act in Chapter 299A, the Private Instruction Act. Section 299A.8, entitled, "Dual Enrollment," provides:

> If a parent, guardian, or legal custodian of a child who is receiving competent private instruction under this chapter submits a request, the child shall also be registered in a public school for dual enrollment purposes. **If the child is enrolled in a public school district for dual enrollment purposes, the child shall be permitted to participate in any academic activities in the district** and shall also be permitted to participate on the same basis as public school children in any extracurricular activities available to the children in the child's grade or group, and the parent, guardian or legal custodian shall not be required to pay the costs of any annual evaluation under this chapter. If the child is enrolled for dual enrollment purposes, the child shall be included in the public school's basic enrollment under section 257.6.

Id. (Emphasis added.)

In addition, departmental rules under 281 Iowa Administrative Code 31.5, provide:

> **31.5(1)** The parent, guardian, or legal custodian of a child of compulsory attendance age who is receiving competent private instruction may enroll the child in the public school district of residence of the child under dual enrollment. The parent, guardian, or legal custodian desiring dual enrollment shall notify the district of residence of the child not later than September 15 of the school year for which dual enrollment is sought.
>
> **31.5(2) A child under dual enrollment may participate in academic or instructional programs of the district on the same basis as any regularly enrolled student.**

Id. (Emphasis added.)

The first issue presented by this appeal is: Are dual-enrolled students "eligible pupils" under the Postsecondary Enrollment Options Act? The first place to go to answer that question is the language of the statute itself. The Iowa Supreme Court stated in Marcus v. Young, 538 N.W.2d 285, 289 (Iowa 1995):

> Rules of statutory construction are to be applied only when the explicit terms of a statute are ambiguous. *Heins v. City of Cedar Rapids*, 231 N.W.2d 16, 18 (Iowa 1975). Precise unambiguous language will be given its plain and rational meaning in light of the subject matter. *Maguire v. Fulton*, 179 N.W.2d 508, 510 (Iowa

> 1970). Therefore, it is not the province of the court to speculate as to probable legislative intent without regard to the wording used in the statute, and any determination must be based upon what the legislature actually said, rather than what it might or should have said. Iowa R.App. P. 14(f)(13); *State v. Brustkern*, 170 N.W.2d 389, 392 (Iowa 1969).

Id. (cited in *In re Matthew Davis*, 14 D.o.E. App. Dec. 199 (1997)).

In Declaratory Ruling #44, 5 D.o.E. App. Dec. 33 (1993), Dr. William Lepley, then the Director of the Department of Education, concluded that "a dual-enrolled student under competent private instruction is not an eligible student for purposes of the PSEOA and may not enroll in college courses under the Act at district expense. *Id.* at 44. In support of his conclusion, he stated:

> In my view this scenario would impose an undue financial hardship on school districts already straining to afford the $250 per course minimum, even for a student who generates full state funding. This does not even consider a scenario of the dual enrolled high school pupil who, still of compulsory attendance age, dual enrolls for one or two courses at the public school, participates in one or more extracurricular activities, and seeks free standardized testing. If I were to interpret the two laws (299A.8 and 261C.4) as permitting home schooled, dual enrolled students to take advantage of the Postsecondary Enrollment Options Act, it is clear that a probability exists that the school district would be placed quickly in a deficit situation as to that pupil, which in turn would disadvantage the regular education pupils' programs. I sincerely doubt that this is what the legislature had in mind.

Id.

We now conclude, however, that the language of the statutes when read together includes Meggan and other dual-enrolled students as "eligible pupils" under the Act. Iowa Code section 261C.3(2). Exhibit K. The Act's stated policy is to promote rigorous academic or vocational-technical pursuits and to provide a wider variety of options to high school pupils. Meggan was a "pupil classified by the board of directors of a school district as a twelfth grade pupil." Iowa Code section 261C.2 (1999). The policy of the Act is to expand the academic opportunities available to high school pupils. Declaratory Ruling #44's interpretation of the Act, however, does the opposite.

The second issue in this appeal is: Is participation under the Act an "academic activity" of the District? The Stones contend that the Act represents an "academic activity" in the Ankeny District for which Meggan Stone, as a dual-enrolled student,

should be eligible. The dual enrollment statute's plain language states that the dual-enrolled child "shall be permitted to participate in any academic activities in the district." It is undisputed that Meggan was a dual-enrolled student in the District during the 1999-2000 school year. We conclude that participation in the Post Secondary Enrollment Options Act is an academic activity of the District because high school academic credit is earned by students for the courses they take at postsecondary institutions.

We conclude that the plain language of the Act, when coupled with the dual enrollment statute enacted four years later, requires inclusion of dual-enrolled students in the Act's benefits. Declaratory Ruling #44 is overruled for purposes of the Postsecondary Enrollment Options Act. Therefore, Meggan Stone should not have been denied benefits under the Act.

It may be that the separate enactments of the PSEO Act and the Private Instruction Act four years apart, coupled with the fact that the two acts do not cross-reference each other, may have resulted in unintended financial consequences to districts. However, it would be the Legislature's province to clarify its position on the issues presented by this appeal if it wishes to do so.

At the time the Ankeny Community School District Board of Directors acted on the Stones' request, Declaratory Ruling #44 was the only existing formal guidance from the Department of Education. Declaratory Ruling #44 concluded that dual-enrolled students could not participate in the PSEO Act. The District was obligated to follow that precedent and was not unreasonable in doing so. However, we are now overruling that Declaratory Ruling. Although the District was not unreasonable in relying on Declaratory Ruling #44 in Meggan's case, it will be subject to reversal if it relies on Declaratory Ruling #44 in the future.

All motions or objections not previously ruled upon are hereby overruled.

III.
DECISION

For the reasons stated above, the decision of the Board of Directors of the Ankeny Community School District made on April 10, 2000, is hereby recommended for affirmance, but only to the extent that at the time of the Board's decision, it was not unreasonable for the Board to rely on Declaratory Ruling #44. There are no costs to this appeal to be assigned.

_____	_____
DATE	SUSAN E. ANDERSON, J.D. ADMINISTRATIVE LAW JUDGE
_____	_____
DATE	CORINE HADLEY, PRESIDENT STATE BOARD OF EDUCATION