

**IOWA STATE DEPARTMENT  
OF EDUCATION  
(Cite as 18 D.o.E. App. Dec. 119)**

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*In re Susi Draftz* :  
  
Timothy & Susan Draftz, :  
Appellants, :  
  
v. : DECISION  
  
Sheldon Community School :  
District, :  
Appellee. :

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[Admin. Doc. #4118]

The above-captioned matter was heard on June 8, 1999, before a hearing panel comprising Klark Jessen, consultant, Office of the Director; Jim Tyson, consultant, Bureau of Administration & School Improvement Services; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding. The Appellants, Timothy and Susan Draftz, were present and were unrepresented by counsel. The Appellee, Sheldon Park Community School District [hereinafter, “the District”], was “present” telephonically in the person of Robin Spears, superintendent. The District was represented by Attorney Jim Hanks of the Ahlers Cooney Dorweiler Haynie Smith & Allbee Law Firm of Des Moines, Iowa.

An evidentiary hearing was held pursuant to departmental rules found at 281 Iowa Administrative Code Chapter 6. Authority and jurisdiction for this appeal are 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.

The Appellants seek reversal of a decision of the Board of Directors [hereinafter, “the Board”] of the District made on March 8, 1999, which denied the request for their daughter, a private-school student, to join the summer theatre program at Sheldon Community High School – a school she does not attend.

**I.  
FINDINGS OF FACT**

Appellants are residents and taxpayers of the Sheldon Community School District. Susi Draftz has attended parochial schools in the District since the second grade.

At the time of this appeal, she was a student at Spalding Catholic High School. During the 1998-1999 school year, she had an accumulative GPA of 3.8 and was a member of the National Honor Society. (Exh. C.) There is no dispute about the fact that she is very talented in theatre as well. Susi has enjoyed prominent roles in school and community productions since grade school. Susi was 15 years old and a sophomore at the time this appeal arose.

Since 1973, the District has operated a summer theatre program at the high school. The program was initiated by a two-year federal grant.

Jerry Peterson, who was Superintendent of the District at the time the program was initiated until 1992, testified that during his entire tenure, no high school students were allowed to participate in Sheldon Theatre unless they were enrolled in the District or enrolled in a school that had a sharing agreement with Sheldon. Grade school students were allowed to participate if they were needed in productions that had roles for children. Mr. Peterson testified that no exceptions were made because the program was created only for Sheldon High School students and if “outsiders” were allowed to participate, they could take parts away from students in the District.

Mr. Peterson’s testimony was corroborated by Jay Shelp. Mr. Shelp was employed for 37 years by the District and retired in 1995. He testified that he helped originate the program in 1973 with a repertoire company that produced seven plays the first summer. The following summer, they decided to settle into a six-play schedule that has been maintained since 1974. He testified that the District assumed funding for the summer theatre in 1973 after the federal grant expired. The District supplied the equivalent of one coach and one assistant coach’s salary for supervision and organization of the summer theatre program. The rest of the support came through ticket sales and donations.

Mr. Shelp testified that the program was operated because it was good for students. He was not concerned with turning out actors and actresses but with building poise and teamwork. He testified that during his tenure as director and coordinator of the summer theatre program, there were no high school participants who were not Sheldon students. He stated that they would sometimes go outside of the Sheldon high school population when casting required younger, smaller students or when there were not enough male actors. He would always make a decision when bringing in a “guest actor” as to whether or not “it would help students to do so.” Even then, the guest actors were not students from other high schools. They were either younger than high school students or high school graduates.

Mr. Shelp testified that in 1980 or 1982, a joint venture was started between the District summer theatre program and the Prairie Arts Council. This was intended as a way for the Prairie Arts Council to support the performing arts. It was also viewed as a way to raise money for the Sheldon program. For these jointly sponsored programs, it was decided to open the production to anyone who tried out, not just Sheldon high school students. Susi Draftz was able to participate in these jointly sponsored productions. However, these productions were separate, and distinct from the Sheldon summer theatre productions.

Jodi Inez Grant testified that she has been the coordinator of the summer theatre program since 1995. She also testified that the only students who have participated in the summer theatre program during her tenure have been Sheldon High School students. She testified that recent Sheldon High School graduates with theatrical backgrounds have been hired as staff members to assist in the program. However, no exceptions have been made for high school students who are not enrolled in the District.

Joseph Mueting is currently the high school principal in the District. He testified that Mrs. Draftz first approached him in the spring of 1998 when Susi was in 8<sup>th</sup> grade at St. Patrick's Elementary School. Mrs. Draftz asked if Susi would be eligible to participate following her eighth-grade year in the summer theatre program. Mr. Mueting stated that it was his first year in the District as principal. He did not know what the "policy" was, so he approached Mr. Shelp and Mrs. Grant to inquire. At that time, Mrs. Draftz had not said whether she had made a decision on whether Susi would be attending Sheldon or Spalding Catholic High School. Therefore, to Mr. Mueting, the only question was whether someone could participate in the program during the summer following 8<sup>th</sup> grade. Mr. Shelp advised the principal that 8<sup>th</sup> graders did not participate in the summer theatre program. Mr. Mueting advised Mrs. Draftz accordingly. Mrs. Draftz did not protest.

Susi decided to attend Spalding Catholic High School. In the spring of her freshman year, Mrs. Draftz approached the high school principal and asked how to apply for the summer theatre program. Mr. Mueting testified that he replied, "I don't know what our policy is for students not attending the high school. I will check." Mr. Mueting also testified that he was using "policy" in the context of "practice and procedure," rather than written policy. Mrs. Draftz, however, interpreted it to mean "written policy."

Once again, Mr. Mueting contacted Mr. Shelp and Mrs. Grant to ask about Susi's eligibility for summer theatre. He was advised that no one had been allowed to participate in the program who was not enrolled as a student in the District. There was no "written policy," per se. It was just the philosophy of the program to limit the admission to enrolled high school students in the District.

Mr. Muetting then contacted the District's attorney and asked "whether an individual who was a resident of the school district, but who was not a student in the district, has a legal right to participate in the summer theatre program?" The attorney's response can be summarized with the following quote from his letter:

Since there is no statute which requires school districts to allow non-students the right to participate in a summer theatre program, my answer to your question is that an individual who is a resident of the school district but is not a student in the school district does not have a legal right to participate in the Summer Theatre program.

The Draftzs were notified of this opinion. In addition, they were advised that the District considers the Sheldon Community School District summer theatre program to be an extracurricular activity. Therefore, it has always been the District's requirement that only high school students who have been enrolled the prior semester in the District may participate in the program.

Appellants contested this interpretation and appealed the District's exclusion of their daughter from the summer theatre program as unconstitutional. Appellants argued that all of the "private" schools in the area of the Sheldon District are "sectarian schools." They are all schools that are religiously affiliated. None of these schools offer summer theatre programs. In addition, Mrs. Draftz argued that as taxpayers, parents of children who attend private schools are entitled to gain admission to tax-supported programs.

Robin Spears, the District's superintendent, testified that a sharing agreement could be entered into between Sheldon and Spalding that would allow participation of private school students in the summer theatre program. However, Spalding has never approached the District to enter into such an agreement. He testified that Sheldon currently has a sharing agreement for 7<sup>th</sup> and 8<sup>th</sup> grade football, wrestling and track with St. Patrick's Catholic School that is located in the District. There is also an academic sharing agreement between St. Patrick's and Sheldon for a computer instructional program. In addition, Mr. Spears pointed out that Spalding is not limited to students of a particular faith, so there is no religious discrimination.

Nevertheless, Appellants appealed the District Board's decision on the grounds that it discriminates against them on the basis of religion and creed. They seek admission for their daughter into the Sheldon theatre program for the summer of 1999.

## II. CONCLUSIONS OF LAW

In appeals to the State Board under Iowa Code chapter 290, the State Board has been directed by the Legislature to render decisions that are "just and equitable" [Iowa Code section 290.3(1999)]; "in the best interest of the affected child" [Iowa Code section 282.18(18)(1999)]; and "in the best interest of education" [281 Iowa Administrative Code 6.17(2)]. The test is reasonableness. Based on this mandate, the State Board's Standard of Review is:

[A] local school board 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(1996).

In applying the Standard of Review to this appeal, the question becomes whether the Board's decision to exclude Susi Draftz from the 1999 summer theatre program was a reasonable exercise of its authority.

The burden of proof is on Appellants to show that the action of the District Board was unreasonable. They can do this on two grounds. First of all, they can produce evidence that the Board lacked the authority to exclude Susi from the summer theatre program. Secondly, they can produce evidence that the Board's policy and practice of excluding non-enrolled high school students from its summer theatre program violates the Due Process and Equal Protection clauses of the Federal and State Constitutions. We find that Appellants have failed to carry their burden of proof on either ground.

***1) Authority for the Board's practice of excluding non-enrolled high school students from the summer theatre program.***

Pursuant to the provisions of Iowa Code chapter 279, local boards of public school districts in Iowa have certain rule-making authority. Specifically, section 279.8, which provides in pertinent part as follows:

The board shall make rules for its own government and that of the directors, officers, employees, teachers and pupils, and for the care of the schoolhouse, grounds, and property of the school corporation, and shall aid in the enforcement of the rules, and require the performance of duties imposed by law and the rules. ...

Iowa Code section 279.8(1999).

This statutory delegation of authority to local school districts is necessary for the exercise of their powers. In *Merriam v. Moody's Executors*, 25 Iowa 163, 170(1868), Chief Justice John F. Dillion established a rule for the determination of local government power which came to be known as the "Dillion Rule." *City of Des Moines v. Master Builders*, 498 N.W.2d 702, 703(Iowa 1993). This rule held that municipal governments [like school districts] could only possess and exercise powers which were: "(1) expressly granted by the legislature; (2) necessarily or fairly implied in or incident to the powers expressly granted; and (3) those indispensably essential – not merely convenient – to the declared objects and purposes of the municipality." *Gritton v. City of Des Moines*, 247 Iowa 326, 331, 73 N.W.2d 813, 815(1955).

Accordingly, it would take a specific statutory authorization to allow the District to make a program available to non-students. The Legislature has required school districts to make certain programs and services available to nonpublic school students on the same basis as they are made available to public school students. Examples are special education services [Iowa Code section 273.2]; transportation [Iowa Code section 285.2]; and driver's education [Iowa Code section 321.178(1)]. There is even specific statutory authority for nonpublic schools to enter into sharing agreements with public schools in order to provide students who are enrolled in private schools the opportunity to enroll in public schools for specified courses of study which are unavailable in their private schools. *Id.* Sharing agreements are also authorized to provide a wider range of specific co-curricular and athletic opportunities to private school students. Indeed, the Sheldon District has such a sharing agreement with St. Patrick's Catholic High School for 7<sup>th</sup> and 8<sup>th</sup> grade wrestling, football, and track.

While there is no statute that requires the District to allow non-students the right to participate in the summer theatre program, there is statutory authority to enter into a sharing agreement between Spalding High School and the Sheldon District if there is a desire on the part of both parties to do so. There is no evidence that Appellants had explored this avenue or that Spalding had ever approached the District with a request to share in the summer theatre program. Therefore, the District's Board had the authority to exclude Susi Draftz from the summer theatre program.

## **2) *Constitutional Due Process and Equal Protection:***

The evidence showed that since the inception of the summer theatre program in 1973, there have been no non-enrolled high school students allowed as participants in the program. The fact that recent graduates have been hired as staff or younger children have been cast in age-appropriate roles does not demonstrate that the District has arbitrarily applied this criterion. In addition, the District established that its policy of allowing only students who attend the high school to participate in the summer theatre program furthered the intention of the program to provide a quality opportunity for those students

attending the Sheldon High School. There was even some evidence that the limitation of the summer theatre program to attending students may enhance enrollment in the District. It certainly appears to be a privilege sought by members of the community. However, there appears to be no legal reason why this privilege must be extended to those students who do not attend the high school.

Yet, Appellants argued that it is a violation of due process and equal protection for the District to deny this privilege to their daughter solely because she attends a private school. Furthermore, they contended that because the private school is religiously affiliated, the denial of Susi's participation in the summer theatre program constitutes religious discrimination as well.

A very similar issue was addressed in *Bradstreet v. Sobol* 6, 650 N.Y.S.2d 402 (A.D. in No. 3 Dept. 1996)(affirming 630 N.Y.S.2d 486, Sup. 1995). In *Sobol*, the parent sought the declaration that her home-schooled daughter was eligible to participate in interscholastic sports in the local school district. The court noted that in order for there to be a violation of due process, a person must be deprived of a property or liberty interest. Since "a student's interest in participating in interscholastic sports is a mere expectation, not a property right subject to due process protection," the due process allegation failed. 630 N.Y.S.2d 486, 487. As far as the equal protection challenge, the court stated as follows: "[A]bsent a suspect classification or fundamental right claim, neither of which is advanced here, a regulation will withstand an equal protection challenge if it bears some rational relationship to a legitimate state purpose." *Id.*

On appeal, the Court noted that "the challenged requirement [to be an enrolled student] does not create a classification based upon the status of plaintiff's daughter as a home-schooled student, but, rather, the classification is based upon her lack of enrollment in the public school where she seeks to participate in the interscholastic sports program, a classification which clearly includes other students, such as those who attend private or parochial schools. We see nothing irrational in requiring that a student be enrolled in a public school in order for the student to participate in the school's interscholastic sports programs." 650 N.Y.S.2d 402, 403.

Likewise, the fact that Appellants' daughter attends a parochial school does not constitute religious discrimination. As Superintendent Spears testified, there are students who attend Spalding High School who do not profess to be Catholic. Students may attend Spalding High School without regard to their religious affiliation. The focus is not on the enrollment of the student in a private school. Rather, the focus is on whether or not the student is enrolled in the Sheldon High School as a student.

The District has established that its policy of allowing only attending students to participate in the summer theatre program furthers legitimate education interests of the District. We do not discern any good reason why this privilege should be extended to students who do not attend the school.

All motions and objections not previously ruled upon are hereby denied and overruled.

### III. DECISION

For the foregoing reasons, the decision of the Board of Directors of the Sheldon Community School District, made on March 8, 1999, to exclude Susi Draftz from the 1999 summer theatre program on the grounds that she is not attending the District's high school as a student, is hereby recommended for affirmance. There are no costs of this appeal to be assigned under Iowa Code chapter 290.

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DATE

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ANN MARIE BRICK, J.D.  
ADMINISTRATIVE LAW JUDGE

It is so ordered.

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DATE

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CORINE HADLEY, PRESIDENT  
IOWA DEPARTMENT OF EDUCATION