

**Iowa State Board
of Education**
(Cite as 17 D.o.E. App. Dec. 228)

In re Karla Haupt :
In re Travis Ringena :
In re Nathan Vogel :
In re Scott Ables :

Roy & Cheryl Haupt, Kendall & Deb :
Ringena, Richard & Pauline Vogel, :
& Leon & Brenda Ables, :
Appellants :

v. :

Wellsburg-Steamboat Rock :
Community School District, :
Appellee. :

DECISION

[Adm. Doc. #4097,
4084, 4094 & 4091]

The above-captioned matters were consolidated and were heard on May 20, 1999, before a hearing panel comprising Jeff Berger and Steve Fey, consultants, Bureau of Administration & School Improvement Services; and Ann Marie Brick, J.D., legal consultant and designated administrative law judge, presiding. Appellants Cheryl Haupt, Deb Ringena, Richard Vogel and Leon Ables were "present" telephonically and were unrepresented by counsel. Appellee, Wellsburg-Steamboat Rock Community School District [hereinafter "the District"] was present in the persons of Robert Hutchcroft, acting superintendent; and Joel Ebert, curriculum director and elementary principal at Ackley-Geneva Community School District. Appellee was represented by Attorney Peter Pashler of the Ahlers Law Firm, Des Moines, Iowa.

An evidentiary hearing was held pursuant to departmental rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for the appeal are found at Iowa Code sections 282.10, 282.11, and 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 a decision of the Board of Directors [hereinafter "the Board"] of the District made on January 25, 1999, that denied their requests that the Board send their children to other contiguous school districts at the expense of the District.

I.
FINDINGS OF FACT

All Appellants are residents of the Wellsburg-Steamboat Rock Community School District. The Board of the District announced its intention to enter into a whole grade sharing agreement with Ackley-Geneva Community School District. Under the agreement, students in kindergarten through grade five will continue to attend school in their respective resident districts and are not affected by the sharing agreement. Students in grades six through eight from both districts will attend school in Wellsburg. Grades nine through twelve for both districts will be located in Ackley.

The agreement is for three years, beginning with the 1999-2000 school year and ending on June 30, 2002. The Board approved the agreement on January 25, 1999. All Appellants timely filed requests with the Board that the Board send their children to another contiguous school district, rather than Ackley-Geneva as specified in the agreement. This is commonly known as the "exclusion" or "opting out" provision of the whole grade sharing law.

Karla Haupt:

Appellants Roy and Cheryl Haupt are the parents of Karla Haupt, who will enter tenth grade for the 1999-2000 school year. They prefer that she attend Grundy Center High School. Her parents filed their appeal seeking Karla's exclusion from the sharing agreement on both statutory grounds: that the agreement will not meet her educational program needs and that adequate consideration was not given to geographical factors. See, Iowa Code section 282.11(1999). Karla will be driving to school. The distance to the high school in Ackley is about 18 miles, with some hills and curves the Appellants consider dangerous. The distance to the high school in Grundy Center is a few miles shorter, primarily via a well-maintained, paved highway. Karla participates in extracurricular activities and would make numerous trips.

Karla is interested in the care of farm and domestic animals, and Grundy Center offers advanced livestock, agricultural careers and several business offerings. The Appellants also consider the block schedule and the facilities to be desirable features of Grundy Center High School.

Karla has been open enrolled to Grundy Center for the 1999-2000 school year under the provisions of Iowa Code section 282.11 (1999).

Travis Ringena:

Appellants Kendall and Deb Ringena are the parents of Travis Ringena. Travis will be in eleventh grade for the 1999-2000 school year, and they prefer that he attend the Grundy Center Community School District. Their appeal is based on Iowa Code section 282.11(1999): that the sharing agreement will not meet his educational program needs and that adequate consideration was not given to geographical factors.

Travis is interested in construction as a career. The Appellants consider Grundy Center's courses in this area to be superior to Ackley-Geneva's, particularly Grundy Center's courses entitled architectural drafting, decoration and design, construction, advanced construction, building construction, materials technology and Principles of Technology. The Appellants also cited Grundy Center's accounting, record keeping and French courses as desirable for Travis. They consider the sports facilities and auditorium at Grundy Center to be outstanding.

The geographical factor cited by the Appellants is convenience. Mrs. Ringena works in Grundy Center and attending extracurricular events there would be convenient for her. Also, Travis would be able to ride with her, rather than driving himself, in case of inclement weather. Mrs. Ringena is the primary parent for educational matters.

Travis has been open enrolled to Grundy Center for the 1999-2000 school year under the provisions of Iowa Code section 282.11 (1999).

Nathan Vogel:

Nathan Vogel will be in grade 12 for the 1999-2000 school year. His parents, Richard and Pauline Vogel, prefer that he attend the Grundy Center Community School District. Their appeal is based on Iowa Code section 282.11(1999): that the sharing agreement will not meet his educational program needs.

Nathan does not have definite career plans but has shown an interest in construction, and the Appellants consider Grundy Center's courses in this area to be superior to Ackley-Geneva's. Mr. Vogel cited Grundy Center's Principles of Technology course in particular, as well as its computer courses. Nathan also participates in vocal music, and the Appellants consider Grundy Center's vocal music department to be "excellent". Nathan receives special education services through a resource program, and the Appellants believe that his needs will be met through Area Education Agency 7.

Nathan has been open enrolled to Grundy Center for the 1999-2000 school year under the provisions of Iowa Code section 282.11 (1999).

Scott Ables:

Leon and Brenda Ables are the parents of Scott Ables, who will be in grade 11 for the 1999-2000 school year. They prefer that Scott attend the Eldora-New Providence Community School District. Their appeal is based on Iowa Code section 282.11 (1999): that the sharing agreement will not meet his educational program needs and that adequate consideration was not given to geographical factors.

Scott is interested in the construction field, and the Appellants believe that the course offerings in this area at Eldora-New Providence are superior to and more numerous than those at Ackley-Geneva. Mr. Ables testified that after taking a two-semester construction course, Eldora-New Providence students are able to participate in building a house and this opportunity would be available to Scott. Other desirable factors cited by the Appellants included Eldora-New Providence's computer training, block scheduling, numerous course offering, and new facilities.

The primary geographical factor cited by the Ables is safety. Scott will be driving to school. His route to Eldora-New Providence would be on state-maintained roads, which the Appellants consider to be well maintained. If he drives to Ackley-Geneva, the route would be on country-maintained roads, which the Appellants consider to be less well-maintained and less safe. In addition, a major highway construction project is planned for the next two years on the route to Ackley. That is a safety concern to the Appellants.

Scott has been open enrolled to Eldora-New Providence for the 1999-2000 school year under the provisions of Iowa Code section 282.11(1999).

The District:

Joel Ebert testified for the District. Mr. Ebert is currently the K-5 principal and K-12 curriculum and staff development director for the Ackley-Geneva Community School District. He has been the curriculum and staff development director since 1987 and the principal since 1994.

Mr. Ebert testified about the comparability of the courses offered by Ackley-Geneva to those offered by Grundy Center and Eldora-New Providence.

In the case of Karla Haupt, Mr. Ebert said that her interest in business courses would be met by Ackley-Geneva's courses in accounting, business law and computers, and her interest in livestock by Ackley-Geneva's courses called Iowa agriculture and advanced animal science (Appellee's Exh. 2.)

Regarding Travis Ringena's educational needs, Mr. Ebert testified that introductory courses such as drafting and woodworking are offered by Ackley-Geneva, and an advanced course will be offered through an agreement with Ellsworth Community College, beginning with the 2000-2001 school. Other related courses include computer-aided design, housing, electronics and power mechanics. (Appellee's Exh. 3.)

Regarding Nathan Vogel, Mr. Ebert testified that his interest in computer training could be met by Ackley-Geneva's courses in computer applications and web page design. He also testified that Ackley-Geneva is one of only three in the State to offer dial-in access to the Internet to its residents. The District also has a resource program that could meet Nathan's needs, according to Mr. Ebert. (Appellee's Exh. 4.)

Regarding Scott Ables, Mr. Ebert testified that the computer skills and applications offered by Ackley-Geneva are comparable to those offered by Eldora-New Providence. (Appellee's Exh. 5.) In addition, the program offered through the agreement with Ellsworth Community College involves building a house after two years of preliminary courses are completed. (Appellee's Exh. 9.)

In summarizing, Mr. Ebert testified that the core curriculum offered by Ackley-Geneva, Grundy Center, and Eldora-New Providence is basically the same and the educational needs cited by the Appellants can be met by Ackley-Geneva. He also said that neither block scheduling nor trimester scheduling is inherently superior to conventional scheduling in determining the quality of a course. Other factors, such as how the time is used, must also be considered.

Robert Hutchcroft, acting superintendent and high school principal for Wellsburg-Steamboat Rock, testified on the geographical issues of this appeal. He said that transportation to Ackley-Geneva would be provided and would be available to all the students in this appeal. He also testified that transportation for most extracurricular activities would also be provided, as much as it has been in the past.

II. CONCLUSIONS OF LAW

The basis for this appeal reads, in pertinent part, as follows:

... Within the thirty-day period prior to the signing of the agreement, the parent or guardian of an affected pupil may request the board of directors to send the pupil to another contiguous school district. For the purposes of this section, "affected pupils" are those who under the whole grade sharing agreement are attending or scheduled to attend the school district specified in the agreement, other than the district of residence, during the term of the agreement. The request shall be based upon one of the following:

1. That the agreement will not meet the educational program needs of the pupil.
2. That adequate consideration was not given to geographical factors.

The board shall allow or disallow the request prior to the signing of the agreement, or the request shall be deemed granted. If the board disallows the request, the board shall indicate the reasons why the request is disallowed and shall notify the parent or guardian that the decision of the board may be appealed as provided in this section.

If the board disallows the request of a parent or guardian of an affected pupil, the parent or guardian, not later than March 1, may appeal the sending of that pupil to the school district specified in the agreement, to the state board of education. The basis for the appeal shall be the same as the basis for the request to the board. An appeal shall specify a contiguous school district to which the parent or guardian wishes to send the affected pupil. If the parent or guardian appeals, the standard of review of the appeal is a preponderance of evidence that the parent's or guardian's hardship outweighs the benefits and integrity of the sharing agreement. The state board may require the district of residence to pay tuition to the contiguous school district specified by the parent or guardian, or may deny

the appeal by the parent or guardian. If the state board requires the district of residence to pay tuition to the contiguous school district specified by the parent or guardian, the tuition shall be equal to the tuition established in the sharing agreement. The decision of the state board is binding on the boards of directors of the school districts affected, except that the decision of the state board may be appealed by either party to the district court.

Iowa Code section 282.11(1999).

All of the Appellants in this case have appealed on the basis that the agreement will not meet the educational program needs of their children. All but the Vogels also appealed on the basis that adequate consideration was not given to geographical factors. The State Board's standard of review in assessing their claims on both bases is "a preponderance of evidence that the parent's or guardian's hardship outweighs the benefits and integrity of the sharing agreement." *Id.* In simple terms, the question before the State Board is whether the Appellants have carried their burden of proof that their child's attendance at Ackley-Geneva, under the terms of the sharing agreement, would constitute a serious hardship. We conclude that they have not.

All of the Appellants have stated a preference for certain aspects of the Grundy Center or Eldora-New Providence districts, including specific course offerings, facilities and scheduling. We have, however, no evidence that the educational program needs of these students will not be met at Ackley-Geneva. The only evidence they presented is that other districts are more desirable to the Appellants. Substantial evidence was presented by the District that the educational programs offered by Ackley-Geneva, Grundy Center, and Eldora-New Providence are essentially comparable. We find that evidence convincing, particularly in the absence of evidence to the contrary.

The evidence of Appellants' hardship on the basis of geographical factors is also unconvincing. The Haults and the Ables have chosen to allow their children to drive to school, which is their right. However, they then claim safety concerns of driving as a hardship. Were these students to attend Ackley-Geneva, they would be provided transportation by the District and the "hardship" would not exist. As the State Board concluded in a previous decision, "We think a true hardship is not of one's own making." *In re Randy and Lori Mulford*, 6 D.o.E. App. Dec. 9 (1988). The Ringenas claim convenience based on Mrs. Ringena's place of employment as their primary geographical factor. They did not, however, present any evidence of what hardship the trip to Ackley would cause the family.

The Appellants have failed to prove by a preponderance of evidence that their hardship outweighs the benefits and integrity of the sharing agreement. There is no other basis on which to reverse the Board's decision.

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

**III.
DECISION**

For the foregoing reasons, the decision of the Board of the Board of Directors of the Wellsburg-Steamboat Rock Community School District, made on January 25, 1999, that denied Appellants' requests that the Board send their children to other contiguous school districts at the expense of the District, is hereby recommended for affirmance. There are no costs of this appeal to be assigned under Iowa Code chapter 290.

DATE

July 9, 1999

Ann Marie Brick

ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

DATE

September 9, 1999

Corine A. Hadley

CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION