Iowa State Board of Education

(Cite as 12 D.o.E. App. Dec. 177)

In re Christa and Casey Harms

Rochelle Harms, Appellant,	:	
v.	:	DECISION
Burt Community School District, Appellee.	:	[Admin. Doc. #3554]

The above-captioned matter was heard telephonically on January 9, 1995, before a hearing panel comprising Dr. Barbara Wickless, consultant, Bureau of School Administration and Accreditation; Dr. Susan Hetzler, consultant, Bureau of Practitioner Preparation and Licensure; and Ann Marie Brick, legal consultant and designated administrative law judge, presiding. Appellants were "present" by telephone, unrepresented by counsel. Appellee, Burt Community School District [hereinafter "the District"], was also "present " in the persons of Dr. Harold Prior, Superintendent, and Rick Engel, attorney at law, 1025 Ashworth Road, Suite 304, West Des Moines, Iowa.

An evidentiary hearing was held in accordance with departmental rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for the appeal are found in Iowa Code § 282.18(5) and chapter 290.

Appellant seeks reversal of a decision of the board of directors [hereinafter "the Board"] of the District made on October 12, 1994, denying the Appellant's timely request for open enrollment for Casey and Christa Harms to Sentral Community School District. The open enrollment application was denied by the Board because both children are presently attending Sentral under the provisions of a whole-grade sharing agreement in which they have "tuitioned-out" to a contiguous district.

I.
Findings of Fact

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 Harms reside in the Burt Community School District. Christa and Casey Harms have attended Sentral for the past two years. They have attended Sentral as "tuitioned-out" students

under the terms of a whole-grade sharing agreement entered into between Algona and Burt during the 1992-93 school year. Christa and Casey are presently enrolled in grades 8 and 10, respectively. The first time they filed for open enrollment was June 21, 1994, for the present school year. They were denied for being untimely. On August 17, 1994, the Harms again filed for open enrollment for the 1995-96 school year. Their request was denied on October 12, 1994, because the children were already enrolled in Sentral under a whole-grade sharing provision.[1] It is necessary to review the legal relationship between Burt and Sentral Community School District over the past few years to understand the posture of this appeal.

Burt Community School District began whole-grade sharing with Sentral in 1988-89, prior to the enactment of the present Open Enrollment Law. The whole-grade sharing agreement was for three years. Pursuant to the plan, the districts would share grades 6 through 12, with Burt operating 6 through 8 and Sentral operating 9 through 12. Subsequently, a three-year renewal was entered into with an option to terminate. At that time, Burt also entered into a corollary one-way whole-grade sharing agreement with the Algona Community School District. Sentral and Burt students grades 6 through 8 continued to attend Burt and Burt students grades 9 through 12 could choose whether to attend Sentral or Algona.

Effective with the 1993-94 school year, the Burt-Sentral whole-grade sharing agreement was terminated and Burt entered into a five-year one-way, whole-grade sharing agreement with the Algona Community School District for grades 6 through 12. Burt continues to maintain a local K-5 elementary program. Under that agreement, Burt paid Algona $2,800 per student in year one. Pursuant to paragraph 16 of the agreement, parents of affected Burt resident pupils could request assignment under § 282.11 to a contiguous district.[2]

1The parents were very upset about the fact that their applications for open enrollment were not acted upon by the Burt Board in a timely manner. They testified that they waited 8 weeks to find out that they were denied on the June 21st application. They then waited 9 weeks to find out they were denied on the August 17th applications. The Burt representatives said the delay occurred while they were trying to figure out how to handle this situation.

2 §282.11 provides in pertinent part:

> Not less than thirty days prior to signing a whole-grading sharing agreement whereby all or a substantial portion of the pupils in a grade in the district will attend school in another district, the board of directors of each school district that is a party to a proposed sharing agreement shall hold a public hearing at which the proposed agreement is described, and at which the parent or guardian of an affected pupil and certified employees of the school district shall have an opportunity to comment on the proposed agreement.

Christa and Casey Harms elected to attend Sentral Community School District beginning in 1993-94 as "tuitioned-out" students pursuant to paragraph 16 of the whole-grade sharing agreement between Algona and Burt entered into under the authority of § 282.11.[3]

Mr. and Mrs. Harms testified at the hearing that throughout the 1992-93 school year, several public meetings were held to discuss the whole-grade sharing agreement. Parents were advised by District officials that they could choose to either "tuition-out" to the Sentral Community School District or they could open enroll there. They were also told that they could tuition-out now and then open enroll later if they desired. The parents' primary concern was transportation for their children. If parents wanted their children bused to Sentral, they would have to tuition-out since transportation would not be provided for Sentral students under an open enrollment agreement. The Harms also testified that in the past two years, their children have only ridden the bus twice to Sentral. Since they no longer need the transportation, the Harms stated they would like to see all the tuition dollars for their children sent to the Sentral Community School District. That is why they have chosen to open enroll at this time.

There is no dispute over the fact that Sentral has agreed to the acceptance of Burt children as "tuitioned-out" students pursuant to the whole-grade sharing agreement with Algona for the receipt of $2,800 per student payment. There is no evidence that Sentral has objected to this arrangement even though they are not bound by it. The only practical difference in changing the status of the Harms' children from "tuitioned-out" to open

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> ...If the Board disallows the request of a parent or guardian of an affected pupil, the parent or guardian, ... may appeal the sending of that pupil to the school district specified in the agreement, to the state board of education. ...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.

3Paragraph 16 of the Algona-Burt whole-grade sharing agreement states as follows:

> Requests to send pupils to another contiguous district. Burt will pay $2,800 per year per pupil for each Burt resident pupil on behalf of whom a timely request to be sent to another contiguous district is made and provided such request is approved by the Burt Board pursuant to § 282.11 of the Code.

enrollment status would be a change in the amount of money that would be sent to the Sentral Community School District by the Burt Community School District. The location of the Harms' children's education and the content of their educational program would not change at all. Therefore, the only issue on this appeal is whether the Harms' election under § 282.11 to tuition-out from Burt to Sentral in 1992 now precludes their option to open enroll their children to the same school district for the 1995-96 school year?

II.
Conclusions of Law

The two statutory provisions at issue here, §§ 282.11 and 282.18, are both subsections of chapter 282, Code of Iowa (1995). Subsection 11 ("Tuitioning-out to a contiguous district") was enacted three years before subsection 18 (Open enrollment) went into effect. When the Open Enrollment Law was enacted, the legislature did not repeal § 282.11, so both the tuitioning-out subsection and the Open Enrollment Law must be reconciled and given effect. Under the rules of statutory construction, when determining the intention of the legislature, the court may consider the object sought to be attained as well as the consequence of a particular construction. Iowa Code § 4.6 (1995).

In the present case, the parents filed a timely application for their children to open enroll to Sentral Community School District for the 1995-96 school year. The question becomes, why would they want to do that if it would mean no change in the location or content of their children's educational program?

The Harms stated very frankly in response to that question that they are doing it for the money. They want Burt to pay Sentral $3,406 for each of their two children instead of the $2,800 payment which is now made pursuant to § 282.11 and paragraph 16 of the whole-grade sharing agreement. The Burt District argues that if open enrollment is allowed to students who are presently tuitioned-out, the cost to Burt this year alone would be $23,028.[4] Burt argues that the loss of these funds could lead to the eventual closing of Burt's K-5 attendance center. In addition, Burt contends that the Harms waived their right to open

4There are currently 38 students being tuitioned-out from Burt to Sentral. This figure represents the savings between the $2,800 being paid under § 282.11 versus the $3,406 due under the Open Enrollment Law.

enrollment by electing the tuition-out provision offered in 1992 pursuant to the whole-grade sharing agreement. Unfortunately for the District, the Law does not support its position.

The District's arguments presume that local property tax revenues are intended to be used to maintain and support a local school rather than to educate the resident students of the district. This argument was effectively defeated by the Iowa Supreme Court when it was used by the Exira Community School District to challenge the Open Enrollment funding provisions. Exira Community School District v. State of Iowa, 512 N.W.2d 787 (Iowa 1994). In the Exira case, the Iowa Supreme Court clearly stated that:

> Local property taxes are not collected for the purpose of supporting a local school, but for the purpose of educating the resident students of the school district. The statute in question (open enrollment), ... merely requires the resident district to fund the education of its resident students and allows the receiving district to continue to devote the funds it generates to the education of its resident students.

Id. at 791.

It is very understandable that a parent needing transportation for a child to attend a contiguous district would elect the tuitioning-out provisions of § 282.11 over the open enrollment option. That is because open enrolled students are not provided transportation by the sending district. It is also understandable that the sending district could reasonably charge $600 per year for the busing of one of its pupils under a whole-grade sharing agreement. In 1992 when the Harms needed transportation for their two children, they elected the tuition-option. However, by so doing, there is no evidence that they were electing that option for the duration of their children's education. In fact, had Sentral decided it would no longer accept the Harms' children for the $2,800 per year, the Harms would have been obligated to open enroll to Sentral or to make up the difference in the tuition themselves.

There is no authority in the Open Enrollment Law for Burt to deny the Harms' applications because of their prior election under § 282.11. In fact, once an application is filed by the October 30th deadline of the year preceding the school year in which open enrollment is to begin, there are only a few reasons which a sending school district board may use to deny a timely

application. These reasons are: (a) that the child's departure would adversely affect a desegregation plan or order in effect in the sending (resident) district; (b) that the student is in need of a special education program that the receiving district does not or cannot provide; or (c) that the student has been expelled. § 282.18(4); (9); (16).

None of those circumstances occurred here.

We understand the District's argument that there are two interests in opposition in this appeal: The freedom of parental choice and the viability and financial well-being of small districts like Burt Community School District. We understand that the Open Enrollment Law operates to favor parental choice over the financial interests of the school districts. But that result comes not from the exercise of parental choice, but from

a policy decision the legislature made when it developed a pupil-driven formula for Iowa's educational finance system. That system provides that local property tax revenues are intended to be used to educate the resident student not to support the resident school district. This is true even when the school district suffers financially as a result of the exercise of parental choice. See, Exira supra.

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

III.
Decision

For the reasons stated above, the decision of the Board of Directors of the Burt Community School District, made on October 12, 1994, denying the open enrollment applications of Christa and Casey Harms is hereby recommended for reversal. There are no costs of this appeal to be assigned. Iowa Code § 290.4.

Date

Ann Marie Brick, J.D.
Administrative Law Judge

It is so ordered.

Date

Ron McGauvran, President
State Board of Education

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OF EDUCATION

In re Casey & Christa Harms	:	
Rochelle Harms, Appellant,	:	
v.	:	NOTICE OF APPEAL HEARING
Burt Community School District, Appellee.	:	[Admin. Doc. # 3554]

TO: Rochelle Harms, Superintendent Harold Prior and Board Secretary Carol McGuire, Attorney Rick Engel

You are hereby notified that the above entitled matter has been set down for telephonic hearing on the 29th day of November, 1994, at 2:00 p.m. The hearing will be held before a hearing panel consisting of Milt Wilson and Jim Tyson, consultants, Bureau of School Administration and Accreditation; and Ann Marie Brick, J.D., legal consultant and administrative law judge, presiding.

The authority and jurisdiction for this appeal are found in Iowa Code section 282.18 (1993).

Appellant requests a hearing regarding Appellee's denial of open enrollment for her children.

If you have any questions or need any assistance with this matter, please feel free to contact me.

Jeannie M. Ramirez
Administrative Assistant II
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Grimes State Office Building
Des Moines, Iowa 50319-0146
(515) 281-5295

IOWA STATE BOARD
OF EDUCATION

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Burt Community School District, Appellee.	:	[Admin. Doc. # 3554]

TO: Rochelle Harms, Superintendent Harold Prior and Board Secretary Carol McGuire, Attorney Rick Engel

You are hereby notified that the above entitled matter has been set down for telephonic hearing on the 9th day of January, 1995, at 9:00 a.m. The hearing will be held before a hearing panel consisting of Dr. Barbara Wickless, consultant, Bureau of School Administration and Accreditation; Dr. Susan Hetzler, consultant, Bureau of Practitioner Preparation and Licensure; and Ann Marie Brick, J.D., legal consultant and administrative law judge, presiding.

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