

IOWA STATE DEPARTMENT
OF EDUCATION
(Cite as 9 D.o.E. App. Dec. 251)

In re: Petition of Carroll
Community School District

:

:

for Membership into the
Raccoon River Activities
Conference

:

DECISION

:

[Admin. Doc. #3180]

The above-captioned matter came on the docket for hearing on June 2, 1992. Kathy L. Collins, legal consultant, was designated by Director of Education William L. Lepley, Ed.D., administrative law judge sitting on behalf of Dr. Lepley.

Petitioner Carroll Community School District [hereafter Carroll] sought membership of Carroll High School in the Raccoon River Activities Conference by formal request on February 4, 1992, and was denied on February 10, 1992, following a vote of the existing conference representatives. Thereafter, a petition was filed with this agency on March 5, 1992, by Carroll Board President Gene Vincent, seeking mediation pursuant to departmental regulations.

A mediation conference was held on April 21, 1992. David H. Bechtel served as chair of the mediation team which included Mr. Bernie Saggau, executive director of the Iowa High School Athletic Association [hereafter the Association, or IHSAA] and Mr. Robert Smiley, associate executive secretary of the Iowa Girls' High School Athletic Union [hereafter the Union, or IGHSAU].

In attendance for the mediation conference were representatives of Carroll and the eight schools that are current members of the Raccoon River Activities Conference. All conference members, as well as representatives of Carroll, were permitted to offer evidence and argument for their respective positions regarding the petition. Following this presentation, a vote was again taken by the conference schools. The vote was 6-2 to deny Carroll's application. Shortly thereafter, the mediation team issued its recommendation that Carroll's petition into the conference be approved. See Previous Record, Mediation Team Report to Dr. Lepley, 4/29/92. The conference representatives did not alter their positions significantly upon being advised of the mediation team's recommendation, and this hearing followed. With the exception of Saydel, all conference schools were represented at the hearing held on June 2. Each of the representatives of the conference, and Carroll, was allowed to present argument and evidence in support of his school's position. Sworn testimony was not taken as the hearing was conducted informally.

I.
Findings of Fact

The administrative law judge finds that the Director of Education has jurisdiction over the parties and subject matter of this hearing. 281 IAC 37. See also Iowa Code section 280.13.

The Raccoon River Activities Conference is currently composed of eight schools: Adel-DeSoto, Dallas Center-Grimes, Perry and Waukee in Dallas County; North Polk and Saydel in Polk County; Ballard-Huxley, in southwest Story County; and Jefferson-Scranton, in Greene County. As of May, 1991, the respective student populations (grades 10-12) are approximated as follows:

Adel-DeSoto:	287
Ballard-Huxley:	215
Dallas Center-Grimes:	204
Jefferson-Scranton:	251
North Polk:	177
Perry:	328
Saydel:	271
Waukee:	193

All are accredited schools with full membership in the Association and Union as well as in the Iowa High School Speech Association and Iowa High School Music Association, and all have a full range of athletic and other --tivities for their students. The conference has included the current members schools since the fall of 1991.

Carroll Community School District lies in central Carroll County, just west of Greene County, northwest of Dallas and Polk counties, and west of Ballard-Huxley. Its 10-12 student population for 1990-91 was approximately 232 and increased to 281 in 1991-92. Its enrollment is predicted to continue upward. Carroll, too, participates fully in athletics and speech and music activities despite the fact that it has been independent of conference affiliation since 1990 when the five-member Midwest Conference disbanded following the departure of Audubon and Jefferson-Scranton.

The distance for Carroll students to travel to other schools in the Raccoon River Activities Conference is between 30 and 65 miles. The trip to Waukee is likely the longest. Without Carroll, the average travel distance for current members of this conference is approximately 35 miles. When Jefferson-Scranton joined the conference in 1991, the distance for all members increased.

Primarily to the north and west of Carroll, the schools of comparable size are in the Lakes Conference, a seven-member conference. Travel distances for Carroll to participate with those schools vary from 56 miles (to Storm Lake) to 133 miles (to Sheldon). The smallest school in the Lakes Conference is Emmetsburg (208 in 10-12, 1990 data) and the largest is Spencer (476 students 10-12, 1990 data). The average travel distance for Carroll would be a little over 95 miles.

Closer, but also primarily north and west of Carroll is the eight-member Twin Lakes Conference. Travel distance for Carroll in that conference would range from 20 to 62 miles, averaging 45.5 miles. However, Carroll's enrollment would be significantly higher (by some sixty to seventy students) than its closest-sized school, Aurelia-Alta (in a coop program), and is over one hundred students higher than the average school population of that conference. Carroll also made application in March to the Twin Lakes Conference and student population became a significant factor.

Carroll has also looked at the Western Iowa Conference comprising eight schools predominantly located southwest of Carroll. With the exception of Audubon, most of the Western Iowa Conference is clustered west and north of Council Bluffs, with an average travel distance of just under 95 miles from Carroll. Again, Carroll would clearly be the largest school in this conference. Missouri Valley, the closest school to Carroll in size, has a 10-12 student population of approximately 215. The average school size (10-12) in the Western Iowa Conference is 147 students.

Carroll expressed its desire to be admitted to the Raccoon River Activities Conference by citing four advantages to its students.

1. The opportunity to participate in an all-conference music festival, academic bowl, etc.;
2. The opportunity for individuals to be recognized as "all-conference" in a sport and the scholarship [financial aid] that goes with such recognition;
3. The opportunity for students to develop healthy rivalries and the life-long friendships that come from such rivalries, and
4. The good feelings which come from 'belonging' vs, being 'independent.'

Their argument is grounded in equity for Carroll students. "If there are going to be high school conferences in the State of Iowa, every high school [student] should have equal access to all the benefits that go with belonging to a conference."

Except for North Polk and Saydel, Carroll has scheduled athletic activities with every school in the Raccoon River Conference; the conference schools schedule their open, non-conference dates with independent schools and schools from other conferences. Quite often, a hearty rivalry exists between schools that are not members of the same conference. The potential loss of an open date, and the sometimes lucrative "gate" it brings, if Carroll were added to the conference is an issue with some conference schools.

Two of the conference schools voted at mediation to admit Carroll. The activities conference constitution requires approval of six members. The reasoning for the schools' no votes varied.

High School Principal Stan Norenberg of Adel-DeSoto stressed the impact of Carroll's admission on the other schools' academic programs. On game, meet, match, or contest days, students are often excused early from school to travel to the site of the competition. Longer travel distances mean earlier release from school; earlier release on a frequent basis means less time in the classroom for students. Distance also impacts on student health and homework time when the students do not arrive home until quite late following an activity. Adel-DeSoto Superintendent Tim Hoffman also stressed that their school does not want to expand to the west for activities; having Jefferson-Scranton in the conference already stretches Adel-DeSoto's travel time beyond a desirable amount.

Ballard Superintendent Craig Scott spoke to the struggle it went through after being excluded from the Heart of Iowa Conference in 1986. Together with North Polk, Ballard school officials spent several years putting a conference together. Along with Carroll's, applications for conference membership from Clarke Community School District (in Osceola) and Nevada Community School were also denied, primarily due to the constraints on budgets and time that would be caused by the addition of those schools, and the scheduling problems created by a ninth member school, causing an uneven number in the conference. Steve Horning, principal at Ballard, suggested that adding a ninth member to the conference would nearly require seeking a tenth member. Ballard is a firm "no," basically because of the eight-member conference concept.

Dennis Bishop, superintendent of Dallas Center-Grimes, stated that his district is also firmly opposed to the addition of Carroll. In citing five reasons for the district's position, Superintendent Bishop stressed distance and the impact of the additional travel on an already spare and lean activities budget. Recent cuts in aid by the legislature and a dim prospect for increased financing to schools in the future have aggravated the activities budget situation. It would be further impaired, he argued, if Carroll were added to the conference.

North Polk also voted no to the question, in good part because it is already the smallest school in the conference and is over 100 eligible students lower in population than Carroll. Originally the range between the smallest and largest schools in the conference was 75; now it is 150. North Polk currently can schedule five non-conference games with schools its own size. That figure would drop to three if Carroll were a member. North Polk has considered leaving the conference but has not done so because the situation now, while not ideal, is "manageable." The inclusion of Carroll would, in North Polk's view, be untenable, the proverbial straw that broke the camel's back.

Clair Eason, superintendent at Waukee, seconded that concern. He fears that smaller schools in the conference would begin to drop out if Carroll joined. Mr. Eason posed two questions for consideration: When we're discussing "equity," should we be looking at only equity for Carroll students? What about the other schools' students? And secondly, what is the role of the state in conferencing? Principals and athletic directors have historically controlled the conference issue locally.

Perry originally voted no, but changed its vote to yes following the mediation. Superintendent Richard Staver, acknowledging Perry's status as the "new kid on the block" with respect to this conference, nevertheless expressed concern for its stability. If the state can order the acceptance of a school into the conference, that alone causes some significant instability. If then member schools begin to drop out as a result of the state's action, considerably more instability would be created.

Jefferson-Scranton supports the inclusion of Carroll into the conference.

II. Conclusions of Law

During the 1991 session of the General Assembly, several legislators expressed interest in legislation that would guarantee each accredited high school membership in an athletic conference. There were, at that time, some eight or more schools unhappily functioning as "independents" in terms of activities. They had apparently sought the ears of their legislative representatives, seeking assistance or a resolution to their dilemma. At that point, this agency stepped in to offer a procedure to assist the involuntarily independent schools, and a chapter of rules was created, passed, and became effective on December 11, 1991. Apparently satisfied to let this process work, proposed legislation specifying that athletic conference decisions could be made by the elected state senators and representatives was withdrawn.

Being an "independent" means scheduling nine football games, or twenty plus basketball games individually. It means traveling long distances and playing irregular schedules on "off-nights." It means hours and hours of time on the telephone spent by athletic directors who, in most schools, have other duties, including teaching, to fulfill.

It also means your school's students do not have an opportunity to win certain awards, honors, or recognition in a conference. It means relying on the local press to "hype" your outstanding scholars, athletes, debaters or musicians. It could mean fewer scholarship offers for them.

It almost invariably means begging for contests and matches as well as long hours on the bus and more time spent away from school for the students.

In Iowa, conference alliances have always been a matter of local choice and local decision making. The only encroachment, prior to the effective date of chapter 37 of the rules of the Department of Education, was a recent decision by the Iowa High School Athletic Association to establish "district football" whereby the post-season road to the playoffs and a state championship is set by the Association pursuant to geographic districts rather than by conferences. The concept of district football has not been embraced throughout Iowa, but Association officials feel it is a fair and more efficient way to conduct a tournament. The other sports sanctioned by the Association continue to be based in part on conference competition, as do the sanctioned events of the Girls' Union.

This is the first opportunity the Department of Education has had to apply chapter 37, although other conference disputes await decisions and still others have been successfully resolved at the mediation level. The premise of chapter 37 is stated in rule 37.1:

It is the purpose of this chapter to provide a procedure ensuring that a public school or accredited nonpublic school desiring to be a member of a conference providing extracurricular athletic contests and competitions for students is granted this opportunity.

281 IAC 37.1.

This statement of policy rests on the assumption that there are advantages to students to be drawn from conference membership that cannot be enjoyed if a school "has been unfairly excluded or prevented from obtaining membership in an athletic activity conference." 281 IAC 37.3. The procedure begins with the filing of a complaint by a school board member with the director of education who then schedules a mediation session involving the independent school and representatives of the schools in the desired conference. The director establishes a mediation team comprising the executive director of the Association or designee and the executive secretary of the Girls' Union or designee.

In this case, Bernie Saggau, executive director of the Association and Assistant Executive Secretary Bob Smiley of the Girls' Union assumed the mediation responsibility and appointed David H. Bechtel, former administrative assistant of this agency prior to his retirement, to chair the mediation team. The mediation was unsuccessful in resolving the dispute. When that occurs, the rules establish that the mediation team makes a recommendation and, if agreement does not occur after the schools read the mediation team's recommendation, the next step is a hearing by the director of education or designee, leading to a written decision establishing the rights of the complaining school.

The principles guiding both the mediation team and the director of education are stated in the rules:

Membership shall be with other schools of comparable size and within reasonable geographic proximity.

281 IAC 37.1.

Factors to be weighed in reaching resolution will include, but not be limited to, school enrollment figures (current and projected), travel distances, comparability of instructional programs, traditional rivalries, number of existing and proposed schools in the conference, and comparability of athletic programs and other school-sponsored programs.

281 IAC 37.4.

Although this process is in its infancy, the mediation and hearing of this case have already taught several lessons in addition to raising questions. Carroll and the conference member representatives came fairly well prepared, providing historical data and evidence of past and anticipated problems or hardships if the decision goes one way or the other. It is my belief that I have more than adequate information to make a decision in this case.

The best student population and geographic alignment for Carroll High School, in terms of those factors combined, is the Raccoon River Activities Conference. While Carroll may be closer to both the Lakes and Twin Lakes conference schools, Carroll so outsizes them as to create an unfair advantage for Carroll's students. In the Raccoon River conference, Carroll is neither the largest nor the smallest school. Their instructional and extracurricular programs are exceedingly comparable to those of the current members. Although the inclusion of Carroll will admittedly increase the travel times and distances for some of the other schools, and therefore the transportation costs, increased travel for students in nearly all Iowa schools has begun and will continue to be a fact of life as schools shrink in size and increase in educational goals. More and more schools are sharing, necessitating increased travel for students. More and more schools are closing, slowly eradicating the assumption so many of us grew up with that we have a "right" to a neighborhood school within walking distance. That vision is no longer consistent with reality in 1990's rural states, including Iowa. It is regrettable, true; but absent a population boom or an economic windfall to school communities, it will become the norm. Change is, after all, inevitable.

In deciding this case, I wish to take the opportunity to stress what I hold to be a state policy on the issue of conferences and this process.

I do not view the chapter 37 procedures as tantamount to an "ask and it shall be given" system whereby a school merely has to establish the fact that it is an independent, has selected its desired conference, and asks me to formalize that preference. I believe that a school must prove initially that it has been "unfairly excluded or denied membership" in a conference. This will not happen if a school, for example, voluntarily secedes from a conference -- perhaps even in protest of my decision to include an independent in its conference through this process -- and then complains of its status as independent. I believe the initial burden falls on the independent school to show what efforts it has made to seek conference membership including its efforts directed toward more than one conference. The school seeking my intrusion into heretofore local decisions should be prepared to show the hardships it has suffered as a result of its independent status. I do not regard this power lightly.

Second, in my view the important phase of this process is mediation. In that setting, all evidence, reasoning, and arguments should be made by all parties. If a mediated settlement is not reached, I place great weight on the mediation team's ensuing recommendation, so much so that the burden of persuasion will thereafter be placed at hearing on the school or schools who

oppose the recommendation. In the absence of convincing proof that the mediation team failed to consider one or more of the factors laid out in the rules, or was otherwise biased, prejudiced, or predisposed, the mediation team's recommendation will be implemented.

Third, a spirit of cooperation and mutual assistance must prevail throughout the process. While I respect the right of each member school to vote its preference, at the same time I expect professionalism, integrity, and collegiality from the school representatives. Mediation need not always result in conference acceptance; it could lead, for example, to a commitment by all or a majority of member-schools to include the independent in their regular non-conference schedules and invitational events. Although such a solution would not cure all of the ills of independent status, it resolves many of them. The independent would still be free to seek a hearing at the department and the opportunity to convince me or my designee that the offer of the conference members or the recommendation of the mediation team still falls short.

I place great stock in the ability of schools to schedule creatively. When that happens, the arguably problematic situation of an uneven number of conference schools (as in this case, 9) can be overcome. Several conferences exist now with an uneven number of member schools. This conference can function with nine members, or magnanimously seek another school or independent to join. It is also possible that further changes could occur in the conference before the effective date of my order in this case. For example, North Polk's representatives stated at hearing that, as the smallest school in the conference, it has been contemplating a change for the past two or three years. If it were to dissociate from the Raccoon River conference for valid reasons within the next two years, the conference would again include an even number of schools. This statement is not by any means to be construed as a suggestion; it merely reflects the facts established at hearing.

I fully anticipate a smooth transition for Carroll over the next two years. As the rules state,

If the decision requires conference realignment, the date of this change shall be made with deference given to existing contracts and commitments. Alignment changes shall be made for four-year periods with automatic review by the director after two years so that further necessary changes take effect at the conclusion of the four-year period, unless agreement exists that implementation of the changes can occur at an earlier date.

III.
Decision

Beginning in school year 1994-95, or earlier if scheduling commitments can be altered, Carroll High School shall become a full member of the Raccoon River Activities Conference. This conference alignment shall continue through school year 1997-98, with review scheduled in June, 1996.

It is so ordered.

7/31/92

Date

William L. Lepley

William L. Lepley, Ed.D.
Director of Education