

IOWA STATE BOARD  
OF EDUCATION  
(Cite as 9 D.o.E. App. Dec. 216)

In re Dennis Hackett, et al. :

Dennis and Joy Hackett, Diane :  
Penney, Lorraine and John :  
Cleveland, Rob and Nancy Ewalt, :  
Nancy Henneman, Suzann Buttercase, :  
Doug and Nancy Shirley, Curtis :  
and Nancy Boyd, :  
Appellants, DECISION

v. :

Sidney Community School District, :  
Appellee. : [Admin. Doc. #3160]

The above-captioned matter was heard on February 28, 1992, before a hearing panel comprising Sherie Surbaugh and Barbara Wickless, consultants, Bureau of School Administration and Accreditation; and Kathy L. Collins, legal consultant and designated administrative law judge by Director of Education William L. Lepley. Appellants (except for Diane Penney and Nancy Henneman) were present in person, unrepresented by counsel. Appellee Sidney Community School District [hereafter the District] was present in the persons of Superintendent Eugene Hess and Mr. Jon Johnson, president of the board of directors [hereafter the Board], also pro se.

An evidentiary hearing was held pursuant to departmental rules found at 281 Iowa Administrative Code 6. Appellants timely appealed a decision of the Board made on February 11, 1992, under Iowa Code chapter 290, seeking reversal of the Board's decision to share athletic programs with Hamburg.

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 this appeal.

In school year 1989-90, the District entered into an athletic cooperative agreement with Hamburg Community School District ["Hamburg"] covering volleyball, basketball, softball and baseball, and girls' and boys' track. Also in 1989, the District began sharing wrestling with Farragut Community School District, but it maintained its own football program. No coaches were let go as a result of the 1989-90 sharing programs although the District's girls' basketball coach had resigned, but both districts planned that as resignations occurred, no replacements would be hired.

Hamburg, approximately ten miles from Sidney, is a district of 338 pupils, and the Sidney District currently educates 441 students. The District's stated primary motivation for sharing athletic programs was the belief that this action could lead to whole-grade sharing or reorganization. In addition to the hope of future whole-grade sharing, the District also agreed to share athletics in anticipation that its costs ultimately would be reduced for those activities and to ensure that sports programs with a declining number of participants could continue to be offered to students.

Early negotiations between Sidney and Hamburg for whole-grade sharing stalled in 1990, apparently over the issue of high school football. According to Appellants, the disagreement arose over which district would be the site of the high school; according to Board President Johnson, the issue came down to which [then] current head football coach would coach the offensive team. Negotiations have never been reactivated. It became clear during the hearing that Hamburg and Sidney have been longstanding football rivals and both have excellent coaches and programs.

Appellants' position on this appeal is that the stated original purpose for the cooperative activities agreement (that athletic sharing would create a climate conducive to whole-grade sharing) for the cooperative activities agreement is no longer valid because student sharing has not occurred. Moreover, Appellants' calculations support their belief that the District has not profited financially from sharing athletics in the past and there is no reason to believe that situation will improve by adding football to the list of shared sports. They also assert that there have been students who have dropped out of or declined to participate in certain shared athletic programs because of sports sharing, and that the number of players may actually increase if the District were to resume its own independent programs.

Finally, Appellants urge the State Board to reverse the District Board's decision to share athletics because of concerns related to the

cost and safety of daily transportation between towns when we have adequate facilities and numbers to support our own sports program. . . . There is no question that academics should be top priority with sports as a valuable extracurricular activity, such as music and the other fine arts. All [of] these activities help to give our students a well-rounded education. We feel the priorities have been badly misplaced by putting sports in the lead position.

Appellants' Exhibit DD.

The District's rejoinder is that although no agreement has been reached for whole-grade sharing as of yet, each of the districts in Fremont County is aware of the likelihood that sharing and reorganization will happen. Board President Johnson testified that his Board recognizes the District "is on the edge of not being able to continue to provide a quality education" based either on numbers or on dollars. Recently the county's schools have agreed to discuss staff vacancies as they arise within each district, and staff sharing has been occurring and will increase next year in several areas. District officials still believe

whole-grade sharing is in the future, and that "sports is where people's hearts are, so if you can get sports sharing, the rest will follow."

Guy Ghan, a sharing and reorganization consultant with the Department of Education, recommended in report dated February 20, 1992, that the District build a new high school and merge their programs with Hamburg, preferably gradually by beginning with all sports. Mr. Ghan rated the District high school facility a "1" on a scale of 1 to 10. However, a bond issue to build a new high school failed last July.

Mr. Ghan was quoted at hearing as having told a District patron in a telephone conversation last July that he would recommend an immediate cessation of shared athletics with Hamburg in order to force that district into full (educational and activity) sharing with the District. Appellants' Exhibit I (Affidavit of Arnold L. Shirley). However, Mr. Ghan's February "School Reorganization and Facility Report" for the District casts doubt on the accuracy of the caller's perceptions of his recommendations. Mr. Ghan's report (issued in conjunction with department consultant Morris Smith) states in part as follows:

To this point, Hamburg and Sidney have not been able to enter into a whole-grade sharing agreement, but it does seem like a logical step. The Department team is not saying that the two have to join, but that whole-grade sharing action seems like a safer bet than to think the two districts will not join. Hamburg doesn't have another partner to choose that is geographically as compatible as Sidney, and the two districts are already into major athletic sharing.

The December, 1989 report recommended whole-grade sharing for Sidney and Hamburg. This is still the team's recommendation.

Because no coaching positions were reduced at the outset of the sharing agreement, the Board did not anticipate immediate cost savings. Nevertheless, in 1991, the District could show cost savings, exclusive of gate and concession receipts, in each sport shared with Hamburg last year.<sup>1</sup> Also, the District points out that the general fund, which supports regular education costs, is not the source of all funding for sports programs. Therefore, Appellants' figures which show that athletic sharing does not save the District any money and in fact is an expense or a drain on the District do not translate into an equal amount of revenue saved for general education programs.

Last fall, the District polled its student body on the issue of sports sharing, asking the following questions with the results shown accordingly (91% of the girls voted (58 students) and 96% of the boys voted (64 students)):

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<sup>1</sup> No cost analysis had been done by Board prior to its February decision. However, a cost analysis was prepared by the District for the appeal hearing. See Appellee's Exhibit 1.

Questions	Girls		Boys		All	
	Yes	No	Yes	No	Yes	No
1. Have you been involved with a co-op sports sharing program as a participant?	25	33	31	33	56	66
2. Do you feel Sidney should continue the co-op sports sharing program?						
-- Volleyball	36	22	47	14	83	36
-- Girls' Basketball	35	23	40	19	75	42
-- Boys' Basketball	37	18	36	26	70	44
-- Girls' Track	36	22	40	20	76	42
-- Boys' Track	34	23	38	24	72	47
-- Softball	35	23	42	17	77	40
-- Baseball	36	22	43	20	79	42
3. Would you like to see the co-op sports sharing program continue?	37	21	45	17	82	38
If yes, with all sports?	17		24		41	
With some sports?	15		20		35	
4. If you did not participate in athletics, would you if we did not share the sport?	13	31	10	30	23	61
* 5. Do you think football should be a co-op shared sport?	15	42	21	38	36	80
* 6. Do you think wrestling should be a co-op shared sport?	36	21	44	17	80	38
If yes, with Hamburg?	8		10		18	
Or Farragut?	25		30		55	
Both?	6		7		13	
* At the time the survey was taken last fall, the District was operating its own football program independently and was engaged in a shared wrestling program with Farragut.						

Appellee's Exhibits 2 and 3.

It appears that the survey results support the District's position that the student body clearly favors continuing the sports sharing program and was relatively satisfied with its sharing partners. It also appears students enjoyed the status quo; they wanted to remain independent in football and continue sharing wrestling with Farragut.

The students' views generally favoring sharing activities are in stark contrast to the views of Sidney adult residents. See Appellants' Exhibit CC (multi-paged exhibit showing signatures of District residents "opposed to sharing all sports with Hamburg").

## II.

### Conclusions of Law

The State Board of Education is reluctant to overturn decisions by locally elected school officials. We will reverse only when Appellants can prove that the decision at issue was made arbitrarily or capriciously, was without basis in fact or upon error of law, was made without legal authority, or amounted to an abuse of the local board's discretion. In re Jerry Eaton, et al., 7 D.o.E. App. Dec. 137, 141 (1989).

An arbitrary or capricious decision is one made "without regard to established rules or standards, or without consideration of the facts of the case." Churchill Truck Lines, Inc. v. Transportation Reg. Bd., 274 N.W.2d 295, 299-300 (Iowa 1979).

Although the decision to share athletic programs is characterized by Appellants as without a logical base because of the failed negotiations for whole-grade sharing and lack of significant savings to the District, the evidence belied that claim. The Board President testified that despite the fact no whole-grade sharing agreement has been reached in the two and one-half years between the onset of athletic sharing and the decision in this case, the District and other Fremont County schools have acknowledged the likelihood that such action will yet take place. We certainly cannot fault the Board for not throwing in the towel when its first overtures were not successful. The fact that Hamburg has not chosen to share with anyone else surely means the door is still open.

As to the cost effectiveness, or lack thereof, of the shared athletic programs, the Board acknowledged first that cost-savings was not its primary goal and, second, that it did not anticipate immediate savings because the sharing districts did not reduce coaching staff but chose to wait for natural attrition to occur. Finally, the Board successfully rebutted Appellants' financial computations and showed that, although not dramatic, each of the shared sports programs achieved some savings to the District.

There is literally no question that the Board had legal authority to enter into shared sports programs. Iowa Code section 280.13 provides express authority for school districts to share any or all interscholastic activities. Accordingly, the action taken was also not made "upon error of law."

An "abuse of discretion" occurs when a school board, faced with two or more available legal options, selects the one that is patently unreasonable or without sufficient evidence to support it. While interested bystanders watching a board arrive at nearly any controversial decision would argue that a decision they do not support constituted an abuse of the board's discretion, it is nevertheless a very high standard to meet. The hearing panel believes that the Board's decision in this

case to continue sports sharing with Hamburg and to add wrestling and football, is a reasonable one based on "the big picture," a phrase Appellants used disparagingly to characterize the Board's outlook but a phrase which we believe illustrates vision and foresight.

Finding no basis upon which to overturn the Board's action in this case, the decision is recommended for affirmance.

We wish to add a note of appreciation for the fact that the District asked its student body about its preferences. We are also not surprised that the students are apparently more willing to cooperate in athletics than the adult residents are. Old rivalries die hard. We do have faith that the new aspects of the February Board decision (football and wrestling with Hamburg), once implemented, will also be accepted by students and adults alike. If history has shown us anything, it is the truth of Board President Johnson's statement that if athletic sharing is successful, the way is paved for further integration of student bodies.

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

April 30, 1992  
DATE

Kathy L. Collins  
KATHY L. COLLINS, J.D.  
LEGAL CONSULTANT AND DESIGNATED  
ADMINISTRATIVE LAW JUDGE

III.  
Decision

For the above-stated reasons the decision of the Sidney Community School District board of directors made on February 11, 1992, to share athletic programs, including wrestling and football, with Hamburg Community School District is hereby affirmed. Costs of this appeal, if any, are assigned to Appellants under Iowa Code chapter 290.

It is so ordered.

5/7/92  
DATE

Ron McGauvran  
RON MCGAUVRAN, PRESIDENT  
STATE BOARD OF EDUCATION