IOWA STATE BOARD
OF EDUCATION
(Cite as 8 D.o.E. App. Dec. 399)

In re Stacey Smith	:	
Greg and Donna Smith, Appellants,	:	
v.	:	DECISION
Norway Community School District, Appellee.	:	[Admin. Doc. #3112]

The above-captioned matter was heard telephonically on March 26, 1991, before a hearing panel comprising David H. Bechtel, special assistant to the director and presiding officer; Edith Eckles, consultant, Bureau of School Administration and Accreditation; and Joan Clary, consultant, Bureau of Special Education. Appellant Donna Smith "appeared" by telephone and represented herself. Appellee Norway Community School District [hereafter the District] also "appeared" in the persons of Superintendent Harold Merchant and the high school principal, James Blackledge, Jr., unrepresented by counsel as well.

An evidentiary hearing was held pursuant to departmental hearing procedures found at 281 Iowa Administrative Code 6. Appeal was based on Iowa Code section 282.11, incorporating Iowa Code chapter 290. Appellants seek reversal of a decision of the District board of directors [hereafter the Board] made on January 22, 1991, denying Appellants' request to be released from the operation of a whole-grade sharing agreement on geography grounds in order that their daughter Stacey attend in the Clear Creek-Amana Community School districts.

I.
Findings of Fact

The presiding officer finds that he and the State Board of Education have jurisdiction over the parties and subject matter of the instant case.

Appellants are the parents of daughters Marti and Stacey Smith; the latter is the subject of this action. Stacey completes her sophomore year this year and will be a junior in 1991-92. She has been active in volleyball, basketball, and softball.

The District completed negotiations for a whole-grade sharing agreement this winter with the Benton Community School District. Stacey made a visitation to the high school she would attend under the new sharing agreement next year, and did not have a good impression. Then she visited the high school in Tiffin operated by the Clear Creek-Amana districts under their sharing agreement. She was much more impressed with the students and environment in Tiffin, and informed her parents that she wanted to attend there.

Had this decision been made at the beginning of the school year, Appellants could have filed for open enrollment for Stacey to Clear Creek-Amana for 1991-92. They did not do so, and the October 30 deadline passed. The law provided for another avenue of release, however. A

separate statute allows parents to request release in the thirty-day period prior to the signing of a whole-grade sharing agreement, which Appellants did. The difference between a release under open enrollment and one under a whole-grade sharing agreement is the amount of discretion given to the local school board. In a release using open enrollment for 1991-92, the district Board could not deny Appellants, regardless of the reason given.[1] On the other hand, the request under the whole-grade sharing opt-out provision must be for one of two reasons, and the local board has the discretion either to deny or approve the request.

In this case, Appellants' request for release from the whole-grade sharing agreement was timely filed on January 21, and Appellants relied on geography grounds for the request. In terms of comparative distance, Appellants live a total of 22.5 miles from the high school in Van Horn where their daughters would attend under the Norway-Benton sharing agreement. The distance from their home to the high school in Tiffin which the girls would attend if enrolled in the Clear Creek-Amana districts is 20.5 miles. Donna works in Amana, and Stacey would drive on many days if an activity bus couldn't get her home after practices and events.

Using its discretion, the District Board denied Appellants' request believing that to grant it would have sent a message, so to speak, that the Board had failed to consider geography in reaching its decision to whole-grade share with Benton Community School District.[2]

Although Appellants missed the October 30 deadline for open enrollment, one provision in that law and the rules adopted by this Department to implement the law allows a parent to request open enrollment after the deadline if the parent can show "good cause" for not filing timely. One of the definitions in the rules for "good cause" is the passage of a whole-grade sharing agreement coupled with the local board's denial of a request for opt-out. See 281 Iowa Administrative Code 17.4(2)"c"(2). Thus, Appellants would qualify for open enrollment consideration below or on appeal here. However, at the same meeting at which Appellants' requests to be released from the whole-grade sharing agreement were denied, their contemporaneous open enrollment requests for both Marti and Stacey were approved. Two logical questions arise: Why are Appellants seeking to reverse the Board's denial of their request to opt-out Stacey to Clear Creek-Amana when their request for open enrollment for her was approved? and Why are they not appealing Marti's denial under the opt-out provision of the whole-grade sharing law?

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[1] A resident or "sending" district can deny an open enrollment request for 1991-92 on two or three grounds under the statute, but none of them are relevant here. See Iowa code §282.18 (1991).

[2] On a "cold" reading of the statute, quoted in Section II of this opinion, we can understand why the Board would view its approval of Appellants' opt-out requests as admitting that the Board failed to give adequate consideration to geographic factors. However, in previous cases interpreting that statutory language, the State Board rejected the "plain language" meaning in favor of one that makes infinitely more sense. See, e.g., In re Randy and Lori Mulford, 6 D.o.E. App. Dec. 9, 13 (1989).

Appellant Donna, in her testimony at hearing as well as in her appearance before the Board at its January 29 meeting when the decision was made, was very forthright about her preference for the opt-out provision over the open enrollment provision. In the former situation, this Department has consistently deemed these transferring students to be eligible for interscholastic athletics in the new district immediately upon transfer because the resident district had made the transfer decision and was financially responsible for the tuition. Under the open enrollment law, however, a student who changes districts is ineligible for athletics for a full school year, with minimal exceptions not relevant here. See Iowa Code §282.18(15)(1991).

Thus, the answer to the first question posed above is that if Stacey were released by the Board under the whole-grade sharing opt-out, she would be immediately eligible in Clear Creek-Amana. She will have to sit out of athletics for her entire junior year if she enrolls in Clear Creek-Amana under open enrollment. (The answer to the second question, why Appellants did not appeal the opt-out release decision as to Marti, is that Marti is going into ninth grade next year, and the same law that denies athletic eligibility to Stacey for the first year of open enrollment as a junior permits Marti full eligibility as a freshman. Id.

One other factor is of some consideration here. The tuition costs paid by the Board to neighboring districts for students who opt out of the whole-grade sharing agreement would be less than the costs to be paid a neighboring district for a student under open enrollment. Compare Iowa Code §§282.11(2) and 282.18(8).

II.
Conclusions of Law

The sole issue before the State Board, as viewed by the presiding officer and hearing panel, is whether the District Board abused its discretion in determining that Appellants did not have adequate proof of a geographic hardship to justify release from the operation of the whole-grade sharing agreement. The pertinent statutory language regarding requests for opt-out and appeals from denials reads 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. 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. . . .

Iowa Code §282.11 (1991)(emphasis added).

In the first hearing decision involving this statute, the State Board of Education had an opportunity to interpret the language above and reasoned that

> The language of the statute with respect to the geographical considerations issue is not terribly helpful in our responsibility to interpret the law and give its intent full application. At first blush it appears that Appellants, in order to be released on this basis, must prove that "consideration was not given to geographical factors" when the sharing agreement was reached. Iowa Code §282.10 (Interim Supp. 1987). We think it highly unlikely if not totally impossible that a board would fail to at least consider geographic factors in such a decision. Such data as where the majority of the affected student population lives, increased or decreased costs of transportation based upon new routes, distance, the quality of the roads traveled, and time expended in transit are all factors affected by geography and are all basic factors in reaching a decision about sharing partners. Therefore, as the legislature is not presumed to have included a worthless ground for appeal, we must assume that what was meant is more than the absence of consideration of geographic factors by the Board.
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> In support of this interpretation is the language that `the parent or guardian's hardship' is to be a factor in the standard of review of these appeals by the State Board and consequently the hearing panel. We read this to mean that there are circumstances, as contemplated by the General Assembly, where geographic conditions could cause a `hardship' to the parent(s) or pupil(s). This seems much more plausible than whether or not geographical factors were considered at all.

> Thus, we interpret the geography ground for appeal to mean that there may be instances of true hardship on the parent, guardian, or pupil due to the location of their residence vis a vis the site of the designated attendance center. With that in mind, we review the evidence before us to see if the Mulfords' situation rises to the level of hardship.

In re Randy and Lori Mulford, 6 D.o.E. App. Dec. 9 at pp. 13-14.

At the January 29 Board meeting, apparently considerable discussion took place on the implications of the Board's granting Appellants' requests to opt-out on geographic grounds. Unfortunately, the Board was not familiar with the above-quoted case which would have eliminated some of the stigma from its decision. We see our role on appeal as reviewing the evidence presented to the Board below on the issue of "geographic hardship." If a preponderance of the evidence supports a finding of hardship, we may conclude that the Board abused its discretion in denying Appellants' request, especially considering the fact that it is going to be costlier for the District under Stacey's open enrollment than under the whole-grade sharing opt out.

In our view the evidence does not point to any hardship on Appellants to have Stacey attend under the sharing agreement. A difference of two miles is not geographically significant. The fact that Donna Smith works in Amana supports the fact that the daily trips to Tiffin might make it more convenient for the family if Stacey were to attend there, but convenience alone is insufficient to constitute a hardship. In re John and Beverly Gilbert, 6 D.o.E. App. Dec. 193 (1988). Finally, the fact that Stacey prefers Amana-Clear Creek is also not enough evidence on which to overturn the local Board's decision. "[W]e believe the legislature clearly intended more than a preference for another district . . . . ." In re Robin and Joyce Hewer, 6 D.o.E. App. Dec. 328, 331 (1988).

Thus, we conclude as a matter of law that the District did not abuse its discretion in denying Appellants' request to opt out of the sharing agreement. The result of our decision is that Stacey is ineligible for a full year, should she follow up on her open enrollment approval and attend in the Clear Creek-Amana districts. If her eligibility and athletic participation is so significant to her education that she cannot forego it, she could seek to "return" to the District where she would be fully eligible.

It is unfortunate that these two statutory methods for leaving a school district have such different impacts on eligibility, but that decision was for the General Assembly to make, and that body has steadfastly refused to eliminate the one-year ineligibility provision from the open enrollment law. We assume their intent in this regard was to prevent students from attending in other than their resident districts solely for purposes of athletics.

Because the Board did not have the benefit of knowing that a decision granting Appellants' requests on the basis of geography would not have sent a message that the Board failed to consider geography in reaching its decision to whole-grade share with Benton Community School District, the Board may wish to reconsider its denial of Stacey's application, again

particularly because of the difference in dollars to the District if she attends in Clear Creek-Amana as a tuition opt-out student. We are not remanding this decision nor requiring them to do so, however; we only wish to make the Board aware that it could change its mind.

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

III.
Decision

For the reasons stated above, the decision of the Norway Community School District board of directors made on January 29, 1991, denying Appellants' request to opt out of the whole-grade sharing agreement to attend in the Amana-Clear Creek districts is hereby affirmed. There are no costs of this appeal to be assigned under Iowa Code section 290.4 Appeal dismissed.

6-14-91
DATE

RON McGAUVRAN, PRESIDENT
STATE BOARD OF EDUCATION

June 6, 1991
DATE

DAVID H. BECHTEL, SPECIAL ASSISTANT
TO THE DIRECTOR
AND PRESIDING OFFICER