

IOWA STATE BOARD
OF EDUCATION
(Cite as 7 D.o.E. App. Dec. 89)

In re Gary and Andrea Beekhuizen	:	
Gary and Andrea Beekhuizen,	:	
Appellants,	:	
	:	
v.	:	DECISION
	:	
Fremont Community	:	
School District,	:	
Appellee.	:	
		[Admin. Doc. 1016]

The above-captioned matter was heard on October 11, 1988, before a hearing panel comprised of David H. Bechtel, special assistant to the director and presiding officer; Ted Stilwill, administrator, Division of Administrative Services; and Robert Yeager, acting chief, Bureau of Area Schools. Appellants were present in person and represented by attorney Mr. Robert Clements of Clements, Pothoven, Pabst & Stravers, Oskaloosa. Appellee Fremont Community School District [hereafter the District or Fremont] was present in the person of Superintendent Randy McCaulley and represented by attorney Mr. Brian L. Gruhn of Mollman, Gruhn & Wertz, Cedar Rapids.

An evidentiary hearing was held according to department rules found at Iowa Administrative Code 281-6 and under the authority of Iowa Code section 282.11 and chapter 290. Appellants seek release from the terms of a whole-grade sharing agreement in order that their two children attend in the Hedrick Community School District [Hedrick] at the expense of the Fremont District. They filed their original notice of appeal on January 20, 1988, within the statutory thirty-day period prior to the signing of the agreement by the District's board of district [hereafter the Board]. See Iowa Code §282.11 (1987 Supp.). Their affidavit of appeal indicated they wished their two children be released to attend in Hedrick, but were vague as to which of the two statutory grounds for appeal they were invoking.

The department then sent a letter to Appellants dated January 25 asking, among other things, that Appellants specify their grounds officially. They responded promptly, on February 1, indicating the appeal was based on geographical considerations. On February 23, we received another letter from Appellants indicating they misunderstood their options and wished to present evidence on both statutory grounds: geographical hardship and that the educational program needs of their two children would not be met under the signed sharing agreement between the District and Eddyville Community School District (Eddyville) its one-way sharing partner.

Appellee subsequently filed a Motion to Dismiss the appeal on the ground that the clarification of grounds for appeal (February 23, 1988) was made outside the statutory period for filing an appeal (in this case, December 25 through January 24). At hearing, Appellee's Motion to Dismiss was denied. We base this denial on the rule of civil procedure that a

party may amend a petition (akin to the affidavit of appeal in administrative hearings) as of right so long as the amendment does not substantially change the nature of the case or prejudice the other party. An amendment "relates back" to the date of original filing. Appellee makes no argument regarding its situation having been prejudiced by the amendment. Certainly the nine months between the last amendment and the date of hearing was ample time to prepare to defend both grounds for appeal. Moreover, we recognize the legal naivete of the average citizen who may not be aware of the technicalities of filing an appeal, and we do not wish to place additional procedural barriers in the road to the State Board of Education.

I. Findings of Fact

The hearing officer finds that he and the State Board of Education have jurisdiction over the parties and subject matter of this hearing.

The District lies in Mahaska and Wapello counties with Hedrick to the east, Ottumwa to the south, Eddyville to the west, and Oskaloosa to the north. It is the smallest of those districts and had a student population in 1987-88 of 200. For approximately three years, the District shared football and later all athletic activities with neighboring Hedrick. During that time the Board began to study academic sharing options. A proposal to share academics with Hedrick failed in the late fall of 1987. In January, 1988, the Board approved a one-way sharing contract with Eddyville. Under the agreement, all high school students (approximately 50 students in grades 9-12) will attend school in Eddyville. The District will not receive any Eddyville pupils, and each district will retain its own K-8 program. Before sharing, Eddyville had a student population of about 600 pupils in the K-12 educational program.

Appellants, residents of the Fremont District, are the parents of Clarice and Greg, currently in eleventh and eighth grades respectively. The children are enrolled as tuition students in the Hedrick Community School District. Appellant Andrea Beekhuizen testified that Clarice's educational needs cannot be met in the Eddyville district. Clarice's goal is to be employed in international business, and she hopes to attend Central College in Pella which has a campus in France and offers specific courses in international business. Clarice enrolled at Hedrick in order to take French which was not and apparently will not be offered at Eddyville under the agreement. Both the District and Eddyville offer Spanish. Mrs. Beekhuizen also alleged that geography was not offered by Eddyville and she believes this is also a necessary foundation for international business. No other evidence was presented as to Clarice's educational program needs.

Appellants claimed that Greg's educational program needs will likewise be lacking under the shared program. Greg would not be attending in Eddyville under the sharing agreement this year, as each district maintains its own elementary program through grade eight, but would attend in Eddyville next year had his parents not enrolled him in Hedrick. As to Greg's career goals and educational needs, Appellants presented no evidence. Mrs. Beekhuizen testified that Greg would probably "handle

himself better" if he's enrolled in the same school as his sister. Appellants want to keep the children together.

Appellants also appealed on geography grounds, alleging that their "hardship outweighs the integrity of the sharing agreements" as required by the statute enabling this type of appeal and requests. However, there was a total absence of evidence on this ground. The only mention of geographical considerations made by the Appellants was laid out in their affidavit of appeal:

1. Children's Safety — The road from Fremont to Eddyville, (even though it is hard surfaced) is one of the most treacherous roads in southern Iowa. It is full of hills, curves, and ravines. It is one of the last to be cleared of ice and snow.

. . .

The Hedrick Community School is geographically much closer than Eddyville and the roads are much better.

But aside from these allegations, which were unproven at hearing, no evidence was offered on the geography ground for appeal. We know only that Clarice drives to school or rides with others going to Hedrick.

II.

Conclusions of Law

The statute on which this appeal is based 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 appeal the sending of that pupil to the school district specified in the agreement, to the state board of education. A parent or guardian may appeal on the basis that sending the pupil to school in the district specified in the agreement will not meet the educational program needs of the pupil, or the school in the school district to which the pupil will be sent is not appropriate because consideration was not given to geographical factors. 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 clear and convincing evidence that the parent 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.

Iowa Code §282.11 (1987 Supp.).

Appellants in this case have brought their appeal on both grounds, but the only ground on which evidence was offered was the educational program needs of their children. However, Greg's needs were never identified. We are left, therefore, to decide whether Clarice Beekhuizen's alleged need for French is sufficient to justify her exclusion from the sharing agreement.

In previous cases brought under this statute, we have found a basis for relief on educational grounds when the child is identified as a talented and gifted ("TAG") pupil, and the resident district offered no special programming for TAG students at that grade level. In re John and Beverly Gilbert ("Gilbert II"), 6 D.o.E. App. Dec. 317 (1988). We have released a young man who had identifiable vocational needs that could be met in a contiguous district but not in his district of residence. In re Larry and Jeanette Johnson, 7 D.o.E. App. Dec. 30 (1989). The question with respect to Clarice is whether Appellants have proven her need for French rather than Spanish, as offered by both the District and Eddyville, in her goal of international business. We conclude that Appellants have not proven it by a clear and convincing standard of proof.

It appears from the record that Clarice's primary educational goal is a career in international business. The only tie to French specifically in this goal comes from Clarice's desire to attend Central College at Pella. While we certainly do not question the College and its international program, we are loath to conclude that French is the only avenue to a career in international business. Surely one could pursue the same goal with a Russian, Japanese, or even Spanish foreign language background. Moreover, as to the geography requirement, we must recognize that that course is required for all students from first through eighth grade, and not at the high school level. A college student majoring in international business will certainly be exposed to additional geography coursework. This is not an educational program need that must be met prior to college enrollment.

Therefore, while we applaud Clarice's goals and support her endeavors to attain them, we cannot conclude that her desire for French over Spanish requires her release from this agreement.

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

III.
Decision

For the foregoing reasons, the request of Mr. and Mrs. Gary Beekhuizen to have their children released from the sharing contract between Fremont and Eddyville Community School Districts is hereby denied and the appeal is dismissed.

May 12, 1989
DATE

May 5, 1999
DATE

Karen Goodenow
KAREN K. GOODENOW, PRESIDENT
STATE BOARD OF EDUCATION

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