IOWA STATE BOARD
OF EDUCATION
(Cite as 7 D.o.E. App. Dec. 70)

In re Walter and Shirley Gordon	:	
Walter and Shirley Gordon, Appellants,	:	
v.	:	DECISION
Meriden-Cleghorn Community School District, Appellee.	:	[Admin. Doc. #986]

The above-captioned matter was heard on August 9, 1988, before a hearing panel composed of David H. Bechtel, special assistant to the director and presiding officer; Ms. Phyllis Herriage, chief, Bureau of Career Education; and Mr. Roger Foelske, assistant chief, Bureau of Career Education. Appellants were present in person and represented by Mr. Dick Montgomery of Greer, Nelson, Montgomery, Barry & Bovee, Spencer, Iowa. Appellee Meriden-Cleghorn Community School District [hereafter the District] was present in the person of Jon Mitts, superintendent jointly employed by the District and Marcus Community School District, and was represented by Mr. Steven Avery of Cornwall, Avery & Bjornstad, Spencer, Iowa.

An evidentiary hearing was held according to departmental rules then found at Iowa Administrative Code 670—51. The appeals of five residents of the District were consolidated for hearing. Appellants timely requested a hearing with the State Board of Education seeking exclusion from a three-year whole-grade sharing agreement entered into between the District board of directors [hereafter the Board] and the board of the Marcus Community School District. Appellants desire that their son Walter attend in the Cherokee district at the expense of Appellee District.

A preliminary decision was issued by the presiding officer to the parties on August 25, 1988.

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 case before them.

On January 27, 1988, a whole-grade sharing agreement was entered into by the boards of directors of Meriden-Cleghorn Community School District and Marcus Community School District ["Marcus"]. Under the agreement, students in kindergarten and grades one through five in both districts

will continue to attend school in their respective resident districts and are not affected by nor involved in the sharing program. Students in grades six through eight from both districts will attend in Cleghorn. High school students from both districts will attend together in Marcus. The agreement is for three years, from school year 1988-89 through June 30, 1991.

Appellants are the parents of Walter ("Wally") Gordon, a senior this year. At the time of hearing, Appellants were not certain what Wally's post-graduation plans were, whether he would enter college or begin a full-time job. Appellants have raised their appeal on both statutory grounds: that attending in Marcus under the sharing agreement will not meet Wally's educational program needs, and that geographic considerations would cause a hardship to Appellants and Wally if he were to attend there.

Wally is an athlete and has participated in football, basketball, track, and baseball in his high school career. During that time, the District shared its football program with Cherokee. Wally, along with the other boys from Meriden-Cleghorn, had to learn to be teammates with former opponents. Now that the District has decided to share with Marcus, Wally would again have to suppress his feelings of rivalry to join the Marcus team, and would be facing his former teammates (at Cherokee) as opponents this year. Appellants state that Wally has no desire to play for Marcus and against Cherokee. Wally fears he won't get along with Marcus students and indicated to his parents that he would refuse to attend school rather than go to Marcus.

In addition, Wally has identified some courses he would like to take at Cherokee, if he were released from the agreement, that are not offered at Marcus High School. Specifically, speed reading, human communications, and a vocational cooperative program where he would receive credit for supervised work experience.

Appellants live 1 1/2 miles northwest of Meriden and 7 miles from Cherokee. However, they shop, work, attend church, and bank in Cherokee, and the family doctor is in Cherokee. They claim to have little or no ties to the Marcus community.

II.
Conclusions of Law

The statute providing the basis for seeking exclusion from a sharing agreement 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. 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.

Iowa Code §282.11 (1987 Supp.)

In previous appeal decisions, the State Board has determined that the phrase "on the basis that . . . the school in the school district to which the pupil will be sent is not appropriate because consideration was not given to geographic factors" has little meaning or practical application without reading that phrase in conjunction with the later phrase "parent or guardian's hardship outweighs the benefits and integrity of the sharing agreement." In re Randy and Lori Mulford, 6 D.o.E. App. Dec. 9, 13-14 (March, 1988). "Thus, we interpret the geography ground for appeal to mean that there may be instances of true hardship on the parent, guardian, or pupils due to the location of their residence vis a vis the site of the designated attendance center." Id. at 14.

In this case, the Appellants have offered no evidence of any hardship on the basis of geography and have, accordingly, failed to meet their burden of proof as to this ground for appeal.

With respect to Wally's educational program needs, we also find the evidence lacking. Appellants were honest in admitting Wally wasn't sure what his educational or vocational goals were at the time of hearing. The only testimony received on the issue was what courses Wally would take at Cherokee that weren't offered under the District's agreement with Marcus. In the absence of a tie between those courses and educational goals, we are hard-pressed to conclude what Wally's "educational program needs" are, let alone find that those needs can't be met in his district of residence.

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

III.
Decision

For the foregoing reasons, the appeal of Walter and Shirley Gordon to have Wally Gordon excluded from the sharing agreement between the Marcus

and Meriden-Cleghorn districts is dismissed for failure to meet the statutory burden of proof. Costs of this appeal, if any, are assigned to Appellants.

April 7, 1989
DATE

KAREN K. GOODENOW, PRESIDENT
STATE BOARD OF EDUCATION

3/23/89
DATE

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