

IOWA STATE BOARD
OF EDUCATION
(Cite as 7 D.o.E. App. Dec. 58)

In re Fred and Judith Johnston :
Fred and Judith Johnston, :
Appellants, :
v. : DECISION
Meriden-Cleghorn Community :
School District, :
Appellee. [Admin. Doc. #990]

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 Wade 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 Wade Johnston, a senior this year.¹ The family lives two and one-half miles from the Cherokee district boundary; their residence is nearly equidistant between Marcus and Cherokee high schools. Wade has his own transportation. The family feels stronger community ties to Cherokee as their church, doctor, dentist, bank, and some relatives are there. Wade has been involved in a non-school swimming program in Cherokee for eleven years, and many of his friends live and attend school there. Wade has two jobs, one at Finley Theatre and the other working for the Parks and Recreation department, both in Cherokee.

Academically, Wade is a very good student whom Appellants characterize as college bound. At this time his career interest lies in the area of advertising and graphic design. Wade is an honor roll student who is also involved in extracurricular activities including band and athletics. In his junior year he participated in wrestling in a cooperative program with Cherokee.² He would like to continue to wrestle. The practices would be held in Cherokee, however, which would entail a good deal of travel during the season. If extra morning practices were held, as they sometimes are, Appellants testified that Wade could be putting 84 miles a day on his pickup, going to early morning practice in Cherokee, back to Marcus for school, and then returning to Cherokee for after-school practice, then going home.

Wade had enrolled at Cherokee at the time of the hearing and was signed up to take eight courses. Five of those were not offered at Marcus: advanced art studies (including photography and printmaking), ceramics, jewelry, human communications, reading for speed and comprehension, and a work co-op program where he could allegedly receive credit for either his theatre job or his job with the recreation department. He would be able to graduate from Cherokee this year as his credits all transfer and he only needs the human communications course to meet Cherokee graduation requirements.

II.

Conclusions of Law

The statute providing the basis for seeking exclusion from a sharing agreement reads, in pertinent part, as follows:

¹ At the time of hearing, in August, Wade was about to enter twelfth grade.

² The wrestling program will continue between Meriden-Cleghorn, Marcus, and Cherokee this year.

. . . 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.

Although Appellants raised both grounds for appeal in their affidavit, Mr. Johnston conceded at the hearing that no real "hardship" would be created for Wade or the family by attending in Marcus. The daily trips to Cherokee and back for wrestling in the wrestling season would be tedious and perhaps expensive, but no hardship to the family as required by statute.

With respect to Wade's academic requirements, Appellants were unable to show us that their son's "educational program needs" could not be met under the sharing agreement. While it is true that five of eight of Wade's courses were not available in Marcus, Appellants did not tie those courses sufficiently to Wade's college or career goals. The work cooperative program certainly bears little on his possible future as a graphic advertising specialist. Cf. In re Larry and Jeanette Johnson, 7 D.o.E. App. Dec. 38 (1989). The art and craft courses Wade wishes to take

at Cherokee may have some relationship to his vocational goals, but the District also offers a variety of art-related courses. See Appellee's Exhibit J.

We find that Appellants have failed to meet their burden of proof with respect to either geographic or educational grounds. All motions or objections not previously ruled upon are denied and overruled.

III.
Decision

For the above-stated reasons, the appeal of Fred and Judith Johnston to have their son Wade released from the sharing agreement between Meriden-Cleghorn and Marcus school districts to attend in Cherokee is hereby dismissed. Costs of this appeal, if any, are assigned to Appellants.

April 7, 1989
DATE

3/23/89
DATE

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

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

IOWA STATE BOARD
OF EDUCATION
(Cite as 7 D.o.E. App. Dec. 62)

In re Richard and Barbara Dorr :
Richard and Barbara Dorr, :
Appellants, :
v. : DECISION
Meriden-Cleghorn Community :
School District, :
Appellee. [Admin. Doc. #1026]

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 daughters, Sandra and Becky, 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

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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 Blake,¹ Becky, and Sandra, in sixth, ninth, and twelfth grades this year respectively. This appeal was filed seeking exclusion from the sharing agreement for Appellants' children on both statutory grounds: that their educational program needs would not be met through the sharing agreement and that sending them to attend high school in Marcus would be inappropriate "because consideration was not given to geographical factors." See Iowa Code §282.11 (1987 Supp.) The district of choice for Appellants is Cherokee Community School District ["Cherokee"].

The only evidence offered by Appellants related to the geographic issue was the fact that their residence is nearly equidistant in travel time between the Marcus and Cherokee high schools. Appellant Barbara Dorr testified that the distance could become a factor as to the girls' ability to participate in extracurricular activities. Mrs. Dorr stated that the girls' attendance in Marcus would be a "problem" and "inconvenient" for the family from a geographical perspective.

With respect to the girls' educational program needs, Appellants allege that Sandy, their oldest child, has computer aptitude and, because she has not yet finalized her post-graduation plans, should participate in the work-for-credit co-op vocational program offered at Cherokee and not available through the Marcus/Meriden-Cleghorn sharing agreement. Sandy had a job at Hardee's at the time of the hearing. Sandy, according to her parents, needs the reading for speed and comprehension course offered at Cherokee and the required human communications (speech) course because she is shy by nature. Although her Iowa Tests of Educational Development support the need for additional work in her reading skills, see Appellee's Exhibit B, the course offerings at Marcus illustrate the availability of language arts courses for seniors that include speaking and reading drills. Appellee's Exhibit I at pp. 1-4. No evidence was offered in support of Appellant's testimony that Sandra has an aptitude for computers or that computer course offerings at Cherokee exceed the opportunities available at Marcus.

Becky, Appellant's younger daughter, in ninth grade, has no articulated educational program needs. Appellant acknowledged the similarity in curriculum between Marcus and Cherokee for ninth grade

¹ Appellee filed a Motion to Dismiss the appeal as to Blake on the ground that he would not be an "affected pupil" as contemplated by Iowa Code section 282.11. The presiding officer concuded that as Blake would be attending in Meriden-Cleghorn and not "sent to attend school in another district," at least during the three-year term of the agreement, the Motion to Dismiss should be granted. The appeal remains active as to Becky and Sandra.

pupils with the exception of human communications at Cherokee. However, Marcus' course offerings include speech units in tenth-grade English and an advanced speech course for juniors and seniors. Id. at pp. 1-2. The only other testimony about Appellants' daughters was a concern about Becky's health and a statement that Sandra desires to attend in Cherokee rather than Marcus.

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.

The evidence as to geography and any hardship the family's location will cause was sorely lacking and falls far short of the required burden of proof. Mere "inconvenience" is an insufficient basis on which to release a student from a sharing agreement. In re John and Cynthia Wilson, 7 D.o.E. App. Dec. 1, 7 (1989).

Although the evidence propounded on the issue of educational program needs for the two Dorr girls was more ample than that offered on the issue of geography, we conclude it nevertheless also fails to meet the required burden of proof. Specifically, except for an unsubstantiated reference to Sandy's aptitude for computer work, all course "needs" could be met equally well in Marcus under the sharing agreement. Cf. In re Larry and Jeanette Johnson, 7 D.o.E. App. Dec. 38 (1989).

We find that Appellants have failed to meet their burden of proof with respect to either geographic or educational grounds. All motions or objections not previously ruled upon are denied and overruled.

III.
Decision

For the above-stated reasons, the appeal of Richard and Barbara Dorr to have Sandra and Becky released from Meriden-Cleghorn's sharing agreement with Marcus to attend in Cherokee is denied for failure to meet the burden of proof mandated by statute. Costs of this appeal, if any, are assigned to Appellants. Appeal dismissed.

April 7, 1989
DATE

3/23/89
DATE

Karen K. Goodenow
KAREN K. GOODENOW, PRESIDENT
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David H. Bechtel
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