

IOWA STATE BOARD  
OF EDUCATION  
(Cite as 7 D.o.E. App. Dec. 38)

In re Larry and Jeanette Johnson :  
Larry and Jeanette Johnson, :  
Appellants, :  
v. : DECISION  
Meriden-Cleghorn Community :  
School District, :  
Appellee. ----- [Admin. Doc. #980] -----

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 sons Kerwin and Kenric 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 24, 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 Kerwin, aged 17 at the time of hearing and about to start his junior year in high school, and Kenric, a 13-year-old who began eighth grade in the fall of 1988.<sup>1</sup> Appellants filed their appeal seeking exclusion from the agreement for their two boys on both statutory grounds: that their sons' 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"].

With respect to Appellants' argument on geographic grounds, evidence showed that the family lives approximately three-quarters of a mile from the Cherokee School District boundary, in the northeast part of the District. Meriden-Cleghorn lies in between Marcus, to the west, and Cherokee, to the east. For the boys to attend high school in Marcus means a trip across both districts. Appellants both work in Cherokee; they shop there and their dentist and doctors are located there.

Appellant Larry Johnson testified that he does not believe geography was given any consideration by the District Board in choosing to share with Marcus. Testimony from Superintendent Jon Mitts and former District superintendent Leland Anderson evidenced the fact that in the course of examining sharing options, the District Board entered into negotiations with both Marcus and Cherokee. Plat maps and district boundary lines were considered as well as where the Meriden-Cleghorn student population lives. At the public hearing, parents raised questions regarding transportation and bus routes. It is clear that geographical considerations were examined by the District Board, although geography was perhaps not the deciding factor in entering into the agreement with Marcus.

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<sup>1</sup> Appellee District filed a Motion to Dismiss the appeal as to Kenric on the ground that he would not be an "affected" pupil as contemplated by Iowa Code section 282.11 as he would be attending eighth grade this year in his home district and not "sent to attend school in another district." The presiding officer concluded that although Kenric would not be an affected pupil in school year 1988-89, he would become affected the following year when he enters ninth grade and is sent to Marcus, and he therefore would be affected during the three-year term of this agreement. While we could have chosen to continue the hearing as to Kenric for one year, that would have necessitated two trips to Des Moines for hearings by both parties. The presiding officer elected to proceed to hear the case as to Kenric at this time, and the Motion to Dismiss was denied.

Regarding the educational program needs of Kerwin, the elder son of Appellants, the fact that Kerwin was injured in an accident in May, 1988, is significant. He needs, according to his doctors, up to two years of physical therapy and is receiving therapy at the hospital in Cherokee. He meets with the therapist before school three days each week.

Kerwin's vocational goals are extremely important to Appellants. At this time Kerwin wants to become a diesel mechanic, and his abilities tend to lie in vocational rather than purely academic areas. Appellant Larry Johnson is a vocational rehabilitation counselor with a Masters degree plus 15 hours in educational guidance and vocational counseling. As such he is quite familiar with the career and vocational programs in the school districts in his area, although he hasn't had much experience with students from Marcus.

The vocational program in Cherokee includes four or five instructors, and a large portion of the building houses vocational programs. In the area of automobile mechanics there are eight to ten welding stations, three large welding machines, hoists for automobile repair work, and four engines used to teach the students how to tear down and reassemble a motor. Cherokee also offers a full year of vocational guidance and a vocational speed reading course that helps students learn to read and interpret technical manuals.<sup>2</sup> They also have advanced electronics and advanced auto mechanics.

Appellant testified as to his belief in the superiority of Cherokee's vocational education programming over Meriden-Cleghorn's.<sup>3</sup> One of the most important aspects of the Cherokee program to Appellants is the cooperative education ("co-op") program whereby a student attends school on a half-time basis in the senior year and works for an employer with whom the school has a cooperative agreement. Appellant made contact with the owner of Graybill Repair in Cherokee who has agreed to accept Kerwin as a co-op student in the area of diesel engine and automobile repair.

By comparison, Marcus (where the high school is to be located under the sharing agreement) does not offer a cooperative education program. There is only one instructor and one piece of welding equipment.

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<sup>2</sup> Kerwin, diagnosed as having a learning disability, is receiving special education in the form of resource room assistance in reading. His individualized education program (IEP) in effect at the time of this hearing did not address his vocational goals or needs. However, Appellants' request for exclusion from the sharing agreement is not based upon a belief that his IEP at Meriden-Cleghorn is inappropriate. Iowa Code section 281.6 establishes a different forum and procedure to appeal the appropriateness of program for a special education student. We therefore are not considering his educational program needs in a special education context.

<sup>3</sup> Appellant is so convinced his eldest son needs the curriculum offered by Cherokee and the convenience of attending there while he is in need of therapy which he receives at the hospital that he enrolled Kerwin in Cherokee at his own expense for this school year, 1988-89.

Appellee's Exhibit I, a course description handbook for the combined high school populations for the 1988-89 school year, illustrates that the vocational courses offered are as follows:

Typing I, II	Advanced Tailoring
General Business	Foods III
Bookkeeping	Family Living
Business Economics	Home Arts II (ninth grade)
Personal and Business Law	Construction and Graphics (tenth grade)
Shorthand	Energy and Power (tenth grade)
Office Practice	Woods
Home Arts	Electronics (one semester)
Foods II	Architectural Drafting
Child Development	Metals
Clothing II	Applied Technology (twelfth grade)

Other than Electronics and possibly Applied Technology, the vocational courses available to Kerwin under the sharing agreement do not appear to meet his vocational goal of diesel repairman. That is, Kerwin's transition from school to work would appear to be better effectuated through the co-op program offered at Cherokee; if he were to attend in Marcus under the agreement, he might be eligible for a fifth year of high school because of his special education vocational needs, but that fifth year would likely be obtained through Northwest Iowa Technical College at Sheldon. In any event, his transition would be pushed back at least one year if he were not able to participate in the co-op program at Cherokee, according to his father.

Appellants' second son, Kenric, is in eighth grade this fall and will be sent to attend in Marcus beginning next year. The only information made available to this panel regarding Kenric's educational program needs was in the form of Appellants' testimony. Mr. Johnson described his younger son as small in stature and college-bound. He wants to wrestle and would wrestle for Cherokee, even if he were not released to attend there, under a pre-existing interscholastic athletic sharing agreement between Marcus, Meriden-Cleghorn, and Cherokee. His eligibility for athletics begins next year.

With respect to his vocational goals, Kenric's plans are not as well defined as Kerwin's. Although Appellants testified as to Kenric's need for an advanced or accelerated mathematics program and computer courses, his grades in mathematics at Meriden-Cleghorn were mediocre. Appellee's Exhibit A. Kenric's father countered by explaining that Kenric is not academically motivated at Meriden-Cleghorn, and he speculated that he would be more disciplined if he were allowed to enroll at Cherokee.

Appellants' arguments for Kenric's education program needs centered on his status as college-bound and the fear that Meriden-Cleghorn staff would "discriminate against" Kenric because his older brother attended Cherokee.

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 not proven a hardship exists on the basis of geography. It is true that Kerwin's early morning therapy sessions at the hospital in Cherokee would possibly cause a problem -- even a hardship -- in scheduling for Kerwin if he were to attend in Marcus. However, he is enrolled in Cherokee. With respect to Kenric, the true geographic situation can be assessed, and we find it lacking in respect to a hardship. Appellants live close to the Cherokee boundary line, but we were not presented with any evidence of what hardship the trip to Marcus would cause the family. Thus, Appellants have failed to carry their burden on geographic grounds.

The alternative ground invoked here is that the curriculum at Marcus established through the sharing agreement with Meriden-Cleghorn will not meet the educational program needs of either Kerwin or Kenric. We conclude that Appellants have carried their burden with respect to Kerwin, but failed to carry their burden with respect to Kenric.

Kerwin has identified and articulable program needs that fit with his long-term vocational goal of becoming a diesel engine repairman. Appellants have shown convincingly that the curriculum and vocational guidance program in Cherokee will have a positive effect on Kerwin's transition to the world of work.

On the other hand, Kenric's goals are less well defined, which is to be expected considering his grade level and age, and the reasoning or justification for Appellants' desire that Kenric attend in Cherokee centers on speculation: that Kenric's motivation might increase at Cherokee and that he might be discriminated against by the District because his brother chose or was able to leave. This is an insufficient basis on which to grant exclusion even under the arguably broad ground of "educational program needs."

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

### III. Decision

For the foregoing reasons, the Meriden-Cleghorn Community School District is hereby ordered to pay to the Cherokee Community School District Cherokee's actual costs of educating Kerwin Johnson as he is a weighted pupil.<sup>4</sup>

The appeal is dismissed as to Kenric.

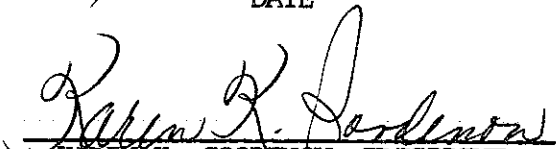
Costs of this appeal, if any, shall be borne equally between the parties.

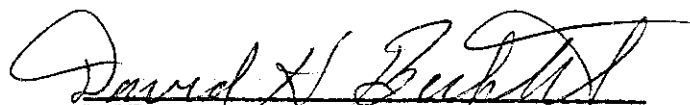
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KAREN K. GOODENOW, PRESIDENT  
STATE BOARD OF EDUCATION

  
DAVID H. BECHTEL, SPECIAL ASSISTANT  
— POLICY AND BUDGET  
AND PRESIDING OFFICER

<sup>4</sup> Although the whole-grade sharing appeal statute technically does not authorize the ordering of a payment greater than the amount established in the sharing agreement, another provision of Iowa law requires that additional funds, if any, involved in the actual costs of educating special education students are forthcoming to effectuate the public policy behind educating students with special needs. See Iowa Code §281.9 (1987) and Iowa Admin. Code 281-41.51(1).