IOWA STATE BOARD
OF EDUCATION
(Cite as 6 D.o.E. App. Dec. 366)

In re Marlys Ohlendorf	:	
Marlys Ohlendorf, Appellant,	:	
	:	
v.		DECISION
	:	
Marcus Community School District, Appellee.	:	[Admin. Doc. #1035]

The above-captioned matter was heard on June 26, 1988, before a hearing panel composed of David H. Bechtel, special assistant to the director and presiding officer; Dr. Oliver T. Himley, chief, Bureau of Compensatory and Equity Education; and Dr. E. Orrin Nearhoof, chief, Bureau of Teacher Education and Certification. Appellant Mrs. Ohlendorf was present in person and was not represented by counsel. Appellee Marcus Community School District [hereafter the District] was present in the person of Superintendent Jon Mitts, also unrepresented by counsel. An evidentiary hearing was held according to departmental rules [then] found at Iowa Administrative Code 670--51, now codified at chapter 281--6.

Appellant timely filed an appeal with the State Board of Education seeking to be excluded from a sharing agreement entered into between the District and Meriden-Cleghorn Community School District in order that her children can attend in the contiguous Remsen-Union district. Appellant has invoked Iowa Code section 282.11 as the basis for her appeal.

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.

Appellant and her husband are the parents of six children: Chad, in fifth grade this year; Ryan, in third grade; Roxane, in second grade; twins Charlotte and Chanda, in first grade; and Beth, a three-year-old daughter. The family lives in rural Remsen, approximately on the boundary line between the Remsen-Union district and their resident district, Marcus. Appellant's only family within the Marcus district is an elderly aunt and uncle. Appellant's mother and four brothers live in the Remsen-Union district and the family doctor is located there as is the area hospital. None of Appellant's children affected by this agreement have extraordinary medical needs.

Mr. Ohlendorf farms. Appellant is not currently working outside the home. The Remsen-Union school bus runs approximately one mile from Appellant's home. Currently the children's bus ride is right at or

slightly in excess of one hour to the school in Marcus. Appellant testified that attending in Remsen-Union would be more convenient for the family.

Superintendent John Mitts of the District testified that a three-year whole-grade sharing agreement between the District and the Meriden-Cleghorn Community School District was entered into last winter to be effective for school years 1988-89, 1989-90, and 1990-91. Under the terms of the agreement each district will maintain its own elementary school serving children in kindergarten through fifth grade. From sixth grade through eighth grade, pupils in both districts will attend school in the Meriden-Cleghorn district at the Cleghorn attendance center; grades 9-12 will attend at the high school in Marcus. If the agreement is extended, it would mean that Appellant's children will attend school in their home district for all but sixth, seventh, and eighth grades.

Superintendent Mitts testified also that the additional distance that Marcus pupils will be transported under the sharing agreement is approximately five miles, and then only for the middle school children. Realizing that this may increase the bus ride to a time in excess of the one-hour limitation,[1] see Iowa Admin. Code 281--43.1(3), Superintendent Mitts indicated that some rerouting may be necessary.

Testimony also evidences the fact that the sharing agreement between Marcus and Meriden-Cleghorn was based, in part, on the geographic proximity of the two districts and that in contemplating the sharing agreement, neither the District board of directors nor the Meriden-Cleghorn board of directors received objections based on geographical hardship. Appellant acknowledges that she did not seek release from the District board nor Superintendent Mitts; not did she voice her concerns during the period the boards were exploring the whole-grade sharing option.

II.
Conclusions of Law

At the time of this hearing, the language of section 282.11 on which Appellant's request is based, read in pertinent part as follows:

> Not less than thirty days prior to signing a whole grade sharing agreement whereby all or a substantial portion of the pupils in a grade in the district will attend school in another district, the board of directors of each school district that is a party to a proposed sharing agreement shall hold a public hearing at which the proposed agreement is described, and at which the parent or guardian of an affected pupil shall

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[1] Appellant initially filed her request for this hearing on the basis of both geographic hardship and the educational program needs of her children. At hearing she voluntarily dismissed the educational programming basis for her request.

> have an opportunity to comment on the proposed agreement. 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. The decision of the state board is binding on the boards of directors of the school districts affected, except that the decision of the state board may be appealed by either party to the district court.

Iowa Code §282.11 (1987 Supp.).

In earlier decisions reached under this statute the State Board has had an opportunity to determine what an "affected pupil" means, and has concluded that to be affected a pupil must be both (1) in grades being shared with the other district involved in the agreement, and (2) sent from their district to attend in the other district. In re Randy and Lori Mulford (I), 6 D.o.E. App. Dec. 9 at p. 12 (1988); accord In re Stephen Bethune, 6 D.o.E. App. Dec. 215, 216 (1988).

Appellant has only one child who will be both enrolled in a class that includes Meriden-Cleghorn pupils and sent to attend in a district other than the district of residence. Chad Ohlendorf will be in grades 5, 6, and 7 during the three-year term of this agreement. This year he will be affected, but not "sent." In the next two years, 1989-90 and 1990-91, he will be both affected and sent. The next youngest child, Ryan, will be in grades 3, 4, and 5 during the term of the agreement and will not be affected nor sent. The same is true, of course, for the youngest children. Thus, Appellant has standing to appeal on behalf of Chad only.

The State Board has also concluded in prior cases that the statutory ground for appeal in this case ("consideration was not given to geographical factors," Iowa Code §282.11 (1987 Supp.)) should be read in

conjunction with the later reference in the statute to a parent or guardian's "hardship." Together, the language indicates a legislative intent "that there are circumstances, as contemplated by the General Assembly, when geographic conditions could cause a 'hardship' to the parent(s) or pupil(s)." In re Randy and Lori Mulford (I), 6 D.o.E. App. Dec. at 14. We have also stated that inconvenience is not equivalent to hardship. Id. at Mulford II, 6 D.o.E. App. Dec. 188, 191 (1988).

In this case, Appellant has not shown that a hardship exists for her or her children based upon geographical conditions. At most, the location of Appellant's home will increase the bus ride some 5-10 minutes. Chad has no extraordinary or significant mental or physical problems that would cause the bus trips in grades 6-8 to create a hardship on him or the family. We are, however, confident that the necessary rerouting by the District will be effected to reduce the time Chad rides the bus within the limits set by our rule.

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

III.
Decision

For the foregoing reasons, the request of Appellant Marlys Ohlendorf on behalf of her children to be released from the Marcus Community School District to attend in Remsen-Union is hereby denied. The appeal is dismissed and costs, if any were incurred under chapter 290, are hereby assigned to Appellant.

Jan. 12, 1989
DATE

Jan 4, 1989
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