IOWA STATE BOARD
OF EDUCATION
(Cite as 6 D.o.E. App. Dec. 332)

In re John and Laura Irwin	:	
John and Laura Irwin, Appellants,	:	
v.	:	DECISION
Lost Nation Community School District, Appellee.	:	[Admin. Doc. #967]

The above-captioned matter was heard on May 2, 1988, before a hearing panel composed of David H. Bechtel, [then] administrator, Division of Administrative Services and presiding officer; Roger Foelske, assistant chief, Bureau of Career Education; and Sharon Slezak, [then] consultant, Bureau of Internal Operations. Appellants John and Laura Irwin were present in person and were represented by Bradley Norton of Norton & Norton, Lowden, Iowa. Appellee Lost Nation Community School District [hereafter the District] was present in the person of [then] Superintendent Paul Galer and was represented by Brian Gruhn of Mollman, Gruhn & Wertz, Cedar Rapids, Iowa. An evidentiary hearing was held pursuant to departmental rules found at Iowa Administrative Code 281--6.7(1)

Appellants timely appealed under Iowa Code section 282.11 from a whole-grade sharing agreement entered into between the District and Midland Community School District under the authority of Iowa Code section 282.10. Appellants seek to be released from the agreement in order that their children may attend in the Calamus-Wheatland Community School District at the expense of the District. They seek exclusion on the grounds that the educational program needs of their two children will not be met in the shared districts' programs, and on the basis that sending their children to attend in the Midland district will cause a hardship because geographic considerations were not made by the District's board of directors [hereafter the Board].

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 appeal.

Appellants are the parents of Matthew Irwin and Heather Dhaemers, ages 7 and 14 respectively at the time of hearing, who are in second and ninth grades this year. Appellants are residents of the District, and their home is on the boundary line between the District and the Calamus

Community School District. (Calamus is engaged in whole grade sharing with the Wheatland Community School District and will hereafter be referred to as Cal-Wheatland.) Appellants' home is situated in the eastern portion of the District about nine miles from the District attendance center and approximately 24 miles from the Midland attendance center. They are only four miles from the Calamus attendance center and eight miles from the Wheatland attendance center. The Cal-Wheatland school bus travels down the road in front of Appellants' house.

Appellee District's Board entered into a whole grade sharing agreement with the Midland Community School District [Midland] on January 28, 1988. The sharing agreement specifies that only pupils in grades four through twelve in both districts will be affected as each district will continue to educate its own resident children in kindergarten through third grade. Grades four, five, and nine through twelve will be held in Midland; grades six through eight will be held in the District. Curriculum will be mutually agreed upon by the two boards for kindergarten through twelfth grade. The five-year agreement runs from July 1, 1988 through June 30, 1993.

Matthew is to attend school in his resident district this year,[1] then be sent to Midland for grades four and five in school years 1989-90 and 1990-91. He would then return to the District for the last two years of the current agreement. Heather begins ninth grade this year at the Midland attendance center and will presumably finish her high school career there as she will graduate in 1992, the fourth year of this five-year agreement.

Appellant Laura Irwin was not currently employed at the time of hearing, having been laid off from her job in Grand Mound, Iowa. Appellant John Irwin works at Caterpiller, Inc., but his plant is scheduled to close. Consequently, Appellants are currently experiencing some financial constraints and if the Caterpiller plant closes and John loses his job, will experience considerable hardship.

Laura's parents and several of the couple's other relatives live in the Cal-Wheatland district. Appellants have no relatives in the District or in Wyoming in the Midland district. Laura's parents have, in the past, picked up the children from school when called upon, but as they are getting older and don't wish to be traveling the highways any more than is necessary, Laura doesn't feel she can call upon them to drive the 48-50 mile round trip to the Midland attendance center. As long as she is unemployed, Laura will have to assume that responsibility. Appellants calculate that a round-trip to Midland would cost approximately $20.00. In contrast, a round trip to Cal-Wheatland, 16 miles, would be about one third of that cost. Appellants also contend their community of interest

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[1] Matthew Irwin will not be an "affected" pupil under the statute until next school year, 1989-90. However, because Heather is affected this year and Matthew will soon be affected, the presiding officer chose not to split the appeals and continue Matthew's case but decided to hear both cases at this time.

is in the Cal-Wheatland district. Heather Irwin prefers to attend in Cal-Wheatland because a number of her cousins go to school there, and the bus ride would be shorter to and from school.

With respect to the "educational program needs" ground for appeal, Appellants discussed two facts of their children's academic and program needs. Matthew has experienced some difficulties in school and receives remedial reading assistance. Appellants suggest that their son's truncated attention span is partially responsible for his school performance, and that this situation will be aggravated by the longer bus ride (to the Midland attendance center) and the possibly shorter school day.

Heather's specific educational program need identified by Appellants as not being met by the District's curriculum is Spanish. Appellants indicate that Heather would be able to take four sequential years of Spanish at Cal-Wheatland, whereby the District allegedly only offers two years of Spanish. Appellant acknowledged that she had not explored what the Midland Spanish program had been prior to the sharing agreement.[2] Appellee's Exhibit B is a comparison of all courses at the District, Midland, and Cal-Wheatland. It illustrates that the District, at least prior to the sharing agreement, offered Spanish I, II, and III. Midland, the District's sharing partner offered two years of both French and Spanish, and anticipates adding Spanish III and IV. Appellee's Exhibit B at p. 2.

Appellants also raised a concern about Heather's ability to become involved in extracurricular activities because of the distance to the Midland center. They contend that she would be denied those opportunities if they have to be responsible for transporting her to and from Midland on a regular basis, or if the District provides a shuttle bus for activities but charges a fee for it, they would not be able to afford it. Appellee testified, through Mr. Galer, that no decision had been reached at the time of hearing regarding the cost of transportation, if any, for an activities bus. Appellants did not clearly specify any activity that Heather might participate in.

II.
Conclusions of Law

The appeal provision exercised by Appellants in this case reads, in pertinent part, as follows:

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[2] As noted above, at the time of hearing no firm decisions had been made regarding changes in the District's curriculum as a result of the two districts coming together. The contract itself states that the two boards will mutually agree upon K-12 curriculum for both attendance centers. Appellee's Exhibit D at p. 1, item 4.

> . . . 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 schools 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.

Iowa Code §282.11 (1987 Supp.).

Appellants failed to show that the District Board did not consider geographical factors in reaching its decision to share with Midland. They also failed to show a true hardship was created for them by virtue of their geographical situation. The anticipated bus ride for their children, although approximately a one-hour trip, does not exceed the standard adopted by the State Board for transportation time. See Iowa Admin. Code 281-43.1(3). Laura Irwin is available to pick the children up in emergencies as she is not working. Although we do not question the financial constraints frequent trips to Midland would cause, they do not at this time rise to the level of "hardship."

The attention span problem Matthew experiences is not significantly affected by a longer bus trip. Our concern with respect to this problem would become relevant only if the class sessions were significantly longer in the District, but the evidence does not show this to be the case. Regarding Heather's longer bus trip and her ability to participate in extracurricular activities, nothing but speculation was introduced in testimony. Appellants did not even specify what extracurricular activities Heather intended to pursue, or for that matter, if she intended to pursue any. The District had not established that a fee would definitely be charged for an activity bus, so Appellants' concerns in this area were, at best fears of what might happen.

The one area where evidence was offered as to Heather's educational program needs was a full Spanish program. Heather's "need" for Spanish was not tied to any vocational or academic goal. Moreover the evidence and testimony showed that in all likelihood Heather will be able to take four units of Spanish in the District as she proceeds through high school. With respect to Heather's desire to attend in Cal-Wheatland, the State Board has consistently held in deciding release-type appeals, that a mere preference for another district is insufficient to justify the relief sought under the statutes. See, e.g., In re Connie Berg, et al., 4 D.P.I.

App. Dec. 150 at 179; In re James Darst, et al., 4 D.P.I. App. Dec. 250, 258.

What we are left with is a family who lives closer to the Cal-Wheatland attendance centers than they do to their own as established by the sharing agreement. This, of course, means a longer bus ride for Heather and Matthew, but this does not equate to a hardship on the parents, and certainly not to the Agreement. Appellants' request must be denied.

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

III.
Decision

For the foregoing reasons, the presiding officer concludes that Appellants have failed to meet their statutory burden of proof. The appeal of John and Laura Irwin is accordingly dismissed.

11/16/88
DATE

KAREN K. GOODENOW, PRESIDENT
STATE BOARD OF EDUCATION

11/7/88
DATE

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