IOWA STATE BOARD
OF EDUCATION
(Cite as 6 D.o.E. App. Dec. 317)

In re John and Beverly Gilbert	:	
John and Beverly Gilbert, Appellants,	:	
v.	:	DECISION ON REHEARING
Hubbard Community School District Board of Directors, Appellee.	:	[Admin. Doc. 999]

The above-captioned matter was originally heard on April 26, 1988. A decision was issued by the presiding officer on August 12, and that decision was adopted by the State Board of Education on August 18, 1988. See In re John and Beverly Gilbert, 6 D.o.E. App. Dec. 193 (1988)("Gilbert I"). On September 7, 1988, Appellants John and Beverly Gilbert filed a Request for Rehearing which was granted by the State Board at its September meeting. The Rehearing was limited to oral argument on the issue: Whether the term "educational program needs" as enacted by the General Assembly should encompass continuity of program and delivery site?

The rehearing in the above-captioned matter was conducted telephonically on October 25, 1988. Appellants appeared and offered argument on their own behalf, unpresented by counsel. Appellee Hubbard Community School District (hereafter the District) was present in the person of David Fisher, president of the District's board of directors (hereafter the Board), also unrepresented by counsel. David H. Bechtel, special assistant to the director for policy and budget, served as presiding officer. The hearing panel was comprised of Dr. Tom Andersen, equity consultant, Bureau of Administration and Accreditation, and Mr. Paul Hoekstra, consultant, Bureau of Instruction and Curriculum. Advising the hearing officer and panel was Kathy L. Collins, administrative consultant for legal and personnel matters. A hearing was held pursuant to rules of the department found at Iowa Administrative Code 281-6.7(1). The authority for the appeal is found at Iowa Code section 282.11 (1987 Supp.).

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 this appeal rehearing.

The pertinent facts underlying this appeal appear in full in Gilbert I. For the purposes of this rehearing the facts are best summarized as follows:

Appellants are the parents of John, James and Kate who reside with them in the District but have a rural Iowa Falls address. The District entered into a sharing agreement pursuant to Iowa Code section 282.10 with the Radcliffe Community School District. Under the agreement, all elementary (K-8) pupils in both districts will attend in Radcliffe. Students from both districts in grades 9-12 will attend in Hubbard. The three-year agreement runs from July 1, 1988 to June 30, 1991.

Appellants filed an appeal seeking the release of all three of their children from the agreement on the grounds of failure of the District to meet the educational program needs of their children, and that their geographic situation vis a vis the location of the school(s) that their children would attend under the terms of the sharing agreement causes a hardship to the parents and children.

The State Board found the evidence insufficient to release any of the children on geography grounds, but found that John, a third grade student this year, has educational program needs that would not be met in his district of residence even considering the sharing agreement. Specifically, John has been identified as a gifted student and qualifies for a Talented and Gifted ("TAG") program. In the District, no TAG program is offered for third grade pupils, although with the sharing agreement an enrichment or TAG program is or will be available to students in grades four through six. Iowa Falls has a TAG program ("LIFT") for which John would qualify.

Therefore, the presiding officer recommended and the State Board approved a release for John Gilbert from the District to attend in the Iowa Falls Community School District, the desired contiguous district specified by Appellants as required by statute.[1] The release, however, was ordered for one year (third grade, 1988-89) only.[2]

Appellants chose to enroll John in the District this fall, foregoing his opportunity in the Iowa Falls TAG program, deciding that John's stability and continuity of program was more important than his accelerated academic program. In essence, the Appellants rejected the tuition-free year for John in Iowa Falls because they did not want his education disrupted. It was on this basis that Appellants sought a rehearing.

They argued forcefully that the State Board's interpretation in Gilbert I of the statutory language was too restrictive and was responsible for a result that was educationally unsound and disruptive. They seek to have the State Board release John for at least the three-year

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[1] The release was conditioned upon John's acceptance into Iowa Falls' TAG program Gilbert, 6 D.o.E. App. Dec. at 197-98.

[2] The one-year release was also subject to extension for the balance of the sharing agreement if the District failed to offer a TAG program for fourth and fifth grade pupils in the last 2 years of the agreement. Id. at 198.

period encompassed by the sharing agreement, for as long as the two districts continue to share, or until John completes his public school education. The Appellee offered no substantive argument.

II.
Conclusions of Law

The statute that establishes whole grade sharing between public school districts reads as follows:

> 282.10 Whole grade sharing.
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> 1. Whole grade sharing is a procedure used by school districts whereby all or a substantial portion of the pupils in any grade in two or more school districts share an educational program for all or a substantial portion of a school day under a written agreement pursuant to section 256.13, 280.15, or 282.7, subsection 1. Whole grade sharing may either be one-way or two-way sharing.
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> 2. One-way whole grade sharing occurs when a school district sends pupils to one or more other school districts for instruction and does not receive a substantial number of pupils from those districts in return.
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> 3. Two-way whole grade sharing occurs when a school district sends pupils to one or more other school districts for instruction and receives a substantial number of pupils from those school districts in return.
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> 4. A whole grade sharing agreement shall be signed by the boards of the districts involved in the agreement not later than February 1 of the school year preceding the school year for which the agreement is to take effect.

Iowa Code §282.10 (1987 Supp.). The statute creating a right to appeal from a whole grade sharing agreement reads 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 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.).

The General Assembly enacted the whole grade sharing statutes in 1987. 1987 Iowa Acts, ch. 224, §§60, 61. During the same session another statute, "Open Enrollment," was enacted. Id. at §55. The State Board of Education was directed also to study the feasibility of allowing students to attend school in districts other than their district of residence. Id. at §76. Subsequently, another "open enrollment" bill was enacted in the ensuing session of the legislature. See 1988 Iowa Legis. Serv. 192 (West). Also during the 1988 session amendments were made, effective July 1, 1988, to the whole grade sharing statutes involved in this appeal. Id. at pp. 606-608. One of those amendments reduced the standard of evidence required to sustain an appeal under section 282.11 to a "preponderance of the evidence" from the prior standard, "clear and convincing evidence." Id. at 607.

Taken together, these recent legislative developments would seem to indicate legislative recognition that there may be valid reasons to release a student from the district of residence to attend school, at no cost to the student's parents, in a contiguous district. The two bases for release from a sharing agreement acknowledged thus far by the General Assembly are geographic conditions creating a hardship on the parents and unmet educational program needs of the pupil. The legislation does little, however, to answer the question of what the terms and duration of such a release ought to be. This has apparently been left to the State Board to decide, employing its expertise in educational matters. Ultimately the State Board's understanding of a statute entrusted to it by interpretation and application is, of course, left to the courts to evaluate in the event the Board's decision is taken up on judicial review. However, the courts will give deference to an administrative agency's interpretation of a statute directed to the agency. Polk County

Drainage Dist. Four v. Iowa Nat'l Resources Council, 377 N.W.2d 236 (Iowa 1985); Meads v. Iowa Dept. of Social Services, 366 N.W.2d 555 (Iowa 1985).

The result that was reached in Gilbert I bothered the hearing panel and the State Board for exactly the reasons proffered by Appellants herein. The Gilberts originally appealed hoping to prove their "hardship outweighed the benefits and integrity of the sharing agreement." The thought did not occur to them in all likelihood that they could gain the release of one of their children but under circumstances that would disrupt his educational program even more than the sharing agreement would.

Young John Gilbert attended kindergarten, first and second grades in Hubbard. Our decision allowed him to attend third grade in Iowa Falls. Thereafter, he would have to leave Iowa Falls, return to his home district only to attend in Radcliffe, his third educational site in five years.[3]

As Appellants pointed out, there are more than just academic aspects to a student's educational growth. A child's progress in school can be significantly affected by physical, emotional, and social factors that have little if anything to do with intellectual status. While it is true that there are no guarantees that John's educational program would not be disrupted by other forces — his parent's change of occupations or job sites could necessitate a relocation to another district, for example — we now believe the added disruption that was prescribed by our initial interpretation of the new statute was a result not contemplated by the legislature.

Accordingly, we modify our earlier decision in Gilbert I to release John Gilbert for the duration of this sharing agreement.[4] We do this on the basis that stability and some semblance of program continuity is a factor of a pupil's educational program.

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[3] This would occur unless his parents were desirous of and able to afford paying the non-resident tuition in Iowa Falls for fourth grade and subsequent years for John to continue his education there. Such a result is disruptive and, we believe, educationally unsound.

[4] The term for which Appellee is responsible for John's tuition to Iowa Falls is that stated in the existing agreement as of this date: through June 30, 1991. We realize that this agreement may be extended or terminated by mutual agreement of the two boards. However, it is not our intent that John's program be disrupted by action of the two boards, nor is it our intent to release him at this point for the duration of his educational career. If the two boards renegotiate or extend the existing agreement beyond the 1990-91 school year, section 282.11 as amended give Appellants the right to seek release from the District Board and, if denied, to appeal here once again. Circumstances may change substantially by that time. John's needs may be different and, we hope, the educational programming established by the District may be altered as well by 1991. The new school standards, effective in 1989-90, may effect a significant enough change in Appellee's programmming to eliminate the necessity for John Gilbert's continued release.

However, by this decision we must not be understood to hold that stability or continuity of program site is an "educational program need" standing alone. We shall apply, in future appeals, a two-tiered approach to the test for release under the term "educational program needs." First, an appellant must prove, by a preponderance of the evidence, that the student has a significant, articulable educational program need that will not be met under the sharing agreement. Only then will the presiding officer and State Board consider, under the facts of each particular case, whether the release ordered should be for one, two, or more years. At that second level of consideration, the pupil's stability and continuity of program will be a relevant factor.

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

III.
Decision

The prior decision in In re John Gilbert, 6 D.o.E. App. Dec. 193 at 197-98 is modified as follows:

Appellee Hubbard Community School District board of directors is hereby ordered to pay to the Iowa Falls Community School District an amount "equal to the tuition established in the [Hubbard-Radcliffe] sharing agreement" for John Gilbert for the balance of school year 1988-89, and school years 1989-90 and 1990-91. In the event that John Gilbert fails to be accepted into the LIFT program for talented and gifted students in the Iowa Falls district, this order is null and void.

11/16/88
DATE

11/17/88
DATE

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

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