IOWA STATE BOARD
OF EDUCATION
(Cite as 6 D.o.E. App. Dec. 193)

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

The above-captioned matter was heard on Tuesday, April 26, 1988, before a hearing panel consisting of David H. Bechtel, Special Assistant to the Director for Policy and Budget, and presiding officer; Dr. Louis E. Smith, chief, Bureau of Food and Nutrition; and Mr. Bill Bean, assistant chief, Bureau of Equity and Compensatory Education. Appellants were present in person and were not represented by counsel. Appellee Hubbard Community School District [hereafter the District] board of directors [hereafter the Board] was present in the persons of Superintendent Albert Eilbeck and Mr. David Fisher, board member. Appellee also appeared pro se (without counsel). An evidentiary hearing was held pursuant to Iowa Code section 282.11 (Interim Supp. 1987) and departmental rules found at 670 Iowa Administrative Code 51.

Appellants seek to have their three children excluded from a whole-grade sharing agreement entered into between the District Board and the board of directors of neighboring Radcliffe Community School District on the grounds of educational programming needs and the absence of consideration of geographical factors by the Board. They wish to enroll their children in the Iowa Falls Community School District. The sharing agreement between the District and Radcliffe was approved on January 25, 1988, and Appellants timely appealed under section 282.11.

I.
Findings of Fact

John and Beverly Gilbert are the parents of John, eight years of age and in third grade; James, four years old who will start kindergarten in the fall of 1989; and Kate, three years of age who will start kindergarten in the fall of 1990. The family lives and farms in the District, approximately one-half mile from the District boundary. They built their present residence prior to the birth of their first child, knowing their land lies in the District. Mrs. Gilbert is a former junior high school teacher, and Mr. Gilbert was a newspaper editor prior to their return to the farm in 1977. Accordingly, the education of Appellants' children is

of paramount concern to them. Mr. and Mrs. Gilbert consider themselves to be full-time employees of the farm.

Appellants' community of interest is Iowa Falls, which lies about eleven miles from their home. They attend church there, the family doctor is there, and they have friends and relatives (their parents' dairy farm) in Iowa Falls. Appellants allege that they have no close friends or relatives in Hubbard or Radcliffe, and that those two communities lack medical facilities and personnel.

Appellants are concerned about the bus routes to Radcliffe, apparently more as to the quality of the roads than the increased distance to Radcliffe which, admittedly is only two miles longer than the distance to Iowa Falls. The District, having not finalized the new bus routes, was unable to provide or identify the roads, travel time, or pick-up schedule. Mr. and Mrs. Gilbert assert that their hardship, should they not be excluded from the sharing agreement, would be one of time and distance rather than finances or significantly increased expenses.

With respect to the educational program needs of their children, Appellants were able to submit information regarding John, their oldest child, only. (James and Kate are apparently two normal, healthy young children whose unique educational needs, if any, have yet to surface.) John, who was finishing second grade at the time of this appeal and is to enroll in third grade in the fall of 1988, is described by his parents as a "bright, quiet, shy" boy who needs time to become comfortable in new situations or surroundings. He responds well to challenges, as evidenced by his response to a change upward in reading groups in first grade. His boredom with school disappeared, his self-esteem improved, and he did exceptionally well. The testimony on this issue was augmented by Appellants' Exhibit 2, a statement from John's first grade teacher, who recommended that he be tested for placement in a talented and gifted (TAG) or enrichment program.

When John was tested, he met the District's criteria for a pull-out enrichment program in school year 1987-88,[1] and he participated in that program in second grade. It was not available to Hubbard third grade students, and will not be available to Hubbard or Radclifffe third graders under the sharing arrangement, however. Appellants' Exhibit 5. It again becomes an option for students in grades four through six. Id.

Iowa Falls Community School District operates a TAG program ("LIFT") for its students and is free to accept previously identified TAG students who are new to the district for immediate inclusion in the program. Appellants' Exhibit 3 (statement from the Iowa Falls TAG instructor, Vicky Stevenson). Therefore, John could be accepted into the program because he met the same testing and qualifying criteria in the District as relied upon by Iowa Falls, and it is offered to third grade pupils.

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[1] The criteria used were John's grades, his achievement scores on the Iowa Tests of Basic Skills (ITBS), a second achievement test (Cognitive Abilities Test), and the results of the Renzulli Learning and Motivational Survey completed by John's teachers.

Appellants' evidence also included reference to the pupil-teacher ratio in Iowa Falls, (lower than in the Hubbard-Radcliffe classes) and the lack of uniformity of texts (and therefore, arguably, articulated curriculum) between Hubbard and Radcliffe. The Gilberts also raised the issue of Hubbard's uncertain future existence and argued that their children's education should not be disrupted due to sharing and reorganization. None of these issues was tied to educational programming needs of their children, but went to an attempted comparison as to the quality of education in the two respective districts.

The sharing agreement between Radcliffe and Hubbard involves all students in both districts. Students in elementary grades (K-8) in both districts will attend in Radcliffe; all students of high school age will attend in Hubbard. Each site will provide complete academic and extracurricular programming for regular education pupils. The agreement is effective from July 1, 1988 to June 30, 1991. Therefore, John Gilbert will be affected this fall when he is sent from his district of residence to attend in Radcliffe. James will be affected the same way when he begins kindergarten in the second year of the agreement, and Kate will be similarly affected and sent to attend in Radcliffe in the fall of 1990.

II.
Conclusions of Law

The appeal provision invoked by Appellants in this case became effective on July 1, 1987, and reads 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 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 (Interim Supp. 1987).

Appellants are only the second family to have their case heard and decided by the State Board. The first decision under section 282.11 also involved the District's sharing agreement. See Randy and Lori Mulford v. Hubbard CSD, 6 D.o.E. App. Dec. 9 (March 1988). In that case the State Board determined that the threshold question is whether Appellants' children are "affected" (by being in a grade that will be shared) and "sent" (by being taught in a district other than their district of residence. See, e.g., Matt and Carol Moore v. Dysart-Geneseo Community School District, 6 D.o.E. App. Dec. 156 (Dismissal of appeal for lack of standing under the statute; Appellants' children were not affected as contemplated by the legislature.)

We conclude that all three of Appellants' children in the case before us are affected, albeit one by one over the three years covered by the agreement, and therefore Appellants have standing to appeal under the statute.

No evidence was offered on the educational programming needs of James and Kate Gilbert. Therefore, if we are to exclude them from this agreement and order the Iowa Falls Community School District to accept them in 1989 and 1990 respectively, it must be on the grounds of geography rising to the level of a hardship on the parents. What the hearing panel saw and heard in terms of evidence on this issue is insufficient to justify a finding of hardship caused by geographic factors.

The difference in mileage between the ride to Radcliffe and the ride to Iowa Falls is a mere two miles. Appellants do not live directly on the boundary line of the District but one-half mile from it. Although Iowa Falls is their community of interest (where the family doctor is located, where they bank, shop, worship, and socialize, etc.), the same could be said for any resident of Hubbard: if no medical facilities exist, all Hubbard residents will be looking to the closest community — probably Iowa Falls — for medical and other services.

Although Appellants are both employed, they work on their farm and are home for the children when they return from school daily. With respect to Appellants' issue regarding the quality of the roads traveled to Radcliffe versus the roads to Iowa Falls, we received no evidence other than their testimony of "concern." They testified that after school extracurricular or community and church activities would be "much less feasible" for the children if they attend in Radcliffe, and they admitted they had no financial hardship if the children were enrolled in Hubbard and sent to

attend in Radcliffe. Appellants failed to carry their burden on the issue of geographical hardship.

However, we are convinced that John's educational program needs (particularly the TAG program) are significant and do justify his exclusion from the whole-grade sharing agreement for third grade in the fall of 1988. In all likelihood, John will be accepted into Iowa Falls' TAG program, having met the criteria necessary. John has profited significantly from the enrichment program in which he participated at Hubbard, and would have to return to regular programming in third grade under the sharing agreement. We prefer to see his growth and motivation continue.

The fact that Hubbard and Radcliffe will together operate a TAG or enrichment program for fourth through sixth grade pupils means that upon completion of John's third grade year, the basis for this exclusion disappears. The hearing officer and panel are cognizant of the fact that this decision means that John could be going back and forth between districts over a three year period between his second, third, and fourth grade years, and this result does not please us. However, we are bound by the statutory language and we do not read into the statute an ability to continue this order for years when John's educational programming needs can be met in his district of residence. We are constrained to make the ensuing order applicable only to the 1988-89 school year, and then contingent upon John's acceptance into the Iowa Falls TAG ("LIFT") program. Should he fail to be included in that program for any reason, the exclusion we grant herein is null and void. Correspondingly, if the combined Hubbard and Radcliffe sharing proposal or curriculum should be modified to remove the enrichment program from the fourth or fifth grades, this order will continue in force and effect for as long as they fail to provide such a program for John Gilbert.

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

III.
Decision

Appellants have standing to appeal under Iowa Code section 282.11 on behalf of their three children. Appellants failed to meet their burden of proof with respect to geographical considerations and resulting hardship as to all three children. Appellants carried their burden of proof on educational program needs with respect to their oldest child, John, only.

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 school year 1988-89. 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. In the event that the District fails to operate a TAG or enrichment program for fourth and/or fifth grades upon John's scheduled return, this order continues in force and effect until the program is provided.

Costs of this appeal, if any, shall be borne by the parties in the amounts incurred by each.

August 18, 1988
DATE

KAREN K. GOODENOW, PRESIDENT
STATE BOARD OF EDUCATION

August 12, 1988
DATE

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