IOWA STATE BOARD
OF EDUCATION
(Cite as 6 D.o.E. App. Dec. 188)

In re Randy and Lori Mulford	:	
Randy and Lori Mulford, Appellants,	:	
v.	:	DECISION
Hubbard Community School District Board of Directors, Appellee.	:	ON REHEARING [Admin. Doc. 964]

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 without 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. An evidentiary hearing was held pursuant to Iowa Code §282.11 and departmental rules found at 670 Iowa Administrative Code 51.

Appellants sought and were granted a rehearing from an earlier decision by the State Board of Education on their appeal seeking exclusion from a whole-grade sharing agreement. See In re Randy and Lori Mulford, 6 D.o.E. App. Dec. 9 (March 1988).

I.
Findings of Fact

The presiding officer finds that he and the State Board of Education have jurisdiction over the parties and the subject matter of this appeal rehearing.

Appellants reside in Hubbard and are the parents of Ashley, age 4, and Clayton, age 2. Ashley will begin kindergarten in the fall of 1989; Clayton will enroll in the fall of 1991.

The District entered into a two-way sharing agreement with neighboring Radcliffe Community School District whereby both districts' students in grades kindergarten through eight will attend school in Radcliffe and all students in grades 9-12 will attend in Hubbard. The agreement runs for three years, from July 1, 1988, through June 30, 1991.

In the State Board's previous decision in this matter, it was held that Clayton will not be "affected"[1] by the whole-grade sharing agreement during its three-year term, and thus Appellants could not pursue their appeal with respect to him. As Ashley will be sent to kindergarten and first grade in Radcliffe during the second and third years of the agreement, the State Board concluded that Appellants had standing to appeal on her behalf. 6 D.o.E. App. Dec. 9, at 12. Nevertheless, Appellants did not carry their burden of proof in the previous case, and the State Board dismissed the appeal, deciding in favor of the District. Id. at 16.

Because Appellants brought the first appeal under the new statute and did not have the benefit of precedent to guide them in the presentation of their evidence, the hearing officer recommended and the State Board granted a rehearing. The previous decision suggested what any appellant might wish to present as evidence and testimony in order to sustain an appeal and be excluded from a sharing agreement. See id. at pp. 13-15. On April 6, Appellants appeared before a newly constituted hearing panel and offered evidence on the issue of geographic hardship. Accordingly, we make the following findings with respect to the new evidence.

Iowa Falls Community School District, the district to which Appellants seek release to enroll Ashley, would accept her into its program. Appellants' Exhibit #1.

Appellant Lori Mulford, Ashley's mother, is employed in Iowa Falls at Ellsworth Community College, one campus of the Iowa Valley Community College District. Her employer and supervisor, Mr. Bill Martin, submitted a letter addressing Lori's ability to take time off from work to attend Ashley's school functions, take Ashley to appointments, or go to parent-teacher conferences, for example. Lori is allowed two personal leave days per year. Beyond that, any time taken for personal business would presumably be charged to her vacation hours. Thereafter she would be docked pay. Mr. Martin specifically stated he would not approve her absence from work to attend to personal business during the regular work day. Appellants' Exhibit 6. A statement from Randy Mulford's employer stated that Randy is similarly bound by work hour policies, except Randy has three personal days per year which are deducted from his accumulated sick leave. Appellants' Exhibit 7. Therefore, neither Lori nor Randy would be free to leave work to attend Ashley's school activities nor attend to her health needs without taking time off from work, losing personal or sick days, or losing pay to do so.

On the issue of child care, the State Board previously found as fact that Ashley's babysitter and her preschool were both located in Iowa Falls. Appellants have family in Iowa Falls who could see to Ashley's needs after school and in the event she had to leave school ill. The State Board questioned whether this situation was one of hardship, as required by the statute for a successful appeal, or one of Appellants' own making. The Board concluded that in the absence of some additional evidence indicating, for example, a dearth of available babysitters or

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[1] See Iowa Code §282.11 (Interim Supp. 1987)

child care centers in Hubbard or Radcliffe, no hardship existed. 6 D.o.E. App. Dec. 9 at 14-15.

In the rehearing, Appellants provided evidence as to the scarcity of available child care in the Hubbard-Radcliffe area. Appellants ran an ad seeking a babysitter (full-time, due to Clayton's age and the fact that the kindergarten program in Radcliffe will be an all day every-other-day program for Ashley beginning in the fall of 1989). Lori testified that she received only two responses. The first did not meet her requirements when references were checked, and the second requires $2.00 per hour to care for both children. Appellants currently pay $1.25 per hour for their children's babysitter, or approximately $50 per week. The increase would be approximately 38%.

Incidental costs would also increase. Lori currently drops the children at Ms. Lorenzen's house on her way to work. If she had to take them to a babysitter and school daily in the Hubbard-Radcliffe area, she estimates that her daily mileeage would increase. Appellants estimate their total weekly costs for mileage and child care for the school year 1989-90, when Ashley is in kindergarten, would be $86.00. If the children stayed in Iowa Falls, the cost is estimated at $40.00.

The Mulfords both work and earn approximately $30,000 annually. They have a new house on forty acres, some medical bills but no unusual debts. In support of their appeal, Appellants' Exhibit 9 alleges that the following constitute hardships if they are not excluded from the sharing agreement:

"PARENT AND EMOTIONAL HARDSHIPS

1. Child(ren) will be forced to spend more time away from their parents.

2. The children will have to get up at 6:30 every morning. Currently, the children get up at 7:00.

3. Currently, I [Beverly] call Ashley after preschool is over. If placed in Hubbard, I would no longer be able to call her, due to the long distance calling.

4. If sitter arrangements are not made for Ashley after school, she becomes a "latch-key" child. I do not want my child to be a "latch-key" child.

5. Emotional factors of changing babysitters."

Appellants' Exhibit 9

II.
Conclusions of Law

The following statute is the law with respect to the appeal before the hearing panel.

> 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).

The Appellants, if they are to succeed on the ground that geography was not adequately considered by the Board in its decision to share, must show by clear and convincing evidence that their hardship outweighs the benefits and integrity of the contract between the two districts. While we can clearly see that it would be less expensive and more convenient for the Mulfords if Ashley were to attend school in Iowa Falls, we do not find clear and convincing evidence of a hardship if they are not exempted from the sharing agreement.

The General Assembly has enacted several statutes encouraging school district reorganization and sharing to effectuate more efficiency in public eduction. In enacting sections 282.10 and 282.11, the legislature clearly stated its collective belief that a sharing agreement such as the one before us is to be regarded with some sanctity.

Clear also is the fact that in every sharing agreement some families

will be negatively affected by virtue of geography. It is always true that people residing in the border areas of school districts have the greatest distance to travel, assuming the school is centrally located within a district. That distance may be compounded when a sharing agreement is entered into between two neighboring districts. When a district chooses a sharing partner to the west, for example, those children in the eastern part of the district will have a much longer trip to and from school. It may be that the increased mileage would even result in a one-way trip in excess of the 60 or 75 minute maximum established by departmental regulations. See Iowa Admin. Code 670--22.1(3).

In the case before us, however, Appellants are not so situated. Appellants' home is only sixteen miles from the elementary attendance center in Radcliffe where Ashley is to attend. The negative geographic considerations are ones that exist primarily because Mrs. Mulford is employed in Iowa Falls. In the previous decision the State Board indicated it would look carefully at the hardship created if Appellants could find no child care provider in the District. However, a suitable babysitter has been located in the Radcliffe-Hubbard area who would charge $2.00 per hour, a figure that strikes the hearing panel as extremely reasonable despite the fact that it is 38% higher than the current fee paid for the same services.

Moreover, Appellants are not indigent and have no unusual or pressing financial obligations. The evidence before the panel indicates that Appellants' child care and transportation costs will increase, but not to the level of a hardship. The arguments made in Appellants' Exhibit 9, prepared by them, speak to inconvenience rather than "hardship." The intent of the General Assembly in creating the exclusionary appeal process in section 282.11 was, we think, for the exceptional case rather than the typical case.

In short, the evidence the State Board suggested would be necessary in the initial decision involving the Mulfords was not forthcoming to the degree necessary to justify a finding of true hardship.

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

III.
Decision

For the foregoing reasons, the appeal of Appellants has not been sustained and is hereby dismissed. Costs of this action under chapter 290, if any, are assigned to Appellants.

August 18, 1988
DATE

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

August 12, 1988
DATE

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