IOWA STATE BOARD
OF EDUCATION
(Cite as 6 D.o.E. App. Dec. 9)

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

The above-captioned matter was heard on February 1, 1988, before a hearing panel consisting of Dr. William L. Lepley, director, Department of Education and presiding officer; Dr. Carol M. Bradley, administrator, Division of Instructional Services; and Gayle C. Obrecht, chief, Bureau of School Administration and Accreditation. Appellants were present in person and were represented by counsel, Mr. Larry Johnson of Iowa Falls. Appellee Hubbard Community School District [hereafter the District] board of directors [hereafter the Board] was present in the person of Superintendent Albert Eilbeck. An evidentiary hearing was held pursuant to Iowa Code section 282.11 (Interim Supp. 1987) and departmental rules found at Iowa Administrative Code 670-51.

Appellants seek to have their children excluded from a whole-grade sharing agreement entered into by the District Board and the Radcliffe Community School District board of directors on the grounds of educational programming and geographical considerations. The agreement was authorized on January 25, 1988, and Appellants timely filed their request pursuant to Iowa Code section 282.11.

I.
Findings of Fact

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

The Mulfords' district of residence is Hubbard which has a student population this year of approximately two hundred seventy students in kindergarten and twelve grades. The Hubbard Board looked into sharing programs and students with neighboring districts and settled on Radcliffe Community School District, its neighbor to the west, as a sharing partner.

The boards of the two districts reached tentative agreement to whole-grade share under the provisions of Iowa Code section 256.13 and the definitions of newly created section 282.10. The three-year agreement

covers school years 1988-89 to 1990-91 and is a two-way sharing arrangement. Elementary children in both districts in grades K-8 will attend school in Radcliffe under the agreement. Secondary students (9-12) in both districts will attend in Hubbard. Each site will provide complete academic and extra-curricular programming for all regular education students.

The District held a public hearing prior to the formal signing of the agreement as required by new section 282.11. Mrs. Mulford was not at the public hearing but had attended previous meetings of the Board when the sharing proposal was discussed. No Hubbard residents were excepted from the sharing agreement.

Appellants are the parents of two children: Ashley, age 4, born January 23, 1984, and Clayton, age 2, born March 11, 1986. Ashley is scheduled and expected to begin kindergarten in the fall of 1989. Clayton will be chronologically eligible to enroll in kindergarten in the fall of 1991. Neither child is deemed or anticipated to be in need of special education.

Appellants both work outside the home. Mrs. Mulford is a former elementary teacher who now serves as educational coordinator and instructor at Ellsworth Community College in Iowa Falls. Mr. Mulford is a carpenter working in New Providence.

The Mulfords live in Hardin County and their property lies just west of Highway 65, northeast of Hubbard and Radcliffe and due south of Iowa Falls. Their land does not lie on the district boundary; it is not contiguous to the Iowa Falls district. Mrs. Mulford testified that their home is approximately sixteen miles from the designated attendance center in Radcliffe and ten miles from the attendance center (North Elementary) in Iowa Falls where she would like to enroll the children. North Elementary is seven or eight blocks from her office on the Ellsworth campus. Mrs. Mulford estimated that the distance from the campus to the Radcliffe Elementary School is about twenty-four miles. From Randy Mulford's work site in New Providence to the elementary school in Radcliffe is about sixteen miles.

The Mulfords have relatives in Iowa Falls and Ashley is currently enrolled in preschool there. The children's babysitter also lives in Iowa Falls. The Mulfords have no family or friends in the Radcliffe district.

The kindergarten delivery system currently in place in both Hubbard and Radcliffe is an all day every-other-day program and will continue to be under the sharing agreement. The Iowa Falls district operates a half-day daily kindergarten program. With respect to counseling services in the districts at issue, Mrs. Mulford testified that Radcliffe employs a person with a K-12 counseling endorsement, but that he or she is a full-time teacher at the secondary level.[1] Iowa Falls has one full-time

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[1] Although Appellant's information was not accurate, the result is as she alleged: that Radcliffe does not have an elementary guidance counselor. The Basic Educational Data Survey (BEDS) filed by Radcliffe (cont.)

counselor for students at two attendance centers. Appellants also raised the issue of school nurses. Radcliffe has a part-time licensed practical nurse (L.P.N.) on staff. Iowa Falls has a full-time registered nurse (R.N.) who serves the entire student population.

At the time of this hearing, the Mulfords had not formally sought permission from the Iowa Falls board of directors or superintendent to enroll their children there as non-resident students.

Proximity to their children's attendance centers is important to the Mulfords because they believe Ashley and Clayton will benefit educationally from their parents' and family members' direct involvement in the children's education. The Mulfords feel strongly about attending parent-teacher conferences, school programs, performances, and other events. They would also like to see the children enrolled in Iowa Falls because of the presence of family members and established child care services in that district in the event that school were dismissed early or one of the children should need to be released due to illness during the course of the school day. It would be more convenient for the children to be enrolled in Iowa Falls which would allow them to go to their babysitter's home or to a family member's home there.

II.
Conclusions of Law

This appeal is the first we have heard under a new section of the Iowa Code enacted by the 72nd General Assembly and effective on July 1, 1987. The language of the pertinent statute 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

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[1] (cont.)
for this year indicates they employ Mr. Ervin D. Dotson as a 7-12 counselor and teacher. He teaches for only two or three periods per day currently and is available to counsel 7-12 students for five or six periods per day.

Although we could take official notice of this fact under Iowa Code section 17A.14(4), it is really not relevant for two reasons. First, the existing employment of a counselor may not continue in the same manner under the sharing agreement, and particularly may change by July 1, 1989 when the new educational standards are in place. Secondly, since Mr. Dotson is employed only as a 7-12 counselor, Appellants' children would not be served by him in the agreement's three-year period unless his assignment changes. Our records show he does not hold an endorsement for elementary guidance and therefore his assignment could not change in the absence of additional course work.

> 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).

This is, therefore, our first opportunity to apply the statute. The threshold question is whether both of Appellants' children are "affected" by the agreement and thus have standing to appeal.

Ashley would have attended kindergarten in Hubbard, her district of residence, in the absence of the sharing agreement. She will be "sent" to Radcliffe instead, and will attend there during the second and third years of this agreement. We conclude that Ashley, even at four and not due to enroll next year, is nevertheless an "affected pupil" under the language of the statute.

On the other hand, Clayton is now only two and will not be eligible to attend kindergarten until the fall of 1991. As the term of the agreement will have expired by that time, we conclude that Clayton is not a child "affected" by the agreement.[2] We concentrate then on the geographical considerations and educational program issues for Ashley only.

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[2] Should the agreement be renegotiated or extended, we assume that the legislature intended that a new public hearing be held and a new appeal period created. At that time Appellants would have standing to appeal on Clayton's behalf.

Appellants testified that to their knowledge and at this time Ashley has no special or extraordinary needs that would require the presence of either an elementary guidance counselor or a full-time nurse, either R.N. or L.P.N. They simply included the evidence regarding the differences between Iowa Falls' and Radcliffe's counseling and health services in an attempt to establish the superiority of Iowa Falls' educational program for kindergarten and elementary students.[3]

There was also no hard evidence submitted, except opinion testimony of Appellants' father and father-in-law, Superintendent Dale Mulford of Guthrie Center, regarding the comparative value of a daily kindergarten program versus an alternate day program. Superintendent Mulford stated his belief that a daily program is better than an every-other-day program, but we take official notice of the fact that research in this area is inconclusive. Again, we have no specific need of Ashley's, such as an attenuated attention span or unusually low retention ability, alleged to be unmet in an alternative day program.

We have, therefore, insufficient evidence of Ashley's educational program needs to indicate that she cannot be successfully served in Radcliffe under the whole-grade sharing agreement. Appellants conceded at the hearing that their main concern or basis for appeal is geographical rather than educational programming. We now examine the evidence submitted on that issue.

The language of the statute with respect to the geographical considerations issue is not terribly helpful in our responsibility to interpret the law and give its intent full application. At first blush it appears that Appellants, in order to be released on this basis, must prove that "consideration was not given to geographical factors" when the sharing agreement was reached. Iowa Code § 282.10 (Interim Supp. 1987). We think it highly unlikely if not totally impossible that a board would fail to at least consider geographic factors in such a decision. Such data as where the majority of the affected student population lives, increased or decreased costs of transportation based upon new routes, distance, the quality of the roads traveled, and time expended in transit are all factors affected by geography and are all basic factors in reaching a decision about sharing partners. Therefore, as the legislature

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[3] There was also a good deal of evidence submitted on the respective salary scales, education, and experience of the faculty at the three districts at issue here. See Appellants' Exhibits 5-8. We do not believe such data are relevant. Our inquiry goes to the educational programming of the district. In the absence of data or evidence showing a link between educational program quality and teachers' salaries, for example, such information is purely speculative. It certainly does not conclusively illustrate that "sending the pupil to school in the district specified in the agreement will not meet the educational program needs of the pupil . . .". We do not see cause for alleging "better" programming in one district over another except as it relates directly to a given pupil's educational program needs.

is not presumed to have included a worthless ground for appeal, we must assume that what was meant is more than the absence of consideration of geographic factors by the Board.

In support of this interpretation is the language that "the parent or guardian's hardship" is to be a factor in the standard of review of these appeals by the State Board and consequently the hearing panel. We read this to mean that there are circumstances, as contemplated by the General Assembly, where geographic conditions could cause a "hardship" to the parent(s) or pupil(s). This seems much more plausible than whether or not geographical factors were considered at all.

Thus, we interpret the geography ground for appeal to mean that there may be instances of true hardship on the parent, guardian, or pupil due to the location of their residence vis a vis the site of the designated attendance center. With that in mind, we review the evidence before us to see if the Mulfords' situation rises to the level of hardship.

The thrust of their argument was not that there is an extraordinary distance between Appellants' home and the elementary school in Radcliffe. In fact it is only sixteen miles. Instead they relied on the distance between their work sites and the attendance center, and child care concerns.

We are pleased that the Mulfords plan to take an active role in their children's education and that they recognize the benefits of that activity to the children's performance. We wish to encourage Appellants and all parents to adopt the philosophy of direct involvement in the education of their children. However, the crux of this issue was that Lori Mulford would be precluded from such participation if Ashley were attending in Radcliffe. We simply had no proof of this through Appellants' testimony or by affidavit of her employer, for example, that she would be released to attend school functions held seven or eight blocks away but not those held twenty-four miles away. Moreover, Randy Mulford is closer to Radclife than is Lori, and he did not testify that it would be impossible or impractical for him to attend school programs and conferences in lieu of his wife's attendance.

The second approach taken by Appellants gives us greater pause. That was that child care is established for Ashley in Iowa Falls, either by babysitter or by family there who could look after Ashley after school on a regular basis or in the event she was not in school all day. The hearing panel has a strong and serious concern about child care and recognizes the significant increase in so-called "latch-key kids" due to the high numbers of families in which both parents work, such as the Mulfords, and those working single-parent families. It is undoubtedly better for Ashley to be taken to the home of a family member or babysitter after school than returned to her home where no one is present. Yet that is not the situation the evidence showed.

What Appellants testified to was not that they <u>could not</u> make child care arrangements in Radcliffe or Hubbard. Instead Mrs. Mulford testified that current arrangements for child care were in Iowa Falls and that they knew no one in Radcliffe. If Appellants could have shown or testified

that the only child care available in Radcliffe and Hubbard had a twenty child waiting list, for example, or that efforts to locate a suitable caretaker in those towns proved fruitless, we would have more reason to conclude the child care issue caused a hardship to the family. In the event that Appellants literally could not afford child care and had to rely on family members, we could also contemplate a hardship. If this panel were to declare this situation a hardship, we would be saying that a parent-Appellant could create the necessary hardship simply by arranging for child care in the desired district. We think a true hardship is not of one's own making.

Therefore, we conclude, albeit somewhat reluctantly, that Appellants in this case have not proved a hardship that outweighs the integrity of the sharing agreement, and certainly not by clear and convincing evidence.

In passing, we wish to add a comment on the position taken by the Board and Appellants in this case, that the Board lacked the authority or declined to use its authority to release Appellants from the sharing agreement. While it is true that the plain language of the new statute does not specifically state that the local board can make a decision to except or exempt a pupil or a family from the agreement, we think that two factors clearly indicate a board's authority to do exactly that.

First, the requirement that a public hearing take place "at which the parent or guardian of an affected pupil shall have an opportunity to comment on the proposed agreement," see § 282.11, contemplates that parents or guardians can and perhaps should make known their desire to be exempted. This would also reaffirm the philosophy of local control, or the right of district board members to make decisions or at least evaluate individual situations or circumstances before the State Board steps in and makes a decision for them.

Second, a local board has jurisdiction over its resident students and under various statutes has the authority to tuition those students, singly or in groups, to other districts for a variety of reasons. See, e.g., Iowa Code §§ 256.13; 282.7(1) and (2); 282.8; 280.16 (1987); 261C.4 (Interim Supp. 1987). We think it is clear from a reading of the school laws of Iowa that this statute has in no way removed the power of the local board to make a decision to exempt or not exempt a pupil on the same statutory basis as this hearing panel and the State Board must look to. We view section 282.11 as laying out the legislature's criteria for exemption from sharing agreements, not as eliminating local control.

Even after an appeal has been filed a board could make a decision to permit some students or families to "opt out" of the sharing agreement. The filing of a letter of appeal with the State Board of Education does not have the effect of staying the local board's power to decide. Board action favorable to the parents requesting release would simply remove the necessity for a hearing at the state level. The Appellant could then voluntarily dismiss the appeal or the district could move to dismiss it.

III.
Decision

For the reasons stated above, the appeal of Mr. and Mrs. Mulford is hereby dismissed. All motions or objections not previously ruled upon are hereby denied and overruled.

March 10, 1988
DATE

KAREN K. GOODENOW, PRESIDENT
STATE BOARD OF EDUCATION

March 10, 1988
DATE

WILLIAM L. LEPLEY, Ed.D.
DIRECTOR, DEPARTMENT OF EDUATION
AND PRESIDING OFFICER