

IOWA STATE BOARD
OF EDUCATION
(Cite as D.o.E. App. Dec. 91)

In re Mary Jo and William Lofstrom :
Mary Jo and William Loftstrom, :
Appellants, :
v. : DECISION
Lakota Consolidated Independent :
School District, :
Appellee. : [Admin. Doc. #855]

The above-captioned matter came on for hearing May 29, 1986, before a hearing panel consisting of Dr. Robert D. Benton, (then) commissioner of the Department of Public Instruction and presiding officer; Mr. Gayle Obrecht, (then) director, Administration and Finance Division; and Mr. David H. Bechtel, (then) administrative assistant. An evidentiary hearing was conducted pursuant to Iowa Code sections 280.16, 290.3, 17A.11-.17, and departmental rules found at 670 Iowa Administrative Code 51. Appellants were present and represented by Mr. Mark Soldat, attorney, Algona; Appellee was present in the person of (then) Superintendent Kermit Miller; and by Counsel Harold White, Fitzgibbons Brothers, Estherville.

I.
Procedural History

In January, 1986, the (then) State Board of Public Instruction decided the first contested cases arising out of new Code section 280.16, "Appropriate Instructional Program Review." See In re Connie Berg, et al., 4 D.P.I. App. Dec. 150. Those appeals were brought against the Lakota district, but Appellants in this case were not parties to that action. Following the State Board's decision in the above-cited case, the District devised a form to be completed by parents requesting relief under section 280.16. Appellants did so on February 28, and the District Board heard their requests on March 25, 1986, reaching a unanimous decision on April 1. The Board concluded that the District can and does provide instructional programming appropriate for the needs and abilities of Appellants' two children, Steven and Stacy. The Lofstroms timely appealed the Board's decision by affidavit of appeal filed on April 22, 1986. Appellants' appeals were consolidated with those of JoAnne and Mark Hamilton and James and Sheila Junkermeier, also against the District. The hearing took place on May 29, 1986, and briefs were submitted by the parties in June.

II.
Findings of Fact

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

Appellants Mary Jo and William Lofstrom are the parents of Steven, now a sixth grader aged 11, and Stacy, a second grade student aged 7. Both children currently attend the North Kossuth Community School District, their parents having voluntarily removed them from the District on October 5, 1986. Since that time, Mr. and Mrs. Lofstrom have paid tuition for their children to attend North Kossuth schools in accordance with Iowa Code section 282.1. William Lofstrom is a farmer, and Mary Jo is a high school teacher employed by the North Kossuth district to teach business and computer courses.

Appellants testified before the Board at the March 25 hearing that the following reasons were the basis for Appellants' allegations that the District's instructional programs are inappropriate for their children:

A. Steven Lofstrom

1. Ineffective classroom discipline.
2. Insufficient competition to stimulate Steve's academic growth and self-motivation.
3. Insufficient numbers of students at Steve's academic level.
4. Insufficient computer instruction and application.
5. The lack of separate instructors for vocal music and instrumental music.
6. The absence of teacher-student (small group) counseling sessions.
7. The absence of the Berkley-Seattle Health Program.
8. The absence of Career Exploration classes.
9. Self-contained teaching through eighth grade versus departmentalized teaching.

B. Stacy Lofstrom

1. Insufficient numbers of students, particularly of girls Stacy's age, to promote social and peer interaction and development.
2. Lack of program continuity.
3. Insufficient numbers of students to foster motivating competition.
4. Insufficient computer instruction and application.
5. Lack of educational television usage to supplement and augment textbook instruction.

6. Insufficient professional growth incentives for teaching staff, resulting in reduced exposure to new or innovative techniques and curricular programs and activities.
7. Separate reading and language arts instruction.

Previous Record, Transcript at pp. 127-138.

Mrs. Lofstrom testified before the Board and the hearing panel that one of her concerns is keeping her children together; she would not send the children to separate school districts. See *id.* at pp. 135-36. As this is not an issue of the appropriateness of instructional programming, it will not be considered in the decision.

The references made by Appellants to the lack of discipline or ineffectiveness of discipline at the District for Steve's class stem from an incident that occurred in September, 1985. At that time the fifth and sixth grade classes were taught by one teacher in a combination class. Disciplinary problems existed, and one incident occurred that could be characterized as a serious loss of control by the teacher. As a result, Superintendent Miller and the Board made a decision to split the classes. A letter was sent to the parents of fifth and sixth grade students. Appellants' Exhibit 8. Some of the Superintendent Miller's statements therein raise a question as to misuse of the resource room and Chapter 1 room.

The resource room is a classroom for designated special education students to attend for instructional assistance by specially trained staff during a portion of the school day. Chapter 1, also known as Title 1, is a federally funded program for remediation in the areas of mathematics and reading. Both Special Education and Chapter 1 criteria are specific and based on diagnostic testing. Both programs are highly regulated by state and national statutes and rules. Only properly qualified students may receive the assistance available in these two programs, and continued funding depends upon compliance with rigid guidelines.

Superintendent Miller's letter stated the following:

Another thing we are going to do is to schedule some of the students for longer periods of time in the resource room and the Title 1 room. If a student continues to be disruptive, we have no other choice.

Id.

Appellants brought in the North Kossuth high school and middle school principal, Mike Hanna, who testified that temporarily placing students in the resource room for misbehavior in class is inappropriate unless the children have been identified as behaviorally disordered. We have no evidence as to which students Mr. Miller was referring, but we do know that the entire fifth and sixth grade classes were not diagnosed as special education or Chapter 1 students. Mr. Miller's statement, if applied to any or all disciplinary problem students, creates an inference of misuse of the programs and/or resources.

Shortly after the loss of control incident, Appellants removed their children from the District and enrolled them in the North Kossuth district. Mrs. Lofstrom testified that this action was taken in part because of her concern that Steve, especially, was not learning due to the attention devoted to controlling the children rather than teaching them. She also was greatly displeased to discover, through Superintendent Miller's letter, that Steve's class had "a five year history" of behavior problems and this was the first time she had been informed of it. Id. To her knowledge, Steve had never been called to the principal's office or otherwise punished for misbehavior.

Upon his arrival at North Kossuth, Steve's teacher noticed his inability to identify and make certain vowel sounds. Appellants' Exhibit 12a. He was given a comprehension inventory test to determine his reading level, and as a result was placed in a low ability group. His progress was excellent, and he is to be moved up a group for this year. Appellants' Exhibit 12a, 13. Steve also has had no incidents of misbehavior at North Kossuth and is characterized as a polite, sincere, and courteous young man. Appellants' Exhibits 8, 9 (below). His academic efforts placed him on the honor roll at North Kossuth. Appellants' Exhibit 8 (below). He continues to receive Chapter 1 assistance for reading.¹ He has not been diagnosed as having a learning disability or other were targeted for special education assistance.

Mrs. Lofstrom is pleased with Steve's progress at North Kossuth and cites the increased class size there as one factor responsible for stimulating him. There were six students in his class at Lakota. Classes average 25-32 pupils at North Kossuth.

Mathematics is an area where Steve excels (he scored in the 90th percentile on the Iowa Tests of Basic Skills), and his motivation to be in the highest ability group there has resulted in a change in attitude and increased conscientiousness. Steve is also quite involved with computers and receives specialized computer laboratory instruction at North Kossuth in keyboarding, mathematics, and language arts. Mrs. Lofstrom testified that to her knowledge, the Lakota system does not teach keyboarding and the children, although given small amounts of time at the computer, are given no real training in computer usage.

Steve also receives broad instruction in instrumental music through band, small group, and individual lessons on the saxophone. He has a separate instructor for vocal music.

North Kossuth offers the Berkeley-Seattle Health program, an innovative approach to teaching health. Classes are held in a laboratory, and the students have the opportunity to see, among other things, how body parts work through animal dissection and simulation exercises showing how organs function.

¹ Apparently Steve was receiving Chapter 1 services at Lakota just prior to his transfer, but his student records failed to indicate this fact, according to Principal Mike Hanna at North Kossuth.

Two other curricular experiences offered at North Kossuth and not available in the District's instructional programming are small group counseling and career exploration. Apparently Steve has his heart set on following in his father's footsteps by farming. His parents are concerned, however, that he be exposed to and encouraged to consider other options, recognizing the dim future of family farming in this country. He receives that exposure at North Kossuth. Appellants allege he would not receive this type of curricular programming in the District.

With respect to Stacy Lofstrom, now in second grade at North Kossuth, her parents cite small class size (8) and particularly the low number of girls (2) in Stacy's class. Mrs. Lofstrom testified below that Stacy was a good friend to only one of the two girls, and upon her enrollment at North Kossuth (14 other girls in a class of 31) she expressed surprise that she could have more than one close girlfriend.

Stacy was a good student at Lakota and continues to be a good student at North Kossuth. She receives computer instruction and has taken quite an interest in applying the knowledge she gained at school to her family's computer at home, working thirty to sixty minutes on her floppy disks at night. Stacy's class is also introduced to educational programming on television, where cable t.v. programs are viewed in the classroom to augment textbook instruction and reinforce learning.

Stacy has been placed in a Chapter 1 reading program at North Kossuth. Testing by the area education agency revealed that Stacy is or was low in visual memory. Appellants' Exhibit 9. We have no evidence with which to attribute this problem to the instructional programs she received in the District. We do know that she is now receiving extra help and is progressing as a result.

Mrs. Lofstrom, on the faculty of the North Kossuth district, elaborated on the continuing education teachers are encouraged or required to receive there. As a result, innovative, responsive techniques and programs have been applied to the classroom such as the Northeast Iowa Writing Project, the Madeline Hunter program (school improvement), Project Measure (evaluating teacher effectiveness), and the Berkeley-Seattle Health program referred to above. Appellants point to these efforts as evidence of the types of academic benefits the children receive at North Kossuth that the District cannot or does not offer them.

Appellants have asked us to take official notice of our findings of fact, with respect to the District, in In re Connie Berg, et al., 4 D.P.I. App. Dec. 150, 158-163. We do so, noting former Superintendent Miller's admission that the curriculum has not been altered since our findings were made. We also note Appellants' Exhibit 6, a copy of the employment contract of Mr. Donald Peterson who was employed to teach "K-12 physical education" in 1985-86. At that time, Mr. Peterson was not certified for elementary teaching and lacked departmental approval for physical education, despite holding a coaching authorization.

III.
Conclusions of Law

The statute which serves as the basis for this appeal reads as follows:

Appropriate Instructional Program Review.

Pursuant to the procedures established in chapter 290, a student's parent or guardian may obtain a review of an action or omission of the board of directors of the district of residence of the student on either of the following grounds:

1. That the student has been or is about to be denied entry or continuance in an instructional program appropriate for that student.
2. That the student has been or is about to be required to enter or continue in an instructional program that is inappropriate for that student.

If the state board of public instruction finds that a student has been denied an appropriate instructional program, or required to enter an inappropriate instructional program, the state board shall order the resident district to provide or make provision for an appropriate instructional program for that student.

- Iowa Code § 280.16 (Interim Supp. 1985).

In our first decision interpreting the statute, we reached some conclusions about what we believe this law was designed to accomplish. See In re Connie Berg, et al., 4 D.P.I. App. Dec. 150, 168-174. We have not deviated from those conclusions in subsequent cases. Therefore, the standard we apply is appropriateness for the individual student's needs and abilities, vis a vis the instructional program or curriculum offered by the appellee school district. Id. at 168; In re Clarence Anderson, 4 D.P.I. App. Dec. 208, 214.

In two cases consolidated with this appeal, we decided issues of law respecting the procedure used by the Board below and the scope of our review of local board decisions under the procedures of Iowa Code chapter 290 and our rules. See In re JoAnne and Mark Hamilton, 5 D.o.E. App. Dec. 76, at - . Therefore we will proceed to decide this appeal on its merits. We note, however, that the same problems are apparent in this case with respect to whether or not the Board actually evaluated the

evidence and made decisions about District programming and the Lofstrom children's needs, or whether counsel for the Board argued his conclusions to convince the Board.²

A. Steve Lofstrom

At the time of Appellants' requests to the Board, Steve was in fifth grade. His parents were motivated to remove him from the District due to the disciplinary problems in the combined fifth and sixth grades. Those classes have since been split. While we recognize the impact that poor discipline has on a learning environment, we are hard-pressed to conclude that poor control by a teacher or teachers is what the general assembly envisioned as an "inappropriate instruction program."

At the elementary and to some extent the middle school level, most pupils receive comparable curricular programs from one district to another. Differences, if any, often lie in the less tangible areas of teacher expertise, motivation, techniques, or in supplemental programs such as those for talented and gifted students. The District, at least on paper, offers many of the same instructional programs as Steve received last year at North Kossuth. See Appellants' Exhibit 9 (below) (Steve's progress report showing curricular areas of vocal music, instrumental music, social science, physical education, science, reading, mathematics, and language arts.)

The District does not provide any course comparable to North Kossuth's Individual Development Program (the teacher-student counseling), which is a curricular area for which Steve's progress is measured and evaluated. At the time of this hearing, the District's physical education classes were taught by an individual who was not properly certified, endorsed, and approved. Therefore, these are two identifiable instructional programs which are or were inappropriate for Steve. Computer instruction is available at North Kossuth with application in several content areas. The

² See pp. 3-7 of Appellants' Exhibit 3, an unofficial transcript of the April 1 board meeting when these decisions were made and voted upon. Mr. Harold White, attorney for the Board, apparently assessed the testimony and evidence himself and brought proposed written decisions to the Board and discussed them. The Board voted 5-0 to approve what seem to be his findings and conclusions in each case. The Board officially found as fact that Steve Lofstrom was a disciplinary problem at Lakota, and the sole reason for his improvement at North Kossuth was because "his mother [is] a teacher and employee at North Kossuth." Mrs. Lofstrom teaches in the high school and Steve is enrolled in the middle school. Further, there was no evidence introduced to the Board indicating such a cause and effect relationship; therefore, the Board's findings in this respect were not based on any substantive evidence. We see no connection between Steve's academic improvement and his mother's employment at North Kossuth. Moreover, the District could proffer no evidence to support the finding that Steve was a discipline problem there. The only negative reflection on Steve was his status as a member of an unruly combination fifth and sixth grade class.

District's computer instruction, on the other hand, is for twenty minutes per student per two-week period and is not carried into subject areas for application, unless the student chooses to do so.

Steve's interests and abilities in mathematics, coupled with the additional computer training he receives in mathematics, make programs such as North Kossuth's appropriate for him. The mathematics and integrated computer instructional programs, and a class size of twenty-five to thirty for peer stimulation and motivation are appropriate for Steve. If Mr. Donald Peterson has been employed to teach K-12 physical education without taking the additional coursework necessary for that endorsement, then for school year 1986-87, the physical education program would also be inappropriate for Steve.

B. Stacy Lofstrom

We have found that Stacy Lofstrom, now a second grader at North Kossuth, is a good student who is benefiting from the additional reading assistance she receives from the Chapter 1 program at North Kossuth. Her penmanship has also improved.

Appellants urge us to find the District's instructional programs inappropriate for Stacy in part because there were only two other little girls in her class there, which arguably retarded her social interaction and peer development. While this may be true, we do not think pure social and peer development is encompassed by the term "instructional program." See generally 4 D.P.I. App. Dec. at 169-174. Certainly Appellants' desire to keep their children together does not at all fall under the statute.

It is perhaps too early in Stacy's educational career to be able to assess accurately her instructional program needs. The only tangible differences for her between the District's second grade programs and those at North Kossuth are in the area of the computer instruction. Therefore, we are unable to conclude with strong conviction that the District's instructional programs are inappropriate for Stacy Lofstrom.

IV. Decision

For the reasons delineated above, the decision of the board of directors of the Lakota Consolidated Independent School District made on April 1, 1986, is reversed in part and affirmed in part. The decision is reversed as to Steve Lofstrom and affirmed as to Stacy Lofstrom.

From the date on which this decision becomes final, the District has the option of providing an appropriate program for Steve in 1986-87 by immediately correcting deficiencies identified in its programming with respect to Steve Lofstrom's needs and then giving evidence of that to this department, or by entering into a sharing agreement with North Kossuth Community School District to provide the appropriate programs for Steve this year, or by paying the maximum tuition for Steve to attend North Kossuth as a non-resident student. This order shall continue in force until the District provides the appropriate programming for Steve Lofstrom.

All motions or objections not previously ruled upon are hereby denied and overruled. Costs of this appeal under chapter 290, if any, are to be shared equally between Appellants and Appellee.

October 10, 1986

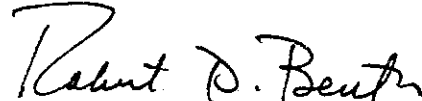
DATE



LUCAS J. DEKOSTER, PRESIDENT
STATE BOARD OF EDUCATION

October 10, 1986

DATE



ROBERT D. BENTON, Ed.D.
DIRECTOR, DEPARTMENT OF EDUCATION
AND PRESIDING OFFICER