

IOWA STATE BOARD  
OF EDUCATION

In re Walter and Barbara Ann Mendenhall	:	
	:	
Walter and Barbara Ann Mendenhall, Appellants,	:	
	:	
v.	:	DECISION
	:	
Arnolds Park Consolidated School District,	:	
Appellee.	:	[Admin. Doc. #877]

The above-captioned matter was heard on September 8, 1986, before a hearing panel consisting of Dr. James Mitchell, deputy director, Department of Education and presiding officer; Ms. Mavis Kelley, administrative assistant; and Dr. Orrin Nearhoof, chief, Bureau of Teacher Education and Certification. An evidentiary hearing was held pursuant to Iowa Code section 280.16; Iowa Code chapters 290 and 17A; and departmental rules found at 670 Iowa Administrative Code 51. Appellants were present in person and represented by Dick Montgomery of Greer, Nelson, Montgomery, Barry & Bovee, Spencer, Iowa. Appellee Arnolds Park Consolidated School District (hereinafter the District) was present in the person of Superintendent Kenneth Carter.

Appellants sought review of a decision of the District's board of directors (hereinafter the Board) made on June 9, 1986, denying their request to tuition their daughter Katherine to the Spirit Lake Community School District (Spirit Lake) for the 1986-87 school year for allegedly failing to provide appropriate instructional programs for Katherine.

I.

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 action.

A. Katherine Mendenhall

Appellants' daughter Katherine (Katie) is in second grade at Spirit Lake where she has attended since kindergarten despite her residency in the District. Appellants paid the tuition for her attendance in kindergarten, and the District, as will be discussed below, paid her tuition for the 1985-86 school year by Board action.

Katherine is an intelligent and highly motivated student. Her father is a doctor and her mother is a certified public accountant with a masters in Science and Zoology from the University of Iowa. Appellants are very involved and interested in education. Mrs. Mendenhall served on a District study committee and as a "mentor" for the elementary school at Spirit Lake, and Dr. Mendenhall regularly attends board meetings in the District.

Katie's birthday is in August, so her parents questioned whether she would be physically, psychologically, and mentally ready to attend school at the age of five. After consulting with experts who felt Katherine was ready, they made the decision to place her in kindergarten, and then had qualms about her attendance in the District. Frankly, Appellants "shopped" for the school district they believed would give Katie the best education; they chose public school in Spirit Lake on the basis of a comparison of reading, mathematics, and enrichment programs, student achievement scores, and conversations with teachers in the area. They recognized that classes in Spirit Lake were generally larger than those in neighboring Milford or in the District, but felt that the quality of education in Spirit Lake outweighed any disadvantages associated with larger class size.

At Spirit Lake there are 90 second graders divided into classes of approximately 23. Mrs. Mendenhall testified that she believes classes of larger than 15 students offer more stimulation and academic competition than smaller classes, as are found in the District.

Katherine has been selected for the PEGASUS and Mentor programs. PEGASUS is an acronym for "Providing Enrichment and Gifted Activities for Spirit Lake's Unique Students," and it is available to intellectually talented children. The PEGASUS program is operated in compliance with Iowa Code sections 442.31-.36 which limits participation to 3% of a district's budget enrollment. Last year Katie received instruction in conversational Spanish and creative writing as a result of being selected for PEGASUS. Katie was also offered an accelerated art program last year, but her parents declined. If offered again this year, they state that they will probably allow her to participate.

The Mentor program was begun as an accelerated program available to the top 25% of students. Community volunteers with expertise in various areas were brought into the classroom to provide academic enrichment and motivation for designated children. The Mentor Program is open to a greater number of pupils who freely move in and out of the program depending upon their needs and the subject areas being addressed.

Spirit Lake also has created a HOTS project (Higher Order Thinking Skills) to which Katie is exposed in elementary school. It is designed to develop problem solving skills including analyzing, drawing inferences and conclusions, researching, synthesizing, and evaluating.

The music programs at Spirit Lake afford numerous choices to the student population including band, chorus, swing groups, and private instrumental lessons. Katie has become interested in piano and flute as a result of her attendance there and exposure to these musical alternatives.

Katie's scores on standardized tests and written comments from her teachers confirm Katie's high level of both ability and achievement. See Appellants' Exhibit 2. She achieved "above average" status in all nine testing areas on the Stanford Achievement Test. In the spring of first grade, or at a grade equivalent of 1.8, Katie scored a composite grade equivalent of 4.1, or fourth grade first month. There is no controversy surrounding Katie's ability. The question is whether or not the District's instructional programs are appropriate for her.

## B. Appellee Arnolds Park Consolidated School District

The District is located on the shores of West Lake Okoboji in Dickinson County. It has the lowest enrollment of the five districts in that area; the 1986-87 figures indicated between 190 and 200 students are enrolled in grades kindergarten through twelve. The District's per pupil cost is the highest in the area, at \$3,995.34. Twenty-one teachers are employed in the District at an annual average salary of \$15,896.

The trend of declining enrollment has not bypassed Arnolds Park. Year after year the number of students has dropped, causing the Board to examine other options for providing a quality education to resident students. In 1982, the Board entered into a sharing agreement with neighboring Milford Community School District whereby additional courses in that district are made available to students attending Arnolds Park and vice versa. Although the program has worked well and is certainly beneficial to students in both districts, the sharing program has not been applied to elementary students.

Mr. John Hunter, then regional consultant from this department assigned to the District, filed a school visit report following a site evaluation on January 23, 1986. Biannual reports for years 1980, 1982, 1984, and 1986 are included in Appellee's Exhibit F. Without specifically citing the District as deficient, Mr. Hunter's report made some recommendations that are relevant here. He reminded the administration and Board that "all professional staff must have a current certificate with proper endorsements and approvals," and that "teacher files must contain complete official college transcripts." While we have no evidence that District teachers are currently teaching outside their areas of approval or endorsement, two teachers have recently been terminated or replaced for failure to obtain the requisite hours necessary for certain approvals.

In addition, Mr. Hunter found that the District had not yet complied with section 280.12 of the Iowa Code, a law requiring each school system to determine, develop, establish, evaluate, and report on educational needs as well as short to long-range goals and objectives for the students and the District. He also suggested that the "Board may want to consider extensive sharing with neighboring schools or reorganization with a contiguous district." (Emphasis added.) Knowing of the 1985 decisions to tuition nine students to Spirit Lake, Mr. Hunter added, "It is my hope that the Board and citizens of Arnolds Park will act in the best interest of the students. I know you care; don't let your emotion rule your decisions and let good judgment go out the window." Appellee's Exhibit F, 1986 Report, p. 2.

As a result of these recommendations, the Board took at least two actions relevant here. The first was to establish the advisory committee as required by Iowa Code section 280.12 (as amended). A curriculum study committee was also organized, but because of the District's uncertain future, it only met once last spring and Superintendent Carter, the committee chair, states there are no present plans to reactivate it.

The second action the Board took was to authorize an accelerated program for implementation in the primary (K-8) grades. No testimony was

introduced describing the program or detailing participation requirements, but several forms were entered into evidence which appear to be the basis of the new program. It will not be a section 442.31 "talented and gifted" program, but instead is designed to motivate students and offer enrichment in areas of high interest and cognitive skills. See Appellee's Exhibit M (6 pages).

A third action taken by the Board was to enter into further negotiations with the Milford board to pursue "whole-grade" sharing. The Board's proposal does not involve elementary students, however, and thus is not relevant to Katie Mendenhall's instructional programs.

In August 1985, Tom Clary was Board president, and the other four directors were Larry Becker, Pam Fisher, Joni Mitchell and Mark Leiss. Several parents of resident students, including Appellants, approached the Board seeking to be tuitioned to neighboring schools under the auspices of a newly enacted state statute, section 10 of H.F. 686 or "Appropriate Instructional Program Review." The language of that statute is quoted in full, infra. The Board granted the requests of those parents and agreed to pay maximum non-resident tuition to neighboring schools, in essence admitting the District could not provide instructional programs sufficient to meet the needs of those pupils.

One month later as a result of local elections the composition of the school board changed, as did its collective position on the appropriateness and tuition issues. The Board unsuccessfully sought to cut off the prior approvals at the end of the first semester, finally agreeing to pay the tuition for those children for the full year. In October of 1985, however, the Board adopted a resolution establishing the new guidelines for action under the statute. The policy reads as follows:

#### Board Policy for Tuitioning

1. No student of the Arnolds Park School will be tuitioned out except Special Education Students, at school expense for a complete education program.
2. If a course or subject is not offered at our school and needed by a student, that student will be tuitioned out for that subject only.
3. Tuitioning applications must be submitted to the Board before July 15 for the upcoming school year.
4. No mid-year consideration will be granted except for semester high school subjects or course offerings. Application for second semester courses must be in the Superintendent's hands before December 1st.
5. There will be a complete review of tuitioned students at mid-year and at the end of each school year.

On June 5, Appellants appeared before the Board at a special meeting called for the purpose of addressing requests for tuitioning for eleven students. Superintendent Kenneth Carter, having previously reviewed the written requests of the parents and the students' records, made his recommendations to the Board with respect to each individual student. In every case his recommendation was against approving the parental requests. The Board voted to rule on the requests at an upcoming regular meeting after the directors had the opportunity to review the materials presented. One director, Lowell Fullmer, was absent.

On June 9 at the regular meeting, four directors were present, Goldman being absent. The Board voted on each individual case. In Katherine's case, Appellants' request was turned down on a 3-1 vote. In fact, no children were released.

## II.

### Conclusions of Law

The statute forming the basis for this hearing 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 new law, we reached some conclusions about what we believe this statute 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 of the instructional programs for the individual student's needs and abilities

measured against the curriculum offered by the appellee school district, taking into consideration such other factors as class size, levels of competition available, and the teachers' certifications and approvals to teach in assigned subject areas. Id. at pp. 174-177; In re Clarence Anderson, 4 D.P.I. App. Dec. 208.

In this case, the District Board concluded in 1985 that its instructional programs would be inappropriate for Katherine. While we are not suggesting that one board cannot take a different stand on an issue from that of a previous board, we think the burden falls on the new board to justify the different decision by the adoption of programs or courses that will meet the student's needs. Here the Board could not point to any differences in curriculum between the 1985-86 school year and the 1986-87 school year. The only "changes" occurred in the composition of the Board and the adoption of a reasonable but more restrictive policy that states the District will not pay tuition to another district for programs the District offers.

The crux of our inquiry involves evaluating a newly developed and implemented accelerated program designed for highly motivated or gifted elementary students, to see whether it will meet Katie Mendenhall's needs and abilities as established above. While we applaud the District for taking such an affirmative step to address the needs of those pupils, we have very little evidence and even less testimony on the new program, rendering such evaluation futile. Mr. Carter testified that the new program would not include conversational Spanish; it would include creative writing as a regular classroom activity; it would not compare with the HOTS program (although some activities appear designed to achieve the same result). Further, he added, the District does not participate in "Project Measure," a program designed to evaluate teacher effectiveness, nor is it a North Central accredited school system. Finally, Mr. Carter could not answer the question affirmatively when asked if Katie Mendenhall's needs and abilities could be met in the District. We are constrained to conclude they cannot.

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

### III. Decision

For the foregoing reasons, the decision of the Arnolds Park Consolidated School District board of directors made on June 9, 1986, denying payment of tuition for Katherine Mendenhall to attend in the Spirit Lake district at Arnolds Park expense is hereby reversed. Because we have found that the District fails to provide the appropriate programs for Katherine, the District shall make the payment required for her to attend in Spirit Lake in the 1986-87 school year. This order shall continue in force until such time as the District can show its programming has changed sufficiently to meet Katherine's needs and abilities. For subsequent school years, Appellee shall either provide the appropriate programs for Katherine, enter into a sharing agreement to make those programs available to her, or pay the tuition required by Iowa Code section 282.1 for her to attend in Spirit Lake.


Costs of this appeal under chapter 290, if any, are hereby assigned to Appellee.


November 12, 1986

DATE

November 5, 1986

DATE

  
LUCAS J. DEKOSTER, PRESIDENT  
STATE BOARD OF EDUCATION

  
JAMES E. MITCHELL, DEPUTY DIRECTOR  
DEPARTMENT OF EDUCATION  
AND PRESIDING OFFICER