

IOWA STATE BOARD
OF EDUCATION
(Cite as 5 D.o.E. App. Dec. 136)

In re Scott and Becky Summa	:	
Scott and Becky Summa,	:	
Appellants,	:	
v.	:	DECISION
Arnolds Park Consolidated	:	
School District,	:	
Appellee.	:	[Admin. Doc. #876]

The above-captioned case 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. Appellants were present in person and represented by counsel, Mr. Joseph Fitzgibbons, Fitzgibbons Brothers, Estherville. Appellee Arnolds Park Consolidated School District (hereinafter the District) was present in the person of Superintendent Kenneth Carter.

An evidentiary hearing was held under the authority of Iowa Code section 280.16, Iowa Code chapters 290 and 17A, and pursuant to departmental rules found at 670 Iowa Administrative Code 51. Appellants are seeking review of a decision of the District board of directors (hereinafter the Board) made on June 9, 1986, denying their request to tuition their daughter Heather to the Spirit Lake Community School District for alleged failure to provide appropriate instructional programming.

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 appeal.

A. Heather Summa

Appellants' daughter, Heather, is a 14 year-old, ninth grade honors student at Spirit Lake High School where she has been enrolled since the 1985-86 school year. Mr. and Mrs. Summa are residents of Arnolds Park and Heather lives with them. She attended in the District through the seventh grade; it is uncontroverted that she was a good student there and continues to be a good student at Spirit Lake. Her parents contend, however, that Heather needs motivation to achieve, and that such motivation was lacking while she was enrolled in the District. For example, she received very good grades with a minimum of effort and little homework. When she transferred to Spirit Lake, she had to study harder and bring work home more often in order to achieve the same high grades. The results of her Iowa Tests of Basic Skills reveal consistency of performance.

Heather particularly excels in mathematics and science. Spirit Lake offers a pre-algebra class for eighth graders, springing those children into an accelerated math program. Heather was tested for placement in the program during the summer of 1985; she qualified as gifted in mathematics but her instructor recommended against her participation in the program, apparently concerned about the adequacy of her mathematics background from the District. Heather is enrolled in algebra and biology this year.

Spirit Lake offers a four-year Spanish program in which Heather is enrolled at the Spanish I level. She anticipates taking all four years of Spanish, mathematics, and science. Heather's parents characterize her as college bound and say at this point she is interested in a career in pharmacy.

In addition to algebra, biology, and Spanish I, Heather is taking freshman English, geography, Introduction to Social Studies, band, and physical education. She has prepared her course schedule for the next three years. It includes (9-12) four years of mathematics, science, Spanish, physical education, and band; three years of English and social studies, with electives including Fundamentals of Writing, sociology, physiology, and calculus.

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. There are ten students in the ninth grade, Heather's class. 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. At the high school, teachers are carrying an average of 4.5 preparations to make available four years of English plus elective Speech and Drama; five courses in science; eight courses in mathematics (divided into college preparatory and non-college preparatory); four years of social studies¹; several vocational education courses; two years of Spanish (designated for grades 11 and 12); physical education; health; band; art; choir; and driver education.

Mr. John Hunter, then regional consultant from this department assigned to the District, filed a school visit report following a site evaluation of the District 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

¹ Economics is listed once in the "Course Descriptions" booklet, but has no grade designation or amount of credit available and does not appear in any other listing. See Appellee's Exhibit B.

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.

In 1982, the District entered into a sharing agreement with neighboring Milford Community School District. This action expanded the course offerings for District students. The agreement made the following courses at Milford available to District students: Shorthand I and II, French I and II, auto mechanics, advanced biology, computer programming, Vocational Agriculture (vo-ag) I and II, vo-ag maintenance, vo-ag construction, farm management, and advanced agriculture. Assuming a student can take a desired course without conflict, the District operates a shuttle bus service between Arnolds Park and Milford. The arrangement has worked very well thus far; twenty of the District's high school students are taking courses there.² Appellee's Exhibit E.

The Board is currently in negotiations with Milford to implement a whole-grade sharing program beginning in school year 1987-88 to continue for three years. The District proposes to send its high school (grades 9-12) students to Milford if Milford will send its middle school (grades 6-8) pupils to the District. There was no testimony or evidence introduced as to the Milford board's willingness to enter into such an agreement.

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 appropriate 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

² We understood that the District offered Spanish I and II and Milford offered French I and II. However, Appellee's Exhibit E appears to show seven students traveling to Milford for Spanish II this fall.

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 the recommendation was for denial of 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. As to some students, Director Mitchell moved to grant the tuitioning requests, including such a motion for Heather Summa, but the motion died for lack of a second. In Heather'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 Heather. 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.

Heather Summa is enrolled in biology and Spanish I this year. The District argues that she could have been permitted to enroll in Spanish I as a ninth grader, even though the course is listed as available to students in grades 11 and 12, and that her enrollment with upper class

students would be appropriate. Even in that scenario, she would be restricted to two years of Spanish instead of four available to her at Spirit Lake. There is a strong argument to be made for the benefits of a sequential four-year foreign language program: it is not merely a matter of two years versus four years. The District contends that it offers biology for sophomores, and that Heather could take that course next year. That solution ignores the four-year sequential science program which is appropriate for a student headed for a career in pharmacology or medicine. With respect to her mathematics abilities and needs, the District offered no evidence of its ability to provide for a gifted student in this area; the District's accelerated programs are available only through the eighth grade.

Furthermore, a student of Heather's caliber should, in our opinion, be challenged and motivated by more competition than she is able to have in a class of ten students. Some classes have considerably fewer than ten students, including some with only one or two students, according to Superintendent Carter.

In sum, we find that the burden was on the District, having once approved Heather's attendance in Spirit Lake, to show sufficient change in its instructional programs to justify its subsequent denial of her parents' request to continue in Spirit Lake. Instead of carrying that burden, Appellee points to what is "possible" (e.g., Heather's inclusion in Spanish I with juniors and seniors; expanded curricular offerings if the sharing arrangement with Milford is accepted). The Board had to overcome the presumption they created in 1985 when they concluded the District's programs were not appropriate for her. They failed to do so. We do not think that Heather Summa should be penalized for a change in Board members' philosophy.

III. Decision

For the reasons discussed above, the decision of the Arnolds Park Consolidated School District board of directors made on June 9, 1986, with respect to Heather Summa, is hereby reversed. Because we have found that the District fails to provide the appropriate programs for Heather, 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 Heather's needs and abilities. For subsequent school years, Appellee shall either provide the appropriate programs for Heather, 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 District.

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