

Iowa State Board
of Education
(Cite as 5 D.o.E. App. Dec. 127)

In re Bruce and Vicky Smith	:	
Bruce and Vicky Smith,	:	
Appellants,	:	
v.	:	DECISION
Arnolds Park Consolidated	:	
School District,	:	
Appellee.	:	[Admin. Doc. #882]

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. 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.

An evidentiary hearing was held under the authority of Iowa Code section 280.16; Iowa Code chapters 290 and 17A; and 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 son Korwin and daughter Kelly to Spirit Lake Community School District (Spirit Lake) for the 1986-87 school year for allegedly failing to provide appropriate instructional programs for the children in their district of residence.

I.
Findings of Fact

The hearing panel finds that it and the State Board of Education have jurisdiction over the parties, with the exception of Kelly Smith, and the subject matter of this appeal. Kelly is a student receiving the benefits of special education. Iowa Code section 280.16 cannot be utilized to remedy allegedly inappropriate programs of special education students.

A. Korwin (Kory) Smith

Kory Smith is a ninth grader who attended in Arnolds Park, his designated school district, from kindergarten through seventh grade. In the summer following seventh grade, his parents petitioned the Board of the District to release him to attend in Spirit Lake at District expense. The Board, as it was constituted in August, 1985, approved Appellants' request and paid Kory's tuition to that district for school year 1985-86. A subsequent request, in June 1986, was denied and will be discussed further below.

Kory admittedly has not had much academic success in his school career. He is an average student who has experienced some problems, both instructional and disciplinary. His troubles became most apparent in fifth grade, when his grades began to seriously decline. When Mrs. Smith sought help and advice from Kory's teacher, she was told that the class itself was a difficult one to teach, that at times it was uncontrollable and always easily distracted. There were then fourteen students including Kory in the class.

When all attempts to reverse Kory's downward performance trend were unsuccessful, Appellants made the request to the Board to tuition Kory to Spirit Lake and he enrolled there in the fall of 1985. No rapid change in his progress occurred there; in fact, he failed one course (science) in eighth grade which he is repeating this year in ninth grade. Nevertheless, Appellants have pointed to a number of factors which lead them to believe that improvement is imminent.

First, Kory was tested by Lakeland Area Education Agency psychologist Jeffrey Thomas in April of 1986 because he was experiencing such difficulty with his eighth grade work. Appellants' Exhibit Kory-5. He did not qualify for special education programming, but several facts were gleaned about him as a result of the battery of tests administered. The most significant of these is that Kory's abilities lie less in the abstract verbal reasoning area than in the "hands on, manipulative" types of tasks. In essence, Kory's success in school will be found, if predictions are accurate, in vocational education courses where he can excel by working with his hands.

At Spirit Lake, Kory has access to extensive computer courses and he has experienced through an exploratory class experience a surge of interest in computers. Vocational education classes in computer drafting, robotics (building a robot), and plastics (vacuform and molding) are available at Spirit Lake. Kory is not enrolled in a computer course for ninth grade because he is retaking science, but anticipates taking computer and vocational courses in grades 10-12. His strong interest in these curricular areas bears out the psychologist's evaluation of his skills and abilities.

Appellants frankly admit that larger class size, stronger motivational techniques, and careful observance of Kory's progress¹ serve as the basis for their desire to see Kory continue at Spirit Lake. Some animosity toward the Arnolds Park District is apparent; they blame the teachers there for not providing stronger study skills, for not contacting parents immediately when a student is having difficulty, and for not demanding more of the students academically, not challenging them. As they are aware of the difficulty of proving that those factors are

¹ Appellants have received progress reports from Kory's teachers at Spirit Lake from one to two times per week. His teachers were also responsible for helping to locate a summer tutor for him and for seeking the evaluation that confirmed Kory's needs and abilities in the manipulative skills area. When Appellants sought similar assistance from District staff, no responses were forthcoming.

tantamount to an inappropriate instructional program for their son, their focus turned to the nature of the computer and vocational education courses available in the two districts.

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, Kory'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 studies²; several vocational courses; two years of Spanish (designated for grades 11 and 12); physical education; health; band; art; and choir; and driver's 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 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

² 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.

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. 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 obtain tuition 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.

Appellants contacted the District asking for a copy of the available course offerings. They were told they would need to go to the school and examine the course descriptions there and make copies at their own expense. 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. In Kory's and Kelly's cases, Appellants' requests were turned down in a 3-1 vote. In fact, no children were released.

II.

Conclusions of Law

A. Kelly Smith

With respect to Kelly Smith, we concluded that we lacked jurisdiction of the appeal. Appropriateness of special education programming for a qualified student is a matter of sophisticated and technical analysis and is subject to extensive state and federal laws. Iowa Code chapter 281 addresses the provision of special education, including the rights of parties to appeal certain issues. See Iowa Code § 281.6 (1985). The special education appeal process is separate from the chapter 290 appeal provision and is governed by separate procedural rules. See 670 Iowa Admin. Code 12.31 *et seq.* Hearing officers cannot be employees of this department, as that would be a conflict of interest. Robert M. v. Benton, 622 F.2d 370 (8th Cir. 1980). Moreover, in special education appeals, the hearing officer's decision is final and not reviewed by the State Board as in these types of appeals. We have previously declined to exercise jurisdiction over a case under Section 280.16 because it involved the provision of special education. See In re Dennis Bush (Randall Bush), 4 D.P.I. App. Dec. 197, 204. Consequently, we must dismiss the appeal herein as it concerns Kelly Smith.

This action was taken at the hearing, and the presiding officer advised that Kelly is to continue receiving her instruction in Spirit Lake at the District's expense until such time as the District elects to

challenge the status quo on the basis that it can provide appropriate special education programming for Kelly within its own borders.

B. Kory Smith

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 program 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 Kory Smith. 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. We have found that Kory's needs and abilities dictate the necessity of computer and vocational education courses. The question is whether or not the District's curriculum includes the appropriate courses for Kory in these areas.

Appellee's Exhibit B includes the course descriptions for the District. A course in computer programming is available with a recommendation that the student contemplating enrolling should have taken Algebra I and geometry, with "C's or higher" as a prerequisite. This statement is consistent with Appellants' allegation that in the District computer study is in the "academic" area rather than the vocational area, if there is such a distinction, and is considered part of the mathematics department. See Appellee's Exhibit B at p. 2 of the Arnolds Park booklet. At this point it is doubtful that Kory could meet the stated entrance guidelines. The computer course is offered for one semester only and is listed as available to juniors and seniors. Kory is a freshman. Appellee now contends that the District could "waive" the grade level requirements for Kory and permit him to enroll earlier than his junior year. Appellants responded that this was the first time they knew such a possibility existed. They believed that the grade designation "11, 12" meant the course was not available to Kory as an underclassman. This was not an unreasonable assumption.

Exhibit B, the District's course descriptions, lists four years, or eight semesters, of industrial arts available ("Shop I"- "Shop IV"). The content of these courses begins with hand woodworking and home economics in the first semester, and the second semester involves woodworking with machines. Shop II covers gas and arc welding, sheet metal fabrication, and advanced woodworking (furniture design, building, and repair.) In Shop III the student studies "how small two-cycle and four-cycle gas engines are constructed, how they operate, what goes wrong, how to service and repair them." The second semester is admittedly a review of the power machine and "the majority of the time will be spent on construction of furniture." The last year of industrial arts leads to the study of modern carpentry, culminating in the building of a model home. This assumes enough students are enrolled to do so. Second semester is "looking into household wiring, wood furniture making, concrete masonry, brick and block masonry." Id.

Through its current sharing program with Milford, Kory could take auto mechanics and a variety of agriculture courses in the vocational program. Milford offers another computer programming class, also for juniors and seniors and also in the mathematics department. This course, however, has no prerequisite or recommended academic foundation.

In addition, courses are available at Milford in basic drawing (grades 9-12), advanced woods (grade 12), cold metals and forge (grades 11-12), architectural drafting (10-12), and electricity (11-12). These courses are not currently available to District students under the sharing agreement, but would presumably replace the District's Shop I-IV sequence in the event that the whole grade sharing proposal becomes a reality.

While we have consistently maintained that Iowa Code section 280.16 appeals are not meant to result in a comparison between two districts,

when a student is enrolled in one district and contends that his home district's programs would be inappropriate, we have often found ourselves examining what options are available in each district. A comparison then becomes not "good" versus "bad" curriculum, but instead what will meet the student's needs and what will not.

Although there are a number of similarities between Arnolds Park and Spirit Lake in the industrial arts area, we cannot help concluding that there is a difference in the breadth, content, and nature of those course offerings. The District's programs encompass traditional courses such as woodworking and metalworking. The Milford courses available through the sharing agreement are primarily agricultural in nature. In contrast, Spirit Lake's vocational curriculum appears to have more advanced technology offerings such as computer drafting, robotics, and plastics in addition to the traditional woodworking and metalworking courses.

The parties did not introduce a copy of the course descriptions at Spirit Lake, but we do have a copy of the class schedule for the high school. It reveals that, at least in the first semester of this year, courses were offered in the principles of technology, power mechanics, advanced metals, advanced woodworking, Industrial Technology I and II, and plastics. (Presumably Industrial Technology III and IV are offered second semester, as may be other electives not appearing on the exhibit.) Appellants' Joint Exhibit 10, p. 3.

The concept of career education in the public schools has undergone serious rethinking and revitalization over the past several years. Two prominent and successful state programs have emerged as a result of that process: Experience-Based Career Education (EBCE) and Career Information Systems of Iowa (CISI). Superintendent Carter testified that the District utilizes both programs.

EBCE is an exploratory experience designed to integrate academic requirements and unpaid work experience in a sampling of fields. Additional funding is available to districts operating such a program, contingent on State Board approval. See Iowa Code § 258.5 (1985). The District has not sought approval nor received the supplementary funding. This makes difficult any attempt to assess their program in light of Kory Smith's needs.

The second statewide project the District offers, CISI, is a formal career guidance program. Through a written assessment process, the student's interests and capabilities are matched with careers. The student is given information about and guidance in the direction(s) he or she wishes to pursue. Ideally, the school then assists the student by delivering those courses it realistically can provide to prepare the student for the next step in the pursuit of satisfying employment. This may be accomplished in several ways: by adding courses utilizing qualified existing staff, by hiring new teachers and adding courses, by sharing with neighboring districts that offer the courses, by agreeing with neighboring districts to jointly employ a teacher to teach the courses, or by arranging for the student's enrollment in a merged area school. See Iowa Code §§ 257.28, 280.15, 282.7, 280A.1(5), 280A.25(9) (1985).

In Kory's case, it appears to us that the District never really sought to determine or satisfy Kory Smith's career needs, or interests, which do

not lie in the areas of woodworking, auto mechanics, or agri-business. We conclude that the District is not currently providing the appropriate instructional programs for Kory.

III.
Decision

For the foregoing reasons, the decision of the Arnolds Park Consolidated School District board of directors made on June 9, 1986 with respect to Kory Smith is hereby reversed. Because we have found that the District fails to provide the appropriate programs for Kory, the District shall make the payments required for him 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 Kory's needs and abilities. For subsequent school years, Appellee shall either provide the appropriate programs for Kory in the District, enter into a sharing agreement to made those programs available to him, or pay the tuition required by Iowa Code section 282.1 for him to attend in Spirit Lake.

The appeal as to Kelly Smith is dismissed without prejudice.

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

LUCAS J. DEKOSTER, PRESIDENT
STATE BOARD OF EDUCATION

James E. Mitchell

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