

IOWA STATE BOARD
OF EDUCATION
(Cite as 5 D.o.E. App. Dec. 120)

In re Gary and Judy Piper	:	
Gary and Judy Piper,	:	
Appellants,	:	
v.	:	DECISION
Arnolds Park Consolidated	:	
School District,	:	
Appellee.	:	[Admin. Doc. #879]

The above-captioned case was heard on October 29, 1986, before a hearing panel consisting of Dr. James E. Mitchell, deputy director, Department of Education and presiding officer; Ms. Mavis Kelley, administrative assistant; and Dr. Carol McDonalds Bradley, administrator, Division of Instructional Services. An evidentiary hearing was held pursuant to Iowa Code section 280.16, chapters 290 and 17A, and departmental rules found at 670 Iowa Administrative Code 51. Appellant Gary Piper was present and represented himself. Appellee Arnolds Park Consolidated School District (hereinafter the District) was present in the persons of Superintendent Kenneth Carter and Mr. William Fredin, former superintendent in the District.

Appellants sought review of a decision of the District board of directors (hereinafter the Board) made on June 9, 1986, denying their request for tuition payment for their daughter to attend the Spirit Lake Community School District (Spirit Lake).

I.
Findings of Fact

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

A. Cory Piper

Appellants are the parents of Cory, a senior at Spirit Lake. Although she and her parents are residents of the District, she transferred to Spirit Lake following the sixth grade. Appellants paid her tuition to attend there as a non-resident student every year with the exception of last year, the 1985-86 school year, when the District Board voted to release her at their expense following a request by Appellants under Iowa Code section 280.16.

Cory is an excellent student. She participates in a variety of organizations and this year was elected vice-president of the senior class and homecoming queen. Her career goals are presently uncertain, but she testified to a tentative desire to pursue teaching or sports medicine.

Cory is currently enrolled in band (marching and regular), calculus, honors chemistry, advanced composition, government, chorus, and Spanish IV. She is in the Elementary Teacher Volunteer Program, which serves to assist elementary students and their teachers and to expose the volunteer to teaching as a career. The volunteer program is not offered for academic credit, but it is a part of the school day. Cory had also been chosen to be in the Peer Helper program, an ongoing project where selected students serve as listeners, leaders, and role models to other students. This program is offered without academic credit, but is recorded on the student's permanent record. Spanish IV students are also required to participate in Pan-Am Club, and Cory holds the office of Public Relations chair in that organization. The club's business is conducted both during class and before and after school.

Cory's enrollment in honors chemistry came about because of her math background. Upon transferring to Spirit Lake at the beginning of seventh grade, Cory enrolled in advanced mathematics, a "pre-algebra" preparatory course that set in motion advanced placement in mathematics. The result is that as a senior, Cory is taking calculus and is able to enroll in the honors chemistry class. That class moves at a more rapid pace because of the students' extensive background in mathematics. The accelerated, year-long course covers the content in two textbooks and a laboratory workbook.

Cory's plans for second semester curriculum include physiology and sociology in addition to the year long courses in Spanish (IV), honors chemistry, and calculus. She intends to continue in band and in the volunteer teachers program. Cory has been accepted at Iowa State University but has not finalized her plans for college other than knowing she will attend a four-year university.

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. The program has worked well and is certainly beneficial to students in both districts, but curriculum is naturally limited somewhat by virtue of the size of the two districts and the number of teachers available to teach additional subjects. The high school schedule reveals that teachers in the District already average four and one-half preparations, or different courses to teach.

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."

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." 1986 School Visit 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.

A second action taken by the Board was to enter into further negotiations with the Milford board to pursue "whole-grade" sharing. The District Board's proposal involves sending all Arnolds Park high school students (9-12) to Milford, and Milford would in turn send its middle school population (6-8) to Arnolds Park. Milford's position on the proposal is uncertain at this time.

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 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. Director Mitchell moved that Appellants' request to tuition Cory be approved; Director Peterson seconded the motion. The vote was 2-2; consequently the motion failed and Appellants' request was denied. In fact, no children were released.

Subsequently, in August, Appellant Gary Piper met with Superintendent Carter in an effort to devise a plan to take care of Cory's instructional program needs. It is undisputed that the District could offer only government and band of Cory's scheduled first and second semester classes. Because the Board policy states that no student will be released at District expense if the desired subjects are available in the District, Superintendent Carter's "offer" on behalf of the Board was to enroll Cory in the District and transport her to Spirit Lake for all classes except government, marching band (for which she would be transported to and from Milford) and physical education. Any extracurricular participation would also occur in the District.

Mr. Piper declined to consider this offer because it would cause a schedule conflict and result in the loss of Cory's honors chemistry class. Moreover, he did not and does not believe that his daughter's senior year should be spent between three districts. He countered by offering to pay the costs of the programs at Spirit Lake that Cory could receive in the District, i.e., government and band.¹ The government class at Spirit Lake is one semester only, whereas in the District it is required for the full year. Thus, were Cory to take government at Arnolds Park, she would be forced to give up a semester of honors chemistry. The meeting between the two men left unresolved the issue of Cory's tuitioning and enrollment for school year 1986-87.

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).

¹ Mr. Piper's testimony revealed that the offer was to pay for one-eighth of Cory's programming, essentially focusing on the government class, ignoring physical education and band. But the spirit of the offer was to pay for courses the Board could not pay for by virtue of the Board policy. Further, Cory is excused from physical education in Spirit Lake this year under its policy allowing students to take extra academic courses instead.

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 Cory Piper. 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. But an "instructional program" is more than the sum of its parts. We think the method by which a district chooses to provide appropriate instructional programs for a student also deserves consideration. In this case, the District's proposal is cumbersome at the very least.

Cory would be transported from the District to Milford the first thing in the morning for marching band.² From there she would be taken to Spirit Lake for calculus second period. She would then have twelve minutes to return to the District for government class, missing honors chemistry. (Government is offered third hour only in the District; the honors chemistry class has only one section and it meets third hour in Spirit Lake.) After lunch, Cory would return to Spirit Lake for advanced composition, chorus (alternating with the teacher volunteer program on Tuesdays and Thursdays), and Spanish IV. Under this plan she would have seventh period free, as that is when she is currently taking the Spirit Lake government class. In essence, she could lose some credit because of this change. Before and after school Cory would be forced to split her time between the districts, depending upon whether Pan-Am Club had activities in which she would be required to participate.

In sum, Cory's educational programming would be substantially disrupted in order to accommodate her instructional needs. This is a result we find to be inappropriate. On the other hand, Mr. Piper's offer to pay personally for the cost of Cory's government class, and perhaps the band class, seems reasonable and is markedly less disruptive than the District's plan. Further, it does not compromise the Board policy established one year ago.

² The District offers band, but its students desiring to participate in marching band must participate in Milford's marching band. The District has a concert band of which Cory would be a part now that the football and marching band seasons are over. For concert band she would start the day in the District.

III.
Decision

For the reasons stated above, the decision of the Arnolds Park Consolidated School District board of directors made on June 9, 1986 is hereby reversed in part. Cory is to remain in Spirit Lake on a full-time basis for school year 1986-87. The District may enter into a sharing agreement with Spirit Lake under the authority of Iowa Code section 257.28 and chapter 28E. The District shall be financially responsible for the instructional costs as agreed by the two boards. As an alternative, and at the Board's discretion, the District could continue to pay Cory's tuition as it did in school year 1985-86.

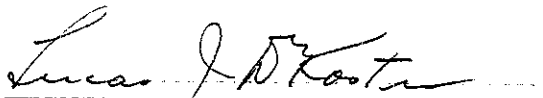
All motions or objections not previously ruled upon are hereby denied and overruled. Costs of this appeal under chapter 290 are hereby assigned to Appellee.

November 12, 1986

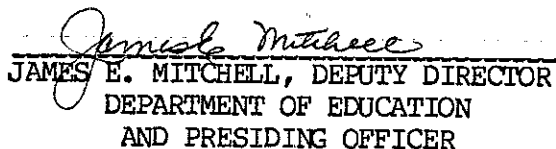
DATE

November 5, 1986

DATE



LUCAS J. DEKOSTER, PRESIDENT
STATE BOARD OF EDUCATION



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