

ICWA STATE BOARD
OF EDUCATION
(Cite as 5 D.o.E. App. Dec. 100)

In re Sheila and James :
Junkermeier :
 :
Mr. & Mrs. James Junkermeier, :
Appellants, :
 :
v. : DECISION
 :
Lakota Consolidated Independent :
School District, :
Appellee. : [Admin. Doc. #856]

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 in person and represented themselves; Appellee was present in the person of (then) Superintendent Kermit Miller and by Counsel Harold White, Fitzgibbons Brothers, Estherville.

Appellants sought review of a decision of the board of directors [hereinafter Board] of Lakota Consolidated Independent School District [hereinafter District] made on April 1, 1986, to the effect that the District is providing instructional programs that would be appropriate for Appellants' daughter, Amy. An affidavit of appeal from that decision was timely filed on April 25, 1986. Appellants' contested case was consolidated with similar appeals by Mark and JoAnne Hamilton and Mary Jo and William Lofstrom against the District and heard on May 29, 1986.

I.
Procedural History

In August, 1985, Appellants and others appeared before the Board in an attempt to invoke the remedies available in a newly enacted statute, Iowa Code section 280.16 ("Appropriate Instructional Program Review"). The Board summarily denied their requests, taking the position that as an approved school district meeting minimum standards, its programs were appropriate for all students. Appellants appealed to the (then) State Board of Public Instruction for review as permitted by the statute.

The first appeals under the new law were presented in two days of hearings. The State Board issued a final decision on January 10, 1986. See In re Connie Berg, et al., 4 D.P.I. App. Dec. 150. Relief was granted to eight of eleven children of appellants in that case. The District was ordered "to provide the appropriate programming for the eight students . . . or to pay the tuition required by the districts in which the students are currently enrolled." Id. at 179.

Appellants herein are the parents of three children, two of whom were the subjects of appeals last year. Relief was granted by the State Board for one of those children, Jenny. As to Amy, the subject of this appeal, the State Board stated, "The decision is remanded for the board's individual determinations to be made with respect to . . . Amy Junkermeier, upon evidence submitted to the board." Id.

The Board adopted written procedures (essentially a questionnaire) for hearing any subsequent requests under section 280.16 in late January. Appellants appeared before the Board on several occasions seeking to effect both the remanded hearing ordered by the State Board and a new hearing, believing the remanded hearing would give them a remedy through the first semester of the 1985-86 school year and the new request would provide a remedy for the balance of that school year.

The Board refused to conduct the remanded hearing. Appellants filed a second affidavit of appeal with this department, relying on the language of section 280.16 allowing appeals to the State Board from "omissions" as well as from decisions of local boards. The District then perpetuated its refusal to hear the case by arguing that the filing of an appeal with the State Board ousted the District of jurisdiction. Appellants reluctantly withdrew their appeal, following which the District set a late March board meeting as the date for the presentation of Appellants' cases. Appellants expected or at least hoped that the Board would hear both the remand and the new case at that meeting, but Board attorney Mr. White announced that the Board had no plans to conduct and hear the remanded case, despite the State Board's order to do so and subsequent reaffirmation of that order. See Previous Record, Transcript of March 25 Board meeting, at pages 8-12.

Appellants have not appealed the fact that the Board omitted to hear their case on remand; instead they are seeking appropriate instructional programs for Amy for the 1985-86 school year and subsequent years, if applicable.

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.

Jim and Sheila Junkermeier are the parents of eleven-year old Jenny, a sixth grader, eight-year old Amy, a third grader, and a three-year old son, Michael. Jim is a farmer, and Sheila is a kindergarten teacher employed by the North Kossuth district. She was formerly employed by the Lakota district and has twelve years of teaching experience.

Jenny and Amy began their educations in the Lakota district where they reside. During the 1985-86 school year, the Junkermeiers removed the girls from the District and enrolled them in the North Kossuth Community School District as non-resident tuition students. Because of our conclusion and order in In re Connie Berg, et al., 4 D.P.I. App. Dec. 150, Jenny's tuition has been paid by the District as a consequence of failing to provide appropriate instructional programs for her. The Junkermeiers have paid Amy's tuition themselves.

Since her enrollment at North Kossuth, Amy has been tested for participation in a Talented and Gifted (TAG) program. The criteria for acceptance into that program are a minimum of 90% composite score on the Iowa Tests of Basic Skills (ITBS) and/or a minimum score of 120 on the Cognitive Abilities Test (CAT); minimum finding of gifted or talented in 6 of 26 areas on the Guilford Structure of the Intellect (S.O.I.) test; and recommendation by one of the student's teachers through application of the Renzulli-Hartmann Scales of Classroom Behavior.

At the time of the board meeting on March 25, the results of Amy's tests were not available for the Board's consideration. Between that date and the date of this hearing, Amy's scores became available.¹ Her ITBS reading and math composites were each 92%; she qualified as gifted and talented in 9 of the 26 testing areas on the Guilford SOI test, and she was recommended by her teacher at North Kossuth, Mrs. Pat Mino. Appellants' Exhibit J-1. That district provides a TAG program established and financed according to Iowa Code sections 442.31-.36. Id. Under those statutes, a district receives supplemental TAG financing for only three percent of its student population; if a district desires to make the program available to a larger percentage of students, the local board is responsible for the additional funding.

There are 29 students in Amy's class at North Kossuth, and 14 of those children are at performance and ability levels in the same range as Amy's. Appellants' Exhibit J-2. She receives computer instruction, Spanish, and courses in library science in addition to the regular curriculum. Amy is particularly enthusiastic about her role in the library and about creative writing. Since she has now been identified as a talented and gifted student, she will, beginning in school year 1986-87, be pulled from the regular classroom once or twice a week to receive specialized instruction in her areas of academic and creative abilities.

If Amy were to attend school in the District, she would be in a class of approximately six students. She would receive no systematic, organized instruction designed to challenge and stimulate her in the academic areas in which she excels by virtue of her talented and gifted status. See In re JoAnne and Mark Hamilton, 5 D.o.E. App. Dec. 76, ___-___. She would not, in a class of six, be exposed to the exchange of ideas, academic competition, and peer motivation to the same degree as she is exposed at North Kossuth.

Appellants, in their appearance before the Board, expressed concern for the small class-size at Lakota, which they believe stifles competition and exchange of ideas and affects social and peer development. They also

¹ The evidence of Amy's qualification for the North Kossuth TAG program was admitted at this hearing over the objection of the District. In one of the cases consolidated with this appeal, we held that our scope of review is de novo, which effectively overrules Appellee's objection. See In re Mark and JoAnne Hamilton, 5 D.o.E. App. Dec. 76, ___ and cases cited therein.

cited lack of quality computer instruction and educational television programming as well as ineffective motivation as support for their belief that the District's instructional programs are inappropriate for Amy. Appellants are probably in a good position to assess these issues as they relate to Amy, since she was formerly a student at the District from kindergarten through part of second grade, and Mrs. Junkermeier has taught at Lakota as well as in other districts. Her characterization of the District as an entity hanging on by a thread, striving only to maintain its existence rather than to improve, is quite credible.

Enrollment has declined in the District to an all-time low of approximately 98 students in kindergarten and twelve grades. No teacher currently on staff is trained in educating the talented and gifted. Computer instruction averages ten minutes per week per pupil. In fact, the District cannot point to any instructional program or course that is innovative or has been established beyond the minimum program required by law. Former Superintendent Kermit Miller testified that no changes have taken place in the District's programs since our January, 1986, decision. See In re Connie Berg, 4 D.P.L. App. Dec. 150, 158-163, 174-177. Therefore, we take official notice of our findings of fact in that decision, as they apply to the District.

III. Conclusions of Law

The sole issue before us is whether or not Appellee District can provide appropriate instructional programs for Amy Junkermeier. That inquiry is the State Board's duty, based on the following statute:

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). Other issues raised during these consolidated case hearings have been addressed and resolved in In re JoAnne and Mark Hamilton, 5 D.o.E. App. Dec. 76.

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.

We have found as fact that Amy Junkermeier, now in third grade at North Kossuth Community School District, has been identified as a talented and gifted student. North Kossuth offers a program designed to meet Amy's needs. The "enrichment activities" offered by the District in lieu of a TAG program are insufficient to meet Amy's instructional needs, and are therefore inappropriate for her.

The District Board did not have before it the information from North Kossuth as to Amy's status and test results; therefore the Board's findings of fact did not address the issue of a TAG program with respect to Amy. Because we are not limited to an examination of the record below and are instead free to take into account the evidence that has come to light since the Board's April 1 decision, we do not take objection with the Board's findings of fact about Amy Junkermeier.

Furthermore, we conclude that if Donald Peterson has again been employed to teach physical education K-12, and has not yet taken the coursework necessary for that endorsement, the District's physical education program would be inappropriate per se because of the Board's failure to employ a properly endorsed teacher for that class. This also means that the District would be in continued violation of state approval standards.

IV. Decision

As of the date of this hearing, May 29, 1986, the District was not providing instructional programs appropriate for Amy Junkermeier's needs as a talented and gifted student. We therefore order the District to provide such programming beginning in the school year 1986-87 or, in the alternative, to make available the appropriate programming for Amy.

From the date on which this decision becomes final, the District has the option of providing an appropriate program for Amy in 1986-87 by correcting immediately identified deficiencies in its programming with respect to Amy Junkermeier'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 Amy this year, or by paying the maximum tuition for Amy to attend North

Kossuth as a non-resident student. This order shall continue in force until the District provides the appropriate programming for Amy Junkermeier.

All motions or objections not previously ruled upon are hereby denied and overruled. Appropriate costs of this appeal order Chapter 290, if any, are hereby assigned to Appellee District.

October 10, 1986

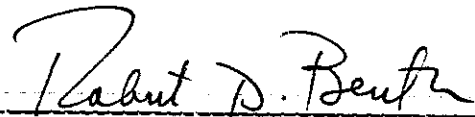
DATE



LUCAS J. DEKOSTER, PRESIDENT
STATE BOARD OF EDUCATION

October 10, 1986

DATE



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