IOWA STATE BOARD OF
PUBLIC INSTRUCTION

(Cite as 4 D.P.I. App. Dec. 287)

In re Warren Roland	:	
	:	
Warren Roland, Appellant,	:	DECISION
v.	:	
Atlantic Community School District, Appellee.	:	[Admin. Doc. 830]

The above-captioned case came on for hearing December 19, 1985, before a hearing panel consisting of Dr. Robert D. Benton, commissioner of public instruction and presiding officer; Ms. Mavis Kelley, chief, Federal Programs Section, Career Education Division; and Mr. Virgil Kellogg, director, Field Services and Supervision Division. A mixed evidentiary and stipulated hearing was held pursuant to Iowa Code chapter 290, Iowa Code sections 17A.12-.17, and Departmental Rules found in Iowa Administrative Code chapter 670—51. Appellant was present and represented by Counsel David J. Siegrist of Britt, Iowa. Appellee was present in the person of Dr. David Else, superintendent, and was represented by Counsel David W. Chase of Cambridge, Feilmeyer, Landsness & Chase, Atlantic, Iowa. Mr. Roland appealed a decision of the Atlantic Community School District [hereinafter the District] board of directors [hereinafter the Board] denying his request to allow his children, educated at home, to attend the District schools on a part-time basis under Iowa Code section 257.26 for purposes of music education.

I.
Findings of Fact

The Hearing Panel finds that it and the State Board of Public Instruction have jurisdiction over the parties and subject matter of this hearing.

Mr. and Mrs. Warren Roland reside in Atlantic, Iowa, and are the parents of six children, four of whom are of formal education age: Heidi, 13; James, 10; Burdette, ("B.J."), 8; and Buffy Jo, 5. Warren owns and operates Roland Funeral Service in Atlantic. He is an Atlantic native and once served on the school board. The Rolands are now advocates of home schooling and together they operate the "Roland Institute of Christian Heritage - Plumfield School." Pursuant to Iowa Code chapter 547, the Rolands recorded that trade name with the county recorder in Cass County in August, 1984, allowing them to conduct the business of schooling under that name.

Mr. Roland serves as Plumfield's administrator, and Mrs. Roland (Amy Jo) is "school mom" and instructor. Amy Jo does not hold a teacher's certificate. In accordance with Iowa law, the family employs two Iowa certificated teachers for their educational programs. There are no other children in attendance at Plumfield school other than the four Roland children. Upon information submitted by Mr. Roland, the District has found the Rolands and their educational program to be in compliance with Iowa Code chapter 299 and Departmental Rules, Iowa Administrative Code chapter 670--63. The District provides no assistance to Mr. and Mrs. Roland in the way of teachers or textbooks.

In August and September, 1985, Mr. Roland approached the District Board and sought approval to enroll two of his children in the public school for vocal and instrumental music only. He stated that he contemplates a similar request in the future for driver education when the children reach eligible age. Mr. Roland based his request on Iowa Code section 257.26. The Board voted 3-2 to deny his request at the August 27 meeting. No reasons were given at that time. The Rolands subsequently requested that the Board reconsider its decision, but no such motion was made. Mr. Roland timely appealed the August decision and this hearing followed.

II.
Conclusions of Law

The statute which serves as the basis for Mr. Roland's request reads as follows:

> 257.26 SHARING INSTRUCTORS AND SERVICES.
> 1. The state board, when necessary to realize the purposes of this chapter, shall approve the enrollment in public schools for specified courses of students who also are enrolled in private schools, when the courses in which they seek enrollment are not available to them in their private schools, provided such students have satisfactorily completed prerequisite courses, if any, or have otherwise shown equivalent competence through testing. Courses made available to students in this manner shall be considered as compliance by the private schools in which such students are enrolled with any standards or laws requiring such private schools to offer or teach such courses.
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> 2. The provisions of this section shall not deprive the respective boards of public school districts of any of their legal powers, statutory or otherwise, and in accepting such specially enrolled students, each of said boards shall prescribe the terms of such special enrollment, including but not limited to scheduling of such courses and the length of class periods. In addition, the board of the affected public school district shall be given notice by the state board of its decision to permit such special enrollment not later than six months prior to the opening of the affected public school district's school year, except

> that the board of the public school district may, in its discretion, waive such notice requirement. School districts and area education agency boards, may, when available, make public school services, which may include health services; special education services; diagnostic services for speech, hearing, and psychological purposes; services for remedial education programs, guidance services and school testing services, available to children attending nonpublic schools in the same manner and to the same extent that they are provided to public school students. However, services that are made available shall be provided on neutral sites, or in mobile units located off the nonpublic school premises as determined by the boards of the school districts and area education agencies providing the services, and not on nonpublic school property, except health services and diagnostic services for speech, hearing, and psychological purposes which may be provided on nonpublic school premises, with the permission of the lawful custodian.

Iowa Code § 257.26(1985)(emphasis added).

This Department has adopted rules to implement this program. See 670--7.1-7.9, Iowa Administrative Code. No definition of "private school" exists in this chapter. Furthermore, in the text of the statute, the term is used synonymously with "nonpublic school." Other Code sections define this and parallel terms, but solely for purposes of specific chapters. See, e.g., Iowa Code § 285.15 ("nonpublic school" for transportation purposes); § 280.2 ("nonpublic school" for purposes of uniform school requirements); § 301.29 ("nonpublic school" for textbook purposes). Although at least two opinions of the Iowa Attorney General have been issued since the adoption of this statute, neither address the term "private school" as it is sought to be applied by Appellant in this case. We are, consequently, called upon to interpret the legislative intent of section 257.26 as best we can.

Chapter 299 of the Iowa Code sets out the recognized alternatives to attendance in the public schools. Section 299.1 states that in lieu of attendance in the public schools, children of compulsory attendance age may "attend upon equivalent instruction by a certified teacher elsewhere." Iowa Code § 299.1(1985)(emphasis added). Subsequent sections delineate the "elsewhere" alternatives. Iowa Code section 299.3 discusses the responsibility of "private schools," and section 299.4 covers similar responsibilities for those providing "private instruction." The latter statute is understood to apply to so-called home schooling. While the two statutes are not models of legislative clarity, nothing compels the conclusion that one is the equivalent of the other, or that both are too vague to be understood as separate alternatives to education in the public schools. The three primary modes for compliance with the compulsory attendance laws are, therefore, public schools, private (nonpublic) schools, and private instruction. Clearly, the intent of the legislature is not to equate private instruction and private schools.

Since the legislature has chosen to distinguish private schools from private instruction, we do not see the terms as synonymous. The question becomes which term is applicable to Plumfield School.

Mr. Roland testified that he had supplied the District with the information required by section 299.4, "Reports as to private instruction." Although minimal, there are differences between this and the reporting statute for private schools. Moreover, upon inquiry by the Panel at the hearing, Mr. Roland answered in the negative to several questions related to private school requirements from Iowa Code chapter 280, "Uniform School Requirements." For example, Mr. Roland stated that he does not routinely raise the United States flag nor the Iowa banner. See Iowa Code § 280.5. No eye or ear protective devices are used by the children as required by sections 280.10 and .11. Full compliance with section 280.12, "Evaluation of educational programs," is questionable. No one acts as principal of Plumfield; Mr. Warren describes himself as "administrator." See Iowa Code § 280.14. In short, Plumfield School does not meet the requirements placed upon private schools.

Although not controlling on the issue, we note that in this session of the General Assembly, Senate File 2269 was introduced. In that bill, proposing a new chapter (299B) to the compulsory attendance laws, the sponsors defined and distinguished the terms "non-public school" and "private instruction." S.F. 2269, § 2. The distinction turns in part on whether or not the pupils in attendance are related. Id. Significantly, section three of the bill creates a provision for "Dual Enrollment" of pupils who are "receiving private instruction or . . . enrolled in a nonpublic school" to "also enroll in a public or approved nonpublic school for dual enrollment purposes." Id. at § 3. The section also permits a public or approved nonpublic school to collect a fee from the dually enrolled pupil unless the pupil is counted in the basic enrollment pursuant to section 442.4. Id.

To date, Senate File 2269 has not passed, but if it were to pass, it would have the effect of amending the compulsory attendance laws. An amendment to a statute does not constitute a construction which is binding on us, but it should be considered and may indicate either an intent to change the existing law or an intent to clarify a doubtful statute. Dye v. Markey, 259 Iowa 1045, ____, 147 N.W.2d 42, 43 (1966). On the other hand, it may be that the language of the proposed amendment was intended to make the statute correspond to what had previously been supposed or assumed to be the law. Id. at ____, 147 N.W.2d at 44.

In this case, however, it is clear that the proposed statutes purport to alter existing compulsory attendance and related statutes. The term "dual enrollment" is used statutorily for the first time and specifically addresses both private instruction pupils and pupils enrolled in nonpublic schools. The bill also defines the terms "private instruction" ("an educational program . . . provided in the home of one or more students over seven and under sixteen who are related") and "nonpublic school" ("a school with two or more students, over seven and under sixteen years of age and not related within the third degree of consanguinity, in attendance").

Although, as we said above, the bill is not law, knowing that such changes were contemplated assists us in our determination whether or not Plumfield School is a private school or a private (home) instruction site.

In his past conversations with members of this Department and appearances before the State Board of Public Instruction, Mr. Roland has characterized himself and his wife as "home schoolers." Appellant's Exhibit D is entitled "Home schooling—An Alternative Education." Appellant has at all times proceeded on the basis that his children's educational situation falls into the private instruction exemption, and he comported himself in accordance with the requirements of that exemption until he sought to enroll his children provisionally in the public schools under section 257.26.

We have no difficulty concluding that Plumfield School is not a private school as contemplated by that section and section 299.3. We therefore conclude that Mr. Roland had no statutory right to seek enrollment for his children under section 257.26. Because he lacks that right, the Board was not required under due process to give him a written reason for denying his request. A more difficult question is presented, however, when we look to chapters 282 and 279 of the Code and the intent of the legislature to be inferred therefrom.

Chapter 282 of the Iowa Code establishes residency as the basis for free public school attendance. Persons between ages five and twenty-one are of school age. Iowa Code § 282.1(1985). "Every school shall be free of tuition to all actual residents" of school age. Iowa Code § 282.6 (1985). A public school board may exclude from school children who lack sufficient maturity, incorrigible children, extremely abnormal children, or children "whose presence in school may be injurious to the health or morals of other pupils or to the welfare of such school." Iowa Code § 282.3(1985) (emphasis added). The clear intent of these statutes, when read together, is that all resident children of proper school age have a statutory right to attend the public school in their district free of charge unless they fall into the categories of students who may be excluded by the board.

Chapter 279 of the Code covers the general authority of public school boards of directors. Included in the powers and duties of the local board is the broad authority to "make rules for its own government and that of the directors, officers, employees, teachers and pupils. . . ." Iowa Code § 279.8(1985). The board also has the power to determine the number of schools in its district, to designate which school each child will attend, and to determine the number of days of attendance beyond the minimum required by law. Iowa Code § 279.11(1985). Departmental Rules adopted under the authority of Chapter 257 give local boards the power to determine the length of the school day and the length of time necessary to constitute a day of attendance. 670 Iowa Admin. Code 3.2(11)(12). The school board determines courses to be taught, and can establish a minimum number of courses required for enrollment under its broad authority in section 279.8.

The definitive question, then, is whether the school is required to enroll and receive every resident child of school age. If so, then is the board required by law to enroll the resident pupil on his or her own terms or the terms the parents or guardians insist upon? Or may the board set its own terms for enrollment?

Appellant seeks to enroll his resident children on his own terms. He sees that instruction is provided to his children in the curricular areas mandated by Chapter 257, but he wants to take advantage of the public school for certain courses and perhaps, he intimates, extracurricular activities. Appellee Board argues that such an arrangement is inimical to the "welfare of the school" under Iowa Code section 282.3. If the Roland children were allowed to attend some courses for credit, a number of problems would be created, not the least of which is an increase in the number of similar requests by home schooling parents.

The difficulty, of course, arises primarily in terms of planning, hiring, and allocating resources. Because a resident student can transfer in at any time residency is established, the schools already face unanticipated changes in student population due to frequent relocations inherent in our mobile society. Suppose Johnny, at sixteen, doesn't care about graduating on time, and wants to take one or two courses per semester in high school, working the rest of the day, until he completes his education at 21. Is this hypothetical situation contemplated by our statutes? Can an otherwise qualified, healthy child of ten satisfy the education laws by enrolling in English and mathematics only? Or does the school have the right to set its school day and to determine a minimum program for each student? If courses and hours of attendance were up to the individual pupil and her parents, the board would indeed have great difficulty determining in advance the number of sections of each class or course and the number of teachers necessary to instruct the pupils. Other practical problems, such as keeping track of students entering and leaving the building, establishing rules for the conduct of students attending on an "audit" basis, would also undoubtedly arise. If we were to hold that Mr. Roland has the right to pick and choose in what courses to enroll his children in the public school, every parent in every district would conceivably hold the same right. We do not think this is the scheme contemplated by our lawmakers.

Furthermore, Mr. Roland does not need to enroll his children in public school "music class" nor to engage a teacher who holds a music approval in order to satisfy state law requirements. Although music is required under section 257.25(3) and (4) for grades one through eight, the teachers currently instructing the Roland children are qualified to teach music in a self-contained classroom through grade eight. See 670 Iowa Admin. Code 16.4. This, therefore, is not a situation whereby a denial of Mr. Roland's request would in effect "force" him into enrolling his children in an established public or private school. If it is the choral or group music participation he seeks, he can achieve that through the children's choir at his church. If private instrumental lessons are his goal, he could engage a music instructor as many, many parents do for their children. The public schools are not "drop-in centers" for purposes of occasional attendance by privately tutored children. But see Snyder v. Charlotte Public School District, 365 N.W.2d 151 (Mich. 1984)(private school student's request for shared time band course approved).

Accordingly, we conclude that the exclusionary provisions of Iowa Code section 282.3 are applicable here. While we may agree with Mr. Roland that his two children would not necessarily upset the "welfare of the school," the board has a right to determine that the part-time admission of the Roland children could lead to similar requests by others, resulting in the board's inability to effectively control the business of education.

Hard cases do indeed make "bad law," and to decide this case in Mr. Roland's favor would open the door to a myriad of unanticipated variations on this theme.

Under our rules, 670 Iowa Admin. Code 51.7, written in conjunction with Iowa Code section 17A.17(2), we need to address a matter of ex parte communication in this case. Prior to the hearing but after the appeal had been filed, Mr. Roland addressed the State Board of Public Instruction on a related topic: home instruction. As an active advocate of this blossoming philosophy, Mr. Roland requested in the summer of 1985 to be allowed to address the State Board if and when the members discussed the content of rules adopted in relation to home instruction. In the fall his request was granted and he was allowed to make comments at the State Board meeting on October 11. Although he spoke from a personal perspective, his remarks appeared primarily designed to encourage the board to take an expansive view of home instruction in its chapter 63 rules. He spoke of himself as a home instructing parent and did not address the "shared time" arrangement he is appealing in the instant case. Consequently, we do not believe his intent was to create a bias in his favor, nor do we think bias resulted. No sanction is therefore necessary.

III.
Decision

For the foregoing reasons, the decision of the Atlantic Community School District on the issue of shared time enrollment for Appellant's children is hereby affirmed. Appropriate costs under Chapter 209, if any, are hereby assigned to the Appellant.

May 16, 1986
DATE

Lucas J. DeKoster
LUCAS J. DEKOSTER, PRESIDENT
STATE BOARD OF PUBLIC INSTRUCTION

April 28, 1986
DATE

Robert D. Benton
ROBERT D. BENTON, Ed.D.
COMMISSIONER OF PUBLIC INSTRUCTION
AND PRESIDING OFFICER