IOWA STATE BOARD OF
PUBLIC INSTRUCTION

(Cite as 4 D.P.I. App. Dec. 179A)

In re Connie Berg, et al.	:	
	:	
Connie and Mickey Berg; Karen and Harold Davids; Berniece and DeWayne Maass; Don Wertjes; Janice and Gordon Wirtjes; Sheila and James Junkermeier; Jolene and Mark Hamilton Appellants	:	DECISION
	:	
v.		
	:	
Lakota Consolidated Independent School District, Appellee	:	[Admin. Doc. 826]

The above-captioned matter was conducted as a limited rehearing on April 7, 1986 before a hearing panel consisting of Dr. Robert Benton, commissioner of public instruction and presiding officer; Dr. Orrin Nearhoof, director, Teacher Education and Certification Division; and Dr. Carol Bradley, administrative consultant. An evidentiary hearing was held pursuant to Iowa Code chapter 290, Iowa Code chapter 17A, and departmental rules found in Iowa Administrative Code chapter 670—51. Appellants were represented by Mark Soldat of Algona; Appellee (hereinafter the District) was represented by Harold White of Fitzgibbons Brothers, Estherville.

The partial rehearing was granted upon the request of the District in a motion filed on January 20, 1986.

I.
Procedure

On September 18 and 28, 1985, a hearing was held under Iowa Code section 280.16 (Interim Supp. 1985), or "Appropriate Instructional Program Review." The hearing panel issued a proposed decision on January 3 which was mailed to the parties on January 6. In that proposed decision, several facts and documents were officially noticed.

The State Board of Public Instruction approved the proposed decision on January 10, 1986, and it became a final decision at that time. Appellee District did not correspond with this agency between receipt of the proposed decision and the issuance of the final decision. Subsequently, the District filed a Motion for Rehearing under Iowa Code section 17A.16(2) and Iowa Administrative Code chapter 670—51.10(1). The motion was granted in part; an Order ensued on February 7, 1986, pursuant to action by the State Board. The issues were limited to the information and documents of which official notice was taken and objection was raised; to wit:

a. The certification records of Sheila Junkermeier
b. The certification records of Diane M. Luepke
c. A letter dated March 20, 1980, from former Lakota Superintendent Michael W. Graham to John Hunter
d. The certification records of Mary Prescher
e. The . . . "Knowledge of the history of the Lakota school system"
f. [The] "combination of factors arising over a period of time"
g. [The] "Reports and recommendations from both inside and outside" the Department of Public Instruction.

In re Connie Berg, et al., Order, 2/7/86. A separate order vacated the judgment, pending this decision, as to those Appellants who were successful in the earlier appeal, and reaffirmed the final decision directing a remand of those appellants who were unsuccessful in the earlier appeal. In re Connie Berg, et al., Order, 3/6/86.

II.
Findings of Facts

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

This agency has the authority under Iowa law to take into consideration "all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency" in reaching a decision in a contested case proceeding. Iowa Code § 17A.14(4)(1985). That knowledge includes "any staff memoranda or data," providing the source of the information is cited in the decision. Id.

In our earlier decision, we were called upon to interpret new section 280.16 for the first time since its enactment. Determining the appropriateness of instructional programs for a given child entails looking at the curriculum and the qualifications of teachers assigned to teach certain courses, among other factors. Parents and even some attorneys are not always familiar with the intricacies of school law and rules. Where evidence is relevant but may not have been offered, we understand the Iowa Administrative Procedures Act, Chapter 17A, to authorize taking official notice of those relevant facts. We did so in reaching the earlier decision in this case. This partial rehearing was ordered to allow the District to "contest such facts" of which official notice was taken.

The certification records of teacher Sheila Junkermeier were at issue because the District alleged that for the years 1981-82 Mrs. Junkermeier was the properly certified, endorsed, and approved teacher for teaching foreign language to grades 9-12 in the District. We checked Mrs. Junkermeier's certificate and found that although she was approved for Spanish, she could only teach that subject in grades K-9. See Berg, et al., v. Lakota Consolidated Independent School District, 4 D.P.I. App. Dec. 150 at 162.

At the rehearing, Mr. Kermit Miller, District superintendent, testified that Mrs. Junkermeier only taught Spanish to two students, both ninth graders, in the year in question. Technically, she was approved for that.

However, the course was available to students in grades 10-12 whom she could not legally teach. We have no way of knowing whether students in grades ten through twelve signed up for Spanish and were denied on the basis of Mrs. Junkermeier's qualifications, or whether, as Mr. Miller suggested, another teacher would have been assigned to teach Spanish if sophomores, juniors, or seniors signed up, or whether Mrs. Junkermeier would have been forced to teach those students in violation of the approval standards. Whom she taught is only part of the inquiry. The issue was not who studied Spanish under Mrs. Junkermeier's instruction, but whether the District misrepresented Mrs. Junkermeier's status on the BEDS [Basic Educational Data System] document required to be filed with the Department. At the rehearing, we received no evidence indicating an error in our certification records of Sheila Junkermeier.

The certification records of Diane M. Luepke were also officially noticed in the original decision. See Berg, supra, 4 D.P.I. App. Dec. at 162. Specifically, the question arose as to whether Mrs. Luepke served as guidance counselor for grades ten through twelve for school year 1984-85 without full or temporary approval from this Department. (Her full certification is as guidance counselor grades K-9). The evidence shows that she did so serve. We find no error in our records and hence, no error of official notice.

The District also took exception to the letter from former Superintendent Michael W. Graham to departmental consultant John Hunter, which was noticed and included in the earlier decision. Id. Nevertheless, upon the rehearing the District produced no evidence showing the lack of authenticity of the letter, nor did they argue that such correspondence was not properly the subject of official notice.

With respect to the certification records of Mary Prescher, we find that our original findings were correct. When Mr. Miller hired Mrs. Prescher, she was to teach multicategorical special education in grades K-12. At that time she was not properly certified for all special education categories; she held an approval for the emotionally disturbed/emotionally mentally handicapped only. She applied for and received temporary certification in September, valid for one year only, to allow her to teach what she was hired to teach. We find no error in our earlier statement. See id. at 175.

The remaining "issues," labeled "e," "f" and "g" supra, can be easily summarized. Appellee sought clarification of three phrases articulated in the earlier decision. We said, "We are deciding this case on its facts, coupled with our educational expertise and knowledge of the history of the Lakota school system." Id. at page 174. The District sought to determine what the "undisclosed" [their characterization] knowledge of the Lakota school system was. We do not think our knowledge was "undisclosed." See id. at pages 150-51 (paragraph two of Findings of Fact), page 152 (Findings of Fact re: Harold and Karen Davids), and pages 158-59 (Findings of fact re: Appellee School District).

Similarly, the phrasing complained of in item "f," "What we find overall with respect to Lakota's instructional programs is a combination of factors arising over a period of time," id. at 174, was a topic sentence, in composition parlance. The "combination of factors" was divulged in that paragraph and ensuing paragraphs. See Id. at 174-179.

Appellee District's final quibble, labeled "g" supra, was with the phrase used in our original decision "reports and recommendations from both inside and outside the Iowa Department of Public Instruction." Id. at page 177. The "inside" report was furnished to the District and consisted of a departmental study conducted in the spring of 1984. The District presented no evidence challenging this report. The "outside" report was entered into evidence at the original hearing as Appellants' Exhibit A, a study conducted by one R.W. Johnson. We have no basis upon which to retract our previous findings or conclusions related to these phrases. Had Mr. Miller called this office we would have been happy to explain these phrases and their basis. Instead, a rehearing was held but no evidence was offered to show that we had exceeded the statutory authority given in Iowa Code section 17A.14.

III.
Conclusions of Law

The Iowa Administrative Procedure Act, codified at Chapter 17A, states as follows:

> Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed and their source, including any staff memoranda or data, and the parties shall be afforded an opportunity to contest such facts before the decision is announced unless the agency determines as part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

Iowa Code § 17A.14(4)(1985).

Although our previous decision included the announcement that we were taking official notice of certain facts, and included the source of those facts, we were concerned that three or four days (from Appellee's receipt of the proposed decision until State Board action was taken finalizing the decision) was arguably insufficient to offer the District an "opportunity to contest such facts." Therefore, we granted a limited rehearing under our rules, Iowa Administrative Code Chapter 670--51.10(1). We made copies of all documents officially noticed and furnished them to the parties at least ten days prior to the rehearing. Appellee was unable to show, with respect to any item challenged, that the previous decision contained erroneous facts or that the material of which we took official notice was improperly noticed.

Any objections or motions not previously ruled upon are hereby overruled and denied.

IV.
Decision

For the foregoing reasons, we affirm the decision in this case made on January 3 and finalized on January 10, 1986. The vacated decision is hereby affirmed and reinstated.

April 17, 1986
DATE

LUCAS J. DEKOSTER, PRESIDENT
STATE BOARD OF PUBLIC INSTRUCTION

April 11, 1986
DATE

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