

IOWA DEPARTMENT OF
PUBLIC INSTRUCTION

(Cite as 1 D.P.I. App. Dec. 182)

In re Erik Sessions	:	
	:	
Linda & Robert Sessions,	:	
Appellants	:	
	:	
v.	:	DECISION
	:	
Decorah Community School District	:	
Appellee	:	
	:	[Admin. Doc. 409]

The above entitled matter was heard on December 19, 1977, by a hearing panel consisting of Dr. Robert Benton, state superintendent and presiding officer; Dr. LeRoy Jensen, associate superintendent, administration; and David Bechtel, administrative assistant. Linda and Robert Sessions were present. Attorney Donald Gloe represented the Decorah Community School District (hereinafter District). The hearing was held pursuant to Chapter 290, The Code 1977, and Departmental Rules, Chapter 670--51, Iowa Administrative Code. The parties were granted additional time to submit written instructions and briefs.

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 involved in this hearing.

On October 4, 1977, Linda and Robert Sessions appeared, with legal counsel, before the District Board of Directors at its regular meeting and requested that they be allowed to educate their seven-year-old son, Erik, at home rather than send him to the District's school. The Sessions presented a lengthy statement of their philosophy of education which basically put forth the proposition that they, as parents in an informal family setting, could do a better job of educating their son than could the District's teachers in a formal educational setting. They outlined several things which they felt are unsatisfactory with formal education.

Erik has not previously been a student in a formal school setting. He has, instead, attended alternative school settings for two years. A psychologist's evaluation shows him to be a well-adjusted youngster with average and above-average achievement abilities. Erik's father, Robert Sessions, has a Ph.D. in philosophy and teaches at Luther College in Decorah, and his mother, Linda Sessions, has a B.A. in sociology and is a homemaker.

The District Board took no action on the Sessions' request in October, but tabled the matter for further consideration. The matter again came up at the November 8 Board meeting. The Sessions again appeared and were represented by legal counsel. The Board's attorney was also present. Superintendent Wayne Burns presented the Board with the unanimous recommendation of the District's five administrators that the Session's request be denied.

The Board was told by the Sessions that in order to comply with Section 299.1, a certificated teacher would be utilized in Erik's planned alternative instructional program. The Sessions stated, through their attorney, that Erik would be educated in the subjects contained in the educational standards found in Section 257.25. The Sessions suggested that the District could supervise Erik's education through District testing and progress reports filed with the District by the parents.

After over one and a half hours of discussion on the matter, the District Board voted unanimously at the November meeting to deny the Sessions' request to educate their son through a program of home tutoring. The Sessions made a timely appeal to the State Board of Public Instruction.

At the hearing before this Panel, the Sessions again explained their philosophy of education. They feel that their concept of education is much broader than that offered in a formal school setting and that education should be family centered. (They have no television in their home.) The Sessions do not feel that formal school settings are successful integrators of the various areas of learning that go on in young minds. They prefer to emphasize personal discovery and research. They feel they can best accomplish their goal by doing a few things intensely and broaden conceptual understandings by utilizing the natural motivation generated. They gave the specific example of the experience of weaving. Beginning with weaving skills, they progressed into the esthetic, historical, social and economic aspects of weaving. Their experiences included several field trips to art and historical museums.

Much hearing time was utilized by the Sessions in explaining their program of instruction. They testified that Section 257.25 would be used as a guide and would be paralleled by their program. They presented a detailed account of the educational activities in which Erik participated during the months of August through November, 1977. They also presented an outline of their goals for Erik's education, the strategy they intend to use to meet those goals, and representative bibliographies of the books and materials which they plan to utilize. In addition to educational experiences provided by the Sessions, Erik is enrolled in a Suzuki method violin class and art, reading and Spanish classes taught at the Luther College Laboratory school. Erik participates regularly in a variety of physical activities and is instructed in good hygiene, first aid and safety education. Time is spent discussing and explaining various career pursuits as part of a career discovery program. The Sessions utilize the services of a private school, by correspondence. The Sessions testified that this was primarily for professional assistance and consultation.

Erik's progress is monitored continuously and a daily record kept. Erik usually participates in his own evaluation. The Sessions plan to utilize feedback from a certificated teacher supervising Erik monthly and from the correspondence school in evaluating his progress. The Sessions plan to have Erik evaluated annually

by a psychologist. His most recent evaluation was completed by a certificated school psychologist on October 1, 1977. The evaluation results show that Erik is in the bright average range and that the majority of his skills are, at a minimum, at expected grade level. By affidavit, the psychologist concluded that Erik is "a very well-adjusted and enjoyable child."

The record shows that supervision of Erik's instructional program will be provided formally by a certificated instructor on a monthly basis and as need arises. Since the person to provide the supervision is a social acquaintance, less formal weekly discussions of Erik's educational progress may occur.

II.
Conclusions of Law

Put simply, the issue raised by the Sessions in this appeal, is whether the proposed instructional program for their son Erik conforms with the State's compulsory education provisions found in Chapter 299, The Code 1977. The District's Board of Directors have responded in the negative and we agree.

The law to be applied to the facts in this matter is found in Sections 299.1 and 299.4. Those sections read as follows:

299.1 Attendance requirement. Any person having control of any child over seven and under sixteen years of age, in proper physical and mental condition to attend school, shall cause said child to attend some public school for at least twenty-four consecutive school weeks in each school year, commencing with the first week of school after the first day of September, unless the board of school directors shall determine upon a later date, which date shall not be later than the first Monday in December.

The board may, by resolution, require attendance for the entire time when the schools are in session in any school year.

In lieu of such attendance such child may attend upon equivalent instruction by a certified teacher elsewhere.

299.4 Reports as to private instruction. Any person having the control of any child over seven and under sixteen years of age, who shall place such child under private instruction, not in a regularly conducted school, upon receiving notice from the secretary of the school district, shall furnish a certificate stating the name and age of such child, the period of time during which such child has been under said private instruction, the details of such instruction, and the name of the instructor.

The State Board of Public Instruction in In re Lisa Ann Edgerton, 1 D.P.I. App. Dec. 162, determined that the legislature intended, by the enactment of Section 299.4, to provide for an education alternative to formal education for Iowa's

school-age children. Such alternatives, however, must meet the tests of "equivalent instruction by a certified teacher . . .," contained in the last paragraph of Section 299.1. 1906 O.A.G. 130, 128 O.A.G. 293, Nolan to Anderson, Dec. 2, 1977.

We find that the Sessions have met the first test by planning an equivalent instructional program. The instructional program which the Sessions have developed for their son, together with their abilities and obvious sincerity lead us to conclude that they have planned an "equivalent" instructional program for the current state of development of their son. See *State v. Massa*, 231 A.2d 252 (N.J. 1967).

However, we do not find that they have sufficiently met the requirement of providing "instruction by a certified teacher." The Sessions argue that a primary reason for certification is the assurance of a minimum level of competence and that not all instruction in the life of a child must be under a certificated instructor. We do not disagree with those contentions. They also argue, however, that their educational backgrounds and experiences give them status equivalent to certification and therefore ask the State Board to waive this requirement for them. With this contention, we cannot agree. When the law requires certification as clearly as it does in Section 299.1, we do not feel that a local board of directors nor the State Board of Public Instruction have authority to waive that requirement. See *People v. Turner*, 263 P.2d 685 (Cal. 1953); *State v. Superior Court*, 346 P.2d 999 (Wash. 1959); and *In re Shinn*, 195 Cal. App. 2d 683, 16 Cal. Repr. 165 (1961).

The Sessions also attempt to comply with the requirement of "instruction by a certified teacher" by resting upon "supervision" provided formally by a certificated teacher on a monthly basis and more frequent consultation on a social basis. In this regard we must also agree with the District in that "supervision" is not "instruction." We do not feel that "supervision" and "consultation" are sufficient substitutes for "instruction by a certified teacher." While acknowledging that the amount of contact with a certificated teacher necessary for compliance with the statute may be subject to disagreement, we do not feel that the arrangement for "supervision" and "consultation" planned by the Sessions meets the reasonable expectation created by the statutory use of the word "instruction."

We find that in making its decision, the District Board did not arbitrarily or capriciously refuse the Sessions the opportunity to provide private instruction for their son. Neither have the Sessions shown us any action by the District Board which would be considered a violation of their rights under law.

All motions and objections not previously ruled upon are hereby overruled.

III.
Decision

The Decision of the Decorah Community School District Board of Directors in this matter is hereby affirmed. Appropriate costs under Chapter 290, if any, are hereby assigned to the Appellants.

February 9, 1978

DATE

Jolly Ann Davidson

JOLLY ANN DAVIDSON, PRESIDENT
STATE BOARD OF PUBLIC INSTRUCTION

February 1, 1978

DATE

Robert D. Benton

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