

IOWA DEPARTMENT
OF EDUCATION
(Cite as 24 D.o.E. App. Dec. 12)

In re Petition for Declaratory Order

Clarion-Goldfield CSD, Petitioner,	:	
for a Declaratory Order as to	:	DECLARATORY ORDER
HF 816, Section 33, New paragraph	:	
gb, amending Iowa Code § 284.13(1)	:	[Adm. Doc. #4625]

On or about November 21, 2005, the Clarion-Goldfield Community School District ["the District"] filed a petition for declaratory order. The District seeks an interpretation of new Iowa Code subsection 284.13(1)"gb," enacted by the 81st General Assembly in § 33 of House File 816. Pursuant to agency rule 281—IAC 3.2, notice of the filing of the petition was sent to several education stakeholders. Petitions for intervention were received from the Iowa State Education Association ["ISEA"] and the Iowa Association of School Boards ["IASB"]; both petitions were granted.

The legislation in question is the appropriation of \$6.625 million to this agency to be distributed to Iowa school districts (commonly known as "Pot 2"). The entirety of new subsection 284.13(1)"gb" reads as follows:

For the fiscal year beginning July 1, 2005, and ending June 30, 2006, up to six million six hundred twenty-five thousand dollars to the department of education for use by school districts for either salaries or professional development, or both, as determined by the school district. Funds received by a school district for purposes of this paragraph shall be distributed using the formula provided in paragraph "f" and are subject to the provisions of section 284.7, subsection 6. A school district shall submit a report to the department in a manner determined by the department describing its use of the funds received under this paragraph. The department shall submit a report on school district use of the funds distributed pursuant to this paragraph to the chairpersons and ranking members of the house and senate standing committees on education, the joint appropriations subcommittee on education, and the legislative services agency not later than January 15, 2006. [Emphasis added.]

Specifically, the District asked **whether use of the Pot 2 funds is a determination made by a school district or is a determination subject to collective bargaining**. The emphasized language is the language in contention. In other words, who is "the school district?"

The District urges this agency to answer the question that the determination is not subject to collective bargaining, but is made solely by each school district through action of its school board members. Intervenor IASB joins the District in opining that the determination is to be made solely by each school district through action of its school board members. On the other hand, Intervenor ISEA first urges this agency to decline to issue a declaratory order. ISEA goes on to state that if a declaratory order is issued that the order should be that the determination is subject to collective bargaining.

This agency has already answered the question posed; however, the answer was in the form of a letter of guidance to public school administrators. We understand that if a person wishes to challenge this agency's interpretation via a petition for judicial review, a letter of guidance is not "final agency action" for such a purpose. Accordingly, we believe it to be appropriate to issue a declaratory order.

The letter of guidance from this agency in which the question was first answered is dated June 22, 2005. The pertinent section of that letter (from page 3 thereof) states:

Question 8: Who determines whether the funds allocated are used for salaries, professional development or both?

Answer: The decision is made locally. If the employees of a district/AEA eligible for these funds are organized under Iowa Administrative [sic; the word Administrative should not appear] Code Chapter 20 (collective bargaining), the board and certified bargaining representatives shall mutually agree upon the use and distribution of the funds If the board and bargaining representatives do not reach agreement by July 15 (or by another mutually agreed upon date), then the board shall divide the funds among the eligible teachers for salaries. Teachers employed on a less than full-time basis shall receive a prorated amount.

Thus, this agency is on record as stating that the determination of how the funds are used is subject to collective bargaining where such units exist. The agency reached this determination by reviewing HF 816 and pertinent sections of Iowa Code §§ 284.13, 284.7, 20.9, and 20.20 – 20.22, and then issued the guidance letter utilizing our statutory authority in § 256.9(16)(the director shall interpret the school laws and rules relating to the school laws), as recognized in § 17A.19(10).

We note first that new subsection 284.13(1)"gb" specifically states, "Funds received by a school district ... are subject to the provisions of section 284.7, subsection 6." This subsection requires mutual agreement between the local board and the district's bargaining unit. ("If the licensed employees of a school district or area education agency receiving funds pursuant to section 284.13, subsection 1, paragraph "d" or "e", for purposes of this section, are organized under chapter 20 for collective bargaining purposes, the board of directors and the certified bargaining representative for the licensed employees shall mutually agree upon a formula for distributing the funds among the teachers employed by the school district or area education agency.")

We next note that the Iowa Code is replete with examples of when the Legislature has intended to leave a decision solely in the hands of the local school board

members, it expressly so states. See, e.g., §§ 256.11(5)"g"(2)(board excuses students in grades 9 – 11 from physical education under certain circumstances); 256B.4(board employs qualified special education teachers and determines maximum number of pupils per teacher); 257.40(board requests to use additional allowable growth dollars for returning dropouts and dropout prevention); 273.22(board petitions Area Education Agency board to join a newly reorganized AEA); 280.5 (board provides and maintains suitable flagstaff on each school site); 280.9A(board offers qualified students the opportunity to register to vote twice each school year); 297.13 (board builds and maintains lawful fence around schoolhouse sites); 299.9 (board prescribes punishment of truant students). These examples represent a tiny minority of references to the local school board in statutes.

In chapter 284 alone, the Legislature refers three times to occasions when the board and the certified bargaining representative are to negotiate items. There are also clear examples in §§ 284.4 and 284.11 of when the board is empowered to act solely. In § 284.4 the board alone applies to this agency to participate in the student achievement and teacher quality program; in § 284.11 the board alone approves whether its district has a team-based variable pay plan. The new subsection under dispute here refers to another subsection within chapter 284 when bargaining is required.

Accordingly, it is the order of the Iowa Department of Education that the Legislature intended that the determination of the use of Pot 2 funds be subject to collective bargaining.

This declaratory order has the same status and binding effect as a final order issued in a contested case proceeding.

Issued this 24th day of January, 2006.



Judy A. Jeffrey, Director