IOWA STATE BOARD OF
PUBLIC INSTRUCTION

(Cite as 4 D.P.I. App. Dec. 282)

In re Greg and Kathy Koether	:	
	:	
Greg and Kathy Koether, Appellants,	:	DECISION
v.	:	
Mar-Mac Community School District,	:	
Appellee.	:	[Admin. Doc. 818]

The above-captioned matter came on for hearing November 28, 1985, before a hearing panel consisting of Dr. Robert D. Benton, commissioner of public instruction and presiding officer; Mr. Dwight Carlson, director, School Transportation and Safety Education Division; and Mr. A. John Martin, director, Instruction and Curriculum Division. Appellants were present and represented by Francis J. Lange, attorney with Kaufman, Lange, Hodge & Neuhaus of Dubuque. Appellee [hereinafter the District] was present in the person of William Owen, superintendent of the District, and was represented by James E. Thomson of Jacobson, Bristol, Thomson, Bauercamper and Garrett of Waukon.

Appellants sought review of a decision of the District Board of Directors [hereinafter the Board] made on August 7, 1985, denying Appellants' request to find the District kindergarten scheme, an all day daily program, inappropriate for their son. In the alternative, they also requested that the District effect a land exchange or a boundary line change to enable the Koethers to send their son to the M-F-L District where kindergarten is held on an all-day, every-other day basis. The review arose under Iowa Code section 280.16 (Interim Supp. 1985). An evidentiary hearing was held pursuant to that section, Iowa Code sections 290.1-.6, and Departmental Rules found in Iowa Administrative Code chapter 670--51.

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.

Appellants are the parents of Scott Koether, a (then) five year-old kindergarten boy who suffers from allergies and severe asthmatic bronchitis, reducing his immunity to common illnesses and making him highly susceptible to pneumonia. He also tires easily, and in that state his condition often worsens. Scott attended pre-school last year, but he missed a number of days of school due to illness and hospitalization. This fall, Scott missed nine of the forty-three days in kindergarten. His report card illustrates the fact that he is progressing normally in school.

II
Conclusions of Law

Appellants sought review of the District Board decision under newly-enacted Iowa Code section 280.16, which reads as follows:

> 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 provisions for an appropriate instructional program for that student.

Iowa Code § 280.16 (Interim Supp. 1985).

This Department has been called upon recently to interpret and apply this new law. See, e.g., In re Connie Berg, et al., 4 D.P.I. App. Dec. 150; In re Clarence Anderson, 4 D.P.I. App. Dec. 208. We concluded, after a very thorough discussion of the implications and theories of applicability of section 280.16, that appropriateness is resolved for each individual child by looking at that child's needs and abilities, and comparing them to the instructional programs offered by the district of residence.

The District filed a Motion to Dismiss in this case, which was taken under advisement. The grounds asserted were that no authority exists under Iowa Code chapter 290 to grant the relief sought by these Appellants; that the parents of a child under compulsory attendance age cannot use the provisions of section 280.16 because the child is not "required" to enter any instructional program until the age of seven; that the legislature, in enacting the statute, did not intend section 280.16 to be applicable to this type of situation, but instead is aimed toward course content; and finally that Iowa Code section 274.37, authorizing boundary changes, does not contemplate appeals to this Department from decisions related thereto.

We now overrule Appellee's motion. Iowa Code section 280.16 incorporates the existing provisions of Iowa Code chapter 290. That chapter authorizes persons aggrieved by "any decision or order of the board of directors of any

in catching up; we were only shown that he is absent from school slightly more often than children without verifiable recurring health problems. While we sympathize with the problem, Scott's physical tendency toward illness and absenteeism is not a sound enough basis to order the District to change its program or pay for Scott's tuition, absent significant other factors.

We are encouraged, as a result of testimony from both parties, to hope that a small but important change in Scott's transportation can be effected to shorten his school day. That fact, coupled with his increased stamina as he adjusts to the routine of daily attendance, should result in improved attendance.

With respect to the Board's denial of Appellants' request to swap land owned by them in the District with land owned by their parents in the M-F-L District, we also agree with the Board's position. We see no abuse of discretion nor arbitrary action by the Board in denying these requests. While we may question whether granting the Koether's request would open the floodgates for others to make similar requests, we respect the fact that the Board, having no precedent against which to measure Appellants' request, would prefer not to engage in land swapping or boundary changes.

Further, we have in the past stated that absent "compelling reasons," such as where man-made barriers are created which significantly alter the position of patrons to the rest of the district, we will uphold the decision of the local board. In re Kenneth Hoksbergen, 1 D.P.I. App. Dec. 86, 88. See also In re Steve Pacha, supra.

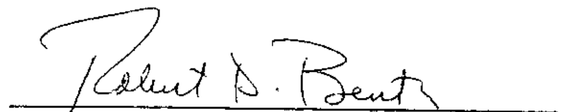
III.
Decision

For the reasons stated above, we find that Appellants have not carried their burden of proof. Accordingly, the decision made on August 7, 1985, by the board of Directors of the Mar-Mac Community School District is hereby affirmed. Costs of this appeal, if any, under Chapter 290 are assigned to Appellants.

May 16, 1986
DATE

April 21, 1986
DATE

LUCAS J. DEKOSTER, PRESIDENT
STATE BOARD OF PUBLIC INSTRUCTION



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