

IOWA STATE BOARD  
OF EDUCATION  
(Cite as 18 D.o.E. App. Dec.34)

***In re Julie & Jennifer Burris; In  
re Michael, Joshua & Crystal  
Renslow; In re Christopher &  
Trevor Nelson*** :

Jayne Whetstone; Dawn Renslow; :  
Daryl & Janna Nelson, :  
Appellants, :

v. :

Stuart-Menlo Community School :  
District, :  
Appellee. :

RULING ON MOTION  
TO DISMISS

[Adm. Doc. #4190]

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On November 18, 1999, Appellants' attorney submitted three Affidavits of Appeal "from a decision made on October 27, 1999, by the Board of Directors of the Stuart-Menlo Community School District." On December 8, 1999, Appellee's attorney submitted a Motion to Dismiss the above-captioned matter which included the following reasons:

COUNT I

...

4. Appellants filed their appeal over four months after the Stuart-Menlo Community School District Board of Directors made its decision not to enter into a new whole grade sharing agreement with the Dexfield Community School District.

...

COUNT II

9. The Appellants' appeal, in effect, is asking the State Board to overturn the Stuart-Menlo Community School District Board of Director's decision and to order the School Board to negotiate a two-way whole grade sharing agreement with the Dexfield Community School District.
10. The State Board cannot provide the Appellants with the remedy they have requested because it does not have the power or the authority to order a School Board to negotiate a two-way whole grade sharing agreement with another school district.

11. Even if the State Board could grant the remedy requested by the Appellants, a grant of the remedy in this case would have no affect because even if the School Boards were ordered to negotiate a whole grade sharing agreement, any agreement reached would not be valid because the legal timelines under Iowa Code section 282.11 for adopting such agreements for the 2000-01 school year have passed.

...

Appellants, through their counsel, submitted a Resistance to the Motion to dismiss on December 8, 1999. The Resistance responded to the Motion to Dismiss as follows:

#### COUNT I

- a. the action taken by the Board of Directors of the Stuart-Menlo Community School District on July 19, 1999, was not the same action taken by them on October 27, 1999, which is the subject matter of this appeal;
- b. the Board of Directors of the Stuart-Menlo Community School District which met and voted on July 19, 1999, was not the same Board of Directors which met and voted on October 27, 1999; and
- c. that there is no limitation on an appeal to the Iowa State Board of Education, pursuant to Chapter 290, if a school board has, on more than one occasion, voted on the same issue, as long as the Appellants timely appeal from the most recent decision, which is what the Appellants herein have done, even assuming, for the same of argument, that the votes taken on July 19, 1999, and October 27, 1999, were the same.

#### COUNT II

9. That the Iowa State Board of Education can provide the Appellants with a remedy, notwithstanding the allegations of the Appellee, if for no other reason than Section 282.10, *Code of Iowa*(1997), provides in subparagraph 4 that a whole grade sharing agreement shall be signed not later than February 1 of the school year preceding the school year for which the agreement is to take effect.

10. that the present whole grade sharing agreement continues through June 30, 2000, and at issue is a whole grade sharing agreement for the 2000-01 school year, and, pursuant to statute, said agreement can be entered into on or before February 1, 2000.

11. That, accordingly, the Appellants have stated a claim upon which Iowa State Board of Education can grant relief, and, for that reason alone, Count II of the Appellee's Motion to Dismiss should be overruled and denied.

12. That, further, it is within the authority of the Iowa State Board of Education to direct the Stuart-Menlo Community School District and the Dexfield Community School District to simply continue the existing sharing agreement beyond June 30, 2000, which would not involve the application of section 282.10, *Code of Iowa*(1997).

Upon review of Appellee's Motion to Dismiss and Appellants' Resistance to the Motion to Dismiss, the undersigned agrees with the reasons set forth in Appellants' Resistance to Motion to Dismiss. Appellee's Motion to Dismiss is hereby denied.

IT IS SO ORDERED.

*December 10, 1999*

DATE

*Susan E. Anderson*

SUSAN E. ANDERSON, J.D.  
ADMINISTRATIVE LAW JUDGE