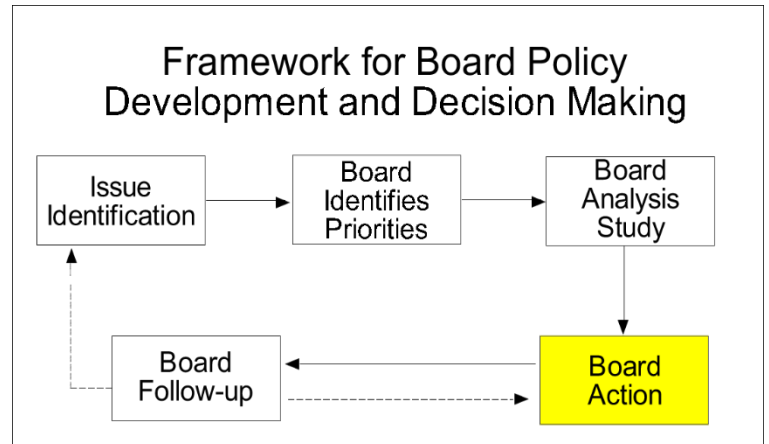


Iowa State Board of Education

Executive Summary

March 21, 2024



Agenda Item:

Appeal Decision - Appeal # 5184

State Board Priority:

Eliminating Achievement and Opportunity Gaps

State Board Role/Authority:

Under Iowa Code section 290.1, the State Board of Education has authority to hear appeals from local school board decisions.

Presenter(s):

None (consent agenda)

Attachment(s):

Two

Recommendation:

It is recommended that the State Board dismiss this appeal.

Background:

On January 9, 2024, administrative law judge Laura Lockard issued a proposed decision dismissing this appeal as untimely.

The twenty-day period to file an appeal of the proposed decision having elapsed, and no appeal having been filed, the proposed decision is placed on the consent agenda for summary approval. Iowa Administrative Code r. 281—6.6(3). By rule, the proposed decision is adopted by operation of law. *Id.*

Dismissed.

IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
CENTRAL PANEL BUREAU

LIANN HESPE,)	DIA Docket No. 24DOE0007
)	Dept. Ed. Docket No. 5184
Appellant,)	
)	
v.)	
)	
BOYDEN-HULL COMMUNITY)	
SCHOOL DISTRICT,)	
)	PROPOSED DECISION
Appellee.)	

Appellant Liann Hesse filed an appeal to the State Board of Education, pursuant to Iowa Code section 290.1, of a decision rendered by the Boyden-Hull Community School District Board of Directors. The matter was bifurcated in order to allow for a hearing first on the issue of whether the State Board of Education has jurisdiction under section 290.1 to hear the appeal filed by the Appellant. A telephone hearing on this issue was held on December 12, 2023. Appellant Liann Hesse was present. Appellee Boyden-Hull Community School District was represented by attorney Jazmine Polk.

The record in the case consists of the following: 1) Appellant’s Affidavit with attached Exhibits A through Q; 2) Appellant’s Amended Affidavit; 3) Appellee’s Exhibits 1 through 10; 4) Appellee’s Motion for Dismiss for Lack of Jurisdiction; and 5) Appellant’s written response to the motion to dismiss with attached exhibit. The parties were informed prior to the hearing that, as the scope of the hearing is limited to the issue of jurisdiction, no ruling on the motion to dismiss for lack of jurisdiction would be issued prior to hearing.

Appellant Liann Hesse testified at the hearing. The Appellee rested on the written record and called no witnesses.

FINDINGS OF FACT

Liann Hesse educates her children, who are in 10th, 11th, and 12th grade during the 2023-24 school year, under the Competent Private Instruction (CPI) option offered by the state. Hesse enrolled her 11th and 12th grader for 13 and 14.5 credits at Northwest Iowa Community College during the 2023-24 school year through the Senior Year Plus (SYP) program, which provides Iowa high school students access to advanced placement courses and other means by which to concurrently access secondary and postsecondary credit.¹ During communications with Dan Pottebaum, the Boyden-Hull High School

¹ See 281 Iowa Administrative Code (IAC) 22.1.

principal, Hespe learned that her students would be limited to taking fewer credits through the SYP program because of their status as CPI students.²

Hespe disagreed with Pottebaum's position on this and Pottebaum subsequently sought guidance from the Department of Education (Department) regarding SYP programming and dual enrolled CPI students. Pottebaum informed Hesper that the Department had advised him that only 12 credits per semester of SYP instruction would be allowed for each of her students. Pottebaum encouraged Hesper to reach out to the Department directly with additional questions. Hesper did so. On May 16, 2023, Buffy Campbell, the Department's school improvement consultant, sent Hesper an e-mail confirming the information that Pottebaum had provided that the proposed schedule for her older students would exceed the course load limit for CPI students and Hesper would be required to pay tuition for the extra credits.

Hesper attended a school board meeting on June 26, 2023 and asked the board to approve the registrations of her 11th and 12th grade students for the 2023-24 school year at more than 12 credits apiece. Following the meeting, Hesper sent an e-mail to board members elaborating on her position. (Exh. 5, 6).

During the June 26 board meeting, it was announced that the next board meeting would take place on July 13, 2023. On July 11, 2023, the agenda for the July 13 board meeting was placed on the board's website. Hesper's CPI issue was on the agenda. During the July 13 meeting, the board voted unanimously in open session to follow the Department's guidance to limit the credits of CPI students in the SYP program. Following the meeting, on July 26, 2023, the meeting minutes were published in the Sioux County Index-Reporter. A draft of the meeting minutes was later posted on the Board's website and the approved meeting minutes were posted following the draft. (Exh. 7-10).

Hesper appealed the decision by filing an affidavit with the Department; the affidavit was received by the Department on August 24, 2023. At hearing, Hesper testified that she wanted to try to exhaust all of her options prior to filing a formal appeal of the board's decisions. Hesper also believed that the board would reach out to her to communicate their decision on her request. She was not aware until approximately mid-August that the board had already taken action at the July 13 meeting.

² Pottebaum referenced a rule found at Iowa Admin. Code r. 281-31.6(2) related to dual enrollment of CPI students. That rule provides that a child under dual enrollment may participate in academic or instructional programs of the district on the same basis as any regularly enrolled student and is eligible to enroll in courses that offer secondary and postsecondary credit on the same basis as a regularly enrolled student. The rule also provides, however, that a child under dual enrollment must receive at least one-quarter of the child's instruction by way of CPI and no more than three-quarters by way of the district's academic programs.

CONCLUSIONS OF LAW

Pursuant to Iowa Code section 290.1, an affected pupil or the parent or guardian of an affected minor pupil who is aggrieved by a decision or order of the board of directors of a school corporation may appeal the decision or order to the state board of education. The appeal must be made “within thirty days after the rendition of the decision or the making of the order.” An appeal is accomplished is accomplished by filing an affidavit with the state board setting forth any error alleged. The rules regarding the procedures for such an appeal are found at 281 Iowa Administrative Code Chapter 6.

The instant hearing is limited to the question of whether the state board of education has jurisdiction to hear Hespe’s appeal pursuant to Iowa Code section 290.1. The Appellee argues that Hespe’s appeal lacks jurisdiction because: 1) it was untimely; and 2) the school board action the Appellant contests is outside of the scope of section 290.1.

Under these circumstances, Hespe’s appeal is untimely. The board rendered the decision that Hespe challenges in open session on July 13, 2023, which started the time clock for appeal. The board was not required to directly communicate the decision to Hespe or publish the minutes of the meeting in order to begin the appeal time period; the relevant time for appeal is within 30 days after the board has rendered the decision.

The thirtieth day following the board’s decision was August 12, 2023. Hespe argued at hearing that her appeal affidavit was postmarked on August 22, 2023, despite not being received by the board until August 24, 2023. The difference between those two dates is immaterial for purposes of determining whether the appeal was timely. In either event, the appeal is untimely.

This decision need not address the second argument by the Appellee, that the appeal is outside of the scope of section 290.1, as that issue is moot due to the untimeliness of the Appellant’s appeal.

ORDER

The Appellants’ appeal is denied as untimely. This matter is dismissed.

cc: Liann Hespe, Appellant (AEDMS)
Jazmine Polk and Danielle Haindfield, Attorneys for Appellee (AEDMS)
Rebecca Griglione, IDOE (AEDMS)

Appeal Rights

Any adversely affected party may appeal a proposed decision to the state board within 20 days after issuance of the proposed decision.³ An appeal of a proposed decision is initiated by filing a timely notice of appeal with the office of the director. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service.⁴ The requirements for the notice are found at Iowa Admin. Code r. 281-6.6(4). Appeal procedures can be found at Iowa Admin. Code r. 281-6.6(5). The board may affirm, modify, or vacate the decision, or may direct a rehearing before the director or the director's designee.⁵

³ 281 Iowa Administrative Code (IAC) 6.6(4).

⁴ *Id.*

⁵ 281 IAC 6.6(6).

Case Title: LIANNE HESPE V. BOYDEN-HULL COMMUNITY SCHOOL DISTRICT
Case Number: 24DOE0007
Type: Proposed Decision

IT IS SO ORDERED.

A handwritten signature in cursive script, appearing to read "Laura Lockard".

Laura Lockard, Administrative Law Judge

IOWA STATE BOARD OF EDUCATION

LIANN HESPE,)
)
 Appellant,) Docket 5184
)
 -vs-) FINAL DECISION
)
 BOYDEN-HULL COMMUNITY)
 SCHOOL DISTRICT,)
)
 Appellee.)

On January 9, 2024, administrative law judge Laura Lockard issued a proposed decision dismissing Liann Hesper's appeal as untimely. A copy is attached and incorporated by this reference.

The twenty-day period to file an appeal of the proposed decision having elapsed, and no appeal having been filed, the proposed decision was placed on the consent agenda of the State Board's March 21, 2024, meeting for summary approval. Iowa Admin. Code r. 281 – 6.6(3). By rule, the proposed decision is adopted by operation of law. *Id.*

IT IS THEREFORE ORDERED that this appeal is DISMISSED.

Done on March 21, 2024.

Iowa State Board of Education, by

John Robbins
President

Copies to Counsel of Record and Unrepresented Parties