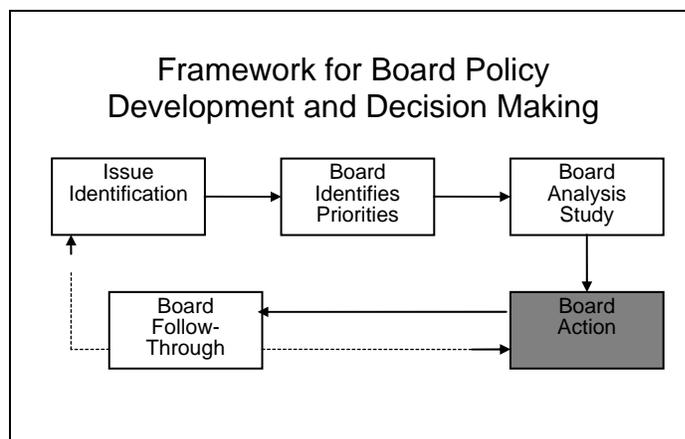


Iowa State Board of Education

Executive Summary

February 6, 2008



Agenda Item: *In re Shared Football Program, 25 D.o.E. App. Dec. 35*

Iowa Goal: 2. All K-12 students will achieve at high levels, prepared for success beyond high school.

Equity Impact Statement: All districts receive guidance from the legal questions answered in this decision.

Presenter: Carol Greta*

Attachments: 1

Recommendation: It is recommended that the State Board vote to affirm the decision of the Preston Community School District local school board to discontinue the interscholastic football program for grades 7 - 12 it shared with the East Central Community School District.

Background: For the past two football seasons, the Preston and East Central Community School Districts offered a cooperatively shared football program pursuant to Iowa Code section 280.13A. Recently, the Preston board voted to discontinue the shared program. That is, each district will now have its own discrete football program. The board members who testified herein stated that they were motivated to act by the lack of participation in the program and the program's lack of success at the varsity level. The Appellants, parents of affected students, desire that the shared program continue.

*In the event of an appeal of a final decision, the State Board is represented in district court by the Iowa Attorney General's office. Therefore, if any State Board member has one or more questions for the Attorney General's office, let us know several days in advance of the February 6th meeting so we can arrange for an assistant Attorney General to be present either in person or via telephone.

The statute that permits a school to be a party to a cooperative sharing agreement for an interscholastic activity does not require a school to enter into or maintain a cooperative sharing agreement for an interscholastic activity, so it cannot be said that the Preston board misapplied the law. In addition, a reasonable person could have found substantial evidence supporting the Preston board's decision. Therefore, we must conclude that the local board did not act unreasonably or contrary to the best interest of education.

RECOMMENDATION: It is recommended that the State Board approve the Administrative Law Judge's proposed decision to affirm the Preston Community School District's Board of Director's decision herein to end its cooperative sharing agreement with the East Central Community School District for 7th – 12th grade football.

**IOWA DEPARTMENT
OF EDUCATION
(Cite as 25 D.o.E. App. Dec. 35)**

In re Shared Football Program

Todd Simmons, Warren and Michelle
Moeller,
Appellants,

vs.

Preston Community School District,
Appellee.

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PROPOSED DECISION

[Admin. Doc. 4663, 4664]

The above-captioned matter was heard telephonically on December 14, 2007, before designated Administrative Law Judge Carol J. Greta. Appellants Todd Simmons and Warren Moeller were present on behalf of their minor sons, who are students of the Preston Community School District. Appellee, the Preston Community School District [“Preston”], was represented by its attorney, Brett Nitzschke of the Gruhn Law Firm, Cedar Rapids. Also present on behalf of Preston were Superintendent Paul Tobin, Board President Ken Lane, and Board Vice President Daniel Henningsen.

An evidentiary hearing was held pursuant to agency rules found at 281—Iowa Administrative Code [IAC] chapter 6. Authority and jurisdiction for the appeal are found in Iowa Code section 290.1. The administrative law judge finds that she and the State Board of Education have jurisdiction over the parties and subject matter of the appeal before them.

The Appellants seek reversal of a decision the Preston Board of Directors made on November 12, 2007, to end its cooperative sharing agreement with the East Central Community School District [“East Central”] for 7th – 12th grade football.

**I.
FINDINGS OF FACT**

The Appellants are parents of students in the Preston Community School District. Todd Simmons’ son, Lance Simmons, is a sophomore who has participated in football at the District for several years. The Moellers have a son, Garrett Moeller, who will be in the 7th grade next school year. Garrett is also a football player.

Preston is located in Jackson County in far Eastern Iowa. Prior to the 2006 football season, Preston directly offered 11-man football, competing as a “Class A” school, the smallest of the five classifications for 11-man football, as determined by the Iowa High School Athletic Association. East Central, which is contiguous to Preston, also directly offered 11-man football to its students prior to the 2006 football season.

Effective with the 2006 football season, Preston and East Central entered into a cooperative sharing agreement for football for students of each district in grades seven through twelve. The initial agreement was for one year, and was renewed by both districts for the 2007 football season. The combined football team competed as a Class 1A team both seasons.¹

Toward the end of the 2007 football season, the Preston board held a work session on October 8 to discuss the shared football program.² This work session was lawfully posted pursuant to Iowa's Open Meetings law; the item on the posted agenda was "Discussion of Co-Operative Football Program for 2008-2010." Neither Appellant argued that inadequate notice was given, and in fact, the number of persons who attended the work session was high enough that the meeting was moved to a larger space. All who attended that work session who desired to speak to the issue were given an opportunity to do so.

The Appellants and other persons supportive of maintaining the cooperative sharing agreement with East Central also presented arguments to the local board at the board's regular meeting of November 12. The tentative agenda for the November 12 meeting listed "Discussion and Possible Action of Direction for 7-12 Football Program" under New Business. The agenda also gave readers notice that the location of the board meeting for this item would be moved to a larger site, the high school media center.

Board members Lane and Henningsen testified that the future of the program became an issue for two primary reasons – lack of student participation (especially on the part of East Central students) and lack of success of the varsity team. In preparation for the discussions about the shared football program, Mr. Henningsen asked the Preston school administrators to provide him with certain statistical information. He then used the data to create a document (District's Exhibit 5) that was given to all Preston board members and to all persons in attendance at the November 12 board meeting. Some of the facts from Exhibit 5 include the following:

¹ Sport classifications are set by the organizations that govern interscholastic athletics in Iowa, the Iowa High School Athletic Association and the Iowa Girls High School Athletic Union. Both the IHSAA and IGHSAA use the certified enrollment data submitted to this agency by high schools for grades 9 – 11 to determine classifications. In the case of a cooperative sharing agreement, the enrollments for these grades of each party to the agreement are added together, and it is not unusual for the team to be moved to a higher classification, as was the case here. In football the classifications for 11-man football are as follows:

4A, the largest 48 schools

3A, the next largest 64 schools

2A, the next largest 72 schools

1A, the next largest 72 schools

A, all remaining schools (approximately 70 schools)

² Board President Lane testified that the board was reluctant to initiate the conversations about the program before the 2007 football season was over, but that the December 1st deadline to make a commitment to the Iowa High School Athletic Association about 8-man or 11-man football forced the issue. For teams such as this shared program that did not qualify for post-season playoffs, the final game of the season was October 26, 2007

1. There were seven 9th – 11th grade students who participated in the football program from East Central during the 2007 season. 25 students from this same cohort participated in football while in junior high, a persistence rate of only 28%. Preston students participated in greater numbers, but still realized a loss between junior high football and senior high football. The 24 Preston 9th – 11th grade students who played football this past fall represented a decrease of four from the 28 students from this same cohort who participated in football while in junior high.
2. In 2005 (the last year both districts offered their own separate football teams), there were 32 students on Preston's varsity roster and 28 on East Central's. In 2007, 30 of 32 Preston students remained on the shared football team and only 13 of 28 players from East Central did so.

From the above data, Mr. Henningsen projected that there would be only 8 - 9 students from East Central who would participate in football over the next two years, rather than the 25 from that age cohort who participated in junior high. When added to the projected numbers from Preston, the team would have a total varsity roster of approximately 40 players. When the shared program was started two years ago, Mr. Henningsen and other Preston parents believed that there would be a somewhat consistent roster of 60 varsity players.

Mr. Henningsen also included in Exhibit 5 a list of concerns raised by parents of the Preston football players. Among these concerns were having to play in a 1A district³, having to start sophomores, and having several students playing both offense and defense. A lack of competitiveness also was raised by Mr. Henningsen as a concern voiced to him by parents. The varsity team created by the sharing agreement had a two-year win-loss record of 2-16. For the two year period immediately preceding the 2006 season, the Preston football team had a win-loss record of 11-7.

One of the witnesses for the Appellants was Mark Milder, a football coach for the shared teams at the junior high levels. He stated to the Preston board, as well as here, that the lower grade football programs did have success. He also shared with the local board his belief that the younger students would stay with the program because of their successful experiences. Steve Nemmers, who was an assistant varsity coach of the shared football program for this past year only, objected to the dissolution of the sharing agreement because not enough time had been given to the program to prove itself. Coach Nemmers pointed out that these two districts also share track and field and cross-country programs, and that both of those shared activities are successful. Finally, he stated on behalf of the Appellants that he talked with some of the students themselves, and that the students wanted the football program to continue as a shared team.

Mr. Moeller noted that Preston and East Central have shared certain high school courses for the past 17 years. It is his understanding that this academic sharing was commenced with and continues to have a goal of eventual reorganization of the two districts. He expressed concern that this goal is harmed by the cessation of the shared football program.

³ All classifications of teams except 4A teams are divided within their classification into districts of eight teams. Only the district champions and district runners-up moved on to postseason play.

The parties agreed that the vast majority of persons who addressed the board both on October 8 and November 12 spoke in favor of continuing the shared football program. Mr. Henningsen added that he heard from persons who did not attend either meeting who were in favor of discontinuing the shared program.

After hearing input from all persons who desired to comment on the issue, the Preston board voted 3 – 2 to end the cooperative sharing agreement with East Central for football for 7th – 12th grades, effective for the 2008 football season.⁴

II. CONCLUSIONS OF LAW

Standard of review

Iowa Code section 274.1 states, "[e]ach school district ... shall have exclusive jurisdiction in all school matters...." Local school board decisions are not spared scrutiny, however. The Legislature provides a process in Iowa Code chapter 290 for aggrieved students to appeal local board decisions to the State Board of Education.⁵

The Iowa Legislature has directed that the State Board, in regard to appeals to this body, make decisions that are "just and equitable." Iowa Code section 290.3. This Board has articulated its standard of review as one that requires that a local board decision not be overturned by the State Board unless the local decision is "unreasonable and contrary to the best interest of education." *In re Jesse Bachman*, 13 D.o.E. App. Dec. 363, 369 (1996). This is a standard that restrains this Board from acting as a "super school board" substituting our judgment for that of the local elected board members. See, e.g., *In re Jerry Eaton*, 7 D.o.E. App. Dec. 137, 141 (1987); *In re Board Policy*, 25 D.o.E. App. Dec. 8 (2007).

At the same time, this Board must determine whether a reasonable person could have found sufficient evidence to come to the same conclusion as reached by the local board. *Sioux City Community School Dist. v. Iowa Dept. of Educ.*, 659 N.W.2d 563, 569, citing Iowa Code section 17A.19(10)(f)(1). "In so doing, we will find a decision was unreasonable if it was not based upon substantial evidence or was based upon an erroneous application of the law." *Id.*

Substantive law

The underlying decision of the Preston school board is governed by Iowa Code section 280.13A, which states in pertinent part as follows:

⁴ The board then voted unanimously to apply to the Iowa High School Athletic Association to participate in 8-man football for the 2008 football season. The Appellants do not appeal this decision.

⁵ See especially section 290.1: "An affected pupil, or the parent or guardian of an affected pupil who is a minor, who is aggrieved by a decision or order of the board of directors of a school corporation in a matter of law or fact, ... may, within thirty days after the rendition of the decision or the making of the order, appeal the decision or order to the state board of education; the basis of the proceedings shall be an affidavit filed with the state board by the party aggrieved within the time for taking the appeal, which affidavit shall set forth any error complained of in a plain and concise manner."

If a school district or nonpublic school does not provide an interscholastic activity for its students, the board of directors of that school district or the authorities in charge of the nonpublic school may complete an agreement with another school district or nonpublic school to provide for the eligibility of its students in interscholastic activities provided by that other school district or nonpublic school. ...

The rule adopted by this Board to further govern cooperative sharing programs is at 281—IAC 36.20. The pertinent language of the rule is as follows:

...[[I]n the event a member or associate member school does not directly make participation in an interscholastic activity available to its students, the governing board of the member or associate member school may, ... by written agreement with the governing board of another member or associate member school, provide for the eligibility of its students in interscholastic activities provided by another member or associate member school. ...Agreements shall be for a minimum of one school year. ...It is the purpose of this rule to allow individual students participation in interscholastic competition in activities not available to them at the school they attend ...

[Emphasis added.]

Both the statute and rule above merely *authorize* the formation of a cooperative sharing agreement; the statute and rule do not *mandate* such an agreement. Neither is there any other statute, rule, or constitutional provision that requires secondary schools to offer football or any other interscholastic athletic activity. Therefore, when an Iowa secondary school chooses to offer interscholastic activities, how the school makes those activities available is a matter of discretion.

This Board may not second-guess local school boards by imposing our own judgment in areas where the locally elected board members have discretion. We look only to see whether a reasonable person could have found substantial credible evidence supporting the Preston board's decision to discontinue the shared football program. This means that we cannot examine whether the Appellants' desire to continue the cooperative sharing agreement for football is the more sensible course of action. This also means that we cannot consider whether the local board's decision was supported by a majority of the persons to whom those board members must answer.

(This Board recognizes the importance of extracurricular activities to supplement a well-rounded educational experience. However, we note that in Iowa (as is true in a majority of states), there is no "right" to participate in an extracurricular activity. *Brands v. Sheldon Community School*, 671 F.Supp. 627 (N.D. Iowa 1987). This means that the local board could vote to not offer football, directly or indirectly, 11-man or 8-man, and affected students could not successfully argue that they were being deprived of a statutory or constitutional right to participate in high school athletics. See also, *Gonyo v. Drake University*, 879 F.Supp. 1000 (S.D. Iowa 1995), holding that university students had no cause of action against the university for the latter's decision to discontinue its wrestling program.)

The two board members who testified herein stated that they voted to discontinue the cooperative sharing agreement for football primarily because of lack of participation by East Central students and lack of success of the varsity team. Reasonable persons may disagree about whether the data regarding past participation are a reliable indicator

of participation in the near future. Reasonable persons may disagree about the importance to be ascribed to a win-loss record. Reasonable persons may disagree about whether success is to be measured solely by cold, hard numbers. But the fact that reasonable minds can differ does not give this Board the legal wherewithal to overturn the local board's decision. There is substantial credible evidence supporting the school district's decision.

To summarize, the law that authorizes a school to enter into or maintain a cooperative sharing agreement for an interscholastic activity is permissive only. The Preston board did not misapply the law. In addition, a reasonable person could have found substantial evidence supporting the Preston board's decision. Therefore, we must conclude that the local board did not act unreasonably or contrary to the best interest of education.

III. DECISION

For the foregoing reasons, it is recommended that the decision of the Board of Directors of the Preston Community School District made on November 12, 2007 be AFFIRMED. There are no costs of this appeal to be assigned.

01/07/08
Date

Carol J. Greta, J.D.
Administrative Law Judge

It is so ordered.

Date

Gene E. Vincent, President
State Board of Education