MINUTES OF THE TELEPHONE CONFERENCE
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE

Members Present

There was a telephone conference held by the Administrative Rules Review Committee on July 19, 1990 at 9:00 a.m. Those who participated were the Committee: Senator Berl E. Priebe, Chairman; Representative Emil S. Pavich, Vice Chairman; Senators Dale L. Tieden and Donald V. Doyle, and Representatives David Schrader and Betty Jean Clark. Staff: Joseph A. Royce, Counsel; Alice Gossett, Administrative Assistant. Others: Paula Dierenfeld, Governor's Administrative Rules Coordinator; David Bechtel, Department of Education; Tom Williams, Superintendent of the Belmond-Klemme School District; Rick Engle, Counsel for Burt School District; Representative Stewart E. Iverson, Jr.; and school board members Laverne Schmidt and Cal Bruggeman.

Time of Conference

The call commenced at 9:05 a.m. with Joe Royce introducing Senator Priebe, who asked Tom Williams to explain who was with him in his office and to detail the situation.

Ch 17 OPEN ENROLLMENT

Williams listed the attending persons in his office as: Cal Bruggeman, the Board President from Klemme; Stewart Iverson, State Representative; and Laverne Schmidt, representative from the Klemme School District. Williams is the shared superintendent between Belmond and Klemme.

Senator Priebe explained the reason for the conference was to continue review of open enrollment discussion from the July 11, 1990 ARRC meeting.

Williams explained that Klemme is a school district of 225 students who, this past school year, negotiated and signed an agreement with the Belmond Community School District to enter into a whole grade sharing agreement. It is to start in fall of 1990-91. With that process, a two-way whole grade sharing agreement was entered into and it was felt that a definite additional educational opportunity was being provided through that arrangement. A long study was conducted, involving a lot of community people and it was felt there was a strong consensus to enter into a whole grade sharing agreement. There was some disagreement. Because of that several people petitioned the district to be eliminated from that whole grade sharing agreement. There were 14 petitions following the period of time the contract was signed with Belmond. The petitions were for various reasons related to geography and athletic sharing. Following a review of those petitions, the board allowed four of those to petition out. They felt that 4 of the 14 had sufficient reasons as outlined in the Code to permit this. Ten petitions were denied.

Then the State Legislature had enacted a new law [SF2306] to replace old Chapter 17 [administrative rules] regarding situations where districts had failed to enter into a whole grade sharing agreement and to maximize parental choice and

access for students to other districts for educational opportunities that were not available in their own district. Following the enactment of that new law, there was misunderstanding as to eligibility. Some disgruntled parents in the district who had supported going to Garner or Ventura felt that the new law made the whole open enrollment "wide open" again. A change in status in the district meant entering into a whole grade sharing agreement. An additional 14 students applied for open enrollment since the new law came out. There are now 24 still requesting to be petitioned out of the district.

Williams believes the rules exceed legislative intent, specifically rule 281--17.4(2)c(2) which addresses those who had petitioned out and had been denied, to now open enroll and automatically be allowed to get out of the sharing agreement. It is felt that nothing in the law addresses that one issue and that it went beyond the intent of the law itself. The Belmond-Klemme district also feels strongly that the wording of the law itself, which speaks to accessing educational opportunities for students, has already been accomplished by the fact that Klemme initiated and entered into a whole grade sharing agreement with the neighboring school district. Also, the rules too broadly define good cause and change in status of the district. There needs to be a very strict definition of that as outlined in the law which states that it only addresses the failure to enter into a whole grade sharing agreement. The law does not address those districts that had taken the initiative and entered into a whole grade sharing agreement. Those are the two main areas where they have problems with the rules. Williams thought the reason the legislature put on the 5 percent cap was to keep any district from collapsing financially in the first year or two in any kind of open enrollment law.

Priebe asked what type of a figure the district was expecting. Williams said it would be approximately $75,000 and it would be devastating to the district. It has a potential of causing some unrest with their sharing partner because of letting more students out than expected when entering into the agreement.

Priebe asked Bechtel to respond.

Bechtel replied that the issue was one of trying to define what the General Assembly meant by "good cause". The Department's position was that, under a whole grade sharing agreement, 282.11, a parent has the right to petition out. The ability for that to happen has been almost nil in Iowa. In looking at whole grade sharing agreements around the state where parents have petitioned to get out of that agreement and go to a different contiguous school district, they have been denied. He said the material Royce sent out to the Committee is not quite accurate on the basis that the rule does not allow any parent to have open enrollment

immediately. It only allows those parents, at the time the board entered the whole grade sharing agreement, who did file petitions with that board and were denied to be let out, to now have open enrollment. Royce agreed.

Bechtel said the parents look at whole grade sharing with some skepticism. A parent who can have the ability to get open enrollment has assurance; a parent who goes along with a whole grade sharing agreement has no assurance. Parents have gone to one school district for a year or two, then the boards get together and they are sent somewhere else. In terms of trying to say what is a failure to a parent, the fact they tried to get out of such an arrangement has some basis for their request was one that should be studied as part of that good cause situation. Bechtel said there will be a fiscal impact in time. He understands Williams' concern.

Priebe noted that when they have their teacher contracts signed, have it built into the budget, and then are looking at a $75,000 impact, that could have devastating effects.

Bechtel indicated that initially 14 people filed to leave; of those, four were allowed. They knew that was going to happen. The only people that are eligible now under this rule to apply for open enrollment would be the additional 10. That is all that is going out of the district. They are not looking at $75,000; they are looking at $28,000 or $30,000.

Bechtel added that open enrollment places an impact on any district. Open enrollment students can go for $500, in most situations, to a receiving district and they would still be making money, but the legislature made a requirement that the lower per pupil district cost is what goes. All districts are faced with that problem. The law now allows the parent, any time they move out of the ditrict, to get open enrollment immediately. That is the fiscal impact on the district that did not have that counted. If one moved out of Des Moines into Webster and did it in November, that student would not be in the count and the new district has to pick up the cost in the next year. They have never had this student there before--it is an impact. The whole issue of open enrollment has not only opportunities for parents but it has fiscal impact on districts.

Tieden asked Williams, under this interpretation, if these 10 that will be eligible are part of the 20 or if all 10 have appealed. In response, Williams said the total number that had open enrolled this year was 4 at the beginning of the school year, that because of a change in residence between Garner and Klemme, qualified for open enrollment initially in the 1989-90 school year. By October 30, an additional 7 had open enrolled and had been approved under the 5 percent cap. They had 11 before entering into a whole grade sharing agreement. They had an additional 14 petitions for open enrollment or for petitioning out; 4 of which were approved. Of those 10 following the enactment of

this new legislation, 6 of the 10 filed for open enrollment. There was one change in residence and 7 new open enrollment applications. They have a total of 14 pending and 11 that have already been approved for next year. There is a potential of a total of 25; the 14 that are pending, plus the 11 that have been approved.

Tieden said as he understood it only the 6 would qualify for legitimacy. Bechtel answered that would be his analysis from what Williams indicated. The rule that is being questioned, apparently would only involve 6 people out of the district under the provisions of that rule--not the 24.

Tieden asked if it was Bechtel's interpretation that the last group would not qualify for open enrollment. Bechtel said it would only be those who filed a petition originally to get out of the whole grade sharing who subsequently also filed under good cause to get out of the district yet this year.

Tieden asked if it was not approved, could they apply and be eligible next year and Bechtel answered that anybody can apply next year.

Tieden added that sometimes people who think they do not like a whole grade sharing program, when they really get to actuality, it is not what they have talked themselves into believing. Bechtel agreed but added that most of the whole grade sharing involved with some people is significant travel time that they could get to a neighbor under open enrollment. The program differential is not that great.

Tieden asked Williams if the students who were involved for athletic purposes, realized they could not participate for a year. Bechtel responded in the affirmative.

Doyle asked where the 5 percent cap came into that 25 and Bechtel replied that the caps are applicable. There was no cap on those students who left the district for some reason in 1988-89. So there is no 5 percent cap. The five percent cap applies only to those applications that were processed or would be processed for 1990-91. He said he had 4 that were approved under that process. The way the rule is written on the issue of "good cause", the caps are not applicable. They would not be able to apply it on an enrollment loss cap. The cap would be 5 percent of these 225 students. If there were 4 out and 6 more left, they would be right at the cap.

Williams asked Bechtel if he was saying that the petitioners are or are not under the 5 percent cap and Bechtel answered, "Are not."

Schrader said he would like to refer back to the reason that the Klemme residents have asked the Committee to object to the rule. That being the subrule that interprets or a

similar set of circumstances to include not only the failure of the whole grade sharing but the initiation of a whole grade sharing. He felt the basic question to be resolved is whether a similar set of circumstances includes the initiation of that whole grade sharing agreement. He disagreed with Royce's memorandum that states the legislative intent of SF2306 was only to allow open enrollment when a sharing agreement was terminated. He said other similar circumstances would include a situation where that open enrollment was initiated. He was not able to visit with Representative Ollie, Chair of the House Education Committee. He did contact Senator Murphy, Chair of the Senate Education Committee, who stated also that was the intent--to allow, under a similar set of circumstances the initiation of a whole grade sharing to fall within that. Schrader spoke in favor of the Department rule as following the intent of the legislature. The other point made was the intent section of the open enrollment bill that there were two real points made. One, to maximize the ability to use educational choices. The districts are arguing that because they shared the choice that educational opportunities are maximized by any action, can meet that goal there of maximizing the ability. The intent language is for the parents and the children to maximize that choice and make those opportunities available. He does not agree that there is an issue here of the Department exceeding its authority or going beyond the legislative authority that was given to it in [SF]2306.

Representative Iverson said he served on that subcommittee of the open enrollment and had many discussions with Representative Ollie about this and on the House side it was never the intent to address the successful negotiations. All that was being addressed was the failure of these negotiations to happen.

Schrader added that Senator Murphy said that he and Representative Ollie had conversations about this issue and had a great deal of difficulty in coming to a conclusion. Representative Ollie was concerned about this but felt that the language would allow for that. The language would allow people to use the good cause exemption for the initiation of a whole grade agreement.

Pavich commented that the Committee could make a special review during the regular meeting. They then could contact the chairs of the committee since there might be other people involved in this situation across the state. There might be a lot more public input and they should get the comments of the chairs of the committee.

Tieden asked if there was a time problem by waiting until the 14th or 15th of August. Williams answered that they have been holding these open enrollment applications for approximately two months and have not acted on them pending some final conclusions and final adoption by the state board, hoping there will be some changes and clarification. They did not intend to act on them until the state adopted

them in August. They then have to make the decision of whether to deny or accept them.

Tieden asked Bechtel when the Department's meeting is in August and Bechtel replied it is the 9th, which would be before the August ARRC meeting. He said they are going back to final adoption on all the open enrollment rules.

Priebe said he felt Pavich made an excellent suggestion to get this on a special review in the August meeting after the board has acted. Klemme may wish to attend or any other school.

Tieden asked Royce if they would still have the opportunity to object. Royce responded that the objection power of the Committee remains in effect for all time, and reminded them to keep in mind that the rules that are effective are the emergency rules of June 13th, to which the Committee can object.

Bechtel said the rules that are being dealt with and the rules that were filed, both Notice of Intended Action and Emergency, were concurrent. The rules before state board in August are the final filed rules.

Royce said that until such time as the filed rules are filed with the Governor's Office, published and 35 days have passed, it is the emergency rules that remain in effect. The emergency rules are effective until they are replaced by the final effective date of the regular rule.

Bechtel added that they would assume these would be identical. That would be up to whether the board made a change in August.

Tieden asked if the Committee objected to the emergency rule and if the board accepted the filed rule, would the objection automatically lift when that 35 day period was up. Royce answered that an objection attaches to a specific rule at a specific point in time. If it is a different rulemaking, the objection would disappear with that original rule. It would have to be renewed.

Priebe felt this was the right approach; to get this back on the agenda, and the filed rule would be filed for the September meeting. Royce thought September would be too late for any action that long after the school year had begun. He recommended this being on the agenda in August.

Bechtel said in terms of the problem faced by the school district, August would be correct. Some determination must be made of what action will be taken in regard to those additional 6 parents that have asked to leave the district.

Priebe said this will have to be taken up in August and either objected to or allow it to go into effect.

Schrader commented on the issue of timeline. There is no reason to support an objection because of the reasons

stated. If the committee were to vote to object, that does not necessarily mean that any policy is going to change with the Board of Education. For that policy to change, it would demand legal action from a district or from someone who challenges the rule, so the timeline is going to be stretched out somewhat unless the Department should voluntarily decide to change their policy on this.

Priebe said an objection has to be made at a full Committee meeting. If there is an objection, it shifts the burden of proof and that is what the Committee is going to have to decide.

Tieded added that it would be his opinion that if the votes were there at the August meeting, even though the Department went ahead and approved them, they would be correct to assume the votes would be counted for anytime in the future and the Klemme board could then plan their procedure by the end of the August meeting. He felt they realized that their only option would be, by the objection, to shift the burden of proof to the Department rather than their board.

Schrader said that was his point. He wanted to make it clear to the people of Klemme that the objection in itself by no means resolves the issue. Tieden said he believed they understood that and Williams concurred.

Pavich felt that the six other parents should have an opportunity to be heard before an objection is made.

Priebe said this is the approach the Committee should take.

Motion

Pavich made a motion that this be scheduled on the August agenda as a special review.

Doyle said he wanted these handouts sent to Ollie and Murphy of everything that was discussed along with the minutes of the conference call and ask them if they can appear at the meeting or send written comments. This would give them some insight if they want to change any laws next year.

Carried

Priebe agreed that was an excellent suggestion, and Pavich agreed to make that part of the motion. Motion carried.

Priebe said these Notices would be sent to Williams and he should see that the people involved would be notified of the meeting.

Burt School District

Priebe said he was contacted by the Burt School District in regard to an open enrollment problem. They have a development north of Algona within a couple miles. A group of people built homes out there, realizing when they built those homes, they were in the Burt school district. There is now a person who is not in the Burt School District, but they are contemplating moving to Oak Lake. As part of the contract to purchase a home from a person who is wishing to move out of the Oak Lake district, the contract is void if

they cannot open enroll that student out of there. Priebe asked how anyone can open enroll out of a district if they are not even there. He asked Bechtel if he had given the correct information. Bechtel said he agreed. The only way an open enrollment can be accomplished is if the parent or guardian is a resident of the district from which they wish to leave. So they are going to have to be actual residents of that district before they can even apply to that district for open enrollment.

Rick Engle said he was counsel to the Burt district. He added one other additional fact that might be important--the fact that the person they are talking about is moving into the state from out of state. He asked Bechtel if they filed right at that point in time, would there be any prohibition or time restraint that would prohibit them from taking advantage of open enrollment immediately because there is a specific section in the law that talks about a person or change in the state in which the family residence is located. There are some rules that have been promulgated in that particular section.

Bechtel asked if he was talking about the issue on good cause and Engle said that was correct. Bechtel said the trouble with that is that good cause kicks in only after October 30. Good cause only lets a person file in the year preceding the year they wish open enrollment, if they have missed the first filing date. So it does not let a person out immediately, it lets them out in the same order as any other open enrollment person that applies. So if they moved in in August, there is no good cause application at that point. You have to wait until after October 30. They moved after October 30, then they could say they had good cause and wanted to apply but either one of them would be for the succeeding school year; it would not be immediately.

Engle asked if there is an exception for a person moving in from out of state, in a change of residence after June 30. Bechtel responded that if a parent moved in August; he was trying to show the current school year.

Priebe asked Engle if he would contact Mr. Keneche and Engle said he would take care of notifying Mr. Keneche.

Tinted Windows

Doyle said they have all received a lot of letters about the tinted windows controversy. The Mason City and Fort Dodge areas are hot. In the Sioux City area the highway patrol is giving tickets for tinted windows and at the previous rules committee they asked that a letter be sent to the Legislative Council for an interim but because of the budget requirements, the studies committee did not take it up. In the issue before the Rules Committee, they could continue that and draft their own bill. It would not cause any additional expense because it would be done after the regular meeting adjourns the second day. He requested Royce to contact Laverne Schroeder, who is representing the window tinters. They are going to have a meeting this week at Fort Dodge. He would like to

continue this inasmuch as it is a rules problem and that they did object to the double delegation. After the adjournment of the regular business, he wants to take the bill that has been before them for 2 years and make some improvements and draft a bill which would include a medical exemption for people that have skin problems. He would like to have that for either the August or September meeting, and have various people come in to work with them on that.

Priebe said he thought they could do it in August. If there is no objection, it will be on the agenda for either the second or third day, depending on the size of the rules.

Doyle said there is a problem if General Motors comes out with cars that are over what the Highway Patrol is interpreting to be legal.

Priebe added that a dealer told him that the new ones will be 33 or maybe even up to as much as 35.

Doyle said the Auto Dealers Association wants to be involved on this issue too.

Priebe thanked everyone for participating in the conference.

Motion Doyle moved to adjourn the conference call. Motion carried.

Adjourned Chairman Priebe adjourned the call at 9:50 a.m.

Respectfully submitted,

Alice Gossett

Alice Gossett, Acting Secretary

APPROVED:

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Chairman