

**IOWA DEPARTMENT OF EDUCATION**  
**26 D.o.E. App. Dec. 378**

*In re Transportation of Open Enrolled Pupils*

Clinton T. Buckingham,	:	
Appellant,	:	DECISION
vs.	:	
	:	[Admin. Doc. 4773]
Riverside Community School District,	:	
Appellee.	:	

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The above-captioned matter was heard telephonically on September 24, 2013, before designated administrative law judge Nicole M. Proesch. The Appellant, Clinton T. Buckingham, was personally present and was self-represented. The Appellee, the Riverside Community School District ["Riverside District"], was represented by Superintendent James Sutton ["Superintendent Sutton"]. Also appearing on behalf of the Riverside District was board secretary, Marilyn Mickey. Also present at the time of the hearing was Lane Plugge and Linda Purdue with Green Hills Area Education Agency ["GHAEA"].

An evidentiary hearing was held pursuant to agency rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for the appeal are found in Iowa Code section 285.12. The administrative law judge finds that she and the Director of the Department of Education have jurisdiction over the parties and subject matter of the appeal before them.

Mr. Buckingham seeks reversal of a decision the local Board of Directors of the Riverside District ["Riverside Board"] made on August 19, 2013, rejecting his and the Treynor Community School District Board ["Treynor Board"] requests that the Riverside Board allow a school bus owned and operated by the Treynor Community School District ["Treynor District"] to enter the Riverside District, which is on the way to the Treynor District, to pick up his children and transport them to the Treynor District. On August 27, 2013, the Board of Directors of the GHAEA upheld the decision of the Riverside Board. We affirm.

**FINDINGS OF FACT**

Clinton T. Buckingham is the parent of two children who reside in the Riverside District, but are open enrolled by Mr. Buckingham to the Treynor District. The Riverside District is 18 miles from the Buckingham residence and the Treynor District is 6 miles from the Buckingham residence. The Buckingham children do not live within walking distance of their Treynor attendance centers.<sup>1</sup>

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<sup>1</sup> While Mr. Buckingham was the sole appellant herein, Mr. Buckingham was not the only parent to go to the Riverside Board and make a transportation request.

For several years prior to the time of this dispute the Riverside District and Treynor District transportation directors believed that there was an unwritten agreement between the two districts which allowed Treynor buses to pick up students in an area boundary between the southwest parts of the Riverside District on 320<sup>th</sup> and 330<sup>th</sup> streets in Silver City, Iowa.<sup>2</sup> Maps of these areas are attached to this decision for reference. Mr. Buckingham took advantage of this agreement when he decided to open enroll his children to the Treynor District. For two years Mr. Buckingham's oldest child was bused under this agreement and picked up in the Riverside District in front of his residence.

In early 2013, Superintendent Sutton received information from a board member that this transportation arrangement was occurring. After following up with the Riverside transportation supervisor, Superintendent Sutton learned that a Treynor bus had been entering the Riverside District to transport open enrolled students to the Treynor District. Superintendent Sutton advised the director that this practice was against Riverside Board's transportation policy and told him to stop this arrangement. Neither party disputes this transportation arrangement was occurring.

On March 13, 2013, the Riverside Board received a letter from the president of the Treynor Board asking the Riverside Board if it would discuss allowing either district to pick up students within the other's boundaries. The Riverside Board took up this issue in their March 19, 2013, meeting but tabled the issue to collect more information.<sup>3</sup> In a follow-up meeting on April 16, 2013, the Riverside Board discussed the issue and noted that the practice of Treynor buses picking up students in the Riverside District has been occurring for a number of years without the knowledge or permission from the Riverside Board. Superintendent Sutton acknowledged that he and the Riverside Board considered the fact that open enrollment has a negative impact on the district and they are losing kids because of open enrollment. The Riverside District openly does not want to encourage parents to open enroll their kids. The Riverside Board decided to maintain its current policy<sup>4</sup> and voted to advise the Treynor Board that it is not interested in permitting Treynor buses to pick up students in the Riverside District.<sup>5</sup>

After the April meeting Mr. Buckingham and his children made alternate arrangements to walk an additional 200 yards from the first pick up post to another stop in the Treynor District. However, Mr. Buckingham felt this arrangement was too dangerous and again went before the Riverside Board.<sup>6</sup> On August 19, 2013, the Riverside Board again heard from Mr. Buckingham regarding his request for transportation. The Riverside Board voted to continue their current board policy of not

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<sup>2</sup> The bus route in question is segments of 320<sup>th</sup> and 330<sup>th</sup> streets in Silver City, Iowa. Segments of these two streets are shared by both school districts. This is an existing Treynor bus route that travels on both 320<sup>th</sup> and 330<sup>th</sup> and runs right past the Buckingham residence and the stop post where the children had been getting picked up. The stop was on the Treynor bus route but not in the Treynor District boundaries.

<sup>3</sup> The Riverside Board noted in the meeting minutes that no formal agreement was ever made for this busing arrangement and tabled the issue until more information could be obtained.

<sup>4</sup> The policy provides that "Students, who choose to attend a school district other than their resident district, will provide transportation to and from the school at their own expense." Riverside Community School District Board of Directors, policy Code No. 712.1 (2009).

<sup>5</sup> The motion was carried with six yes votes and one abstention.

<sup>6</sup> Mr. Buckingham's primary concerns were his inability to see the children from his residence at the new stop, there is no sign at this stop, and inclement weather.

allowing other buses into the Riverside District to pick up children.<sup>7</sup> The Riverside Board has now communicated to the Treynor Board that it will no longer permit or tolerate any transportation within its boundaries of Riverside District resident students who are open enrolled by a school bus owned and operated by the receiving school district. Accordingly, at this time, the Riverside Board does not knowingly allow or tolerate any school bus owned and operated by another school district to travel within its boundaries to transport open enrolled students.

### CONCLUSIONS OF LAW

The statutory basis for Mr. Buckingham's appeal, Iowa Code section 285.12, states in pertinent part as follows:

In the event of a [student transportation-related] disagreement between a school patron and the board of the school district, the patron if dissatisfied with the decision of the district board, may appeal to the area education agency board... . . . Either party may appeal the decision of the agency board to the director of the department of education... .

Although the statute is silent regarding the standard of review, the standard to be applied in appeals of student transportation decisions was clarified by the Iowa Supreme Court in *Sioux City Community School District v. Iowa Department of Education*, 659 N.W.2d 563 (Iowa 2003). In that case, the Department had overturned a decision of the Sioux City Board of Education regarding transportation<sup>8</sup>, and the Supreme Court determined that the Department was wrong to so decide.

Nothing in Iowa Code section 285.12 suggests the scope of the Department's review of the school district's decision is de novo, allowing the Department to reverse the school district and substitute its own judgment. No statute gives the Department authority to override the school district's ultimate decision because it determines the decision was wrong. Rather, where a statute provides for a review of a school district's discretionary action, the review, by necessary implication, is limited to determining whether the school district abused its discretion. See 63C Am. Jur. 2d *Public Officers and Employees* § 231, at 670; 67 C.J.S. *Officers* § 107, at 378.

*Id.* at 568.

Accordingly, this agency's review in this case is for abuse of discretion. Under the abuse of discretion standard we look at whether a reasonable person would have

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<sup>7</sup> The motion was carried with six yes votes and one abstention.

<sup>8</sup> The underlying request by the parents in the Sioux City case was for transportation for elementary students who lived less than two miles from their school but whose walking route was along a busy frontage road. Iowa Code § 285.1 mandates that districts provide transportation only when elementary students reside more than two miles from their schools of attendance (three miles for secondary students).

found sufficient evidence to come to the same conclusion reached by the school district. *Id.* at 569. “[W]e will find a decision was unreasonable if it was not based upon substantial evidence or was based upon an erroneous application of the law.” *City of Windsor Heights v. Spanos*, 572 N.W.2d 591, 592 (Iowa 1997). We may not substitute our judgment for that of the Riverside Board.

The law that the Riverside Board applied herein is part of the open enrollment statute, specifically subsection 10 of Iowa Code section 282.18:

- a. Notwithstanding section 285.1 relating to transportation of nonresident pupils, the parent or guardian is responsible for transporting the pupil without reimbursement to and from a point on a regular school bus route of the receiving district. ...
- b. A receiving district may send school vehicles into the district of residence of the pupil using the open enrollment option under this section, for the purpose of transporting the pupil to and from school in the receiving district, if the boards of both the sending and receiving districts agree to this arrangement.

Mr. Buckingham argues that all parties were aware of the Riverside Board policy regarding transportation of open enrolled students and that both districts overlooked the policy for years and allowed this transportation to take place. Mr. Buckingham argues that putting a stop to a practice that has been in place for 12 years is irrational and unreasonable. In support of his position Mr. Buckingham cites the findings of the State Board of Education [“State Board”] in *In re Pam Rohlk*, 11 D.o.E. App. Dec. 20 (1993)<sup>9</sup>, and *In re Joshua, Arthur & Tea Haug*, 22 D.o.E. App. Dec. 36 (2003)<sup>10</sup>. Neither of these cases directly supports this proposition. Mr. Buckingham argues that the bus would be driving on the same bus route that it is currently on, that it would not go off of the bus route, but that it would simply make another stop in front of his residence to pick up his children. Finally, he argues that this decision is not the Riverside Board’s decision to make by law.

While Mr. Buckingham’s arguments might appear to be reasonable arguments, they must fail for several reasons. First, the Riverside Board was not overlooking its policy. This transportation arrangement was occurring without the knowledge or approval of the Riverside Board and it was in violation of the board’s current transportation policy. Second, the question of whether or not the district abused its discretion in making its decision is answered by asking whether a reasonable person would have found sufficient evidence to come to the same conclusion as the district. Here the Riverside District openly admits that to allow open enrollment transportation has a negative impact on the district’s enrollment. The Riverside District does not want to encourage open enrollment by having these transportation arrangements in place. Even, Mr. Buckingham argued that the open enrollment issue appears to be driving the district’s decision in this case. A reasonable person could find that the loss of enrollment is a rational basis for the district’s decision. Furthermore, it is not arbitrary or capricious for a district to make a decision not to allow buses from neighboring districts

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<sup>9</sup> In *In re Pam Rohlk*, the State Board affirmed the decision by the Eastwood Community School District to not allow buses from other districts within its borders to transport kids who are open enrolled to other districts. *Id.*

<sup>10</sup> In *Haug*, the State Board affirmed the decision by the Springville Community School District to refuse to allow other school district buses into the district for open enrollment transportation purposes. *Id.*

to enter its district to pick up open enrolled students. See *In re Danielle, Dalton, & Dustin Dea*, 14 D.o.E. App. Dec. 359 (1997)<sup>11</sup>. Finally, this decision is allowed under Iowa Code section 281.18(10) and is a decision solely within the province of the Riverside Board to make. Although the parties agree this past practice of allowing other districts' buses into its boundaries for open enrollment transportation was occurring, albeit unbeknownst to the Riverside Board, the decision the Riverside Board made on August 19, 2013 is entirely consistent with the District's policies.

"Notwithstanding section 285.1" means that the language that follows that phrase is an exception to section 285.1. The transportation of students who are open enrolled is the responsibility of the students' parents or guardians. Only if a receiving school district (the district to which students are open enrolled) has express permission from the board of the resident school district may the former send a school bus into the latter to pick up and drop off open enrolled students. Furthermore, the administrative rule interpreting this statute provides that transportation is the responsibility of the parent or guardian, and that it is discretionary with the district whether it agrees to allow buses from other districts into its territory. Iowa Administrative Code 281 --- 17.9(1). Nothing in our law or rules compels a school district of a resident school district to give such permission.

We conclude that a reasonable person could have found sufficient evidence to determine that the Riverside Board's refusal of Mr. Buckingham's request was a rational decision. The local Board took no action that it was prohibited from taking under section 282.18(10). There are no grounds by which this agency can reverse the underlying decision.

### DECISION

For the foregoing reasons, the decision of the Board of Directors of the Riverside Community School District made on August 19, 2013, is *AFFIRMED*. There are no costs of this appeal to be assigned.

10/2/13  
Date

/s/  
Nicole M. Proesch, J.D., Judge

10/2/13  
Date

/s/  
Brad Buck, Director

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<sup>11</sup> In *In re Danielle, Dalton, and Dustin Dea*, the State Board found a district's decision to discontinue allowing buses from other districts into its own district for open enrollment purposes was not arbitrary and capricious. *Id.* The local board in that case openly admitted the rationale behind the decision was to discourage open enrollment. *Id.*