

IOWA DEPARTMENT OF EDUCATION
24 DoE App. Dec 153

In re: Open Enrollment Transportation :

John Childers, :
Appellant

DECISION

vs. :

[Admin. Doc. 4640]

Griswold Community School District, : DIA No. 06DOE001
Appellee.

This appeal hearing was held before Administrative Law Judge Margaret LaMarche¹, presiding on behalf of Judy A. Jeffrey, Director of the Iowa Department of Education, on October 16, 2006 at 10:00 a.m. in conference room 320, Lucas State Office Building, Des Moines, Iowa. Appellant John Childers appeared and was self-represented. Attorney James Hanks represented Appellee Griswold Community School District. The Appellee submitted a written Motion to Dismiss, and the Appellant was later allowed until October 26, 2006 to submit his written response.

ISSUES

- 1) Whether the appeal should be dismissed for lack of jurisdiction because the Notice of Appeal was untimely?
- 2) Whether the Griswold School District Board abused its discretion when it denied John Childers' request to allow a bus from the Red Oak School District to enter the Griswold School District in order to pick up and transport the Childers' children to the Red Oak School District, where they are currently open enrolled?

FINDINGS OF FACT

John and Wilma Ann Childers and their children live at 1069 G Avenue, Red Oak, Iowa, which is within the boundaries of the Griswold Community School District. On or about January 18, 2006, the Childers filed an application to open

¹ This appeal was transferred to the Iowa Department of Inspections and Appeals for hearing following a Ruling on Second Motion to Disqualify.

enroll their son in the Red Oak Community School District for the 2005-2006 school year. The Childers did not check any of the reasons listed on the application for a late open enrollment.² Nevertheless, the Red Oak School District (receiving district) approved the Childers' open enrollment application on January 23, 2006.

The open enrollment application also includes a section for the approval of the resident district, to be completed only if the resident district has a desegregation plan or if the student claims pervasive harassment or severe health condition. This section contains only the name of the Griswold Community School District and the signature of its superintendent. The questions concerning the resident district's action on the application were left blank. The Childers also open enrolled their daughter in the Red Oak School District.

On February 24, 2006, the Childers made a written request, pursuant to Iowa Code §282.18(10), asking the Griswold Community School District to allow the Red Oak School District to enter the Griswold School District to pick up and transport their children to school in the Red Oak District. In this request, the Childers state that there would be no additional cost to the Red Oak or to the Griswold School Districts because the Red Oak school bus drives past their daycare providers' home and passes at the top of the Childers' lane.

The Childers' transportation request was placed on the Griswold School Board agenda for March 22, 2006, and John Childers appeared before the Board. At this meeting, Mr. Childers did not raise the allegations that his son had been harassed or bullied as a reason supporting his transportation request. Mr. Childers also did not raise any other instance where the Griswold School District had opened its boundaries for busses from another school district.

Superintendent Darwin Lehman advised the Board that it had never previously granted this type of request. Mr. Lehman had been the district's superintendent for three years and had been a principal in the district for five years before that. Mr. Lehman had also consulted the prior

² One of the reasons for a late application is "pervasive harassment." Mr. Childers had previously complained to the school district that some students were harassing his son at school and on the bus.

superintendent, who had served the district for fifteen years, about the past practice of the Board. At the March 22nd meeting, neither Superintendent Lehman nor the Board members were aware of any other instance where Griswold buses entered other school districts to pick up open enrolled students or other school district buses entered the Griswold District. The Board felt that it should continue the past practice of not approving such requests, which would discourage open enrollment in general. The Griswold School Board voted unanimously to deny the Childers' request.

On May 25, 2006, John Childers wrote to the Griswold School Board asking them to reconsider his transportation request and further stating that if his family would later become economically eligible for transportation assistance due to a job loss, illness, etc., Griswold would not have to pay since Red Oak would have already agreed to provide transportation.

On June 7, 2006, Superintendent Lehman notified Mr. Childers that he was denying the reconsideration request for two reasons: 1) the Griswold Board already denied the request at its March meeting, and 2) the Griswold district is not required to open up its boundaries to other districts to pick up students and this has been a past practice between Red Oak and Griswold districts. Superintendent Lehman advised Mr. Childers that if he was dissatisfied with this response, he could make a written request for reconsideration to the Board's President and ask for the issue to be added to the agenda.

On June 27, 2006, Mr. Childers sent his written request for reconsideration directly to the Griswold Board President. At its meeting on July 17, 2006, the Griswold Board addressed Mr. Childers' request for reconsideration, although this item did not appear on the Board's published agenda and the certified minutes do not reflect that the agenda was amended to add this item. Superintendent Lehman testified that his personal notes from the July 17th meeting indicate that the Board added this item to its agenda, and he believed that the failure to document the agenda addition in the minutes was a clerical error that went unnoticed when the minutes were approved in August.³ John

³ John Childers argues that the Board's July 17, 2006 meeting violated the Open Meetings statute due to lack of proper notice to the public. See generally Iowa Code §21.4. Mr. Childers was allowed to make a

Childers did not attend the July 17th meeting because he did not realize his request would be addressed. Board President Cherie Miner recalled that the Board had "very little discussion" before voting "to uphold its previous decision and not let the Red Oak bus stop by the Childers' house as it passes by." See Griswold Board Minutes, July 17, 2006. On July 20, 2006, Superintendent Lehman notified John Childers in writing that the Griswold School Board had denied his request at its July 17, 2006 meeting.

On July 27, 2006, Mr. Childers filed an appeal of the Griswold Board's July 17, 2006 decision with the Loess Hills Area Education Agency (AEA).⁴ The AEA heard and denied the appeal at its meeting on August 22, 2006. John Childers received written notification of the decision on August 25, 2006.

On August 30, 2006, Mr. Childers filed an appeal with the Iowa Department of Education. In his appeal letter Mr. Childers asserts, for the first time, that the Griswold school bus currently picks up the children of another family who reside in the Red Oak District but attend a Griswold school. Mr. Childers further asserted that the decision of the Griswold Board was irrational because in order for his children to ride the Red Oak bus they will have to walk 1.25 miles down a dangerous country gravel road with no shoulders and across a primary road with a blind intersection (and in partial darkness in the winter a.m. hours) when the same bus travels within 600 feet of the Childers' driveway. Finally, Mr. Childers asserted that after complaining that his son was being harassed, he was pressured to open enroll or his children would be moved to another elementary in the Griswold District that was a 30-40 mile roundtrip from the Childers' home. Mr. Childers attached a Griswold School District Map showing the location of his home and the home of the other family, a

record on this issue, but the parties were advised that the administrative law judge did not have jurisdiction to decide the open meetings issue raised by Mr. Childers because Iowa Code §21.6 vests enforcement authority solely in the district court.

⁴ In his appeal letter to the AEA, Mr. Childers states that his son had been harassed at his Griswold school and asserts that the school board's inadequate response to his complaints justify his transportation request. Mr. Childers' did not raise this issue before the Griswold School Board but testified at the Board of Education hearing that the Griswold Board was aware of his harassment claims because he raised them at the Board's January 2006 meeting.

letter from the Griswold School District dated January 3, 2006, and correspondence from the Red Oak School District concerning his son's adjustment to his new school. Mr. Childers had not presented these documents to the Griswold School Board or to the Loess Hills Area Education Agency.

On September 24, 2006, John Childers submitted a second letter in support of his appeal. In this letter, Mr. Childers named another family's children, who reside in the Riverside School District but attend school in the Griswold School District, who have been picked up by the Griswold bus since 2002. Mr. Childers also named a third family, who resided in the Griswold District ten years earlier and were allowed at that time to have the Riverside School District bus pick up their children. Mr. Childers attached another school district map showing the location of his residence and the locations of the three family residences and also attached a copy of the Griswold Board's July 17th agenda.

Before John Childers filed his appeal to the Department of Education, Superintendent Lehman was unaware that Griswold buses were entering other school districts to pick up students from two families or that any other school district's bus had ever been permitted to enter the Griswold School District boundary to pick up students. Darwin Lehman has contacted the former Griswold superintendent to ask about the families that John Childers named in his appeal. The former superintendent told Lehman that he had forgotten about those cases but recalled that he had personally authorized the transportation director to pick up the children from these two families. The former superintendent did not obtain authorization or approval from the school board.⁵ The Griswold Board President, who had been on the Board for 4½ years, was not aware of these cases until after John Childers filed his appeal with the Department of Education. She was very surprised that the former superintendent bypassed the Board and approved the transportation requests on his own. It is her belief that the Board still intends to follow its prior practice of not

⁵ In his post-hearing written response, Mr. Childers makes what amounts to a hearsay objection to this testimony. Hearsay evidence is admissible in administrative hearings. Iowa Code section 17A.14(1). This testimony was deemed reliable because it was corroborated by the testimony of the school board president and no contrary evidence was presented to show that the school board ever approved these transportation requests.

approving requests to open the school district's boundaries.

CONCLUSIONS OF LAW

I. Applicable Statutes and Rules/Standard of Review

Iowa Code §282.18(10) (2005) provides, in relevant part:

282.18 Open enrollment.

10. 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. However, 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...

See also 281 IAC 17.9(1).

Iowa Code chapter 285 addresses a variety of school transportation issues, including the power and duty of local boards to establish, maintain and operate bus routes. Iowa Code §285.10(2) (2005). Iowa Code §285.12 requires school patrons to file an affidavit of appeal with the area education agency board within ten days if it is dissatisfied with a decision of the district board. Either party may appeal the area education agency's decision to the director of the department of education within five (5) days after receipt of the decision of the agency board.

While section 285.12 is silent as to the scope of review to be exercised by the Department of Education, the Iowa Supreme Court has held that the appropriate standard of review is abuse of discretion and not de novo review. Sioux City School District v. Dept. of Education, 659 N.W.2d 563, 568-569 (Iowa 2003). Under this standard, the question is whether a reasonable person could have found sufficient evidence to come to the same conclusion as that reached by the school district. The Department of

Education is not permitted to substitute its judgment for that of the school district. Id.

II. Motion To Dismiss

John Childers testified that he appealed from the March 22, 2006 decision of the Griswold Board, but that appeal was ruled untimely because it was not filed within ten days. John Childers argues that this prior ruling was unfair and/or incorrect because he had been given conflicting information about the appeal period and because the appeal was timely under Iowa Code section 290.1, which provides parents thirty days to appeal a local board decision to the state board. However, Mr. Childers never appealed the ruling on the timeliness of his first appeal, and that ruling has become final.

After his appeal was ruled untimely, John Childers filed a written request asking the Griswold Board to reconsider its decision on his transportation request. The Griswold School District took action on this request at its July 17, 2006 meeting, and Mr. Childers filed a second appeal. The Griswold School District argues that the second appeal should also be denied as untimely because the reconsideration request did not trigger a new appeal period.

The Griswold School District cites two prior decisions of the Department of Education as precedent. See 16 D.o.E. App. Dec. 336, 16 D.o.E. App. Dec. 338. In those cases, the school patron asked the school board to reconsider its earlier refusal to grant their transportation request (which was nearly identical to the request made by the Childers). The minutes of the school board meeting in those cases reflected that the Board voted not to place the reconsideration request on a future agenda. The Department of Education later concluded that it lacked jurisdiction to consider an appeal from a Board's refusal to reconsider an earlier decision.

However in this case, the minutes of the July 17, 2006 meeting and the recollection of the Board President establish that the Board was presented with the Childers' reconsideration request, had a brief discussion, and then voted unanimously to "uphold the Board's previous decision and not let the Red Oak bus stop at Childers' house as it passes by." While the transportation does not appear on

the school board's written agenda for July 17th, the superintendent recalled that it was added as an agenda item. This is different from the cases cited by the Griswold School District, where the board merely voted not to place the reconsideration request on the future agenda. Based on this record, it appears that the Griswold School Board reconsidered Childers' request, had a brief discussion, but then took action to uphold their prior decision. Under these circumstances, a new ten-day appeal period is triggered. The Department of Education and the undersigned administrative law judge have jurisdiction to consider the appeal.

III. Whether the Griswold Community School District Board Abused Its Discretion?

In determining whether the decision of the Griswold School District Board constituted an abuse of discretion, the Department must consider the evidence and information presented to the Board at the time that the decision was made. At the time of the July 17, 2006 decision, the Griswold Board and the Superintendent did not know that the former superintendent had previously bypassed appropriate procedures⁶ and authorized the transportation director to pick up students from two families who resided in districts outside of Griswold. They also did not know that another school district had entered the Griswold School District boundary ten years' earlier to pick up children from a third family. In addition, Mr. Childers did not raise his harassment claims as justification for his transportation request. The Griswold School Board's decision cannot be characterized as unreasonable or arbitrary based on the failure to consider information that was never presented to them.

The Griswold School District Board has taken the position that it does not want to open its boundaries to other school district's busses. The Board's primary rationale for this position is to discourage open enrollment. The Department of Education has previously held that it is not arbitrary and capricious for a school board, motivated by the desire to discourage open enrollment, to decide to no

⁶ State law requires the boards of the sending district and the receiving district to approve such a request, not the superintendent. Iowa Code §282.18(10)(2005).

longer allow buses from neighboring districts to enter its district to pick up open enrolled children in order to discourage open enrollment. 22 D.o.E. App. Dec. 36, 39-40, citing Iowa Code section 282.18(10) and 14 D.o.E. App. Dec at 361.

Reasonable persons could disagree about whether the Griswold School District Board should have made an exception to its past practice in this case. Nevertheless, the Griswold School Board had a legal and rational basis for its decision. The decision to deny the Childers' transportation request was not an abuse of discretion.

DECISION

For the foregoing reasons, the Appellee's Motion to Dismiss is DENIED. The July 17, 2006 decision of the Griswold Community School District Board to deny the request to allow the Red Oak Community School District to enter Griswold School District boundaries to pick up an open enrolled student is AFFIRMED.

Margaret LaMarche

November 1, 2006

Date

Margaret LaMarche
Administrative Law Judge

It is so ordered.

11.1.06
Date

Judy A. Jeffrey

Judy A. Jeffrey, Director
Iowa Department of Education