IOWA DEPARTMENT
OF EDUCATION
(Cite as 23 D.o.E. App. Dec. 289)

In re Transportation Services	:	
Marsha Sears, Appellant,	:	DECISION
vs.	:	[Admin. Doc. 4608]
Heartland Area Education Agency, Appellee.	:	

The above-captioned matter was heard in person on July 5, 2005, before designated administrative law judge Carol J. Greta. The Appellant, Marsha Sears, was personally present; Ms. Sears chose to forego legal counsel. Appellee, the Heartland Area Education Agency, was represented by attorney Frank Harty. Dr. Wayne Rand, Administrator of Heartland AEA, was also present.

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 § 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.

In this case Ms. Sears seeks reversal of a decision the local Board of Directors of the District made on April 11, 2005, to privatize student transportation for all students of the District. On May 10, the Board of Directors of Heartland Area Education Agency (AEA 11) upheld the decision of the Ankeny Board. The evidentiary hearing for this appeal was consolidated with the evidentiary hearing for another appeal brought by Ms. Sears (Admin. Doc. 4609), in which she seeks reversal of a subsequent decision of the Ankeny Board to sell its transportation fleet to the private transportation provider.[1]

I.
FINDINGS OF FACT

Marsha Sears is the mother of a student of the Ankeny Community School District. Her child is a student with a disability who receives transportation services between home and school. Ms. Sears did not present details about her child's transportation[2], but it was clear that she has been very satisfied with the arrangements

[1] The decision in Admin. Doc. 4609 is a State Board of Education decision pursuant to Iowa Code section 290.1.

[2] It is not known, for instance, whether the transportation for Ms. Sears' child is required by the terms of the child's IEP, or Individualized Education Program.

that have been in place for her child. She is apprehensive not knowing how privatization will affect her child.

Through the 2004-05 school year, the District has directly provided its own student transportation with a fleet of vehicles owned by the District. Dr. Mutchler, who has been superintendent since the 2002-03 school year, testified that his predecessor told him that informal conversations with directors and administrators about privatizing this service had occurred from time to time before Dr. Mutchler was hired. No formal action had even been taken however.

During the 2004-05 school year, the District's transportation director stated that she intended to exercise her option for early retirement, effective at the end of the 2004-05 school year. Dr. Mutchler described this as the impetus for exploring privatization of the District's student transportation services. He and his staff called area school districts that fully or partially utilize a private company for student transportation. An informal meeting was held on December 22, 2004 with various private transportation companies. The meeting was held for the purpose of mutual information gathering and to answer questions from the companies in a large group setting where, as Dr. Mutchler stated, "no one company would feel it had an 'in.'"

The District then developed a Request for Proposal (RFP), the first formal step in the bid process. Representatives from five or six private transportation providers showed up for the pre-bid, mandatory meeting. Not present was any representative from First Student Services, a company that District administration was hoping would submit a bid. The absence of First Student meant that that company could not be given further consideration by the District.

On March 14, 2005,[3] a progress report was presented to the local Board regarding privatization. The Board also reviewed a written analysis prepared by Mr. Naber, the District's business manager. (Appellee's Exhibit 4) At this point, the process had been public for six weeks.

At a March 28 work session the Board addressed privatization again. A few days prior to this work session, Dr. Mutchler sent a letter to the school board members in which he noted that Durham was the low bidder. Dr. Mutchler also noted that he would not be bringing a pros-and-cons chart with him to the work session because he wanted "to have you work as a group with me to put a T-chart on the wall and talk through all of the possible issues… ."

[3] All dates mentioned hereafter in this Decision are 2005 dates.

A two-hour long public forum was conducted regarding the privatization issue on the evening of April 4. All questions raised or "facts" asserted by audience members

were followed up on by Ankeny Associate Superintendent Anne Laing. A seven-page summary of Dr. Laing's findings was prepared and given to local Board members. This document (Appellee's Exhibit 9) is a public record and available to any member of the public who requested a copy.

At its Regular Board meeting on April 11, the local Board voted 4 – 3 to approve a motion "that the Superintendent be authorized to negotiate a contract with Durham School Services L.P. for the transportation of students to the Ankeny Community School District and that the proposed contract thereafter be submitted to the Board for its consideration."

The District's rationale for privatization was twofold – (1) to increase safety of students and (2) to increase efficiency of operations.

Durham has a point system to reward drivers for safe driving; the District does not have such an incentive. The company also provides more in-service training for its drivers than the District is capable of providing. Durham has regional safety personnel who respond immediately when a Durham driver is involved in a bus accident. The safety personnel examine causal factors and respond with remedial training, if needed. Durham also employs regional mechanics who, because of the volume of vehicles for which they are responsible, provide an expertise that enhances both safety and efficiency.

Efficiency is also enhanced by Durham's ability to maximize the use of computer software to plan bus routes more efficiently. The District presently owns such software, but is unable to fully realize the benefits of the software because it cannot afford to dedicate an employee to work with the program. Finally, because Durham purchases school buses in bulk, Dr. Mutchler estimates that the District will save about $100,000 annually.

II.
CONCLUSIONS OF LAW

The statutory basis for Ms. Sears' appeal, Iowa Code section 285.12, states in pertinent part as follows:

> In the event of a 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… .

Section 285.12 does not pertain to all disagreements between a school patron and her local board. Chapter 285 governs school transportation matters only.

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The standard of review to be applied in appeals of student transportation decisions was recently 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[4], 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.
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> The issue is whether the Department properly reviewed the school district's decision for an abuse of discretion. The Department stated, "Although reasonable minds could differ over the judgment call that the [AEA] was called upon to make," it went on to say the parents "convinced" the AEA that the school district's decision was "adverse to the health and safety of the students." By stating "reasonable minds could differ" over this discretionary decision, the Department conceded there was evidence supporting the school district's decision. That is, the Department did not review the school district's action for abuse of discretion but instead made its own judgment based upon the entire record. … The Department did not determine whether a reasonable person could have come to the same conclusion as the school district. The Department's action exceeded its authority. [Emphasis added.]

Id. at 568, 569-570.

[4] 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).

Accordingly, this agency's review is for abuse of discretion; that is, we look only to whether a reasonable person could have found sufficient evidence to come to the same conclusion as reached by the school district. Iowa Code § 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." *City of Windsor Heights v. Spanos*, 572 N.W.2d 591, 592 (Iowa 1997). We may not substitute our judgment for that of the local Board.

Ms. Sears wisely does not argue that the District has no authority to privatize student transportation. Such authority is established in Iowa Code sections 285.5 and 285.10. The latter imposes a duty on all local school boards to provide student transportation; the former permits the fulfillment of that duty through contracts with private parties.

The points on appeal brought forth by Ms. Sears in this appeal are the following: (1) that the Ankeny Board did not give approval to Dr. Mutchler to seek proposals from private transportation providers and (2) that the decision to privatize was improperly motivated.

Because the final decision about privatization was make by the local Board, it is irrelevant how the process started. Once the District began to explore privatization, there is simply no evidence to support the assertion that the process and decision were not fully supported by a majority of the local Board members. For a 16-week period, including at least four open Board meetings, this issue was avidly and publicly debated. The final 4-3 vote in favor of privatization demonstrates the Board's diversity of opinion of privatization. But at no point during the process did the Board instruct Dr. Mutchler or District staff to discontinue the groundwork in progress. If the Board believed, as Ms. Sears suggests, that any of its administrators overstepped his or her job duties, the Board has authority to deal with that administrator has his or her employer. This agency has no evidence that such is the case, and we have no jurisdiction over local employment matters.

As to the rationale behind the Board's decision to privatize, the reasons articulated herein were safety and efficiency (including cost savings). Whether there were other factors that motivated the District is not determinative of the outcome of this appeal. The abuse of discretion standard means that the local Board's decision will be upheld unless shown to be unreasonable or lacking rationality under the attendant circumstances. *Sioux City Community School District v. Iowa Department of Education*, *supra* at 566 [citations omitted].

The local Board's decision did not have to be the best possible decision under the circumstances. It is sufficient for purposes of our review that the decision was not

unreasonable. For example, the District was under no obligation to show that it had a poor safety record in order to justify increased safety as one of the reasons for

privatization. Neither was the District legally obligated to explore every possible alternative available to it for student transportation.

We conclude that a reasonable person could have found sufficient evidence to determine that privatization was a rational decision. The local Board took no action that it was prohibited from taking under chapter 285. The local Board members were aware – through petitions – that hundreds of District patrons were opposed to privatization of student transportation. It clearly was a decision that the Board did not make lightly. But, there are no grounds by which this agency can reverse the underlying decision.

III.
DECISION

For the foregoing reasons, the decision of the Board of Directors of the Ankeny Community School District made on April 25, 2005 is AFFIRMED. There are no costs of this appeal to be assigned.

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

It is so ordered.

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Date Judy A. Jeffrey, Director