

IOWA STATE BOARD OF
PUBLIC INSTRUCTION

(Cite as 3 D.P.I. App. Dec. 122)

In re Delbert Jackson	:	
	:	
Delbert Jackson, Appellant	:	DECISION
	:	
v.	:	
	:	
Area Education Agency 9, Appellee	:	[Admin. Doc. 680]

The above entitled matter was heard on December 30, 1982, before a hearing panel consisting of Dr. Robert Benton, state superintendent and presiding officer; Dr. Carol Bradley, chief, instructional services section, special education division; and Mr. A. John Martin, director, instruction and curriculum division. The hearing was held pursuant to Section 285.12, The Code 1981, and Chapter 670--51, Iowa Administrative Code. Mr. Jackson was present and presented evidence and argument on his own behalf. Area Education Agency 9 (hereinafter Agency) was not represented. The Bellevue Community School District (hereinafter District) was represented by John A. Bohy, a District administrator, and Albert Knake, District Board president.

The Appellant has appealed a decision of the Agency Board of Directors upholding a District Board decision regarding transportation of students in the District.

I.
Findings of Fact

The Hearing Panel finds that it and the State Board of Public Instruction have jurisdiction over the parties and subject matter.

The facts presented to the Hearing Panel in this issue revolve around a rural school bus route. The route is one of 14 operated by the District and is located southwest of the community of Bellevue and, on a map, somewhat resembles a cowboy's lariat. In the morning, the school bus leaves town on a road to the southwest for several miles, turns to the right for a short distance and then gradually loops back around to the left until it returns for the return trip to town on the original route out of town. On the return portion of the route, the bus makes a six- to eight-minute deviation from the early part of the route when it turns to the right on a different road. After driving about one and four-tenth miles on the spur portion of the route, referred to in testimony as the "dog's leg," the bus will turn around and return to the original route for completion of the trip back to town. Two students transported in the school bus reside on the "dog's leg" portion of the route.

In the afternoon, the school bus will again start out of the town on the road toward the southwest, but instead of going past the "dog's leg" spur, as it did on the morning route, it will turn left to drop off those students living along that portion of the route. The bus will then turn around and return to complete the "loop" portion of the "lariat" route as it did in the morning and then return to town.

The primary difference between the morning and afternoon routes is that the students living along the "dog's leg" are among the last on the bus in the morning and are among the first off in the afternoon. For the students living along the "loop" portion of the route, the amount of time they spend riding the bus is reversed. The students on the "loop" portion of the route which get on the bus first in the morning and thus have the longest morning ride of the students living along the "loop" are the first ones off the bus in the afternoon and have the shortest afternoon ride of the students living along the "loop."

By running the "dog's leg" portion of the route late in the morning route and early in the afternoon route, those children living along the "loop" portion of the route must ride the bus six to eight minutes a day longer than if the entire route were run in reverse order in the afternoon. However, if the entire route were run in reverse order in the afternoon so that the students living on the "dog's leg" now getting on late in the morning route would be getting off the bus late in the afternoon route, those students residing on the "dog's leg" would be required to ride an estimated additional 40 to 45 minutes while the children residing on the "loop" are dropped off first.

In summary, those students residing on the "loop" portion of the route are returned home in the afternoon in the reverse order they were picked up in the morning, resulting in a balancing of the time spent on the bus. The students residing along the other portion of the route, including the "dog's leg," are among the last ones on the bus in the morning and are among the first ones off in the afternoon.

The Appellant and his three school-age children reside on the east side of the "loop" portion of the route and are among the last of the children residing along the "loop" to get on the bus in the morning and are among the last of the children residing along the "loop" to get off the bus in the afternoon. Because the "dog's leg" portion of the route is run after the Appellant's children get on in the morning and before they get off in the afternoon, they travel the "dog's leg" portion of the route both ways. If the route were reversed as Mr. Jackson requests, his children would ride the "dog's leg" portion of the route only once a day. The students residing along the "dog's leg" do not ride the "loop" portion of the route in either the morning or the afternoon. If the route was reversed as Mr. Jackson requests, the children would ride the loop once a day.

The 1982-83 school year is the first year the route in issue has been utilized by the District. In prior years, the "dog's leg" was a portion of another bus route which was one of two routes eliminated by the District for reasons of efficiency.

Mr. Jackson raised the issue regarding the bus route with District Superintendent C. C. Hammann. Superintendent Hammann reviewed the route for efficiency and safety and concluded that no problem existed. He apparently also requested the advice of transportation staff in the Dubuque Community School District on the matter and was told that the existing route appeared to be efficient.

On November 8, 1982, Mr. Jackson met with the District Board at its regular November meeting. He was given the opportunity to raise his objection to the existing bus route. Several other persons present supported the existing route.

After discussion, the District Board of Directors voted to make no changes in the existing bus route. Mr. Jackson appealed that decision to the Agency Board of Directors under the provisions of Section 285.12, The Code 1981, on the basis that the running of the route as it existed resulted in discrimination toward the other students who ride that bus.

On December 1, the Agency Board of Directors held a hearing to review the matter. Mr. Jackson and District official's were granted the opportunity to present their respective sides of the issue. After hearing the parties, the Agency Board of Directors discussed the matter and then voted to disapprove Mr. Jackson's appeal.

Mr. Jackson then filed an appeal of the Agency's decision with the State Superintendent of Public Instruction.

II.

Conclusions of Law

Mr. Jackson has not attacked the legal authority of the District Board to establish bus routes. It is well that he did not, for that authority is obviously present in statute. Section 285.10 provides the following in this regard:

285.10 Powers and duties of local boards. The powers and duties of the local school boards shall be to:

* * * * *

2. Establish, maintain and operate bus routes for the transportation of pupils so as to provide for the economical and efficient operation thereof without duplication of facilities, and to properly safeguard the health and safety of the pupils transported.

* * * * *

The primary thrust of Mr. Jackson's complaint is that as a result of the existing morning and afternoon bus routes at issue here, two students are receiving preferential treatment to the detriment of many of the other students on the bus. He apparently feels that such treatment is discriminatory and should be stopped.

We agree that two students having less riding time than the rest of the students is a type of discrimination, but we must note that not all discrimination is improper or illegal. See *In re Sarah Belcastro*, 3 D.P.I. App. Dec. 3, at page 7. Almost any time a school board makes a decision between two or more choices, a type of discrimination exists. When one teacher is chosen over another to fill a vacancy, one automobile dealer is chosen over another to sell the district an automobile, one textbook is chosen over another for ninth grade mathematics, the board has made a discriminating choice. Choices, by their very nature, result in someone or something being treated differently than another. Merely because the District Board has made a choice of directions for the school bus route to run does not necessarily, and does not here, create a type of discrimination which is improper or illegal.

The legislature has very clearly established the authority for school districts to establish school bus routes within the guidelines of "economical and efficient operation," and proper safeguard for the health and safety of the students. We have not been shown by the Appellant that the route he suggests is in any substantial way more or less efficient or safe than the existing route. He has, in effect, not shown us that the District establishment of the route and reaffirmation of the route on November 8 should be wrested from the discretionary judgment of the District Board.

Next year, because of graduation of seniors and entrance of new students, the District may have to make revisions in their existing bus routes. If that happens, the District Board is in the best position to establish those routes. We in Des Moines will intervene only when we are shown good cause to do so, and we have not been shown good cause here.

The Appellant has raised a related issue which has only an indirect relationship to the problem. While it is not directly germane to the primary issue, we do feel that it should be addressed.

Mr. Jackson has noted, and the record verifies, that the District bus on the route at issue here is scheduled to pick up its first elementary students at 7:06 a.m. and its first school stop is at 8:09 a.m., a total of 63 minutes. For students of elementary age, Departmental Rule 670--22.1(3), establishes a maximum school bus route riding time of 60 minutes. We do not feel that in the ordinary scope of things that an excess schedule time of three minutes is a violation of that rule. The record shows very clearly that not all students ride the bus every day and that weather and readiness of students play an important role in the actual riding time. The record does not disclose any objections on the part of the parents of the students involved. We have not been shown that the actual riding time regularly exceeds 60 minutes for elementary-age students or if it does, that anyone directly involved objects.

While we do not consider the 60 minute riding rule directly relevant to this decision, we would not want Mr. Jackson to think we take the issue lightly. The 60 minute riding time rule will be enforced when it can be established by actual regular riding time and with the objection of those persons directly affected.

III.
Decision

The decision of the Area Education Agency Board of Directors affirming the decision of the Bellevue Community School District Board of Directors in this matter is hereby affirmed.

February 10, 1983

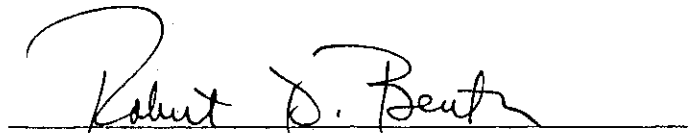
DATE



KAREN K. GOODENOW, PRESIDENT
STATE BOARD OF PUBLIC INSTRUCTION

January 19, 1983

DATE



ROBERT D. BENTON, Ed.D.
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
AND
PRESIDING OFFICER