

IOWA DEPARTMENT OF EDUCATION
26 D.o.E. App. Dec. 82

In re Transportation of Open Enrolled Pupils

Toby Nicholson, Appellant,	:	
	:	DECISION
vs.	:	
	:	[Admin. Doc. 4723]
Marshalltown Community School District, Appellee.	:	

The above-captioned matter was heard telephonically on January 12, 2011, before designated administrative law judge Carol J. Greta. The Appellant, Toby Nicholson, was personally present and was represented by attorney Joanie Grife. The Appellee, the Marshalltown Community School District ["Marshalltown District"], was represented by attorney Thomas Hillers. Also appearing on behalf of the Marshalltown District was Superintendent Marvin Wade.

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. Nicholson seeks reversal of a decision the local Board of Directors of the Marshalltown District ["Marshalltown Board"] made on September 13, 2010, rejecting his request that the Marshalltown Board allow a school bus owned and operated by the East Marshall Community School District ["East Marshall"] to enter the town of Haverhill, located within the Marshalltown District, to pick up his children and transport them to East Marshall. On November 22 2010, the Board of Directors of Area Education Agency 267 upheld the decision of the Marshalltown Board. We affirm.

FINDINGS OF FACT

Toby Nicholson is the parent of two children who reside in the Marshalltown District, but are open enrolled by Mr. Nicholson to East Marshall. His children do not live within walking distance of their East Marshall attendance centers, one of which is in Gilman and the other in Laurel.¹

¹ Mr. Nicholson's children are among the 16 – 19 students who reside in Haverhill in the Marshalltown district, are open enrolled to East Marshall, and who were also regularly picked up by the East Marshall bus that transported the Nicholson children. While Mr. Nicholson is the sole Appellant herein, other Haverhill parents addressed the Marshalltown Board in support of Mr. Nicholson's request that the Board permit the East Marshall bus to stop in Haverhill.

At the time of the initial hearing before the Marshalltown Board and until the end of the first semester of the 2010-2011 school year, the Marshalltown District allowed an East Marshall school bus to enter the Marshalltown District the necessary few hundred feet to pick up Mr. Nicholson's children at a bus stop near the intersection of 280th Street and Iowa Highway 14 (a/k/a Reed Avenue). A map of the area is attached to this decision for reference.

Claiming that the stop is unsafe for the students, Mr. Nicholson asked that the location of the bus stop be relocated to Haverhill, roughly two miles further into the interior of the Marshalltown District. Mr. Nicholson also pointed out that a school bus from the GMG Community School District² has been permitted to enter the Marshalltown District for the purpose of picking up and dropping off open enrolled students.

Superintendent Wade acknowledged that a GMG school bus has been entering the Marshalltown District to transport open enrolled students, but he stated that such transportation was not with the knowledge and consent of the present Marshalltown Board or Marshalltown District administration. The Marshalltown Board has now communicated to all of its neighboring school districts that it will no longer permit or tolerate any transportation within its boundaries of Marshalltown District resident students who are open enrolled by a school bus owned and operated by the receiving school district. This included revoking any affirmative consent previously given to East Marshall. Accordingly, at this time, the Marshalltown 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. Nicholson'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... .

The standard of review 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 transportation³, and the Supreme Court determined that the Department was wrong to so decide.

² The GMG District is also contiguous to the Marshalltown District.

³ 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).

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 is for abuse of discretion. "[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 Marshalltown Board.

The law that the Marshalltown Board applied herein is the subsection 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. Nicholson argues that open enrolled students must be provided with transportation on the same basis that school transportation is provided to students under section 285.1. He gives the example that resident students of the Marshalltown District who are enrolled in Marshalltown Catholic School, a K – 8 accredited nonpublic school, are provided statutorily with transportation to their nonpublic school. He is correct about students who are enrolled in accredited nonpublic schools, but not in his conclusion that, therefore, open enrolled students should also be provided transportation.

Subsection 14 of Iowa Code section 285.1 states that students attending a nonpublic school "shall be entitled to transportation on the same basis as provided for resident public school pupils under this section." It is a bit of an oversimplification, but suffice it to say that, for any Marshalltown District resident student who attends an accredited nonpublic school located more than two miles from the student's resident (three miles if the school is a secondary school), the Marshalltown District has a statutory duty to provide transportation for the student. Other subsections of section 285.1 give a school district the options of providing such transportation directly, by

contracting with private parties, by contracting with a contiguous school district (if the accredited nonpublic school is not within the boundaries of the resident district), or by paying reimbursement to the parents. See subsections 14 to 17 of Iowa Code section 285.1. However, the provisions regarding the transportation of students enrolled in accredited nonpublic schools cannot be applied, even by analogy, to students who take advantage of the open enrollment statute.

In the first place, the “notwithstanding” clause in section 282.18(10) means that open enrolled students *are an exception to* the provisions of section 285.1. The word “notwithstanding” means despite something or in spite of the fact that. Accordingly, when a statute begins with the phrase “notwithstanding [a specific provision of law],” it is presumed that the legislature intended to override any potential conflicts with the cited legislation.

Secondly, it is a rule of statutory construction that the specific or substantive statute supersedes the general statute. *Albright v. Oliver*, 114 S.Ct. 807, 813 (1994). Section 285.1 is the general student transportation law; 282.18(10) provides the specific provision for open enrolled students. In addition, the express mention of one thing in statute implies the exclusion of other things not specifically mentioned. *State v. Beach*, 630 N.W.2d 598, 600 (Iowa 2001). The Legislature may regulate by omission as well as by inclusion. *Bob Zimmerman Ford, Inc. v. Midwest Auto. BMW*, 679 N.W.2d 606, 610 (Iowa 2004). Thus, when the Legislature provided for accredited nonpublic school students, it intended to make provision just for those students.

“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. Nothing in our law 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 Marshalltown Board’s refusal of Mr. Nicholson’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 Marshalltown Community School District made on September 13, 2010 is *AFFIRMED*. There are no costs of this appeal to be assigned.

Date

Carol J. Greta, J.D., Judge

Date

Jason E. Glass, Director