

IOWA DEPARTMENT OF EDUCATION
27 D.o.E. App. Dec. 524

<i>In re Transportation Appeal</i>	:	
Julie Gesell,	:	
Appellant,	:	DECISION
vs.	:	
	:	[Admin. Doc. 4787]
Iowa City Community School District,	:	
Appellee.	:	

The above captioned matter was heard telephonically on July 22, 2014, before designated administrative law judge Nicole M. Proesch. The Appellant, Julie Gesell [hereinafter “Ms. Gesell”], was present and was self-represented. The Appellee, the Iowa City Community School District [hereinafter “ICCSD”], was represented by Dr. David Dude [hereinafter “Dr. Dude”], Chief Operating Officer. Also present for ICCSD was Dr. Craig Hansel [hereinafter “Dr. Hansel”], Board Secretary, and Esme Davis, Transportation Manager [hereinafter Mrs. Davis].

An evidentiary hearing was held pursuant to agency rules found at 281 Iowa Administrative Code chapter 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 [hereinafter “the Department”] have jurisdiction over the parties and subject matter of the appeal before them.

Mrs. Gesell seeks reversal of the decision of the local Board of Directors of the ICCSD [hereinafter “ICCSD Board”] made on May 29, 2014 to end discretionary transportation for an area in the City of North Liberty. On June 27, 2014, the Board of Directors of the Grant Wood Area Education Agency [hereinafter “GWAEA Board”] upheld the decision of the ICCSD Board. We affirm the decision of ICCSD Board and the decision of the GWAEA.

FINDINGS OF FACT

Ms. Gesell is the mother of four children: age 13, age 10, age 6, and age 2. The Gesell family lives in the ICCSD. The Gesell home is located in North Liberty just west of Garner Elementary [hereinafter “Garner”], which is the designated attendance center for the two middle children. Their residence is 1.1 miles from Garner. The two middle children received discretionary¹ busing during the 2013-2014 school year.

¹ Iowa Code section 285.1(a)(1) requires that school districts provide transportation to students who live more than two miles from their attendance center. If the student lives less than two miles from their attendance center the school district may provide transportation at its discretion but is not required to.

On April 9, 2014, the Gesell family, along with 98 other families in the affected Garner attendance zone,² received a letter³ from the ICCSD stating that their children would not be receiving discretionary busing services for the 2014-2015 school year. The letter provided the right to appeal the decision to ICCSD administrators by notifying Ms. Davis within 10 business days of receiving the letter. Ms. Gesell, along with 29 other families, requested an appeal. On April 28, 2014, Ms. Gesell received a letter from the ICCSD notifying her that the District's Executive Cabinet had reviewed the appeal and determined that the original decision would stand. Ms. Gesell, along with 16 other families, appealed this decision to the ICCSD Board and requested a hearing. On May 16, 2014, ICCSD sent a third and final letter providing notice of an appeal hearing scheduled for May 29, 2014, to those 16 families.

Proceedings before ICCSD Board

On May 29, 2014, the ICCSD Board held a transportation hearing for the 16 families who appealed the decision to discontinue discretionary bussing to the Garner attendance zone. At the outset of the hearing Dr. Dude explained the timeline of events leading up to the hearing.

The board minutes of the hearing reflect the following facts:

The ICCSD has a contract with Durham School Services to provide busing to approximately 5,500 students on a daily basis. During the 2013-2014 school year the district spent \$4,949,813 on busing transportation of students. This is an expense that is paid out of both the General Fund (\$3.6 Million) and the Physical Plant Equipment Levy (\$1.4 Million). Since the majority of this expense is paid out of the district's General Fund the costs of transportation competes against other expenses such as teacher salaries and benefits, curriculum, professional development, support staff salaries and benefits, and other expenses the district incurs. Since the General Fund has a limited balance the district must balance the needs for these funds. This includes the need for discretionary busing.

At the time of the hearing the district had 35 discretionary busing areas busing 1575 students on 43 different bus routes. Each bus route costs the district approximately \$40,000.00. The ICCSD reviews discretionary busing areas once a year or sooner if needed to determine whether changes need to be made. Discretionary busing is provided for a variety of reasons including the following: lack of sidewalks, high volume traffic, and unsupervised crossings at high volume traffic intersections. Other factors taken into account when making these decisions include the age of the students, traffic volume, cross walks, railroad crossings, sidewalks, sidewalk features, safety devices, traffic control devices, and the presence of crossing guards. Each area is individually evaluated to determine if discretionary busing is necessary.

In April of 2014 the district reviewed the area serving Garner located west of highway 965. During a review of the area district administration found that the walking route to Garner "is no longer significantly different from the routes used by the other 4,600 elementary students

² The area for which discretionary busing was removed is described as a rectangular area in the City of North Liberty, north of the line comprised of Westwood Drive and extending westerly along rear lots lines until the western boarder of the district, east of the western boarder of the district, south of Penn Street, west of Highway 965, and within a two mile walking radius of Garner.

³ The letter described the walking route that children were expected to take in lieu of busing services as follows: "There is a pedestrian walk tunnel under HWY 965 at the intersection of W Cherry St. to safely get across HWY 965. Once on the east side of HWY 965 there is a complete sidewalk path to Garner. The walking route was evaluated and determined to be a safe route."

in the school district who do not receive discretionary busing within the walk zone of their perspective schools.” The district applies the same criteria throughout the district when making these decisions and believes this decision is consistent with other decisions made regarding discretionary busing, fair to other affected families, and economically prudent. The district also provided several examples of other discretionary busing areas that it eliminated busing for in the 2013-2014 school year based on the same criteria. The district met with representatives from both the City of North Liberty and the volunteer-run Garner Elementary Walking School Bus program to discuss the change. The families, including the Gesell Family, affected by this decision were notified as part of the process as outlined above.

Parents argued that the district’s decision to discontinue busing was an abuse of discretion and presented evidence that the walking route proposed by the district was unsafe. The following concerns were noted:

[S]afety due to tunnel, Highway 965, no crossing guard, walking school bus not a viable option, late notice, past the deadline for open enrollment, [before and after school programs] are full, safety concerns of North Liberty police, student safety more important than budget, railroad crossing, excessive traffic, distance of walk, weather conditions, no pay to ride option, and students no following the route in lieu of a shorter walk.

Ms. Gesell’s affidavit of appeal presented the following concerns:

[The] walking route our children are expected to use which is a very indirect route, crossing multiple neighborhoods using the underpass and then crossing Zeller to make it to school. This walking route is unsafe for children of this age to be expected to navigate. From our home our children would need to cross Zeller, walk through several neighborhoods, go under the underpass, more business parking lots, cross Cherry Street, take a bike path, then finally cross Zeller again, go over railroad crossings, then walk through another neighborhood to finally get to school.

The board minutes reflect that after hearing evidence and testimony from all the parties the board members discussed the issues presented. After this discussion a motion was made to overturn the administrative decision and allow for discretionary busing of students to Garner. The motion failed for lack of a second. A motion was made to uphold the administrative decision. This motion failed for lack of a second. Since nothing passed, the ICCSD Board in effect upheld the decision of administration to discontinue discretionary busing of students to Garner.

Proceedings before GWAEA

Ms. Gesell, along with 10 other families, filed a timely notice of appeal of the ICCSD Board decision to the GWAEA Board and requested a hearing. On June 25, 2014, a hearing was held before the GWAEA Board. The GWAEA Board received evidence and arguments from the parties. The ICCSD argued that it did not abuse its discretion. The parents argued that the ICCSD abused its discretion by its decision to discontinue discretionary busing to the Garner attendance zone.⁴

⁴ During the hearing two families also challenged the decision that their homes were located in the discretionary busing zone and not the mandatory busing zone; however, this Appellant was not one of those families and thus this issue will not be reviewed on appeal. Additionally, the lack of a vote by the

The GWAEA Board by a motion and affirmative vote of 7-0 concluded that the ICCSD Board's decision to end discretionary transportation for all appellants was not an abuse of discretion and did not violate any procedure of the ICCSD Board policy.

The written decision states, in part:

The GWAEA Board concludes that the Board of Directors of the Iowa City Community School District did not abuse its discretion when it decided to end busing. The GWAEA Board concludes that this decision of the School District was reasonable because it evaluated alternate routes, walked the route, concluded it had sidewalks, and was not different from routes that other patrons use who do not have busing, including crossing busy streets and using tunnels. The GWAEA Board notes that the School District, as set forth in the last paragraph of the second page of the minutes of May 29, 2014 meeting, appears to have fully questioned the factors involved in the decision to end discretionary busing.

The GWAEA Board also notes that the School District contends that this decision to eliminate discretionary bussing is consistent with other decisions in other similar situations. The Appellants did not provide any evidence or argument to establish that the dangers or safety risks associated with walking to Garner School are different than similar issues encountered by other patrons of the School District who are not entitled to busing.

(GWAEA's Findings of Fact, Conclusions of Law, and Decision, Page 7-8).

On July 2, 2014, Ms. Gesell filed a timely notice of appeal.

Proceedings before the Department

At the appeal hearing before the Department, Ms. Gesell argued that the walking route proposed by the ICCSD was not safe and requested that the decision be overturned. The ICCSD asked for the decision of the ICCSD Board to be upheld.

The issue in this appeal is whether the ICCSD abused its discretion when it terminated discretionary busing for an area in the City of North Liberty which included the Gesell residence. The GWAEA Board concluded that the ICCSD did not abuse its discretion in so deciding. The Department agrees.

CONCLUSIONS OF LAW

The Department has the authority to review a school district's decision regarding transportation disputes between school patrons and the board of a school district. Iowa Code § 285.12 (2013). A school district is only required to provide transportation to elementary school students who live more than two miles from the school they are designated to attend. *Id.* § 285.1(a)(1). A school board in their discretion may but is not required to provide transportation to those students who are located less than two miles from the school and not otherwise entitled to transportation. *Id.* § 285.1(c).

ICCSD was also challenged during the appeal proceedings before the GWAEA Board; however, this issue was not preserved for further review by the Appellant in this case and will not be reviewed.

The Iowa Supreme Court has stated that the standard of review for these appeals is abuse of discretion. “[W]here 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.” *Sioux City Community School Dist. v. Iowa Dept. of Educ.*, 659 N.W.2d 563, 568 (2003). The abuse of discretion standard requires the Department to look only at whether a reasonable person could have found sufficient evidence to come to the same conclusion as the school district. *Id.* at 569; *see also* Iowa Code § 17A.19(10)(f)(1). If a decision was not based upon substantial evidence or was based on an erroneous application of law we will find the decision is unreasonable. *Id.* The Department may not substitute its own judgment for that of the school district. *See id.*

The Appellant here is required to show that the ICCSD abused its discretion when it decided to end discretionary busing for the Garner attendance zone that included their residence. However, no evidence has been offered to support this argument. Under the abuse of discretion standard, a reasonable person could find substantial evidence supporting ICCSD’s decision in this case.

The record here establishes that ICCSD reviews discretionary busing on a yearly basis to determine if changes needed to be made to any of this bus routes. In April of 2014 ICCSD conducted a review of discretionary busing for the Garner attendance zone. As part of that review the district review of the financial costs of transportation and balanced the other needs of the school district against the need to continue discretionary busing in the district. District administrators determined that other needs such as teacher salaries and benefits, curriculum, professional development, support staff salaries and benefits, and other expenses outweighed the need to continue discretionary busing in some areas. Eliminating this route alone saves the district approximately \$40,000.00 during the upcoming school year. From a financial perspective this is certainly sufficient evidence supporting the district’s decision.

The Garner bus route that is in question was not the only discretionary bus route that was eliminated for the 2014-2015 school year. The district also offered evidence that several other discretionary bus routes were eliminated during the 2013-2014 school year. The Garner route was evaluated by district administration on the same criteria as other routes and it was not found to be significantly different from other walking routes used by other elementary students in the school district who do not receive discretionary busing. The district carefully considered the factors that the Appellant and other parents raised and concluded that the proposed walking route was most passable and safest route. Additionally, the GWAEA Board in its findings concluded that it had the authority under Iowa Code section 285.1(9) to decide a new the most passable and safest route without regard to the districts findings. Iowa Code § 285.1(9). In reviewing this route the GWAEA Board concluded that the proposed walking route is the most passable and safest route.

Given the facts in the record it can hardly be argued that the district did not carefully balance the competing interests involved in making this discretionary decision. Although the Appellant has raised legitimate concerns about the safety of the proposed walking route, these concerns were considered by the district several times throughout the appeal process and the district and AEA still found the route to be safe. Under these circumstances the Department finds that a reasonable person could have found substantial evidence supporting the school district’s decision. Thus, we conclude the ICCSD did not abuse its discretion.

DECISION

For the foregoing reason, the decision of the Board of Directors of the Iowa City Community School District made on May 29, 2014, is AFFIRMED, and the decision of the Board of Directors of the Grant Wood Area Education Agency made on June 27, 2014, is AFFIRMED. There are no costs of this appeal to be assigned.

8/22/2014
Date

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

8/22/2014
Date

/s/
Brad A. Buck, Director