

**IOWA DEPARTMENT
OF EDUCATION
(Cite as 23 D.o.E. App. Dec. 197)**

In re School Bus Driver Authorization

Charles Vestal, Respondent-Appellant,	:	
vs.	:	DECISION
Troy and Laura Hatcher, Complainant-Appellees.	:	[Admin. Doc. 4606]

This matter was heard telephonically on May 26, 2005, before Carol J. Greta, J.D., designated administrative law judge, presiding on behalf of Judy A. Jeffrey, Director of the Iowa Department of Education. Respondent-Appellant Charles Vestal took part in the hearing on his own behalf. Complainant-Appellees, Troy Hatcher and Laura Hatcher appeared on their own behalf. Neither party was represented by legal counsel. Appearing and testifying on behalf of Mr. Vestal’s employer, the Nishna Valley Community School District, was Kurt Kaiser, Superintendent of the District. Max Christensen, executive transportation officer for the State Department of Education was also present.

Hearing was held pursuant to this agency’s administrative rules in 281 Iowa Administrative Code Chapter 6. The Iowa Department of Education has jurisdiction over the hearing pursuant to Iowa Code section 321.376 and 281—IAC rule 43.24. At issue is Mr. Vestal’s authorization to operate a school bus.

**I.
FINDINGS OF FACT**

Charles Vestal, a former two-term school board member of the Nishna Valley District, has been operating a school bus for the District for one year. He duly received his authorization to do so from this agency. The bus Mr. Vestal operates, like all buses owned by the District, is equipped with an audio/visual camera. Superintendent Kaiser testified that the intent of the equipment is to protect both the students and the District.

Mr. and Mrs. Hatcher are the parents of Austin, an elementary-age student who rides Mr. Vestal’s bus. While on the bus, Austin has not always acted in a manner that would make his parents proud of him. He has “bullied” and “picked on” children younger and/or smaller than he.

On two separate occasions this school year, Mr. Vestal was asked by other children on his bus to cover the lens of the camera that is mounted inside the bus so that a child could strike Austin. Both times, Mr. Vestal complied, knowing that Austin would be hit while he covered the camera lens. According to Mr. Hatcher's undisputed testimony, the audiotape of the more recent incident (March 14, 2005) recorded Mr. Vestal twice saying, "OK; that's enough," to the child hitting Austin. He then took his hand away from the lens.

On another occasion, Mr. Vestal punished Austin for picking on another child by making Austin sit on the top step of the bus. Austin sat there until the bus traveled the remaining ¼ to ½ mile to his attendance center.

The above facts are not in dispute. The issue before this agency is whether the authorization issued to Mr. Vestal should be revoked.

II. CONCLUSIONS OF LAW

All persons who operate a school bus in Iowa must hold all of the following: (1) an appropriate driver's license from the Iowa Department of Transportation, (2) a certification of acceptable physical examination, and (3) an authorization to operate a school bus issued by this agency. Iowa Code Section 321.376(1) states in part, "The department of education shall revoke . . . an authorization to operate a school bus to any person who, after notice and opportunity for hearing, is determined to have committed any of the acts proscribed under section 321.375, subsection 2."

The acts proscribed by section 321.375(2) include the following: "d. The commission of . . . a public offense as defined by the Iowa criminal code, if the offense is relevant to and affects driving ability . . ."

Although Austin was not hurt due to any of the actions of Mr. Vestal, and although no criminal charges were filed, public offenses were committed. Covering the camera lens, an act that directly encouraged the two assaults against Austin, aided and abetted those assaults. *See* Iowa Code sections 703.1 and 708.1. In addition, causing Austin to sit in a moving bus on the top step created a substantial risk to Austin's safety. As such, Mr. Vestal could also have been charged with child endangerment under section 726.6.¹ The latter offense is directly relevant to driving ability. We also conclude that the aiding and abetting of assaults against a child is relevant to driving ability; all school employees must safeguard the safety of the children in their care.

¹ Operators of motor vehicles do not have to be the parent or guardian of the child put at risk to be charged with child endangerment.

After learning of the incidents on the bus, Mr. and Mrs. Hatcher filed a complaint with Mr. Vestal's employer, the Nishna Valley Community School District. Dissatisfied with the action taken by the District (a letter of reprimand), the Hatchers took advantage of our agency rule 281—IAC 43.24, which states, "A person who believes that a school bus driver who holds an authorization issued by the department of education ... has committed acts in violation of Iowa Code subsection 321.375(2) or rule 43.12(285) may file a complaint with the department against the driver or applicant." When this agency receives such a complaint, we set a hearing "for the purpose of determining whether the bus driver's [authorization] shall be denied or revoked." 281—IAC 43.24.

In this case, while Austin was not injured in any of the three incidents, he was twice assaulted (as defined by the Iowa criminal code) and was unnecessarily exposed to a substantial risk of harm. All three incidents were within the control of Mr. Vestal to prevent. This case is aggravated by the fact that Mr. Vestal's lapses of judgment resulted not in *omissions* of action, but in *commissions* of gravely erroneous acts.

Therefore, revocation is the appropriate sanction. Any other result would thwart the intent of our lawmakers and this agency to safeguard from harm the most vulnerable of our population, our schoolchildren.

III. DECISION

For the foregoing reasons, this agency orders that Mr. Vestal's authorization to drive a school bus be and hereby is **revoked**. There are no costs of this appeal to be assigned.

Date

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

It is so ordered.

Date

Judy A. Jeffrey, Director
Iowa Department of Education