

**IOWA DEPARTMENT
OF EDUCATION
(Cite as 22 D.o.E. App. Dec. 290)**

In re Appeal of Complaints against District Staff

Brian and Cathy Davis, Appellants,	:	DISMISSAL OF APPEAL
	:	
vs.	:	
	:	
Corning Community School District, Appellee.	:	[Admin. Doc. 4575]

On April 29, 2004, this agency received an affidavit of appeal from the Appellants herein, Brian and Cathy Davis. The Appellants are the parents of two minor children (Lucas and Quinn) who attend the Corning Community School District, the Appellee herein. It was not clear by their affidavit of appeal what relief they sought. Accordingly, the undersigned scheduled a prehearing conference herein.

The prehearing conference took place telephonically on May 27, 2004. The Appellants both took part in the conference, and were represented by attorney Duane L. Golden of Mt. Ayr. The Appellee was represented by Attorney Rick Engel of Des Moines; Superintendent Mike Wells also participated in the conference. No testimony was elicited at the conference, the sole purpose of which was to ascertain whether the State Board of Education has jurisdiction over this appeal.

The third of four pages of the affidavit of appeal states in part as follows:

At the school board meeting we were on the agenda as a student discipline issue and that it would be closed session. We asked that the agenda [be] corrected as we had 10 compliance violations, 2 harassment charges and 2 letters of appeal that dealt with two members of administration as well as two school employees, they changed the agenda to read closed session to discuss harassment and compliance issues involving administration and staff.

The local Board meeting at issue was held on April 12, 2004. The *agenda* item involving the Appellants states, "Closed session to discuss a Student Discipline Issue." Consistent with the Appellants' request to re-cast the item, the *minutes* regarding that item state:

CLOSED SESSION TO DISCUSS HARRASSMENT AND COMPLIANCE ISSUES

Moved by Leonard seconded by Goldsmith that the board hold a closed session as provided in Section 21.5(1)(i) of the Open Meetings Law to evaluate the professional competency of an individual whose performance is being considered to prevent needless and irreparable injury to that individual's reputation, as that individual has requested a closed session.

Upon returning to open session after being in closed session on the above matter for 30 minutes, no action was taken by the Board.¹

At this prehearing conference, the Appellants stated that the relief they sought from the local Board was the reinstatement of Lucas on his assigned school bus, reimbursement to the Davises for providing Lucas with school transportation while he was banned from the bus, an award of attorneys' fees, and for the driver of Lucas' school bus to be re-assigned to a different route.

The affidavit of appeal refers only to an earlier 30-day ban of both Lucas and Quinn from their bus that occurred in the first semester of the 2003-04 school year. While it is clear that there were other, more recent issues regarding the Davis boys and their bus driver (and other District personnel), the affidavit does not detail any specific discipline that was suffered by Lucas or Quinn. Nor does the affidavit raise the issues of transportation reimbursement, attorneys' fees, or reassignment of the bus driver. What the affidavit does cover in detail are complaints filed by the Appellants against various District employees, particularly the bus driver.

Iowa Code section 290.1 was amended in 2002 and now states in part, "An affected pupil, or the parent or guardian of an affected pupil who is a minor, who is aggrieved by a decision or order of the board of directors of a school corporation in a matter of law or fact, ... may, within thirty days after the rendition of the decision or the making of the order, appeal the decision or order to the state board of education" Section 290.6 states that the state board of education is specifically not authorized to render judgment for money or any other compensation.

¹ Where it is clear from the agenda and/or minutes of a local board meeting that the practical result of lack of a formal decision of the board is to deny a parent or student request, such inaction may be the subject of a section 290.1 appeal. *In re Jed and Tessa Thompson*, 10 D.o.E. App. Dec. 195 (1993). In this present case, if the Appellants had appealed from a refusal of the Corning Board to set aside or otherwise modify a disciplinary action taken against one or both of their children, the appeal would be justiciable. We do not have to reach that question here, inasmuch as this order concludes that the Appellants did not appeal from any disciplinary action against Lucas or Quinn.

The State Board of Education has no jurisdiction over the affidavit of appeal filed herein. Even under Iowa's flexible "notice pleading" philosophy, there is insufficient evidence in the affidavit that a student discipline matter is the subject of this appeal. In fact, the Appellants went to great lengths in their affidavit to disavow that their appeal was based on a matter of student discipline.

As noted in the conference, the State Board cannot issue judgment for money damages. Therefore, this Board has no authority to entertain the Appellants' requests for transportation reimbursement and attorney's fees.

Finally, personnel decisions of local boards of education do not aggrieve students in a legal sense, and thus, are not subject to section 290 appeals. Iowa Code section 285.10(4) provides that local boards are authorized to employ bus drivers and determine their qualifications. The employment agreement between board and driver involves only those two parties. No third party – such as a parent or student – may file a complaint or appeal regarding the *terms* of the employment agreement itself. Assignment to a particular bus route is a term of employment. Therefore, the Davises may not appeal if the local Board declined to alter its employee's bus route.

This does not render the Appellants without any avenue of relief. The local Board, as is true of all employers, has a duty to use reasonable care in employment decisions. *Stricker v. Cessford Const. Co.*, 179 F.Supp.2d 987 (N.D.Iowa 2001). If the Appellants believe that they or their sons have been civilly damaged by the omission or commission of any act of the District or any of its employees, they may seek the advice of legal counsel and file an appropriate cause of action in a court of law. However, no *administrative* remedy is available to them in this matter.

For the foregoing reason, the appeal herein is **dismissed**.

Date

Carol J. Greta, Administrative Law Judge