

**IOWA DEPARTMENT
OF EDUCATION**
(Cite as 21 D.o.E. App. Dec. 136)

In re Transportation Route :

Viola Gibson Safety Committee, :
Appellant, :

v. : DECISION

Grant Wood Area Education :
Agency, Appellee; and :
Cedar Rapids Community :
School District, :
Intervenor. :

[Admin. Doc. # 4478]

The above-captioned matter was heard on July 10, 2002, before Terry Voy, consultant, Bureau of Administration & School Accreditation; and Susan E. Anderson, J.D., designated administrative law judge, presiding. Appellant, Viola Gibson Safety Committee, was present in the persons of Paige Martino and Randy Bachman. Paige Martino was the Committee's spokesperson. Appellee, Grant Wood Area Education Agency [hereinafter, "the AEA"], was present in the person of Kim Martin, Grant Wood Area Education Agency Board Secretary, and was represented by Attorney Wilford Stone of Lynch Dallas, P.C., of Cedar Rapids, Iowa. Intervenor, the Cedar Rapids Community School District, [hereinafter, "the District"], was present in the persons of Gregg Petersen, Executive Administrator for Elementary Education; Paula Vincent, Associate Superintendent; and Susan McDermott, Board President. The District was represented by Attorneys Matt Novak and Terry Abernathy of Pickens, Barnes & Abernathy of Cedar Rapids, Iowa.

An evidentiary hearing was held pursuant to Departmental Rules found at 281 Iowa Administrative Code 6. Authority and jurisdiction for this appeal are found at Iowa Code chapter 285.12(2001). 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.

Appellant seeks reversal of a decision of the Board of Directors of the AEA made on May 6, 2002, which affirmed the District's decision to charge a fee for transporting students who live within two miles of the Viola Gibson Elementary School. The AEA's decision, transcript and record from the AEA hearing on May 1, 2002 were stipulated into the record at the hearing before the Department of Education.

I. FINDINGS OF FACT

The Viola Gibson Safety Committee is comprised of parents whose children will attend Viola Gibson Elementary School. Viola Gibson Elementary School is the first new elementary school to be built in the Cedar Rapids Community School District in over thirty years. The first classes at Viola Gibson School began on August 26, 2002, at the beginning of the 2002-2003 school year. Viola Gibson Elementary School is located in northeast Cedar Rapids. The access to the school is provided by Gibson Drive off of Blairs Ferry Road, N.E. The approximate enrollment is 390 students, 262 of whom are eligible to be bused for a fee. Current plans provide for only one way into and out of the school, as access is provided by Gibson Drive onto Blairs Ferry Road. The properties immediately adjacent to the school and extending for miles in all directions except east of Bison Drive are devoid of sidewalks, easements, pathways, stop lights, cross walks, under or overpasses, or any other pedestrian safety device. Although the posted speed limit on Blairs Ferry Road is 45 miles per hour, the Committee testified that the traffic on Blairs Ferry Road travels an average of 53 miles per hour.

Viola Gibson Elementary School has only one access road, Gibson Drive and there are no safe transportation alternatives. In one 24-hour period, 10,327 cars traveled by the school. The Committee further notes that children cannot safely walk to this school. It argues that no five- to ten-year-old student should be required to walk along, or across, Blairs Ferry Road. The Committee notes that there are no back roads, sidewalks or trails for the children and that parent pick-up and drop-off will unsafely increase the traffic on Blairs Ferry Road.

On March 11, 2002, Ms. Martino, on behalf of the Viola Gibson Safety Committee, wrote to the Cedar Rapids District's Board of Directors, requesting that it "exercise its legislatively granted discretion and provide no-fee busing to all students in attendance for a period of two years." On March 19, 2002, Board President Susan McDermott denied the request. On March 25, 2002, Ms. Martino on behalf of the Viola Gibson Safety Committee requested the District Board to reconsider its denial.

On April 15, 2002, the District's Board of Directors held a regular meeting. On the agenda for that meeting was consideration of the Viola Gibson Safety Committee's request for temporary no-fee busing for all children within the attendance area of the new school. Ms. Martino and Gregg Peterson, Executive Administrator for Elementary Education, presented evidence regarding each side's position. (Exh. D, videotape.) Following the presentations, it was recommended, "that the Board of Education sustain the decision of the administration, which is to reject a request to make an exception in the current Board of Education policy and regulations governing eligibility for transportation, thus denying free transportation to students residing within two miles of Viola Gibson Elementary School." (Agenda item BA-02-255.) The record of votes was three to two, with one Board member absent.

The Committee testified that the only definitive plans for traffic control in the Viola Gibson area are turning lanes near Bison Drive on Blairs Ferry Road to facilitate turning into the school. Of the approximately 262 students eligible to be bused to Viola Gibson School, only six (6) students paid to be bused to their former elementary schools. The Committee testified that the Board will not be adding any additional routes to accommodate the Viola Gibson students, and will actually be transporting students a shorter distance. The Committee pointed out that the school district would be using the same buses on the same routes currently being used.

The Committee argues that its proposal for two years of free busing is a temporary measure until adequate safety alternatives are permanently in place in the community. The Committee notes that it has worked together with the Cedar Rapids Community School Board, the cities of Cedar Rapids and Hiawatha, and Linn County officials towards more long-term solutions involving roads, trails, sidewalks, reduced speed limits, traffic crossings and increasing public awareness.

The Cedar Rapids Community School District stated that it is committed to sharing in the responsibility for student safety with parents in the community. The District notes that it maintains safe, clean and sound facilities for all students, and that each of the District's buildings has developed and implemented extensive safety plans. The District communicates its safety procedures and tips to parents by handbooks and newsletters. Regarding Viola Gibson, the District states that it designed the building with safety as a first priority in parking and drop-off traffic areas.

The District's Transportation Review Committee reviewed the Viola Gibson attendance area for hazardous conditions. The Transportation Review Committee began working in the spring of 2001 with the cities of Cedar Rapids and Hiawatha and with Linn County officials to study and provide for traffic safety at the school. The District notes that this "collaborative effort" continues to date.

The Cedar Rapids Community School District Transportation Review Committee in 2001 recommended that the Board establish bus routes within the two-mile radius around Viola Gibson Elementary School and charge parents or guardians a fee with Iowa Code section 285.1 and District Regulations 901.1, 901.2, and 901A. (Exh. C.) The cost per student within the two-mile radius is \$408 per student. If a parent has several children, the cost for a second student is \$204 and \$136 for a third child. There is no additional charge for a family with more than three children. On January 24, 2002, the Transportation Review Committee reviewed the area around Viola Gibson School and because of the factors raised by the Viola Gibson Safety Committee, decided that fee busing was warranted. The fee would be charged on a pro-rata basis consistent with District policy.

The Committee argues that the District should put “safety before cost.” It notes that Viola Gibson Elementary School is different from all other schools in the Cedar Rapids School District. Erskine, Cleveland and Van Buren Schools all have infrastructure in place. It urged the Cedar Rapids Board to refine the policy rather than change it. It also notes that there is no demonstrable cost difference to the District to bus the Viola Gibson students.

The Committee suggests that the two-year time limit would “grandfather in” those current residents so that they and others can decide whether to continue residing in the school district and pay a fee for busing. The Committee notes that the Viola Gibson School is unique in that it is being built on land recently annexed by the City of Cedar Rapids, and that there is no infrastructure in place around it. The Committee argues that the Cedar Rapids District has made previous policy exceptions on a case-by-case basis where busing is concerned. It states that exceptions were made for Pierce and Jackson Elementary schools, and for the Monroe kindergarten class. The Committee argues that many of those children can safely walk to their current schools. The Committee also notes that many of the Viola Gibson families that may not qualify for the free lunch and meal programs may have to pay for busing and may incur an inordinate financial burden.

District policy 901 states that the Cedar Rapids Board recognizes its responsibility to provide transportation to and from school for students who qualify for transportation, as provided by the Iowa Code. The Cedar Rapids Board also will make reasonable provisions for transportation of students involved in educational field trips and co-curricular activities. The Board stated that it is committed to maintaining its transportation system in an efficient, safe, and economical manner and in compliance with state law and Department of Education rules. The Board’s policy was established in 1978 and was reviewed and approved in 1989, 1997 and 1999.

District Policy 901A determines eligibility for student transportation and was first approved by the District Board in 1981. It has been reviewed, revised and approved on five separate occasions. This policy established a “Transportation Review Committee,” whose purpose was to determine eligibility for transportation when there were issues involving “distance measurement” and/or “existence of hazardous conditions,” and “open enrollment transportation.” The Committee’s membership consists of the Director of Research and Education, the Director of Elementary and Secondary Education, and a principal appointed by the Superintendent. The Executive Director of Business Services and the Manager of Transportation serve as non-voting resource members. The Committee’s duties include the following:

1. Determine the “most passable and safest route” upon appeal from the decision of the Manager of Transportation;

2. Follow established criteria for assessing hazardous conditions, and when requested, determine their application;
3. Recommend, in accordance with Regulation 901.2, transportation to areas where the Committee determines hazardous conditions exist; and
4. Recommend changes or adjustments in the transportation entitlement program.

The Committee's decision regarding distance measurement and hazardous conditions are subject to appeal to the superintendent. This policy has been reviewed and revised twice in 1989, once in 1992, 1997 and 1999. The criteria for determining hazardous conditions pursuant to District Policy 901A are as follows:

1. The existence of an intersection where law enforcement officials will not permit the use of crossing guards; and/or
2. The existence of a bridge or viaduct where there are no, or limited, provisions for pedestrian walkways.

When appropriate, consideration also should be given to the following: age of student, rural, suburban or urban areas, or railroad crossing (mainline or switch area, number of tracks, signals available, and speed of trains). The fourth criteria in determining hazardous conditions is the roadway including the adequacy of sidewalks or walkways, the width of shoulder if used for walking, adequacy of walkways and bridges or through underpasses, and obstructions to pedestrian traffic. Finally, roadway crossing is the fifth factor in determining hazardous conditions, including traffic conditions (number of lanes, speed limits and traffic volume and patterns), visibility at crossing, traffic control devices and the availability of crossing guards.

District Policy 901.1 governs student eligibility for District transportation. The relevant portion states that elementary school students who live more than two miles from the school designated for their attendance shall be entitled to free school transportation. The District policy further states:

The District shall furnish transportation, for a fee, to pupils who do not live the required distance from school when it is determined in accordance with procedure 901A that transportation is justified. Free transportation may be furnished when such transportation is essential to the implementation of the District's desegregation-integration plan, stabilization, and whole grade sharing plans, or for approved special programs.

Id.

The policy further cites Iowa Code chapter 285 and 282.18. This policy was first approved in 1978 and has been reviewed, revised and approved in 1981, 1989, 1992, 1997 and 1999. District Policy 901.2 governs student transportation fees. It was first approved in 1978, and was revised and reviewed in 1979, 1980, 1981, 1989, 1992, 1997 and 1999. This regulation also cites Iowa Code section 285, governing student transportation. The District regulation states that fees for transportation services shall be charged when students do not live the required distance from school and when it is determined in accord with procedure 901A that transportation is justified. The relevant portion of this regulation states as follows:

The fee charged shall be based on the pro-rata cost per pupil, computed annually by state formula. The base fee shall be 100% of the pro-rata cost per pupil, rounded to the nearest dollar, for the first student in a family, and 50% of the pro-rata cost per student, rounded to the nearest dollar, for the second student in a family. The charge will be 33% for any additional family members.

Id. This regulation provides further guidance on transportation passes, students who elect to receive transportation after the semester begins, payment for transportation, and other transportation fee issues. The District notes that these policies have been in place for years, and have been continuously and consistently applied. The District argues that its policies recognize that everyone has a “shared responsibility” in helping the children arrive safely at school.

The District urged the Grant Wood AEA to affirm District policy, as it is consistent with Iowa law and the District’s internal policies. It noted that fee busing in hazardous areas has been District policy for 24 years. It distinguished Appellant’s Exhibits 1 through 5, and states that those cases did not involve hazardous conditions. It notes that the policy was set by elected officials who have responsibility for setting policy for all children and families in the District, not just within one school attendance area. It notes that many parents, past and present, and all other Cedar Rapids elementary schools have shared in the responsibility to get children safely to and from school.

The District notes that it will continue to work with city and county officials to arrive at a resolution of the safety concerns, including turning lanes, examining the speed limits, examining the use of traffic signals and the extension of streets and development of the neighborhood. It also notes that it has 12 attendance areas, including Viola Gibson Elementary School, designated as safety hazard areas in the District, and buses students within all 12 areas for a fee. If a parent qualifies for free or reduced school meals, their children may receive free or reduced busing on a case-by-case basis. Around 47 students

at Viola Gibson Elementary School currently qualify for free or reduced priced meals. Mr. Petersen testified from his experience as principal at Hiawatha Elementary School, that of 120 students residing in nearby mobile home parks, only ten to fifteen students actually walked to school and the other 110 students were driven to school by parents.

The parents initiated an appeal to the Grant Wood AEA Board of Directors. Grant Wood AEA heard the appeal on May 1, 2002, and voted 7 to 2 to affirm the District's decision. The AEA Board issued its decision on May 6, 2002. The AEA Board found that the District had complied with procedure 901A in determining that transportation is justified for pupils who reside within two miles of the Viola Gibson Elementary School.

The AEA Board also found that the District had complied with Regulation 901.1, which states that the District "shall furnish transportation, for a fee, to pupils who do not live the required distance from school when it is determined in accordance with procedure 901A that transportation is justified." (Exh. C.) The AEA Board found that the District did not violate any of its internal procedures and/or regulations, nor waived any of its procedures and/or regulations by its actions. The AEA Board found that the District had applied Regulation 901.2, stating that the fee charged would be based on a pro-rata cost per pupil, computed annually by State formula and otherwise applied Regulation 901.2 consistently and accurately in the Viola Gibson Elementary School Case.

The AEA Board found that the District, in applying Iowa Code section 285 and its procedures 901.A, Regulation 901.1 and 901.2, properly relied upon evidence presented by its administration, the Transportation Review Committee, concerned parents, and local government entities in exercising its discretion to collect fees from parents or guardians of children for transportation of students within a two-mile radius of the Viola Gibson Elementary School. The Board found that the District had designated at least 11 other attendance areas in the District as containing hazardous conditions and had exercised its discretion to provide free busing to those students within a two-mile radius of their schools. The District had also considered a parent's ability to pay for busing and those parents who qualified for free or reduced-price school meals could receive free or reduced-priced busing on a case-by-case basis. As of the beginning of the 2002-2003 school year, however, all elementary student in the Cedar Rapids District who live in designated hazardous areas within two miles of their schools must pay the fee if they want to be bused by the District.

In addition to testimony, board policies and the District's Board minutes, the record at the Grant Wood AEA hearing included videotapes and documentary evidence such as maps of the relevant locations in Cedar Rapids. The Grant Wood Board issued its decision on May 6, 2002, which states, in part:

The Grant Wood AEA Board of Directors concludes based on the record before it that there is a basis in law and in fact for the Cedar Rapids Community School District's actions, and that its April 15, 2002, decision is based on reasonable grounds.

In accordance with the statutory criteria set forth in Iowa Code section 285(2001), the Grant Wood Area Education Agency's Board of Directors decides this appeal as follows:

The decision of the Cedar Rapids Community School District Board of Directors (Agenda Item BA-02-254), April 15, 2002) is affirmed. The Board did not abuse its discretion in applying Iowa Code section 285 (2001) by voting to collect from the parent or guardian of Viola Gibson Elementary School pupils not more than the pro-rata cost for the optional transportation of those pupils who live within two miles from the school.

Id.

The parents then appealed the AEA's decision to the Director of the Department of Education under the provisions of Iowa Code chapter 285.

The Committee believes that the Board's decision is wrong for various reasons:

1. Cost never comes before safety of a child;
2. Viola Gibson Elementary School is different from other elementary schools in the District;
3. It is important to set precedence which involve preserving children's safety;
4. There are no viable transportation alternatives;
5. The District cannot assume a large legal liability;
6. The District Board's policies are outdated and wrong and should be overturned because the Iowa Code permits the Board to exercise its discretion

to provide no-fee busing, and another school board in the Grant Wood AEA area has provided no-fee busing.

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7. There will be no staff reductions as a consequence of no-fee busing; and
8. Public policy requires that “no child be put at risk.” (Aff. of Appeal, p. 2.)

II. CONCLUSIONS OF LAW

Iowa Code section 285.12 directs the agency boards to hear and decide appeals in a transportation disagreement between a school patron and the board of a local district. Iowa Code section 285.12(2001). That section also further provides as follows:

... Either party may appeal the decision of the agency board to the director of the department of education by notifying the opposite party and the agency administrator in writing within five days after receipt of notice of the decision of the agency board and shall file with the director of the department of education an affidavit of appeal, reasons for appeal, and the facts involved in the disagreement. The agency administrator shall, within ten days of said notice, file with the director all records and papers pertaining to the case, including action of the agency board. The director shall hear the appeal within fifteen days of the filing of the records in the director’s office, notifying all parties and the agency administrator of the time of hearing. The director shall forthwith decide the same and return all papers with a copy of the decision to the agency administrator. The decision of the director shall be subject to judicial review in accordance with the terms of the Iowa administrative procedure Act. Pending final order made by the director, upon any appeal prosecuted to such director, the order of the agency board from which the appeal is taken shall be operative and be in full force and effect.

Id.

The power and duties of area boards with regard to student transportation are described in Section 285.9 which first broadly authorizes area education agency boards to “[e]nforce all laws and all rules and regulations of the Department of Education relating to transportation.” Iowa Code subsection 285.9(1) (2001). When a local board fails to make necessary arrangements for transportation as required by law, the Code provides that the area education agency board shall “make necessary arrangements in conformity with law and established requirements.” Iowa Code subsection 285.9(4)(2001).

The Department of Education is authorized under section 285.8 of the Iowa Code to “exercise general supervision over the school transportation system in the state.” The Department’s rules relating to transportation are contained in 281 Iowa Administrative

Code chapter 43. The first rule under that chapter provides that bus routes within an AEA must be efficient and economical, that riding time should not exceed certain limits and that routes should be reviewed annually for safety hazards.

The boards of directors of school districts have numerous powers and duties, as specified under the provisions of the Iowa Code. Among these are to:

1. The board of directors of every school district shall provide transportation, either directly or by reimbursement for transportation, for all resident pupils attending public school, kindergarten through twelfth grade, except that:
 - (a) Elementary pupils shall be entitled to transportation only if they live more than two miles from the school designated for attendance.
...
 - (d) ... Boards in their discretion may provide transportation for some or all resident pupils attending public school or pupils who attend nonpublic schools who are not entitled to transportation. Boards in their discretion may collect from the parent or guardian of the pupil not more than the pro rata cost for such optional transportation, determined as provided in subsection 12.
...

Iowa Code section 285.1(1)(2001).

Iowa Code section 285.1(12) (2001) provides:

The pro rata cost of transportation shall be based upon the actual cost for all the children transported in all school buses. It shall include one-seventh of the original net cost of the bus and other items as determined and approved by the director of the department of education but no part of the capital outlay cost for school buses and transportation equipment for which the school district is reimbursed from

state funds or that portion of the cost of the operation of a school bus used in transporting pupils to and from extra-curricular activities shall be included in determining the pro rata cost. ...

Id.

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The powers and duties of local boards include:

1. Provide transportation for each resident pupil who attends public school, and each resident pupil who attends a nonpublic school, and who is entitled to transportation under the laws of the state.
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.

Iowa Code Sections 285.10(1), (2)(2001).

The powers of AEA boards include:

The powers and duties of area boards. The powers and duties of the respective area education agency boards shall be to:

1. Enforce all laws and regulations of the department of education relating to transportation.

Iowa Code Section 285.9(1)(2001).

Chapter 285 is silent regarding the standard of review that an area education agency must use in reviewing a local board's transportation decision. The Legislature certainly could have established a limited standard of review for the Agency. It could have stated limitations regarding the subject matter of the appeals, but it did not. Instead, when there is a disagreement between a school patron and a school district, Iowa Code Section 285.12 provides that the agency board will hear it, decide it, and notify the parties of its decision.

The process under Iowa Code Section 285.12 is unique and is different from appeal in virtually any other kind of disputes from school board decisions that are governed by Iowa Code Chapter 290. By creating this intermediate step of appeal at the agency level, the General Assembly must have intended that these decisions remain as close to the local level as possible. In a case such as this one, the dispute between the patrons of

the Cedar Rapids Community School District and the District should be decided by the Area Education Agency board familiar with Cedar Rapids and its surrounding area.

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This preference for local expertise also obviously requires that the members of an area education agency board, all of whom are selected by the districts served by the AEA, exercise their own independent judgment and discretion. These individuals are educational policymakers to whom the General Assembly has entrusted the responsibility for directing the work of the area education agency. Since the Grant Wood AEA's work also includes the responsibilities to oversee and enforce all laws, rules and regulations relating to transportation (*See*, Iowa Code Section 285.9 (2001)), AEA board members must be allowed

to exercise their judgment and discretion in resolving disputes between patrons and local school boards.¹ *Sioux City Community School District, Appellant, v. Western Hills Area Education Agency, Appellee*, 19 D.o.E. App. Dec. 282(2001).

In the most recent decision issued by the Department of Education on a bus transportation appeal, the Director affirmed the AEA's reversal of the Sioux City District's refusal to transport elementary students who lived in an unsafe area within two miles of their attendance center. *Id.* The facts in that appeal, however, are different from the Cedar Rapids appeal now before us. In the Sioux City appeal, the district refused to transport the students in an unsafe area at all, either with or without a fee. In the Cedar Rapids appeal, however, the Cedar Rapids District has agreed to transport the students in an unsafe area for a fee representing not more than the District's pro-rata cost of transportation. The fees charged by the Cedar Rapids District conform to the formula found in the applicable statute, Iowa Code section 285.12.

The District notes that the Iowa Code specifically states that the Board of Directors of every school district shall provide transportation, either directly or by reimbursement for transportation, except that elementary pupils shall be entitled to transportation only if they live more than two miles from the school designated for attendance. The District notes, however, that school boards may provide transportation for some or all resident pupils attending public schools. They may also collect from the parent or guardian of the pupil no more than the district's pro-rata cost. The District argues that it exercised its discretion to provide transportation for students within the two miles radius and believes that the parents have a "shared responsibility" with the District for the cost.

¹ The Grant Wood AEA's brief asserts that an area education agency should not be considered a "party" to an appeal under Iowa Code section 285.12. The Department will consider this approach in future appeals.

The issue before the AEA Board was whether the Cedar Rapids Community School District reasonably exercised its discretion when on April 15, 2002, it voted to collect from the parent or guardian of Viola Gibson Elementary School pupils not more than the pro-rata cost of transporting those pupils who live within two miles from the Viola Gibson Elementary School. The AEA Board concluded that the District's decision was reasonable.

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The question now before the Director of the Department of Education is whether the decision by the Grant Wood Area Education Agency Board was a reasonable exercise of its authority under Iowa Code section 285. Local boards of directors are required to make decisions that are reasonable. *In re Jesse Bachman*, 13 D.o.E. App. Dec. 363(1996).

The record shows that the Grant Wood AEA's Board thoroughly evaluated the situation on Gibson Drive in addressing the transportation concerns of these parents and of the District. The Grant Wood AEA Board was justified in making its own analysis of the facts in deciding to affirm the District's decision to charge a fee for the transportation being provided to the students residing within two miles of the Viola Gibson Elementary School. The District convinced the AEA Board that it had exercised its discretion in a reasonable way under Iowa Code section 285.1(2001). The parents in this appeal have failed to show that the Grant Wood AEA Board's affirmance of the District was unreasonable. There is no other basis on which to reverse it.

Any motions or objections not previously ruled upon are hereby denied and overruled.

III. DECISION

For the foregoing reasons, the decision of the Grant Wood Area Education Agency's Board of Directors made on May 6, 2002, affirming the decision of the Cedar Rapids Community School District Board of Education's decision to charge a fee for transporting students residing within two miles of the Viola Gibson Elementary School, is hereby affirmed. There are no costs of this appeal to be assigned.

DATE

SUSAN E. ANDERSON, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

DATE

TED STILWILL, DIRECTOR
DEPARTMENT OF EDUCATION