

IOWA DEPARTMENT
OF EDUCATION

(Cite as 19 D.o.E. App. Dec. 282)

In re Transportation Route :

Sioux City Community School :
District, Appellant, :

v. : DECISION

Western Hills Area Education :
Agency, Appellee; and :
Parents of Students Residing in :
Regency Mobile Home Park, :
Intervenors. :

[Admin. Doc. # 4343]

The above-captioned matter was heard on April 11, 2001, before a hearing panel comprised of Terry Voy, consultant, Bureau of Administration & School Improvement Services; Joe DeHart, consultant, Bureau of Planning, Research & Evaluation; and Susan E. Anderson, J.D., designated administrative law judge, presiding. Appellant, Sioux City Community School District [hereinafter, “the District”], was present in the person of Superintendent Larry Williams. The Appellant was represented by Attorney Dawn Mastalir of Berenstein, Moore, Berenstein, Heffernan & Moeller, L.L.P., of Sioux City, Iowa. Appellee, Western Hills Area Education Agency [hereinafter, “the AEA”], was represented by Attorney Andrew J. Bracken of Ahlers, Cooney, Dorweiler, Haynie, Smith & Allbee, P.C., of Des Moines, Iowa. Intervenors, the parents of the students residing in Regency Mobile Home Park [hereinafter, “the parents”], were represented by Attorney David Simmons of Sioux City, 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 January 25, 2001, to reverse Appellant’s decision to discontinue bus service to the students residing in Regency Mobile Home Park.

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I.
FINDINGS OF FACT

Intervenors are the parents of elementary school children, whose families reside at Regency Mobile Home Park in Sioux City, Iowa [hereinafter, “Regency”]. The designated attendance center for the children is McKinley Elementary School [hereinafter, “McKinley”], which has an enrollment of 217 students. The 94 students who reside in Regency constitute approximately 44% of the total enrollment at McKinley. They are

all in grades kindergarten through fifth and are 5 to 11 years of age. The distance from Regency to McKinley Elementary School is approximately 1.6 miles.

The only route for students to walk from Regency to McKinley requires students to walk along Gordon Drive for approximately ½ mile. Gordon Drive is a major business thoroughfare in Sioux City and carries a high volume of traffic. The speed limit on Gordon Drive is 45 miles per hour. There are no signs posted along Gordon Drive at this location indicating that it is near a school zone or that children pedestrians are present. There is a frontage road that runs roughly parallel to Gordon Drive that serves the businesses along Gordon Drive. The speed limit on the frontage road is 25 miles per hour.

During calendar year 1995, a construction project began along Gordon Drive for the Gordon Plaza Shopping Mall ["Gordon Plaza"]. This construction project was located in the route that students use to walk from Regency to McKinley. At that time, the City of Sioux City determined that it was unsafe for school children to walk along Gordon Drive at the location of the construction project. Transportation for the students residing in Regency was provided until 1999 by the local property developer at no cost to the District or to the parents. Beginning in 1999, after the construction of Gordon Plaza was completed, a reconstruction of Gordon Drive was underway. During the reconstruction, there was no sidewalk along Gordon Drive. At that point, the District began to provide free transportation to the students who resided at Regency at its own expense because of the concerns for their safety due to the absence of a sidewalk adjacent to Gordon Plaza.

A sidewalk was later constructed adjacent to Gordon Plaza to allow the students residing at Regency to walk to McKinley. The sidewalk removed the District's concerns for the students' safety. On October 24, 2000, District administrators notified the parents of students who reside at Regency that, effective November 10, 2000, the District would no longer provide free transportation to the students. On November 13, 2000, concerned parents of the affected students

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addressed the Board of the District. The Board took no action to modify the decision of the administration and bus service to the students was discontinued beginning on November 10, 2000.

The sidewalk used by the students who walk from Regency Mobile Home Park to McKinley School was constructed down the middle of a right-of-way between Gordon Drive and the frontage road that serves the businesses along Gordon Drive. The distance between the sidewalk and both Gordon Drive and the frontage road varies from a minimum of five feet to a maximum of twenty feet.

There are no speed restriction devices, such as speed bumps or signs indicating pedestrian crosswalks along Gordon Drive or the frontage road. There are three intersections at which the sidewalk along Gordon Drive is interrupted by traffic traveling between Gordon Drive and the frontage road. The first intersection is at the entrance to Regency. The second intersection is referred to as "the middle crossing." The third intersection is at Martha Street, where the distance between the sidewalk and Gordon Drive is five feet, and the sidewalk is adjacent to a turning lane. The speed of traffic

wishing to turn is generally reduced, but the posted speed limit is 45 miles per hour. Neither the District nor the City has provided any crossing guards at any location on the sidewalk along Gordon Drive.

Commercial or business establishments line the area that was the subject of the construction project. Owners of property in Sioux City are required by ordinance to clean the snow from sidewalks adjacent to their property. A number of the businesses along the route the students walk from Regency Mobile Home Park do not open until 9:00 a.m. or after. The students are required to be at McKinley School prior to 9:00 a.m.

The City has undertaken the responsibility for clearing the snow from the sidewalk along Gordon Drive. Nevertheless, the evidence showed that there has been snow on the sidewalk and/or that snow has been cleared from the street and piled onto the sidewalk.

On December 18, 2000, the AEA Board heard an appeal filed by parent Raquel Ramirez and voted to reverse the action of the Sioux City Community School District to discontinue the bus service. On January 23, 2001, Ms. Ramirez, through her attorney, again requested that the District reverse the determination

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by the Superintendent to discontinue busing service and requested that the District resume transportation services to McKinley. The request was tabled pending a review by the District.

The District then established a Safety Committee [hereinafter, "the Committee"] which included professionals from various agencies and backgrounds such as members of the City's Public Works/Traffic Division, a Sioux City police officer, a member of the Woodbury County Sheriff's Department and various school personnel. The Committee met on four occasions in January and February 2001 and considered various specific issues relating to Gordon Drive as well as other safety-related issues. Minutes from the Committee meetings were admitted into evidence and shared with the WHAEA Board at its hearing. Those minutes included the following:

Note was taken of the number of points at which the sidewalk along Gordon Drive was interrupted by entrances to businesses and it was determined that this occurred at only three points along the 1.1 mile route. The first point is at Spalding Street where the exit off Gordon Drive leads to the entrance of the Regency Mobile Home Park. A revision of signage at this point was recommended. The second exit off Gordon Drive is at South Martha Street. The committee felt that no additional signage or markings would be appropriate. The third area is approximately mid-way between Spalding Street and South Martha Street. The pedestrian traffic at this junction has a good view of vehicle traffic and the vehicular traffic has equally good view of any pedestrian traffic, therefore the Committee felt that no additional signage was necessary at this point.

(Reply to Affidavit of Appeal of Raquel Ramirez and Other Similarly-Situated Parents, p. 4.)

Ultimately, the Committee recommended to Superintendent Williams that the improvements to Gordon Drive, including the sidewalk constructed along side Gordon Drive and between Gordon Drive and the frontage road, provided a reasonably safe walk for children traveling between the Regency and McKinley. Based, in part, on the Committee's recommendations, and based on the superintendent's own review of the background facts and circumstances, Superinten-

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dent Williams recommended to the Sioux City Board of Education that the request to reinstate school bus transportation services to the Appellants be declined.

On March 1, 2001, following a hearing on the issue before the Sioux City Community School District's Board, the Board voted unanimously to affirm Superintendent Williams' recommendation and to decline the parents' request to provide school transportation services to the students. The parents initiated an appeal to the WHAEA Board on March 9, 2001. The WHAEA Board held a hearing on March 19, 2001. In addition to testimony, the Committee minutes, and the District Board's minutes, the record at the WHAEA hearing included tape-recorded testimony and documentary evidence such as photographs and maps of the relevant locations in Sioux City. The WHAEA Board issued its decision on March 21, 2001. The decision states, in part:

1. ... The AEA Board is concerned that children as young as kindergarten age face an unreasonably dangerous walk given the volume of traffic on Gordon Drive and the access road, the speed of the traffic, the number and complexity of the crossings along Gordon Drive, and the fact that locating the sidewalk in the median makes it so the children are surrounded by traffic on Gordon Drive and the frontage road.
2. Based on this unique set of circumstances, the AEA Board concludes that the decision of the Sioux City Community School District Board of Directors to accept the school administration recommendation to discontinue transportation services to the students who reside at Regency Mobile Home Park and who attend McKinley Elementary School was not a proper discretionary act.

(WHAEA's Findings of Fact, Conclusions of Law and Decision, p. 8.)

The District then appealed the AEA's decision to the Director of the Department of Education under the provisions of Iowa Code chapter 285. At the appeal hearing before the Department of Education, Superintendent Larry Williams testified on behalf of the District and supported his testimony, when requested, with diagrams of the route the children take as they walk from Regency to McKinley.

II. CONCLUSIONS OF LAW

A. Jurisdiction

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.

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.

Thus, despite the local school district's argument, the first rule of the Department addresses issues of student safety.

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).

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:

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

Iowa Code Section 285.9(1)(2001)

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).

Each bus route shall be reviewed annually for safety hazards.

281 Iowa Administrative Code 43.1(6).

The District cites *Howell School Board District v. Hubbartt*, 70 N.W.2d 531 (Iowa 1955), and argues that the WHAEA has no jurisdiction over the dispute in this matter. A prior Department of Education decision has already addressed the District's argument. *In re Appeal of Cedar Rapids Community School District from Decision of Grant Wood Area Education Agency*, 1 D.P.I. 74, 77-78 (1975). That decision states, in pertinent part:

A decision subsequent to *Howell* in *Center Township School District v. Oakland Independent School District*, 251 IA 1113, 104 N.W.2d 454 (1960), reviewed the scope of authority on an appeal under Section 285.12. That Section is similar to Section 285.12 except that it provides for appeals in the event of disagreement between a local school board and an area education agency board. The court in that decision reiterated the view in *Kinzer* [*Kinzer v. Directors of Independent School District*, 129 Iowa 441, 447, 105 N.W. 686, 3 L.R.A., N.S., 496]. It said at page 456:

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The rule to be gathered from our pertinent precedents is that decisions of local boards involving the exercise of their discretion must be appealed to the county or state superintendent. ...

...

This Hearing Panel believes that decisions prior and subsequent to the *Howell* decision, including the *Kinzer* decision which was the basis for the *Howell* decision, indicate clearly that discretionary decisions of local boards are appealable under respective statutes and that discretionary matters of transportation may be appealed under Section 285.12 to an area education agency board and subsequently to the State Superintendent. Any other finding would cause Section 285.12 to be devoid of meaning and place in the law.

Id., pp. 77-78.

In *Howell*, the Iowa Supreme Court ruled that neither the State Department of Education through its director nor the local area education agency had statutory authority to determine matters within the jurisdiction of the local school board. Specifically, the dispute in *Howell* centered on a local school district decision to assign a student to one school when the parent sought to enroll the student in another school in a different school district. Therefore, the Iowa Supreme Court concluded the local district had exclusive jurisdiction under Iowa Code section 274.1.

Howell did not involve a dispute between a school patron and a school district relating specifically to transportation services. This dispute does involve transportation services and falls squarely under Iowa Code section 285.12 (2001).

Because of the State Board's prior decision, the District's argument cannot be reconciled with Section 285.12. After all, if the District has exclusive jurisdiction over transportation matters, and neither the WHAEA nor the Department of Education has any authority, then Section 285.12 creates a pointless process under which school patrons may appeal from school board decisions relating to transportation but may never have redress.

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Because this dispute relates to the provision of transportation services, and because the WHAEA has specific responsibilities under Iowa Code Section 285.12 and other statutory authority to supervise and regulate school transportation services, the District's jurisdictional argument must be rejected.

B. Area Education Agency's Standard of Review

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. That is, in a case such as this one, this dispute between the patrons of the Sioux City Community School District, the Sioux City Community School District, was decided by the Area Education Agency board familiar with Sioux City and its surrounding area.

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, exercises 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 WHAEA'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

C. The Director’s Standard of Review

The question before the Director of the Department of Education is whether the decision by the Western Hills Area Education Agency Board was a reasonable

exercise of its authority under the law and the Iowa Administrative Code. 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 WHAEA’s Board thoroughly evaluated the situation on Gordon Drive in addressing the transportation concerns of these parents and of the District. The WHAEA Board was justified in making its own analysis of the facts in deciding to reverse the District’s decision to discontinue the transportation being provided to the students residing at Regency. Although reasonable minds could differ over the judgment call that the WHAEA was called upon to make, the parents convinced the WHAEA Board that the District exercised its discretion in an unreasonable way adverse to the health and safety of the students, as required by Iowa Code section 285.10(2)(2001). The District has failed to show that the WHAEA’s Board decision 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 Western Hills Area Education Agency’s Board of Directors made on March 19, 2001, reversing the decision of the Sioux City Community School District Board of Education’s decision to discontinue transportation for the students residing in Regency Mobile Home Park, 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

¹ The WHAEA’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.

DEPARTMENT OF EDUCATION