

IOWA DEPARTMENT OF EDUCATION
(Cite as 28 D.o.E. App. Dec. 435)

<i>In re Transportation Bus Stop</i>)	
)	
Fairfield Community School District,)	DECISION
Appellant,)	
)	
v.)	
)	
Great Prairie Area Education Agency,)	Admin. Doc. No. 5097
)	
Appellee.)	

STATEMENT OF THE CASE

The above-captioned matter was heard telephonically on November 19, 2018, before Nicole M. Proesch, J.D., designated administrative law judge. Appearing on behalf of the Appellant ["Fairfield CSD"] were Superintendent Laurie Noll ["Superintendent Noll"], with legal counsel Jeffery Krausman. The Appellee, Great Prairie Area Education Agency ["GPAEA"] was represented by Chief Administrator Cindy Yelick ["Chief Yelick"]. Appearing on behalf of Pekin Community School District ["Pekin CSD"] were Superintendent Dave Harper ["Superintendent Harper"], with legal counsel Brett Nitzschke.

Authority and jurisdiction for the appeal are found in Iowa Code § 285.13. 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.

In this case, Fairfield CSD seeks reversal of a decision GPAEA made on October 10, 2018, approving a bus stop location created by Pekin CSD. The appellant disputes that the gravel parking area at the intersection of Packwood Road and 160th Street was an established pick up point for Pekin's school bus stop for students who are open enrolled from Fairfield CSD to Pekin CSD. The Appellants contend that the newly constructed parking lot and bus stop were impermissibly created for the primary purpose of picking up open enrolled students from Fairfield CSD.

FINDINGS OF FACT

In prior school years, unbeknownst to Fairfield CSD, the Pekin CSD picked up students who were open enrolled from Fairfield CSD to Pekin CSD at 1620 Ginkgo Avenue, which is in the Fairfield CSD boundaries. After Fairfield CSD discovered this practice, they contacted

Pekin CSD and advised them they would need to bring this request to the Fairfield CSD Board of Directors ["Board"] for approval. On October 16, 2017, this request was brought to the Board and was denied.

In September of 2018, a new gravel parking area was put in place at the intersection of 160th Street and Packwood Road, which is located within Pekin CSD Boundaries. Pekin CSD had reached out to the Jefferson County Engineer's Office and requested the parking lot so that parents would have a safe place to wait and drop off their students to ride the bus. Previously, parents and students had been parking on the side of the road. Pekin CSD paid for the gravel for the parking area.

On September 4, 2018, Superintendent Noll contacted Superintendent Harper regarding the parking area and advised him that it did not appear to be a previously established stop on the Pekin CSD bus route. Superintendent Harper indicated that the parking area had been an established stop for over twenty years. This disagreement was brought to Chief Yelick and placed on the GPAEA's agenda.

On October 9, 2018, GPAEA heard evidence and testimony from both districts. Both districts agreed that:

- 1) The Pekin CSD bus route is solely within the Pekin CSD and does not cross into Fairfield CSD.
- 2) The bus route services both Pekin CSD resident students and some that are open enrolled from Fairfield CSD to Pekin CSD.
- 3) The route has been used for several years.

GPAEA Memo, October 4, 2018.

GPAEA found that there was no dispute that the route was preexisting. The issue was whether or not the stop was preexisting. Pekin CSD offered evidence that they have families who can attest to being picked up at this stop prior to the gravel parking lot being installed. Additionally, a retired Administrator, Sam Ritchie, wrote a letter on September 7, 2018, attesting that the stop at 160th Street and Packwood Road was a point on the existing bus route for resident students that was also established as a pick up point for open enrolled students in the late 1970s when the open enrollment law was passed.

GPAEA considered Iowa Code section 285.10(2) which directs schools to "properly safeguard the health and safety of the pupils transported." GPAEA unanimously accepted the recommendation of Ms. Yelick to approve the stop, noting that Pekin CSD is operating a bus within its own borders, on a pre-existing regular route serving both resident and non-resident open enrolled students, and offering a safer alternative.

Fairfield CSD filed a timely notice of appeal on October 15, 2018. The issue is the meaning of "existed prior" language in Iowa Code section 282.18(10).

CONCLUSIONS OF LAW

The statutory basis for the appeal of Fairfield CSD are Iowa Code sections 282.18(10) and 285.13, which state as follows:

Notwithstanding section 285.1 relating to transportation of nonresident pupils, the parent or guardian is responsible for transporting the pupil without reimbursement to and from a point on a regular school bus route of the receiving district. For purposes of this subsection, "a point on a regular school bus route of the receiving district" includes any school bus stop on the regular school bus route of the receiving district that existed prior to road construction that necessitates a change in the regular school bus route, whether or not the change in the regular school bus route resulting from the road construction necessitates sending school vehicles from the receiving district into the district of residence in order to safely, economically, or efficiently transport students to or from the preexisting point.
Iowa Code section 282.18(10)(a).

In the event of a disagreement between the board of a school district and the board of an area education agency, the board of the school district may appeal to the director of the department of education and the procedure and times provided for in section 285.12 shall prevail in any such case. The decision of the director shall be subject to judicial review in accordance with the terms of the Iowa administrative procedure Act, chapter 17A.
Iowa Code section 285.13.

The standard of review to be applied in appeals of student transportation decisions was clarified by the Iowa Supreme Court in *Sioux City Community School District v. Iowa Department of Education*, 659 N.W.2d 563 (Iowa 2003). In that case, the Department applied a *de novo* standard of review, which allowed the Department to reverse the decision of Sioux City Community School District and substitute its own judgment. However, the Supreme Court reversed the decision of the Department and determined that the appropriate scope of review of the district's decision is for an abuse of discretion.

In applying the abuse of discretion standard we look only to whether or not a reasonable person could have found sufficient evidence to come to the same conclusion as reached by the GPAEA. Iowa Code § 17A.19(10)(f)(1). "In so doing, we will find a decision was unreasonable if it was not based upon substantial evidence or was based upon an erroneous application of the law." *City of Windsor Heights v. Spanos*, 572 N.W.2d 591, 592 (Iowa 1997). We may not substitute our judgment for that of the Board.

Fairfield CSD argues that that the newly constructed parking lot and bus stop were impermissibly created for the primary purpose of picking up open enrolled students from

Fairfield CSD and the stop did not exist prior to these open enrolled students moving to Pekin CSD. Fairfield CSD questions the meaning of the following phrase: "that existed prior to road construction that necessitates a change in the regular school bus route . . ." *Iowa Code* § 282.18(10)(a).

The plain language in Iowa Code section 282.18(10) allows a district to pick up open enrolled students from a point on the regular school bus route of the receiving district. This point includes any stop that already exists on the bus route for picking up resident students. A district cannot purposefully alter or add a bus stop to a regular route for the sole purpose of accommodating open enrolled students. The reference to road construction would only be an issue if the regular bus route had to be altered because of road construction necessitating a new route or alternative bus stops. In that case, the district could not rely on the altered route as the basis for a new pick up point for open enrolled students.

In this instance, the regular bus route has not been altered due to construction. Pekin CSD has provided evidence that the stop at 160th and Parkwood existed as a stop on the regular bus route for resident students prior to the open enrollment law being passed and prior to construction of the parking lot. Thus, the evidence supports the conclusion that the stop is a prior existing stop on the regular school bus route.

GPAEA reviewed the evidence before it and has appropriately applied Iowa Code section 282.18(10) to the facts in this case. There are no reported cases and no Attorney General Opinions that offer guidance on the specific language. However, the plain language of section 282.18(10) supports the reasoning of GPAEA. We find that the rationale underlying the decision reached by GPAEA was not unreasonable. Therefore, GPAEA took no action that it was prohibited from taking under chapter 285.

DECISION

For the foregoing reasons, the October 10, 2018 decision of the Board of Directors of the Great Prairie Area Education Agency is AFFIRMED. There are no costs of this appeal to be assigned.

12-4-18
Date

Nicole M. Proesch
Nicole M. Proesch, J.D.
Administrative Law Judge

It is so ordered.

12-4-18
Date

Ryan M. Wise
Ryan M. Wise, Ed. L.D., Director