

IOWA STATE BOARD
OF EDUCATION
(Cite as 16 D.o.E. App. Dec. 336)

In re Joshua, Arthur & Tea Haug :

Wayne & Anita Haug, :
Appellants, :

v. : DISMISSAL

Springville Community School :
District, :
Appellee. : [Adm. Doc. #4056]

Appellants filed an affidavit of appeal received by the State Board of Education on November 19, 1998. Appellants have tried on several occasions to obtain transportation for their children who are open-enrolled to the Mt. Vernon Community School District. Appellants have appealed the Appellee's failure to allow a Mt. Vernon school bus to come into the Springville District to pick up their children. The State Board has already affirmed the Appellee's decision not to allow the open enrollment transportation.¹

The Haugs sought to have the District Board revisit its position because there are new members on the Board. Pursuant to Board policy, "an issue can be revisited if two circumstances exist: (a) the make up of the board has changed substantially; or (b) if a majority of the board has changed its mind on an issue." 15 D.o.E. App. Dec. 81, 84.

At the October 21, 1998, meeting the president of the District Board asked the Board to consider the Haugs request only to determine "whether the majority of the Board thinks the transportation issue should be addressed at a future meeting." The minutes of the meeting reflect that "it was a consensus of the Board not to place the item on a future agenda."

According to an affidavit signed by Anita Haug, she clarified the issue she wants the State Board of Education to consider on appeal is the Appellee's refusal to allow Mt. Vernon buses into the Springville District to pick up her open-enrolled children. (See, Affidavit, March 18, 1999.)

¹ *In re Joshua Haug*, 15 D.o.E. App. Dec. 81(1997) and *In re Arthur Haug*, 14 D.o.E. App. Dec. 288(1997) provide the background for the present appeal.

Since the District Board did not decide to reconsider its earlier refusal to allow Mt. Vernon buses into the District, the State Board has no jurisdiction to consider the issue raised by Appellants in this appeal.

Challenges to local board of education decisions are governed by Iowa Code 290. Section 290.1 grants an aggrieved person thirty (30) days from the local board decision or order to contest its legality. The question raised by this appeal is whether the District's decision not to reconsider its earlier busing issue allows the Haugs to question the denial of busing by the Board. The answer is "No". The Board simply decided not to reconsider. A board's refusal to reconsider an earlier decision is not appealable. *In re Edward Zaccaro, et al.* As the State Board stated in that decision:

This is because an administrative agency has only such jurisdiction and authority as expressly conferred by state. *Northwestern Bell Telephone Co. v. Iowa Utilities Bd.*, 477 N.W.2d 678, 682 (Iowa 1991). Filing the Affidavit of Appeal within thirty (30) days of the original board decision is jurisdictional. Iowa Code section 290.1. The fact that Appellants believed that the District would act favorably toward their concerns at subsequent Board meetings, does not change this fact. Even if Appellants were misled by the District Board's action, "jurisdiction cannot be established by consent, waiver, or estoppel." *Qualley v. Chrysler Credit Corp.*, 261 N.W.2d 466,468 (Iowa 1978). "That rule proceeds on the premise that jurisdiction does not attach, nor is it lost, on equitable principles. It is purely a matter of statute." *Cunningham v. Iowa Dept. of Job Svc.*, 319 N.W.2d 202,204 (Iowa 1982).

For these reasons, Appellants' appeal of the District Board's October 21, 1998, decision *not to place* the busing issue on a future agenda is hereby dismissed.

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ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

IOWA STATE BOARD
OF EDUCATION
(Cite as 16 D.o.E. App. Dec. 338)

In re Joshua, Arthur & Tea Haug :
Wayne & Anita Haug, :
Appellants, :
v. : DECISION ON
Springville Community School : REQUEST FOR REHEARING
District, : (Revised Dismissal)
Appellee. : [Adm. Doc. #4056]

On March 19, 1999, the above-captioned matter was dismissed for lack of jurisdiction by the undersigned administrative law judge [hereinafter, "ALJ"]. Anita Haug requested a rehearing on March 23, 1999.

Pursuant to 281 Iowa Administrative Code 6.13, "[a] rehearing shall not be granted unless it is necessary to correct a mistake of law or fact, or for other good cause." If any grounds for a rehearing exist, the ALJ may review the record or may proceed with a partial hearing on the matter. A decision of what to do is solely within the discretion of the ALJ.

In reviewing the records, it was found that the previous dismissal contained a misstatement of fact, to wit:

The State Board has already affirmed the Appellee's decision not to allow the open enrollment transportation (*citing, In re Joshua Haug*, 15 D.o.E. App. Dec. 81(1997) and *In re Arthur Haug*, 14 D.o.E. App. Dec. 288 (1997) as background for the present appeal.

(*Dismissal*, March 19, 1999.)

That statement is not technically correct because the State Board has never addressed the exact issue of the District Board's denial of the Haugs' open enrollment transportation request. That is because the Haugs did not appeal the denial of their request by the Springville District Board that was made on September 20, 1995. The District Board granted Ms. Haug's request to be placed

on the agenda at its June 19, 1996, board meeting. She again requested that the Mt. Vernon bus be allowed to come into the District for the purpose of transporting her child. "No action was taken on the bus transportation issue since the Board had

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previously denied this request on September 20, 1995." 14 D.o.E. App. Dec. 288, 289. As a result of her failure to have these two requests granted by the District Board, Ms. Haug attempted the "property tax swap" which was the subject of the appeal entitled, *In re Arthur Haug*, 14 D.o.E. App. Dec. 288(1997). State Board affirmed the District Board's right to refuse the request of the "property tax swap".

The second issue considered by the State Board on appeal was the denial of the Haugs' request to be on the August 20, 1997, board agenda in order to seek permission for the Mt. Vernon bus to enter Springville's School District to pick up their sons, Joshua and Arthur. *In re Joshua Haug*, 15 D.o.E. App. Dec. 81(1997). The State Board affirmed the denial of the Haugs' request to be on the board agenda as a proper application of the District Board's policy regarding board agenda access by patrons of the District.

So, Ms. Haug is correct that the State Board of Education has not "already affirmed the Appellee's decision not to allow the open enrollment transportation." That is because the State Board has not "squarely addressed" this issue in the two prior appeals. However, the Haugs' two previous appeals to the State Board had their roots in the District Board's refusal to grant the Haugs' request for open enrollment transportation.

The present appeal is another attempt to have the position of the District Board on this matter reviewed. The Haugs' initial affidavit of appeal indicated that the issue was whether the District Board through its superintendent and/or board president failed to give them the opportunity to have the full board address their request for open enrollment transportation. Ms. Haug disagreed with that categorization of the issue in the initial notice of appeal. As a result, she signed an affidavit stating that the issue for appeal in the present hearing would be "the Appellee's refusal to allow Mt. Vernon buses into the Springville District to pick up her open-enrolled children." *See, Affidavit*, March 18, 1999.

As stated in the previous dismissal, since the District Board did not decide to reconsider its earlier refusal to allow Mt. Vernon buses into the District, the State Board has no jurisdiction to consider the issue raised by Appellants in this appeal.

Challenges to local board of education decisions are governed by Iowa Code 290. Section 290.1 grants an aggrieved person thirty (30) days from the local board decision or order to contest its legality. The question raised by this appeal is whether the District's decision not to reconsider its earlier busing issue allows the Haugs to question the denial of busing by the Board. The answer is "No". The Board simply decided not to reconsider. A

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board's refusal to reconsider an earlier decision is not appealable. *In re Edward Zaccaro, et al.* As the State Board stated in that decision:

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Although I am mindful of the frustration that the Haugs feel because their requests for transportation have not been granted by the District Board, the State Board has not interfered in cases involving inter-district transportation of open-enrolled students. This is because allowing a bus to enter another district to pick up open-enrolled students is primarily for the convenience of the individual parents. Convenience of the parents is important, but it does not rise to the level of concern necessary to use the State Board's discretionary power to overturn a local district board. When the local district board is within its statutory authority, as is the case here, the parents' best solution is to work more with individual board members and spend less time in the decisions of the administration.

For these reasons, Appellants' appeal of the District Board's October 21, 1998, decision not to place the busing issue on a future agenda is hereby dismissed.

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ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE