

**IOWA STATE DEPARTMENT
OF EDUCATION
(Cite as 16 D.o.E. App. Dec. 224)**

In re Cole, Jamie, & Tim Shirley :

Tim & Carolyn Shirley, :
Appellants, :

v. : DECISION

Hamburg Community School :
District, :
Appellee. :
: [Admin. Doc. # 4039]

The above-captioned matter was heard telephonically on October 7, 1998, before a hearing panel comprising Lee Crawford and Vic Lundy, consultants, Bureau of Technical and Vocational Education; and Ann Marie Brick, legal consultant and designated administrative law judge, presiding. Appellant, Tim Shirley, was present "telephonically" and was unrepresented by counsel. The Appellee, Hamburg Community School District [hereinafter, "the District"], was present "telephonically" in the persons of James Stephens, superintendent; Gene Heins, board president; and Karen Borris, board secretary. The District was also *pro se*.

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 sections 282.18 and 290.1(1997). The administrative law judge finds that she and the State Board of Education have jurisdiction over the parties and subject matter of the appeal before them.

Appellants seek reversal of a decision of the Board of Directors [hereinafter, "the Board"] of the District made on August 17, 1998, denying permission for the Sidney Community School District's bus to enter the District to pick up their open-enrolled children.

**I.
FINDINGS OF FACT**

Tim and Carolyn Shirley live in the Hamburg District with their children – Cole, age 14; Jamie, age 9; and Tim, age 10. Their residence is .3 miles from the boundary between the Hamburg District and the Sidney Community School District. The three children are open enrolled to Sidney.

Mr. Shirley testified that he is a cattle farmer and works from 5:30 a.m. or 6:00 a.m. to late in the evening. Mrs. Shirley works outside the home from 7:00 a.m. to 3:30 p.m. As a result, they cannot transport the children to and from school. Cole, the oldest, has a school permit that allows him to drive himself and the two younger children to the nearest Sidney District bus stop, about .5 miles from their residence. Mr. Shirley stated that he and his wife are opposed to this arrangement because they think it is too much responsibility for a fourteen-year-old. Concerned for safety, the Shirleys asked the Sidney District if its bus could pick up the children at their residence. They were told that it would be done only if the Hamburg Board agreed. The Shirleys attended the Hamburg Board of Directors' August 17, 1998, meeting and asked that it allow the Sidney bus to enter the District to pick up their children. The request was denied on a 4-0 vote.

James Stephens testified on behalf of the District. He stated that five District students are currently open enrolled to Sidney and two are open enrolled into Hamburg from Sidney. No buses from other districts are allowed to enter the District to transport open-enrolled students. He said that the District has been consistent in refusing permission. The Board believes that if it makes an exception in this case, it would be required to make exceptions in other open enrollment cases.

II. CONCLUSIONS OF LAW

Mr. and Mrs. Shirley argue that the welfare of the students involved, in this case their physical safety, should be the primary factor in deciding this and similar disputes. They also point out that the distance involved, .3 miles, is negligible. We agree that common sense is in the Shirleys' favor when the situation is viewed from their perspective alone.

Unfortunately for the Shirley family, the law is clear and specific regarding this situation. Parents who open enroll their children are responsible for transporting them without reimbursement to and from a point on a regular bus route of the receiving district. Iowa Code §282.18(10)(1997); 281 Iowa Administrative Code 17.9(1). The point must be a designated stop on the bus route of the receiving district. 281 IAC 17.9(1). The only exception to this is if the child meets the income eligibility guidelines set by the Iowa Department of Education. Iowa Code §282.18(10)(1997); 281 IAC 17.9(2). Therefore, the Shirleys are responsible for transporting their children to a designated stop on the Sidney bus route.

However, the open enrollment law also provides that if the boards of the receiving district and the sending district agree, the receiving district may send buses into the sending district to pick up open-enrolled students. Iowa Code §282.18(10)(1997); 281

IAC 17.9(1). Such an agreement must be approved by the area education agency. Iowa Code §285.9(3)(1997); 281 IAC 17.9(1). In this case no agreement between the Hamburg District and the Sidney District exists. The Hamburg Board has been consistent in not allowing buses of other districts to enter its territory to transport open-enrolled students. We find the Board's decision in this case to be reasonable and within its authority.

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

**III.
DECISION**

For the foregoing reasons, the decision of the Board of Directors of the Hamburg Community School District made on August 17, 1998, denying the Appellants' request to allow the Sidney bus to pick up their open-enrolled children, is hereby recommended for affirmance. There are no costs of this appeal to be assigned.

DATE

ANN MARIE BRICK, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

DATE

CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION