

**IOWA STATE BOARD
OF EDUCATION
(Cite as 15 D.o.E. App. Dec. 184)**

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| In re Tyler & Daniel Hall | : | |
| Pamela Jo Hall, Appellant, | : | |
| v. | : | DECISION |
| Fremont Community School District, Appellee. | : | |
| | | [Admin. Doc. #3943] |

This case was heard telephonically on February 4, 1998, before a hearing panel comprising Mr. Klark Jessen, Office of the Director; Ms. Christine Anders, Bureau of Food and Nutrition; and Amy Christensen, J.D., designated administrative law judge, presiding. The Appellant, Ms. Pamela Jo Hall, was present telephonically and was unrepresented by counsel. The Appellee, Fremont Community School District [hereinafter, "the District"], was present telephonically in the persons of Mr. James Nelson, Superintendent; Mr. Kevin Hedge, Board President; and Ms. Jacquelyn Perkins, Board Secretary. The District was represented by Mr. Brian Gruhn.

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.

The Appellant seeks reversal of a decision of the Board of Directors [hereinafter, "the Board"] of the District made on January 19, 1998, which denied her request to allow her open-enrolled children to board the Eddyville-Blakesburg Community School District's bus when it turns around in her driveway.

**I.
FINDINGS OF FACT**

Ms. Hall and her two children, Tyler and Daniel, live in the Fremont District. Tyler is in the fourth grade, and Daniel is in fifth grade. When the family moved into their home in December of 1996, Ms. Hall thought it was in the Eddyville-Blakesburg District. The children began attending school at Eddyville-Blakesburg. The children

were picked up by the Eddyville-Blakesburg bus when it used the Hall's driveway as a turnaround. Ms. Hall believes the bus has been turning around in what is now her driveway for several years, but she does not know for certain, since she has only lived there since December 1996. The Hall's driveway is not a designated stop on the Eddyville-Blakesburg bus route.

In about April of 1997, Ms. Hall learned that the family home was actually in the Fremont District. Once she learned this, she applied for open enrollment for Tyler and Daniel so they could continue at Eddyville-Blakesburg. The application was granted by both districts. The children continued to be picked up by the Eddyville-Blakesburg bus when it turned around in their driveway.

In October 1997, the bus driver told Ms. Hall that someone had complained to the Fremont District, and he could no longer pick up the children in their driveway. Since then, Ms. Hall drives her children one mile down the road into Kirksville. The children board the bus at the stop there. Ms. Hall then follows the bus back home, where it turns around in her driveway, and then takes the children to school. The only alternative for Ms. Hall is to drive her children ¼ mile down the road where they can board the bus at the stop there. However, she does not do so because the stop is unsafe coming from her direction. Both the ¼ mile stop and the one-mile stop are in the Eddyville-Blakesburg District.

When she was told her children could no longer board the bus in her driveway, Ms. Hall then called Dr. Meyer, the superintendent of the Eddyville-Blakesburg District. He suggested she ask the Fremont Board for permission for her children to board the bus in her driveway. Ms. Hall testified the Eddyville-Blakesburg District has no problem with picking up her children, so long as the District continues to need a larger bus on that route and therefore needs to use her driveway as a turnaround. Ms. Hall attended the October Fremont School Board meeting. However, since she was not on the agenda, she was told she had to return to the meeting on November 17th. She did so, but her request was denied by the Fremont Board. She testified she was told that the reasons for the denial were that 1) it was district policy not to allow it; and 2) since she open enrolled her children, she had to suffer the consequences.

Ms. Hall then contacted Dr. Westra at the Southern Prairie AEA office. She testified Dr. Westra told her that Eddyville-Blakesburg had never gotten approval to enter the Fremont District to turn the bus around. Since the Eddyville-Blakesburg District must use a larger bus on the route in question, and the route is on a gravel road, the first place the bus can safely turn around is at the Hall's driveway. Therefore, the Eddyville-Blakesburg District requested permission from the Fremont District to do so, and the Fremont District agreed at its December 15, 1997 meeting. The minutes of that meeting state that permission was granted for the Eddyville-Blakesburg bus to enter the Fremont District "for turnaround purposes only." The Southern Prairie AEA Board approved the

route at its January 13, 1998 meeting. The minutes of that meeting reflect that approval was given for the Eddyville-Blakesburg bus to enter the Fremont District “to provide efficient most direct route for transporting local district students. (Safety reasons.)”

Ms. Hall’s request for her children to board the bus at her driveway was then put on the January 19, 1998 Fremont Board agenda. Ms. Hall could not be at the meeting. The request was denied. Ms. Hall then appealed to the State Board.

Mr. Nelson has been superintendent of the Fremont District since July of 1997. He is also the principal, and has been the principal for about three years. Superintendent Nelson testified that it has always been the practice of both the Fremont District and the Eddyville-Blakesburg District to deny each other’s buses permission to enter each other’s districts to pick up open enrolled students. In January 1998, the two districts had a joint Board meeting, at which this issue was discussed, and both Boards will continue this practice.

Superintendent Nelson testified that the first time he learned the Eddyville-Blakesburg bus was entering the Fremont District and picking up the Hall children was in October of 1997. As soon as he learned of this, he called Superintendent Meyer and asked him not to enter the Fremont District to pick up open enrolled students. This is when the bus driver told Ms. Hall he could no longer pick up Tyler and Daniel when he turned around in the Hall’s driveway.

Superintendent Nelson also testified that the Fremont Board granted permission for the Eddyville-Blakesburg bus to turn around in the Hall driveway solely for safety reasons. He testified the Fremont Board is concerned that if they allow the Hall children to be picked up, other open enrolled students will also request permission to board Eddyville-Blakesburg buses in the Fremont District. Since the two districts have agreed they will not enter each other’s districts to transport open enrolled students, the Fremont District will abide by the agreement and not make any exceptions. Mr. Nelson also testified the District has always denied requests for transportation from parents of open enrolled students.

II. CONCLUSIONS OF LAW

Ms. Hall argues that it is ridiculous that her children may not board the bus when it turns around in her driveway. She argues that her special circumstances of the bus turning around in her driveway should be sufficient to provide an exception to the rule that both districts must agree before the receiving district’s bus may enter the resident district to transport open enrolled students.

We agree that common sense is in Ms. Hall's favor when the situation is viewed solely from her perspective. Of course it does not make sense that she should have to drive her children a mile down the road, watch them board the bus, and then follow the bus back to her own driveway, where it turns around.

Unfortunately for Ms. Hall and her children, the law is clear and specific regarding this situation, even though it does not seem to make sense in this particular case when the situation is viewed in isolation. Parents who open enroll their children are responsible for transporting their children without reimbursement to and from a point on a regular bus route of the receiving district. Iowa Code 282.18(10)(1997); 281 IAC 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). Thus Ms. Hall is responsible for transporting her children to a designated stop on the Eddyville-Blakesburg bus route.

However, the open enrollment statute also provides that if the boards of the receiving school district and the sending school district agree, the receiving school 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). This agreement must be approved by the Area Education Agency. Iowa Code 285.9(3)(1997); 281 IAC 17.9(1). In this case, the Fremont Board and the Eddyville Board have a mutual agreement that they will not enter each others' districts to transport open enrolled students. This decision is allowed by Iowa law. Iowa Code section 282.18(10)(1997). A local school board has the authority to *deny* receiving districts' buses the ability to enter the District to pick up open-enrolled students, and it also has the authority to *allow* receiving districts' buses into the District. Iowa Code section 282.18(10)(1997); 281 IAC 17.9(1). There is no provision for special circumstances or exceptions in the statute or the rule.

In this case, the Fremont District granted permission for the Eddyville-Blakesburg bus to enter its district solely for the purpose of turning around in the Hall's driveway. This arrangement was approved by the AEA. 281 IAC 17.9(1) provides that "Bus routes that are outside the boundary of the receiving district that have been authorized by an area education agency board of directors, as provided by Iowa Code subsection 285.9(3), may be used to transport open enrollment pupils." Given the legislature's requirement in the statute that both districts must agree before buses may enter another district to pick up open enrolled students, we interpret this rule to mean that said bus routes may be used to transport open enrolled students only if both districts agree.

Local boards do not have the authority to act arbitrarily and capriciously. In re Danielle, Dalton, & Dustin Dea, 14 D.o.E. App. Dec. 359 (1997); Iowa Code 17A.19(8)“g”(1997). The question in this case is whether the District acted arbitrarily and capriciously when it denied the Ms. Hall’s request. We hold that it did not. The Fremont District has an agreement with the Eddyville-Blakesburg District that no buses will enter to pick up open enrolled students. The Fremont District has consistently followed this agreement. As soon as he learned the bus was picking up the Hall children, Superintendent Nelson asked his fellow superintendent to stop the practice. The Fremont District acted within its authority when it decided to not allow the Eddyville-Blakesburg bus to pick up the Hall children even though it was already entering the District to turn the bus around in the Hall’s driveway. This decision was not made arbitrarily and capriciously, but is consistent with the agreement and past practice. Therefore, the Board’s decision to deny Ms. Hall’s request was within its authority under Iowa Code section 282.18(10)(1997) and 281 IAC 17.9(1).

Although we recognize this decision does not seem to make sense when the Hall’s situation is viewed in isolation, there is nothing in the law which would require the Fremont District to allow the Eddyville-Blakesburg bus to pick up the Hall children in their driveway, so long as the District consistently follows the agreement it has with the Eddyville-Blakesburg District.

The legislature has given the State Board the authority to consider unique circumstances in open enrollment cases in Iowa Code section 282.18(18)(1997). That section provides that “Notwithstanding the general limitations contained in this section [the open enrollment statute], in appeals to the state board from decisions of school boards relating to student transfers under open enrollment, the state board shall exercise broad discretion to achieve just and equitable results which are in the best interest of the affected child or children.” The State Board has interpreted this section to mean it is to be used in extraordinary cases involving “such unique proportions that justice and fairness require the State Board to overlook the regular statutory procedures.” In re Katie Webbeking, 10 D.o.E. App. Dec. 268 (1993). The section has generally been used in cases involving a late-filed open enrollment application coupled with extraordinary circumstances such as severe harassment of a student which was not known before the application deadline. In re Melissa Van Bommel, 14 D.o.E. App. Dec. 281 (1997). We do not believe it is appropriate to use paragraph 18 in cases involving inter-district transportation of open enrolled students, because allowing a bus to enter another district to pick up open enrolled students is primarily for the convenience of the parents. Convenience of the parents is important, but it does not rise to the level of concern for just and equitable results in the best interest of the children, which is necessary for use of paragraph 18.

III.
DECISION

For the foregoing reasons, the decision of the Board of Directors of the Fremont Community School District made on January 19, 1998, which denied Ms. Hall's request to allow the Eddyville-Blakesburg bus to pick up her open enrolled children when the bus turns around in her driveway, is hereby recommended for affirmance. There are no costs of this appeal to be assigned.

DATE

AMY CHRISTENSEN, J.D.
ADMINISTRATIVE LAW JUDGE

It is so ordered.

DATE

CORINE HADLEY, PRESIDENT
STATE BOARD OF EDUCATION