

**IOWA STATE BOARD
OF EDUCATION
(Cite as 14 D.o.E. App. Dec. 359)**

In re Danielle, Dalton, & Dustin Dea :

 Kandy Dea, Appellant, :

 v. :

 A-H-S-T Community School :
 District, Appellee. :

DECISION

[Admin. Doc. #3901]

This case was heard telephonically on August 14, 1997, before a hearing panel comprising Mr. Lee Crawford, consultant, Bureau of Technical and Vocational Education; Ms. Christine Anders, consultant, Bureau of Food and Nutrition; and Amy Christensen, J.D., designated administrative law judge, presiding. The Appellant, Ms. Kandy Dea, was present telephonically and was unrepresented by counsel. The Appellee, A-H-S-T Community School District [hereinafter, "the District"], was also present telephonically in the persons of Mr. Todd Wendt, Superintendent, and Ms. Nancy Collins, Board Secretary. The District was also *pro se*.

An evidentiary hearing was held pursuant to Departmental rules found at 281 Iowa Administrative Code Ch. 6. Authority and jurisdiction for this appeal are found at Iowa Code section 290.1(1997).

The Appellant seeks reversal of a decision of the Board of Directors [hereinafter, "the Board"] of the District made on June 16, 1997, which denied her request to allow a Walnut District bus to enter the A-H-S-T District to pick up her open enrolled children.

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.

**I.
FINDINGS OF FACT**

Kandy Dea has three children: Danielle, Dalton, and Dustin. The Deas live in the A-H-S-T Community School District. The children are open enrolled to the Walnut School District.

During the 1996-97 school year, the Board of the A-H-S-T District allowed the Walnut bus to enter the District to pick up the open-enrolled Dea children. The Walnut bus must come only 1,300 feet into the District to pick up the Dea children, as they live on the edge of the District.

The Deas live at the top of a steep hill. If the children have to walk to the nearest bus stop of the Walnut District, they have to walk on the down side of the hill, and there is a blind spot so that drivers are not able to see the children walking along the side of the road. This blind spot is a distance of between 10 and 20 feet.

The Dea family meets the income eligibility requirements for transportation established by the Department of Education.

Until June 16, 1997, the District's position has been that it would look at transportation of open enrolled students on a case-by-case basis. This is why the Deas' request for open enrollment transportation for the 1996-97 school year was granted in 1996. The District does not have a written policy regarding open enrollment transportation.

Based on this prior grant of transportation for her open-enrolled children, Ms. Dea accepted a job, and the family borrowed money to make home improvements. Ms. Dea needs to work. If the Walnut bus is not allowed to enter into the A-H-S-T District to pick up her children, she will have to transport them to school, which will mean she will have to quit her newly-acquired job. Although the Deas meet the income eligibility guidelines, the District has chosen to meet the requirement to provide transportation by paying the pro-rata cost of the transportation rather than by transporting these students to the nearest district.

At the June 16, 1997 school board meeting, the Board voted to establish a policy whereby no buses from neighboring districts would be allowed to enter the District to transport open enrolled students. Superintendent Wendt testified the Board took this action because it wanted to make open enrollment inconvenient for parents whose children were open enrolled.

On June 18, 1997, the District mailed a letter to all affected parents telling them of the decision by the Board to no longer allow buses from neighboring districts to enter the District. In addition, the District mailed a letter to neighboring district superintendents informing them of the Board's decision.

II. CONCLUSIONS OF LAW

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). 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). The Deas met the income eligibility requirements, but the District chose to provide reimbursement for transportation rather than the actual transportation. This is allowed by the Iowa Code and Department of Education rules. Iowa Code 282.18(10)(1997); 281 IAC 17.9(2). Thus the Deas are responsible for transporting their children to a designated stop on the Walnut bus route, since the District will pay the parents for providing this transportation.

However, 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 Board of the A-H-S-T District made a decision to no longer allow buses from neighboring districts to enter its district to pick up open-enrolled children. 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).

Local boards do not have the authority to act arbitrarily and capriciously. See, Iowa Code 17A.19(8)“g”(1997). The question in this case is whether the District acted arbitrarily and capriciously when it denied the Dea's request. We hold that it did not. Although the District formerly considered applications on a case-by-case basis, it was within the Board's authority to change its mind from prior policy. It acted within its authority when it decided to no longer allow receiving buses into its District. This decision was not made arbitrarily and capriciously, but will be applied to all parents and all other districts. Therefore, the Board's decision to deny the Deas' request for transportation was within its authority under Iowa Code section 282.18(10)(1997) and 281 IAC 17.9(1).

Although we recognize this decision will present a hardship for this family, there is nothing in the law which would require the District to continue its prior allowance of the Walnut bus into the District, so long as it adopted the new policy in a reasonable manner and consistently applies it to all students and districts. Of course, since the Deas

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meet the income eligibility guidelines, the District could choose to provide transportation to receiving districts only for income eligible families, and therefore the Deas, while still denying receiving districts entrance into the A-H-S-T District. However, it is within the District's discretion whether to provide reimbursement as it did in this case, or transport the children of income eligible families. Iowa Code 282.18(10)(1997); 281 IAC 17.9(2).

III.
DECISION

For the foregoing reasons, the decision of the Board of Directors of the A-H-S-T Community School District made on June 16, 1997, which denied the Deas' request for transportation for their open enrolled children, 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