

**IOWA STATE BOARD  
OF EDUCATION**  
(Cite as 14 D.o.E. App. Dec. 344)

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<b>In re Parents of Open Enrolled</b>	:	
<b>Students from Sheldon Community</b>	:	
<b>School District to Sibley-Ocheyden</b>	:	
<b>Community School District</b>	:	
Regina Kruger, et al.,	:	
Appellants,	:	
v.	:	DECISION
Sheldon Community School	:	
District, Appellee.	:	

[Admin. Doc. #3893]

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The above-captioned matter was heard telephonically on July 28, 1997, before a hearing panel comprising Mr. Judge Brown, Bureau of Administration, Instruction, and School Improvement; Ms. Sharon Willis, Bureau of Planning, Research & Evaluation; and Amy Christensen, J.D., designated administrative law judge, presiding. The Appellants are a group of parents. Mrs. Regina Kruger acted as the spokesperson for the group, was present, and was unrepresented by counsel. Mr. Kruger was also present at most of the hearing. No other Appellants were present at the hearing. The Appellee, Sheldon Community School District [hereinafter, "the District"], was present in the persons of Mr. Patrick McCarty, Board President, and Ms. Paula Ommen, Board Secretary. The District was represented by attorney Mr. James Hanks.

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 Appellants seek reversal of a decision of the Board of Directors [hereinafter, "the Board"] of the Sheldon District made over the course of several months to discontinue the practice of allowing buses from the Sibley-Ocheyden District into the Sheldon District to pick up the Appellants' open enrolled students.

On July 16, 1997, the District filed a Motion to Dismiss, a Motion for Summary Judgment, and a Motion to Strike. The motions were denied in an Order dated July 17, 1997. The District renewed the motions at the hearing, and we therefore rule on them in this decision.

## **I. FINDINGS OF FACT**

The Appellants, the Parents of Open Enrolled Students from Sheldon Community School District to Sibley-Ocheyden Community School District [hereinafter, “Parents Group”], are a group of approximately twenty-four parents whose children are open enrolled from the Sheldon District to the Sibley-Ocheyden District. Mrs. Regina Kruger acted as the spokesperson for the group in this appeal.

Mrs. Kruger has three children. The family lives in Ashton, Iowa. Her oldest child, Amanda, was in the fifth grade during the 1996-97 school year. Amanda has been open enrolled to the Sibley-Ocheyden District since kindergarten. Almost all of the children of the Parents Group have never attended school in the Sheldon District. Mrs. Kruger’s children have always been open-enrolled from the Sheldon District to the Sibley-Ocheyden District. Her children have always been transported to and from school by buses from the Sibley-Ocheyden District, which entered into the Sheldon District to pick up the children.

The Sibley-Ocheyden bus picks up children of the Parents Group in several locations in the Sheldon District. It picks up several children, including Mrs. Kruger’s, at a Catholic church parking lot on the edge of Ashton. This is approximately one-half mile from the border of the Sibley-Ocheyden District.

For several years, the Sheldon District has had reciprocal busing agreements with several neighboring districts, including the Sibley-Ocheyden District. Some of these agreements have been verbal agreements, and at least one was written. On July 29, 1996, former Superintendent Michael Teigland<sup>1</sup> signed a reciprocal transportation agreement with the Superintendent of the Sibley-Ocheyden District. The agreement provided that buses could enter into each other’s districts for a maximum distance of four miles to transport open enrolled students.

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<sup>1</sup> Unfortunately, Mr. Teigland was not available at the hearing to testify. He has left the District and is now serving as a Superintendent in another district.

Whether or not the Board of the Sheldon District knew of the busing agreements, and directed the Superintendent to enter into them, was disputed at the hearing. Mrs. Kruger questioned how the Board could not know buses were entering and leaving its District for a period of several years. Area Education Agency 4 approved the July 1996 Sheldon/Sibley-Ocheyden reciprocal transportation agreement at its Board of Directors' meeting on September 17, 1996. Superintendent Teigland wrote a letter to the editor of the local paper on June 30, 1997, in which he stated that approximately five years ago, the Board (made up of different members) had approved a transportation request for one family and directed him to develop parameters for reciprocal transportation agreements, which was done with the approval of the Board. However, Board President McCarty testified that he has been on the Board for about five years, and the Board did not know of the agreements or the practice until December of 1996. He also testified that Superintendent Teigland came to the District only a couple of months before he came on the Board, and during his tenure, the Board never directed or authorized Mr. Teigland to develop or enter into reciprocal agreements. At the hearing, Mr. McCarty questioned whether Mr. Teigland's memory of the events was accurate. He also testified that communication between Mr. Teigland and the Board was not always as good as it could have been. Board Secretary Ommen testified she reviewed the minutes of prior years' Board meetings, and based on this and on her two years' experience on the Board, she agreed with Mr. McCarty's testimony. The only written policy of the Board regarding transportation is very vague, does not specifically relate to open enrollment, and contains nothing specific about how the Sheldon District will handle transportation of open enrolled students. It was last reviewed July 1, 1989.

Although the panel finds it difficult to believe that a school board in a small town could not know of the busing practice, we make no finding whether or not the Board directed or authorized Mr. Teigland to enter into the agreements, and we make no finding whether or not the Board members knew of the busing practice, because those findings would not make any difference in the decision which must be reached in this case.

In December of 1996, the Board had a retreat. Mr. McCarty testified notice of the meeting was posted. At the retreat, one of the Board members asked Superintendent Teigland about the busing situation with the Sibley-Ocheyden District. Mr. McCarty testified that he did not know how the Board member knew to raise the issue, but he guessed that someone must have called him. Mr. McCarty testified that at the retreat, the Board made it clear to Mr. Teigland that they were not happy with the situation, he had exceeded his authority, and that they expected him to correct it. They also decided not to end the practice immediately, but to wait until the end of the school year to give the affected parents time to make other transportation arrangements. Mr. McCarty also testified that at the retreat, the Board did not know there was a written reciprocal transportation agreement with the Sibley-Ocheyden District, and they did not know there were transportation agreements with other districts. No minutes of the retreat were taken

or published. A list of five objectives (none of which involved open enrollment transportation) was developed at the retreat, and later approved at the January Board meeting, and the minutes of the January Board meeting were published.

Mr. McCarty testified that the Board's philosophy is "Don't do for one what you're not willing to do for all." In keeping with that philosophy, at the retreat, the Board decided that no matter where they set the boundary for buses being allowed into the District, there would always be a family on the wrong side of the boundary. So that if buses would be allowed into the District no more than one-half mile, or two miles, or four miles, there would be a family who wouldn't live within those boundaries. Therefore, they decided that the appropriate boundary would be the District boundary itself. This was the rationale for the Board's decision to discontinue the reciprocal transportation agreement with Sibley-Ocheyden. Mr. McCarty also testified that the Board believes the decision whether to open enroll or not is the parents', and the Board is not attempting to discourage open enrollment by making transportation more difficult for open enrolled parents.

As a result of the discussion at the retreat, Superintendent Teigland notified the Superintendent of the Sibley-Ocheyden District that as of the 1997-98 school year, buses would no longer be allowed into the Sheldon District to pick up open-enrolled students. The Sheldon District did not notify the affected parents of this decision. The parents found out about the decision in January 1997, when the superintendent of the Sibley-Ocheyden District sent them a letter telling them their children would not be picked up beginning with the 1997-98 school year.

Understandably, the parents were upset. Mrs. Kruger testified it would be much more difficult for her to arrange transportation for her children when school starts late or is closed early due to storms. She is very concerned about her children's safety if the bus is not allowed to pick up her children in the Ashton church parking lot. She testified that the nearest bus stop within the Sibley-Ocheyden District is on a busy highway. She also testified the parents asked the owners of the house nearest to Ashton within the Sibley-Ocheyden District if they would allow the Sibley-Ocheyden bus to pick up their children at the end of the driveway, but the owners refused because they were concerned about liability if one of the children got hit. Mrs. Kruger testified that the Parents Group would be willing to compromise on the distance buses are allowed to enter the District, because most of the parents live within one mile of the District boundary.

The Superintendent prepares the Board Agenda, with additions from Mr. McCarty as the Board President, if he has anything to add. The parents requested they be placed on the Agenda for the January 13, 1997 Board meeting. This was done, and the parents were placed on the Communications section of the Agenda. Mr. McCarty testified that the Board always follows a similar procedure for its meetings. At the beginning of the

meeting, he asks if there are any additions or corrections to the Agenda. He asks if anyone who wishes to speak to the Board. There are some brief reports. Members of the public who wish to speak to the Board are then allowed to speak. The remainder of the meeting involves Board discussion only, and members of the public are not allowed to participate in the discussion. Mr. McCarty testified the Board welcomes public input, but they conduct the meetings using this procedure so the meetings are manageable.

At the January Board meeting, members of the Parents Group, including Mrs. Kruger, spoke to the Board regarding their concerns over the open enrollment busing issue. Mr. McCarty testified that the first time the Board learned there was a written reciprocal transportation agreement was at the January 13 Board meeting when Mrs. Kruger brought it to the Board's attention. The Parents Group asked the Board to reconsider its decision to discontinue the busing agreement, and asked the Board a number of questions. Mr. McCarty asked Mrs. Kruger to make a written list of the questions, and directed Mr. Teigland to take the list and answer the questions for the parents. The Board listened to the parents' concerns. However, it was clear to Mr. McCarty that the Board members had not changed their mind and they did not support continuing the transportation agreement beyond the end of the 1996-97 school year. Although it is somewhat unclear from the testimony and the minutes of the January Board meeting, it does not appear that the Board took any formal affirmative action with respect to the parents' concerns. Rather, the position taken by the Board was through inaction.

The parents again requested to be placed on the Agenda for the February 10, 1997 Board meeting. They were placed on the Agenda under Communications. The group wanted answers to the questions they had asked in January. Before the Board meeting, Mr. McCarty asked Mrs. Kruger if she wanted to address the Board. When she said she did, he asked her to try to limit her comments to five minutes. According to Mr. McCarty's testimony, Mr. Teigland verbally answered most of the group's questions at the February meeting. According to Mrs. Kruger's Affidavit of Appeal, the Parents Group has never gotten answers to its questions. However, she did not dispute Mr. McCarty's testimony at the hearing. At the February meeting, the parents expressed their unhappiness with the position the Board had taken at the January meeting. Mrs. Kruger wanted the Board to discuss the issue further and reconsider its position. However, Mr. McCarty testified the Board had a number of other items on the Agenda, particularly budget issues, and the Board did not want to take up the issue at that time. Mrs. Kruger asked when the Board would be willing to discuss it, and Mr. McCarty told her after school was out in June or July.

The Parents Group asked Dr. Hayden at Area Education Agency 4 how they could challenge the Board's action, and he told them they would have to wait for final Board action. He told them of their right to appeal to the Iowa Department of Education once the District Board took final action.

Prior to the June 9, 1997 Board meeting, the Parents Group requested to be placed on the Agenda for the meeting. Superintendent Teigland told Mrs. Kruger the item would not be taken up under Communications, but under Old Business, and that the group should come to the meeting at 9 p.m. It is unclear why Mr. Teigland said this, and unfortunately he was not available at the hearing to testify. Mr. McCarty testified he had no reason to disbelieve Mrs. Kruger's testimony that she had been told to come at 9 p.m. There is an item on the Agenda under Old Business called "Report on Busing for Open Enrollment Students". There is nothing on the Agenda under Communications for the Parents Group. (There is an item on the Agenda under Communications which lists a Linda Kruger, but she had nothing to do with this issue.) It is possible Mr. Teigland thought the Parents Group could address the Board when the topic came up under Old Business, even though that was contrary to all prior Board procedure with respect to the conduct of meetings. In any case, Mr. McCarty testified he did not know the Parents Group wanted to address the Board ahead of the meeting. When asked by Mrs. Kruger whether it was possible the group had been intentionally misled as to the time to come to the meeting, Mr. McCarty answered "anything's possible". The Parents Group certainly feels like it was misled. Mr. McCarty testified he thought the Old Business Agenda Item was simply going to be Mr. Teigland's report on whether he had completed arrangements with respect to open enrollment transportation issues.

Therefore, when Mr. McCarty asked if there was anyone who wished to address the Board at the beginning of the June 9, 1997 meeting, no one spoke up because Mrs. Kruger was not at the meeting yet, since she had been told to come at 9 p.m. When he asked whether there were any additions to the Agenda, no one spoke up. Mr. Teigland did not tell Mr. McCarty that the parents had asked to speak to the Board at that time. Mrs. Kruger came to the meeting a little before 9 p.m. When the item came up on the Agenda, the Board heard Mr. Teigland's report on the issue. Mr. McCarty asked the Board if anyone wanted to make a motion regarding the issue, but the Board was silent. After that, it was apparent to Mr. McCarty that the Board was not going to take action to change its position. He then stated that the District would bus to the District lines and not beyond, and that no other districts' buses would be allowed to enter the District. He stated that the policy regarding open enrollment busing would not change, despite verbal and written agreements made by the Superintendent which had not been approved by the Board. A Mrs. Johnson stood up and spoke to the Board for about one minute. Mr. McCarty testified he did not recognize the woman, so he explained the Board's procedure, and that she should have been there to speak under the Communications portion of the Agenda. At this point, the Parents Group became upset, and Mr. McCarty called a short recess. Mr. McCarty testified that it was during the recess, in the bathroom, that Mr. Teigland first told Mr. McCarty he had told the Parents Group they could speak at 9 p.m. Mr. McCarty testified that he did not consider allowing the Parents Group to speak after the recess, because it was obvious to him that the Board had no intention of passing a motion to change its position. After the break, the Parents Group was not

allowed to speak to the Board. Mr. McCarty testified the reference in the June 9 Minutes to “After hearing some public comments” referred to the time before the break when Mrs. Johnson spoke briefly to the Board.

## II. CONCLUSIONS OF LAW

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). 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 economic eligibility guidelines set by the Iowa Department of Education. Iowa Code 282.18(10)(1997). Thus, Mrs. Kruger and the rest of the Parents Group are responsible for transporting their children to a designated bus stop on the Sibley-Ocheyden bus route. (There was no evidence any of the parents met the economic eligibility requirements.)

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 Sheldon District either: (1) never agreed to allow the Sibley-Ocheyden bus to enter its district to pick up the parents’ children because the decision was made by the superintendents of both districts informally without notification to the Sheldon Board; or (2) changed Board position at the December retreat and following meetings, and no longer wanted the Superintendent to enter into a reciprocal transportation agreement with Sibley-Ocheyden.

The Sheldon Board had the authority to take either of these positions. Iowa Code 282.18(10)(1997); *In re Kathryn & Susan Amunson*, 14 D.o.E. App. Dec. 91 (1997). A local school board has the authority to deny receiving district buses the ability to enter the district to pick up open enrolled students. Iowa Code 282.18(10)(1997); 281 IAC 17.9(1). It also has the authority to allow receiving district buses into the district. *Id.*

However, local boards do not have the authority to act arbitrarily and capriciously. *See*, Iowa Code 17A.19(8)(1997). While the parents argued that the District discriminated against them by discontinuing the Sibley-Ocheyden reciprocal transportation agreement without discontinuing agreements with the other districts, they are unrepresented by legal counsel.<sup>2</sup> We will therefore take their argument to be that the District acted arbitrarily and capriciously. It appears that the Board did not know of the

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<sup>2</sup> The Iowa Department of Education has no authority to adjudicate discrimination cases. That is the responsibility of the Iowa Civil Rights Commission. Iowa Code Chapter 216(1997).

other agreements in December, and that is why only the Sibley-Ocheyden agreement was terminated at that time. Furthermore, the Board later took action to discontinue all agreements, so any apparent arbitrariness was cured by the later action.

The Parents Group alleges the Board violated the Open Meetings Law and Iowa Code sections 279.35 and 279.36 when it held the Board Retreat in December 1996. The Iowa Department of Education does not have jurisdiction over alleged violations of the Open Meetings Law. We agree that the Board could have done a better job of compliance with Iowa Code sections 279.35 and 279.36. The Board did not take minutes of the December Board meeting and publish them, which would have been the clearest way to comply with Iowa Code sections 279.35 and 279.36. However, they did publish notice of the Retreat, took action to affirm the five objectives at the January Board meeting, listened to parents and refused to change their mind on the transportation issue at the January meeting, and published minutes of the January Board meeting. Therefore, we hold that the Board's actions were not invalid under 279.35 or 279.36, although we urge the Board to take minutes at retreats and publish them in future years.

The Appellants allege the District failed to provide them with answers to their questions, and this violated their rights. The evidence at the hearing showed the District answered most of the group's questions at the February meeting. In addition, although it is wise for a Board to answer citizen's questions, we cannot think of a legal duty which would require it to do so.

The Appellants allege their rights were violated when the Board refused to allow them to speak at the June 9, 1997 Board meeting at 9:00 p.m., after the Superintendent promised them the opportunity. We are very disturbed by this as well. The Superintendent is the head of administration for the District. For the Board to inflexibly follow Board procedure in the conduct of a meeting in the face of a Superintendent's promise that these parents could speak is extremely disturbing. We also do not understand it. The Board had the clear authority to make any decision it wanted. The issue was already divisive. Mr. McCarty did not act wisely when he refused to allow these parents to speak. However, given the total circumstances surrounding this case, we do not believe this mistake was fatal to the Board's decision.

The parents argue that precedent was set by the District years ago when it allowed buses to pick up their children, and that no written notice was ever given to the Sibley-Ocheyden District or to the parents to terminate the agreement. This does not invalidate the Board's action. The Board has the authority to change its mind regarding busing agreements. Even if it made the decision years ago to allow this, it can now change its mind. There is no legal duty on the part of the District to give written notice to the parents, although it certainly would have been the courteous thing to do. If the Sibley-

Ocheyden District had a problem with the verbal notification by the Superintendent, it was incumbent on it to raise the issue with the Sheldon District when oral notice was given.

The Board filed a Motion to Dismiss, alleging that the final Board action for purposes of appeal occurred in December 1996 or at the latest in January 1997. They argue that no action was taken at the June 9, 1997 Board meeting, and therefore the appeal is untimely. We disagree with the District's characterization of the decision making in this case. Evidence at the hearing showed it was far from clear that the Board's action which occurred in December or January was a final action of the Board. It appears to the panel that the Board did not want to take a clear, public stand on this issue which was controversial. It appears to the panel that the Board avoided making a clear decision in public with reasons for the decision given to the affected parents. Board members would not make any motions on this issue. They did not clearly state their position until the June meeting. Furthermore, at the February meeting, Mr. McCarty told the Parents Group that the Board would take up the issue at the June or July Board meeting. Since there was no clear public statement from the Board until the June 9 meeting, and no clear statement in the minutes until June, that the Board would not allow buses to enter or leave the District to transport open enrolled students despite previously unapproved agreements by the Superintendent, we hold that final Board action took place on June 9, 1997, and the Appellants' appeal was therefore timely. Furthermore, a refusal to act at a Board meeting, such as the refusal to make a motion on an issue before the Board, is a Board action for purposes of allowing an aggrieved party to appeal. See, Op. Atty. Gen. (Feb. 3, 1928). The Motion to Dismiss is hereby denied.

The District renewed its Motion to Strike and Motion for Summary Judgment as well. Because we have dealt with the legal issues recited in the Motion to Strike separately in this decision, there is no need to rule on the Motion. The Motion for Summary Judgment is hereby denied, because it is moot since the hearing was held, and it is obvious there were many material contested facts in this case.

Therefore, under the facts of this case, the Board's decision to discontinue the practice of allowing Sibley-Ocheyden buses into the District for transportation of open-enrolled students was within its authority under Iowa Code section 282.18(10)(1997) and 281 IAC 17.9(1).

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

**III.  
DECISION**

For the foregoing reasons, the decision of the Board of Directors of the Sheldon Community School District made during the months December 1996 through June 1997, to discontinue the reciprocal transportation agreement with the Sibley-Ocheyden District, is hereby recommended for affirmance. There are no costs of this appeal to be assigned.

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DATE

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AMY CHRISTENSEN, J.D.  
ADMINISTRATIVE LAW JUDGE

It is so ordered.

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DATE

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CORINE HADLEY, PRESIDENT  
STATE BOARD OF EDUCATION