IOWA DEPARTMENT
OF EDUCATION
(Cite as 22 D.o.E. App. Dec. 36)

In re Joshua, Arthur, and T'ea Haug

R. Wayne and Anita Haug, Appellants,	:	
	:	DECISION
vs.	:	
Grant Wood AEA #10, Appellee.	:	[Admin. Doc. 4536]

This matter was heard telephonically on May 5, 2003, before Carol J. Greta, designated administrative law judge, presiding on behalf of Ted Stilwill, Director of the Iowa Department of Education.

Appellants, R. Wayne and Anita Haug, took part in the hearing on behalf of their minor children, Joshua, Arthur, and T'ea. Appellee, Grant Wood Area Education Agency [hereinafter, "GWAEA"], was represented by its Board President Lynne Cannon and Board Secretary Kim Martin. Neither party was represented by legal counsel.

An evidentiary hearing was held pursuant to departmental rules found at 281-Iowa Administrative Code 6. Jurisdiction for this appeal is pursuant to Iowa Code § 285.12. Appellants seek reversal of a decision of the Board of GWAEA made on February 19, 2003, upholding a decision of the Springville Community School District board to refuse to allow other school district buses – including a bus from the Mt. Vernon District – into the Springville District for open enrollment transportation purposes.

The administrative law judge finds that she and the Director of the Department of Education have jurisdiction over the parties and subject matter of this appeal.

I.
FINDINGS OF FACT

The Haugs and their three school-aged children live in the Springville Community School District. Their residence is located approximately one-half mile from the Mt. Vernon Community School District boundary. The Haug children have always attended school in the Mt. Vernon District via the open enrollment law, Iowa Code § 282.18.

The issue in this appeal is whether the Springville Board abused its discretion when, on January 15, 2003, it refused a request from the Haugs to allow a bus from the Mt. Vernon District to enter the Springville District a distance of roughly one-half mile to pick up the Haug children. The GWAEA Board concluded that the Springville Board had not abused its discretion in so deciding. That conclusion is correct.

This was not the first time the Haugs made such a request of the Springville Board. On September 20, 1995, that Board denied the first request for this type of transportation cooperation from the Haugs, who did not appeal that denial. Rather, the Haugs next approached the Springville Board to ask that the Board approve a boundary alteration whereby the Haug property would be contained within the Mt. Vernon District in exchange for another parcel of land to be contained within the Springville District. When the Springville Board denied this property swap, the Haugs appealed to the State Board of Education which affirmed the local Board's decision. *In re Arthur Haug*, 14 D.o.E. App. Dec. 288 (1997).

Twice after the *Arthur Haug* decision, the Haugs tried to request open enrollment transportation cooperation from the Springville Board, and were twice refused time on the Board's agenda. The family appealed these refusals to the State Board, which again upheld the Springville Board. *In re Joshua Haug*, 15 D.o.E. App. Dec. 81 (1997) and *In re Joshua, Arthur, and Tea* [sic] *Haug*, 16 D.o.E. App. Dec. 336 (1999). Anita Haug's request for rehearing of the last decision cited was denied in *In re Joshua, Arthur, and Tea* [sic] *Haug*, 16 D.o.E. App. Dec. 338 (1999). In the *Joshua Haug* decision, this agency noted that the local Board could revisit an earlier position taken if "the make up of the board has changed substantially." 15 D.o.E. App. Dec. at 84.

This school year, 2002-2003, Springville has a new superintendent and new Board members. Accordingly, the Haugs' request to be placed in the Board's agenda was granted. The outcome, however, was the same. The Springvile Board's minutes for its January 15, 2003 meeting state as follows:

> Anita and Wayne Haug addressed the board to request that Mt. Vernon bus be allowed into the Springville district to transport their children. After discussion regarding previous requests and denials, Ron Jaeger made a motion to continue to disallow other school district buses into the Springville district for open enrollment transportation. All ayes, motion carried.

II.
CONCLUSIONS

Transportation disputes between a school patron and the school district board are first appealed to the area education agency board in which the district lies. Iowa Code § 285.12 then provides, "Either party may appeal the decision of the agency board to the director of the department of education … ."

Section 285.12 is silent as to the scope of review of this agency upon hearing such appeals. However, the Iowa Supreme Court recently addressed that issue directly in *Sioux City Community School District v. Iowa Department of Education*, No. 23/01-1996 (filed April 2, 2003). In that case, patrons of the Sioux City District appealed the local school board's denial of discretionary transportation[1] to the appropriate area education agency board, which reversed the local board. This agency upheld the AEA board, whereupon the Sioux City Board filed for judicial review. In reversing the decisions of the district court, the Department of Education, and the AEA board, the Supreme Court ruled as follows:

> Nothing in Iowa Code section 285.12 suggests the scope of the Department's review of the school district's decision is de novo, allowing the Department to reverse the school district and substitute its own judgment.
>
> In applying abuse of discretion standards, we look only to whether a reasonable person could have found sufficient evidence to come to the same conclusion as reached by the school district. Iowa Code § 17A.19(10)(f)(1). In so doing, we will find a decision was unreasonable if it was not based upon substantial evidence or was based upon an erroneous application of the law. [Cite omitted.] Neither we nor the Department may substitute our judgment for that of the school district.
>
> The Department has authority to review the school district's discretionary decisions made pursuant to Iowa Code section 285.12. However, by necessary implication, the Department's review is limited to determining whether the school district abused its discretion. The parents were required to show the school district's decision was

[1] The underlying request by the parents in the *Sioux City* case was for transportation for elementary students who lived less than two miles from their school but whose walking route was along a busy frontage road. Iowa Code § 285.1 mandates that districts provide transportation only when elementary students reside more than two miles from their schools of attendance (three miles for secondary students).

> unreasonable and lacked rationality. The Department exceeded its authority by substituting its judgment for that of the school district.

The underlying statute in question here is a subsection of the open enrollment law, Iowa Code § 282.18(10), which states in pertinent part as follows:

> [T]he parent or guardian is responsible for transporting the pupil without reimbursement to and from a point on a school bus route of the receiving district. However, a receiving district may send school vehicles into the district of residence of the pupil using the open enrollment option under this section, for the purpose of transporting the pupil to and from school in the receiving district, if the boards of both the sending and receiving districts agree to this arrangement.

The administrative rule accompanying this statute also emphasizes that transportation is the responsibility of the parent or guardian, and that it is discretionary with the district whether it agrees to allow buses from other districts into its territory. 281—Iowa Administrative Code 17.9(1). Although this is not the same law as was at issue in the *Sioux City* case, the standard of review is the same because both school boards were being asked to provide discretionary transportation. That is, neither board was compelled by law to agree to the parental request.

Although there was conflicting information in the record about Springville's past practice regarding allowing other districts' buses into its boundaries for open enrollment transportation purposes, the decision the Springville Board made on January 15, 2003 is wholly consistent with the District's policies. Local Board Policy # 501.14, Open Enrollment Transfers – Procedures as a Sending District states unequivocally, "The Board will not approve a student's request to allow the receiving district to enter the school district for the purposes of transportation." And Policy # 505.6, Open Enrollment Transfers, formerly included a statement that the "board may approve a student's request to allow the receiving district to enter the school district for the purpose of transportation." This sentence was omitted from Policy #505.6 when it was amended. Accordingly, the clear and consistent policy of the Springville District is to deny requests to allow busing from a receiving district to enter the Springville District for open enrollment transportation purposes.

In *In re Danielle, Dalton, and Dustin Dea*, 14 D.o.E. App. Dec. 359 (1997), the State Board of Education was faced with the issue of whether a district's decision to discontinue allowing buses from all other districts into its own for open enrollment purposes was arbitrary and capricious. The local board in that case was very open that

the rationale behind its decision was to discourage open enrollment out of the district. The State Board concluded that such a policy was not arbitrary or capricious. "This decision [to no longer allow buses from neighboring districts to enter its district to pick up open enrolled children] is allowed by Iowa law. Iowa Code section 282.18(10) (1997)." 14 D.o.E. App. Dec. at 361.

Furthermore, as the Iowa Supreme Court recently ruled in the *Sioux City* case, a local board's decision cannot be said to be arbitrary and capricious if reasonable minds could disagree regarding the substance of that decision. The Haugs provided this agency with their prepared remarks that they made to both the Springville and GWAEA Boards. In her remarks to the Springville Board, Mrs. Haug read as follows:

> I would like to suggest a compromise. Would you consider allowing the bus [from Mt. Vernon] to come to our residence on a trial basis for the remainder of the year? If during that time you record any effect positive or negative you could reassess your decision at a later date. You might receive other transportation requests by then, you may gain support and respect for this action or it might go totally unnoticed. You won't know if you don't try."

By the very nature of these remarks, the Haugs conceded that there was evidence supporting the Springville Board's decision, specifically, that the District was concerned about encouraging further open enrollments. In the transcript of the proceedings before the GWAEA Board, Mrs. Haug directly acknowledged that this concern was the driving force behind the Springville Board's refusal of her family's request.

Mrs. Haug's compromise may be the most sensible, reasonable solution. It may even be the best solution. However, we may not second-guess the local Board by imposing a different decision if we conclude that the local Board's decision was not an abuse of its discretion. That Board's desire to discourage open enrollments cannot be said to be irrational. It must be remembered that the local Board is not denying or taking from the Haugs any <u>right</u> that the family or its children possess. Iowa Code section 282.18(10) allows each school district to decide whether to cooperate with another district to provide open enrollment transportation to its patrons, but that subsection is clear that transportation is the responsibility of families who take advantage of open enrollment. We cannot, and do not, conclude that the Springville Board abused its discretion by making an arbitrary decision.

III.
DECISION

For the foregoing reasons, the February 19, 2003 decision of the Board of GWAEA to uphold the decision of the Springville Community School District Board[2] to refuse to allow other school district buses (including those from the Mt. Vernon District) into the Springville District for open enrollment transportation purposes is **AFFIRMED**. There are no costs associated with this appeal to be assigned to either party.

_____ _____

Date Carol J. Greta, J.D.
Administrative Law Judge

It is so ordered.

_____ _____

Date Ted Stilwill, Director
Iowa Department of Education

[2] We note that it is consistent with *Sioux City Community School District v. Iowa Department of Education*, *supra*, for the original parties to these appeals to remain constant throughout the life of the appeal. Hereafter, when a transportation decision of an area education agency board is appealed to the undersigned, the parties before this agency shall be the school patron(s) and the board of the school district. The outcome of this appeal was not affected by the GWAEA Board being the Appellee, rather than the Springville Community School District Board, because the GWAEA Board upheld the decision of the District's Board.