

**IOWA STATE BOARD
OF EDUCATION**
(Cite as 14 D.o.E. App. Dec. 91)

In re Kathryn & Susan Amunson :

Gary Amunson, :
Appellant, :

v. : DECISION

East Monona Community :
School District, :
Appellee. :

[Admin. Doc. #3826]

The above-captioned matter was heard telephonically on April 18, 1997 before a hearing panel comprising Mr. Klark Jessen, consultant, Office of the Director; Ms. Christine Anders, consultant, Bureau of Food and Nutrition; and Amy Christensen, designated administrative law judge, presiding. The Appellant, Mr. Gary Amunson, was present telephonically and was unrepresented by counsel. Mr. Amunson's wife, Linda Amunson, was also present telephonically, and represented the Appellant when he had to leave the hearing to return to work. The Appellee, East Monona Community School District [hereinafter, the District], was also present telephonically in the persons of Mr. Paul Tedesco, Superintendent, and Ms. Kathryn Halvorson, Board Secretary. The District was represented by Mr. D.R. Franck, attorney.

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 section 290.1(1995).

The Appellant seeks reversal of a decision of the Board of Directors [hereinafter, the Board] of the District made on November 11, 1996, which denied his request to allow a Charter Oak-Ute District bus to enter the East Monona District to pick up the Appellant's 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

The Amunsons have two children: Kathryn and Susan. The Amunsons live in the East Monona Community School District. The children are open enrolled to the Charter Oak-Ute School District.

On September 5, 1996, the Amunsons sent a letter to the Board requesting that the Charter Oak-Ute bus be allowed to enter the East Monona District to pick up their children, and stated that the Board had set a precedent by allowing the Charter Oak-Ute bus into the East Monona District to pick up the children of Mr. and Mrs. Meadows.

Prior to receiving this letter, the East Monona Board and Superintendent were unaware that the Charter Oak-Ute bus was entering their District to pick up the Meadows' children. At the September 9, 1996 Board meeting, the Board voted to deny the Amunsons' request for transportation, and directed Mr. Tedesco, Superintendent, to investigate why the Charter Oak-Ute bus was coming into the East Monona District, since the Board had not approved this. The East Monona District is very concerned about the financial impact of open enrollment on their District and the students who remain in the district, and they hope that restrictive transportation policies will stem the tide of students open enrolling out of the district.

Mr. Tedesco investigated the situation, and could find no records allowing a Charter Oak-Ute bus into the East Monona District. He then sent letters to both the Amunsons and the Meadows informing them of the Board's decision, that he could find no records to support the busing practice, and that he was asking the Charter Oak-Ute District to stop picking up the Meadows' children.

After further investigation, the District discovered that the former superintendents of the East Monona and Charter Oak-Ute Districts had made a gentlemen's agreement to allow the Charter Oak-Ute school bus to enter the East Monona District to pick up the Meadows' children. This agreement was made during the 1991-92 school year, and a Charter Oak-Ute bus has been picking up the Meadows' children since the fall of 1992. The agreement had never been approved by the East Monona Board.

At the October 14, 1996 Board meeting, the Board voted to allow the continuation of the practice of picking up the Meadows' children by the Charter Oak-Ute bus, "based on the circumstances of this case. The East Monona Board reserves the right to review each case individually and believes this case not to set a precedent." The Board's decision was contingent on approval by the Charter Oak-Ute District and the Western Hills Area Education Agency, which was later obtained. The Meadows' bus stop is a designated stop on the Charter Oak-Ute bus route.

Based on the decision at the October Board meeting, Mr. and Mrs. Amunson again requested that the Board approve their request for bus transportation. This request was denied at the November 11, 1996 Board meeting. At the same meeting, the Board revised its open enrollment policies to state that it would not allow any other school districts to enter its district to transport open enrolled students, and it would not provide transportation for any students who open enrolled into the East Monona District from other districts. The Amunsons appealed the Board's decision to deny their request for transportation to the Iowa Department of Education.

The Amunsons have been driving their children to the Meadows' bus stop, and the Charter Oak-Ute bus has been transporting the Amunson children with the Meadows' children to school from that bus stop. The Amunsons would like the bus to pick up their children nearer to their home.

On March 10, 1997, the Board voted to discontinue allowing the Charter Oak-Ute bus to enter the East Monona District to pick up the Meadows' children, beginning with the 1997-98 school year. The Board did not require an immediate change, because it wanted to give the family time to make other transportation arrangements. Mr. Tedesco informed the Meadows and the Amunsons of this decision by letter dated March 13, 1997. Neither the Meadows or the Amunsons appealed this 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(11)(1995). 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(11)(1995). Thus, the Amunsons were responsible for transporting their children to a designated bus stop on the Charter Oak-Ute bus route. (There was no evidence the Amunsons 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(11)(1995); 281 IAC 17.9(1). This agreement must be approved by the Area Education Agency. Iowa Code 285.9(3)(1995); 281 IAC 17.9(1). In this case, the Board of the East Monona District never agreed to allow the Charter Oak-Ute bus to enter its district to pick up the Meadows' children until the October 1996 Board meeting, because the decision was made by the superintendents of both districts informally without notification to the East Monona Board.

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(11)(1995); 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)“g”(1995). The question in this case is whether the Board acted arbitrarily and capriciously in allowing the Charter Oak-Ute bus into the district to pick up the Meadows children, but not the Amunson children. The answer is no. The East Monona Board was faced with a difficult situation: a decision which had been made several years before without its knowledge. The Meadows’ children had been picked up by the Charter Oak-Ute bus for several years. In the Board’s actions and in all communication to the parents, the District made it clear the Meadows’ decision had been made because of the unique facts of the case, that it was limited to that situation, and that the District would not allow buses into the district to pick up any other open enrolled students, not just the Amunson children. The Board adopted written policies which stated this position. Although not immediately relevant to the decisions made in October and November of 1996, because the decision came after those decisions had been made, the fact that the Board voted in March of 1997 to end the busing of the Meadows’ children with the 1997-98 school year lends support to the view that the Board was not arbitrarily picking and choosing which open enrolled students could be picked up by the Charter Oak-Ute bus. Therefore, given the unique facts of this case, the Board’s decision to deny the Amunsons’ request for transportation was within its authority under Iowa Code section 282.18(11)(1995) and 281 IAC 17.9(1).

The Amunsons have the responsibility to transport their children to a designated bus stop on the Charter Oak-Ute route. The Meadows’ stop is a designated bus stop on the Charter Oak-Ute route. The route has been approved by the Area Education Agency. Therefore, the Amunsons must transport their children to the Meadows’ bus stop, so long as it is a designated bus stop on the Charter Oak-Ute route. Beginning with the 1997-98 school year, since the East Monona Board has voted to discontinue the practice of allowing the Charter Oak-Ute bus into the district to pick up the Meadows’ children, the Amunsons will have to transport their children to and from a designated stop on the Charter Oak-Ute route as it will exist next year. Iowa Code 282.18(11)(1995); 281 IAC 17.9(1).

III. DECISION

For the foregoing reasons, the decision of the Board of Directors of the East Monona Community School District made on November 11, 1996, which denied the

Amunsons' request for transportation for their open enrolled children, is hereby recommended for affirmance. The Amunsons must transport their children to and from the Meadows' stop, so long as that stop is a designated bus stop on the Charter Oak-Ute route. 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