

IOWA DEPARTMENT
OF EDUCATION
(Cite as 11 D.o.E. App. Dec. 71)

In re Mount Vernon :
Community School District :
 :
Mount Vernon Community :
School District, :
Appellant, :
 :
v. : DECISION
 :
Grant Wood Area :
Education Agency, :
Appellee; and :
Anamosa Community School :
District, Intervenor. : [Admin. Doc. # 3388]

The above-captioned matter was heard on December 13, 1993, before a hearing panel comprising Mark Haack, chief, Bureau of Instructional Services; Dwight Carlson, chief, Bureau of School Administration and Accreditation; and Kathy Lee Collins, legal consultant and designated administrative law judge, presiding. Appellant Mount Vernon Community School District [hereafter "the District"] was present in the persons of Adrian Ringold, superintendent; Dean Borg, president of the board of directors; Larry Sproston, transportation director for the District; and Wayne Novak, bus driver for the District. Appellant was represented by Guy Booth of Cedar Rapids. Appellee Grant Wood Area Education Agency [hereafter, "the AEA"] was present in the persons of Administrator Ron Fielder and AEA Board President Lynne Cannon; the AEA was represented by Iris Muchmore of Smith, Perrine, Albright & Ellwood, Cedar Rapids. Third party Intervenor Anamosa Community School District [hereafter "Anamosa"] was represented by Brian Gruhn of the Gruhn Law Firm, Cedar Rapids; Superintendent Dr. Randall McCaulley and Transportation Director Matt English were present at hearing.

At issue is a decision made by the AEA Board on November 15, 1993, to deny the District's request to travel across portions of the Anamosa school district on regular bus routes. Post-hearing briefs of the Appellee and Intervenor were filed on January 5 and 10, 1994.

A mixed evidentiary and stipulated record hearing was held pursuant to rules of the Department of Education found at 281 Iowa Administrative Code 6.

I.
FINDINGS OF FACT

The administrative law judge finds that she and the director of education have jurisdiction over the parties and subject matter of the appeal before them. Iowa Code § 285.13(1993).

The District lies to the south and west of the Anamosa district in lower northeast Iowa. The District is strangely configured, due in part to the receipt of additional territory in 1961 involving a reorganization of the former Martelle school system. The lion's share of the territory in that reorganization apparently was attached to Anamosa. There are approximately 33 students who live in the Martelle area (northeast of the District boundary) who have open enrolled to the District and who have been transported by the District, first by being picked up at a park in Anamosa and more recently by being picked up on the highway.

The District asserts that Highway 1, which cuts diagonally through the Lisbon Community School District first,¹ then back into the District, then at the far north edge of the District into Anamosa, is the safest, most economical and direct route for its buses. The District also asserts that it has been running through Lisbon and Anamosa on Highway 1 since 1961, apparently solely on informal agreements between the school superintendents of those districts without formal AEA approval.

In the 1992-93 school year, the (former) Anamosa superintendent is said to have begun to complain to District Superintendent Adrian Ringold that two District buses were crossing into Anamosa territory, one at the south edge of the District and another at the far eastern edge. Despite the fact that such a complaint would have seemed to imply Anamosa's withdrawal of its previous "permission" by informal agreement, no changes were made in the routes until October of 1993 when the Anamosa school board passed a resolution not to allow District buses into its borders.² That action spawned the District's request for the first time asking the AEA Board to approve its routes into Anamosa.

¹The District's traversing through a portion of the Lisbon Community School District was not at issue because Lisbon was not contesting the route. The AEA Board approved the District's route through Lisbon later at the same meeting.

²Pursuant to a 1992 amendment to the open enrollment law eliminating a previous prohibition placed on receiving district buses entering neighboring districts for the purpose of transporting open enrollment students, Anamosa signed an agreement with Monticello for each district's buses to enter the other district by one mile to collect open enrollment students. Anamosa and Springville have also agreed to very short-distance forays into each other's territory to transport open enrollment students.

A hearing was held on November 15 at a regular meeting of the Grant Wood AEA board of directors. District school board President Dean Borg introduced Superintendent Ringold who delivered a short presentation stressing that the request to cross into Anamosa was simply consistent with its regular route established in the 1960s and that his request was not for the *purpose* of transporting open enrollment students but rather for safety and economical efficiency of transportation. Anamosa's attorney spoke against the request.

Directors on the AEA Board asked questions of Superintendent Ringold and gave him an opportunity to continue the hearing in order to bring his transportation director in at a later date to offer specifics and provide answers to questions of which Mr. Ringold was unsure, but the District declined. The AEA Board president proposed informally that her Board might want to do an independent evaluation of the bus routes and those suggested to the District by Anamosa, but no other directors felt this need. A motion to approve the District's request died for lack of a second. Thereafter, a motion to deny the request passed 8-1, Carmichael voting no. This appeal followed.

Although it was understandably somewhat difficult for the hearing panel to follow the testimony of those familiar with the roads, family residences and general territory of the area, we have attempted to glean some facts that are relevant to the resolution of this case:

1. Of the two areas where District buses have crossed into Anamosa, the area of primary concern is the Martelle area. The District bus, staying on Highway 1, goes north into Anamosa (sections 12 and 7 on the map), picks up the Martelle open enrollment students and then heads west on Route E45 to the Stewart residence inside the District.
2. The Stewarts have children enrolled in the District, but they ride the bus only 50% of the time or less. Thus there are many times when this foray into Anamosa is solely for the purpose of transporting Martelle open enrollment students.
3. Anamosa suggests, and I agree, that the District could stay within its own boundaries and still safely transport students if it would leave Highway 1 at Lehr Road, travel west briefly then turn north onto Linn Grove

Road to Route E45, then go east to the Stewart residence. The bus could then turn around in the Stewart's drive and reverse the route.³

At the AEA Board hearing statements regarding this potential route established that it would add very little mileage or expense to the District; however, the District opposed this suggestion on the grounds that it has a long-standing policy to avoid turnarounds,⁴ that the weather and winter/spring road conditions make Highway 1 the preferred route because E45 is gravel, and that the Martelle students' safety was at issue if they could not be picked up on the side of the road the bus was traveling, having to cross the highway to wait for the bus or to walk home. Anamosa successfully rebutted this concern by proposing a route that would not require the students to cross the highway.

4. District Transportation Director Larry Sproston, who is also the driver for the route at issue, testified that drifting snow in the winter often causes problems on the county roads; melting snow in the spring and no ditches routinely cause water across some of the roads. Therefore, he has a strong preference for using Highway 1 as much as possible.

Mr. Sproston also testified that with respect to transportation economics and effi

³There was testimony on the respective advisability of head-in-back-out versus back-in-head-out turnarounds. However, despite the fact that school transportation laws are extraordinarily detailed (see, e.g., Iowa Code § 321.372), there is no state law or administrative regulation addressing the wisdom of one over the other type of turnaround. Visibility is apparently the primary factor in selecting one option over the other. Testimony was at odds over the visibility range at the Mike Stewart drive, but there is at least 300 feet, the minimum distance required for stopping a school bus to pick up or drop off pupils.

⁴Despite this policy, the District admitted to several turnarounds on their routes and no history of accidents as a result. Pictures (Exhibits 1-5 and 9-12) of the Stewart's driveway as it intersects with the county's gravel Linn Grove Road belie any danger in conducting a safe turnaround there.

ciency, hard-surfaced roads are preferable to gravel roads for fuel economy as well as wear-and-tear on the school bus.

II. CONCLUSIONS OF LAW

This controversy was placed in the AEA's lap as a result of Iowa Code section 285.9:

The powers and duties of the ... area education agency boards shall be to:

...

(3) Approve all bus routes outside the boundary of the district of the school operating buses.

Iowa Code § 285.9(3)(1993). From this single statute it is clear that no school district can establish a bus route that extends outside its boundaries as a matter of right. Despite this fact, the Mount Vernon District did so without AEA approval for a number of years. Can the District establish an unapproved (and therefore arguably illegal) route and then argue that the AEA Board is, in essence, estopped from disapproving it despite the fact that it is currently being used to transport open enrollment students living in Anamosa without that district's agreement?

The District's response to Anamosa's accusation (that the route is designed to effectuate the transportation of open enrollment students) is to point to its duty under Iowa law:

The powers and duties of the local school boards shall be to:

...

(2) Establish, maintain and operate bus routes for the transportation of pupils so as to provide for the economical and efficient operation thereof without duplication of facilities, and to properly safeguard the health and safety of the pupils transported.

Iowa Code § 285.10(2)(1993). The District's argument is that using the route based on Highway 1 is necessary for "economical and efficient operation... [that] properly safeguards the health and safety of the pupils."

The burden is on the appellant in any case to prove that the decision from which it appeals was made arbitrarily or capriciously, was beyond the authority of the board or in violation of law, lacked a basis in fact or was marked by an abuse of discre

tion. In re Jerry Eaton, 7 D.o.E. App. Dec. 137, 141 (1989). Just because "reasonable minds may differ" as to the best decision to be made, that is no reason to overturn an otherwise proper board decision.

The real issue in this case is somewhat insidious. The Iowa open enrollment law as originally passed placed the burden of transporting open enrollment pupils on the parents of those pupils. They were required to transport their children either to the school of open enrollment or "to and from a point on a regular school bus route of the receiving district" without reimbursement, unless the family qualified for free transportation because of economic need. Iowa Code § 282.18(11)(1989).

A 1992 amendment states

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.

Iowa Code § 282.18 (11)(1993).

In order to continue to transport the 33 Martelle resident students who had open enrolled to Mount Vernon after their resident district (Anamosa) school board closed the Martelle attendance center, the District in this case had to prove that it was only picking up those students because they were waiting at a point on the "regular school bus route." It is quite clear there was no agreement between the District and Anamosa transporting open enrollment students.

The fact is, District buses headed up Highway 1, picked up the Martelle students (first at Martelle Park and after October 26, on the highway), then turned the bus around in the park and drove south on Highway 1, directly back from whence it came. The post-10/26 alternate route had the driver traversing north on Highway 1 through Martelle to E45, west on E45 to Linn Grove Road, south on Linn Grove to Lehr Road, and then East on Lehr back to Highway 1, again for the sole purpose of picking up those same students. Despite District testimony that the goal of this route was to get back to Highway 1 and avoid a turnaround at the Stewart residence, it is certainly a long and cumbersome route merely to avoid a turnaround.

Anamosa personnel presented a proposal that the District access the same District students without travelling on Highway 1 north of Lehr Road, using the same road (Linn Grove) going northbound and southbound that the District has used southbound only. This alteration to the "Martelle Route" requires that the bus turn around before it enters Anamosa after picking up stu-

dents at the residence of Mike Stewart. This turnaround, which could be performed at either of two private driveways, would be performed on a public highway at the intersection of either driveway, under conditions that exceed the legally prescribed safety conditions for school bus stops in Iowa. Iowa Code § 321.372(1993).

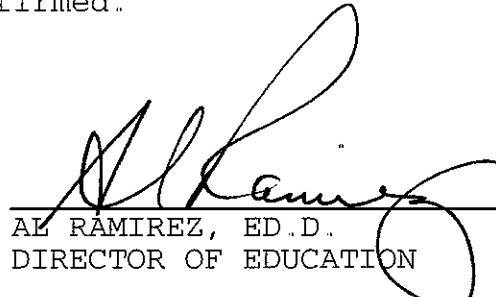
This would be a harder case to resolve if the legislature had not specifically decided the public policy issue of transporting open enrollment children against receiving districts by prohibiting them from entering another district without that district's permission. Likewise, we would probably not be deciding the issue today if the students in the Martelle area had not elected open enrollment. After all, the District's buses have been traversing into Anamosa and Lisbon without objection for many years. From that standpoint, it is unfortunate a law has created a degree of enmity among school districts.

It is also distressing to think about those 33 children being without the convenient school transportation that they have been accustomed to for over four years. Nevertheless, the fact remains that the burden of their transportation, at least to get the students to a point within the District that is on the route where District children are being picked up and dropped off, has been placed legislatively on the parents. They can celebrate their free ride for the past four or five years, but the proverbial piper has arrived with hands outstretched; it's time to pay him.

III. DECISION

As there is insufficient evidence that either economic efficiency or safety issues require the District to cross into Anamosa, and there is considerable evidence that the routes may have been recently customized to transport open enrollment students, the decision of the Grant Wood Area Education Agency board of directors must be affirmed.

February 1, 1994
DATE


AL RAMIREZ, ED.D.
DIRECTOR OF EDUCATION